

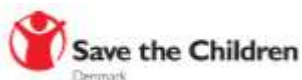


# Closing a Protection Gap

*“Separated children have the right to a guardian  
who will protect their rights and best interests”*

National Report  
2010-2011

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DEFENCE FOR CHILDREN  
International

*This publication has been produced with the financial support of the Daphne III Programme of the European Commission. The contents of this publication are the sole responsibility of the author and can in no way be taken to reflect the views of the European Commission.*

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## 1. Acknowledgements

We would like to thank all the people who accepted to be interviewed and who support us in our research and interviews activities.

We would like also to express our gratitude to Lara Olivetti and Salvatore Fachile, to Silvia De Lotto and Francesca De Lotto of “Associazione Nuovi Cittadini onlus” - Udine, to Lassaad of Cooperativa Dedalus – Napoli, to Vito Savasta, to Gabriela Salvadori, Luigi Vittorio Berliri, Jenny Theresa Porcelli and Federico Feliciani of Società Cooperativa Sociale “Spes contra spem” and of Community “Approdo” - Rome, to Paola Bastianoni and Federico Zullo, to the Public Guardian of minors of Region of Emilia Romagna and to its staff, in particular to Elena Buccoliero, to the Public Guardian of minors of Region of Veneto and its staff, in particular to Francesca Rech and Lisa Cerantola, to Sandra Odorico of the Guardians Volunteers Association - Trieste, to Luigina d’Orlando of the staff of the Public Guardian of minors of Region of Friuli Venezia Giulia, to Silvana D’Auria of the Public Agency for Guardianship of the Municipality of Naples, to Ali of Società Cooperativa Sociale “Metoikos” - Bologna and of Community “La Mongolfiera” and its friendly children.

## 2. Background of the project

Separated children have the right to a guardian who will protect their rights and best interests. Not only do separated children have to live in a country they don’t know without their parents but, in some countries, they also run the risk of being detained because of their residence status or run the risk of being exploited by traffickers.

Proper guardianship systems are also essential to assist in finding a durable solution for separated children, whether that be return to their country of origin, transfer to another country (for example for family reunification) or integration into the host country.

The type of protection and care a separated child receives from a guardian depends upon the country which he/she has (often randomly) entered. Since all European countries have signed the Convention on the Rights of the Child (CRC) and have the obligation to take into account the special needs of separated children, the significant differences in the level of protection separated children receive in European countries are not acceptable.

The mission of this project is therefore **to improve the situation and development chances of separated children** by means of **closing a protection gap for separated children in Europe by developing core standards with a focus on qualifications of guardians based on the views of separated children in relation to their rights according to the CRC and EU directives.**

The mission of the project is in line with the contents of the communication from the European Commission to the European Parliament concerning the Action Plan 2010-2014 for unaccompanied minors, in particular where the Commission states to consider: *“Introducing review mechanisms to*

*monitor the quality of guardianship in order to ensure that the best interests of the child are represented throughout the decision-making process and, in particular, to prevent abuse”.*<sup>1</sup>

**Other important sub goals of this project are:**

- to assist guardians in finding a durable solution for the child.
- to boost a European Community policy and harmonization of guardianship in practice.
- to strengthen the attention to the Convention on the Rights of the Child.

This project will in fact provide an instrument to improve the qualifications of a guardian to take the special needs and rights of separated children into account and to harmonize the protection separated children receive from their guardian. The assumption is that when all guardians have sufficient qualifications to work in the best interest of the child the level of protection children receive in the different European countries will harmonize.

This project is based on the interviews with (former) separated children and guardians in eight countries. The interviews have provided inputs for the definition of a set of international standards that will be developed in 2011 on the basis of the results of the consultation with separated children and will focus on the rights of the children according to the Convention on the Rights of the Child (CRC).<sup>2</sup> The research activity includes also a literature study of the relevant research and legislation.

The partners in the project are divided into Research Development partners and Field Research partners. All eight partners have carried out the research in the same way but the Research Development partners will have a bigger role in developing the core standards in 2011.

The partners in this project are:

<b>Research Development partners:</b>	
Defence for Children International -ECPAT	The Netherlands
Plate-form Mineurs en exil – Service Droit des Jeunes	Belgium
Save the Children	Sweden
Defence for Children International	Italy
<b>Field Research partners:</b>	
Save the Children	Denmark
Slovene Philanthropy	Slovenia
Refugee Council	Ireland
Bundesfachverband UMF	Germany

<sup>1</sup> See for this communication: <http://www.statewatch.org/news/2010/may/eu-com-action-plan-unaccompanied-minors-com-213-3-10.pdf>, p. 10.

<sup>2</sup> The project is inspired by the Quality4Children standards for Out – of -home childcare in Europe (<http://www.quality4children.info>). This excellent study provides a useful framework but needs to be specified for separated children.

### 3. Methodology

The objective of this qualitative research is to gather existing research, information and legislation, and collect the views on guardianship of separated children and guardians. The information and accounts provided have been analyzed in order to get a deeper understanding of the complexity of the matter and to focus on good practices and recommendations in relation to the guardians in Italy.

The methodology of the national research consists of a literature study including a study of the relevant research and legislation, at least ten interviews with (former) separated children and at least ten experts including guardians.

#### *Interviews methodology and sampling*

Data and information have been gained by conducting qualitative semi-structured interviews with question lists as a guideline.<sup>3</sup> Before starting the interviews, two question lists for the interviews with separated children and with guardians/experts respectively was worked out based on a pilot completed in 2009 by Defence for Children – The Netherlands.<sup>4</sup> The results were then discussed with all the partners at a kick off meeting in February 2010 and adjustments were made.

Both the question lists include subjects like: procedural aspects, qualifications of a guardian, the best interest of the child assessment, reception facilities, return, legal knowledge and communication<sup>5</sup>.

The questions of the question lists were not asked in a strict order, since it has been essential for the consultations with the separated children and guardians/experts to have as much “open interviews” as possible, in order to collect new ideas, suggestions and recommendations from the interviewees and not to limit the results to the subjects in the question lists.

All the interviews were conducted in Italian and no interpreter was involved. All the interviews with guardians/experts took place at their office, while the interviews with (former) separated children were carried out at the office of their housing institution, at their guardians’ office or, in one case, in a café.

For what concerns the sampling, in order to reflect as accurately as possible the local differences as to the procedures and practices for the appointment of a guardian, guardians and children from one small (Udine), one medium (Venice) and two large cities (Rome and Naples) of the country have been approached. Moreover, by choosing to interview children and guardians/experts living in the above mentioned cities (Udine, Venice, Rome and Naples) of the North, the Center and the South of

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<sup>3</sup> See the research “My Nidos” by the Hogeschool Utrecht that worked with the method ‘story telling’. A recommendation from this report was to interview children instead to get a better responses and more information (see Hogeschool Utrecht, “Mijn Nidos”, Utrecht: 2008., p 46).

<sup>4</sup> See for this pilot: <http://www.defenceforchildren.nl/images/20/1098.pdf>.

<sup>5</sup> See Annex 1 and 2 for the question lists that served as a guideline for the interviews with the separated children and the guardians/experts.

the country respectively, it was possible to cover also the differences deriving from the regional contexts and systems.

### *Ethical dilemmas*

The researcher has been sensitive to the ethical dilemmas rising from interviewing separated children about their guardians, from whom they are very dependant, and to the topics the children do not want to talk about. The accounts of the interviewees are dealt with the highest level of confidentiality: all of them have been informed about the confidentiality of the conversation and have signed an informed consent document for their participation to the project. The results of the interviews are presented without the names and contact details of the children and their guardian. All interviewees got a code and are registered in the computer system of the project's researcher. Access to this information will be restricted to the other project's researchers and will not be made public in any other way.

### *Good practices and recommendations*

The inputs from the conversations with the (former) separated children, guardians and other experts and parties involved were labeled into categories corresponding with the table of content of this national report.

The good practices and recommendations derived from these information and from research activities are based on the views of the respondents and are linked to the articles of the Convention on the Rights of the Child. The best practices based on national or local projects are also described more in details in Annex 4.b.

## **4. Interviewees**

We conducted interviews with 14 (former) separated children and 7 guardians. Except for one separated child and for former separated children, we asked and received the permission for the interview to children's guardians.

Furthermore we interviewed 9 people involved in separated children's life, who added information about their views on guardianship. During the research activities also a phone call with an expert on separated children was realized.

In total, we conducted 30 individual interviews and discuss the contents of the project and of the research with some of the people we met. This gave added information, especially during the meetings with guardians and experts working with children. We also conducted a non structured focus group meeting with 8 children. The mixture of these interview techniques made it possible to include information from in-depth conversations with individuals but also let children express their opinions within the focus group.

***(Former) Separated children***

<b>N.</b>	<b>Sex</b>	<b>Age</b>	<b>Country of origin</b>	<b>Staying in Italy for</b>	<b>Legal status</b>	<b>Facility where he/she is living</b>	<b>Interviewed with his/her guardian's consent?</b>
<b>IT1</b>	Male	16	Afghanistan	2 years	Residence permit for subsidiary protection	Community for separated children	YES
<b>IT2</b>	Male	17	Afghanistan	2 years	Residence permit for subsidiary protection	Community for separated children	YES
<b>IT3</b>	Male	18	Afghanistan	2 years	Residence permit for subsidiary protection	Community for separated children	N/A
<b>IT4</b>	Male	17	Eritrea	1 year and a half	Refugee (he is waiting for a correct version of his residence permit, with the indication of his correct date of birth)	Reception Centre	NO
<b>IT5</b>	Male	18	Afghanistan	1 year and 2 months	Refugee	Flat share	N/A
<b>IT6</b>	Male	17	Mali	2 years	He has not been granted a residence permit for asylum seeking yet due to problems with his identification	Small living community for separated children	YES
<b>IT7</b>	Male	16	Burkina Faso	1 year	Not asylum seeker. He holds a residence permit for minor age	Small living community for separated children	YES
<b>IT8</b>	Male	17	Ghana	2 years	Not asylum seeker. He holds a residence permit for fostering	Flat share	YES
<b>IT9</b>	Male	17	Morocco	4 years	Not asylum seeker. He holds a residence	Small living community for	YES



					permit for minor age	separated children	
<b>IT10</b>	Male	17	Ghana	2 years	Not asylum seeker. He holds a residence permit for minor age	Small living community for separated children	YES
<b>IT11</b>	Male	18	Morocco	2 years	Not asylum seeker. He holds a residence permit for prolonged fostering	Small living community for separated children	N/A
<b>IT12</b>	Male	18	Pakistan	6 years	Not asylum seeker. He holds a residence permit for prolonged fostering	Small living community for separated children	N/A
<b>IT13</b>	Female	16	Ukraina	8 months	Not asylum seeker. She holds a residence permit for minor age	Small living community for separated children	YES
<b>IT14</b>	Male	19	Afghanistan	2 years	Residence permit for subsidiary protection	Independent (flat share)	N/A

### **Guardians**

<b>N.</b>	<b>Sex</b>	<b>Length of experience as guardian</b>	<b>Current occupation</b>
<b>ITG5</b>	Male	7	He is an expert on children issues, he is honorary judge to the Juvenile Court, professor at the university and expert on conflict mediation
<b>ITG6</b>	Female	3	Employee at the Public Administration (graduated in Law)
<b>ITG7</b>	Female	4	Graduated in Economics
<b>ITG11</b>	Male	10	He is Public guardian of an Italian Region and professor at the University. He has always worked in institutions at local and national level and he has been teacher at school.
<b>ITG13</b>	Female	3	Cultural mediator

ITG14	Male	3	Cultural mediator
ITG15	Female	3	Biologist. She holds a book store
ITG16	Female	5	Teacher

### Experts

N.	Sex	Occupation
ITA1	Male	Lawyer working with separated children and collaborating with child-focussed organisations
ITA2	Female	Social Services and Guardianship Services Head Officer
ITA3	Female	Social psychologist
ITA4	Female	Responsible of a third sector organization working with separated children asylum seekers
ITA8	Female	Honorary judge to the Juvenile Justice Court
ITA9	Female	Social assistant of a community for separated children
ITA10	Male	Professional educator of a community for separated children
ITA12	Female	Lawyer working within the public guardian staff and on the guardians project of the Region

### National Advisory Council

Esteemed professionals and organizations' representatives working in the human rights and children's rights field have accepted to accompany and support the research process as members of the National Advisory Council. Our intention was to bring in a wide range of working experience, theoretical backgrounds, perspectives and points of view. Due to his vast experience in activities and programmes for the protection of children from different forms of exploitation and abuse and for the promotion of human rights in the migration phenomena, and due to the fact that he is not directly involved in the project, we deemed useful also to involve in the group the Director of Defence for Children International – Italy.

We had consultations with the members of National Advisory Council concerning the main protection gaps of the Italian guardianship systems, the first findings and results of the research process, the dissemination and information strategy.

**It is important to highlight that the outcomes of this report do not reflect necessarily the views of all the members of the National Advisory Council.**

<b>National Advisory Group:</b>	
Stefania Congia	Official of the Data Protection Authority (previously

	she worked with Unaccompanied Children Committee at the Ministry of Welfare and Labour - Italy)
<b>Gustavo Gozzi</b>	Professor of Human Rights – University of Bologna
<b>Annalisa Faccini</b>	Social Services and Guardianship Services Head Officer - Municipality of Bologna
<b>Luigi Citarella</b>	President of INDiMi - National Institute for Children’s Rights Italian and Italian Representative to the UN Committee on the Rights of the Child
<b>Lucio Strumendo</b>	Public Guardian for Children – Region of Veneto
<b>Laura Baldassarre</b>	UNICEF - Italy
<b>Daniele Lugli</b>	Ombudsman for Civil Rights – Region of Emilia Romagna (he also decided to act as Public Guardian for Minors of Region Emilia Romagna, since this position is still vacant).
<b>Pippo Costella</b>	Director of Defence for Children International – Italy
<b>Elena Rozzi</b>	Association for Juridical Studies on Migration - ASGI

## 5. Introduction

This report represents the first comprehensive effort to systematically analyze and qualify the performance of the Italian guardianship system in response to the needs of separated children.

Even if the need for special protective measures for separated children is widely recognized at national and international level, projects and activities for the protection of separated children are not based on common competences, procedures and criteria of analysis, in particular for what concerns the role, skills and responsibilities of guardians. Guardianship has often appeared as one of the elements analysed in previous research, reports and studies on separated children but it was rarely the central subject of analysis and research. This is why in this report we will focus on the needs of separated children and guardians to strengthen the qualifications of the guardians and to support them in their work in order to ensure the full protection of separated children’s rights and needs. The assumption of this work is that the most qualified guardian can however obtain the aimed results only if the national institutional system supports his/her work with the provision of the resources and the guarantees necessary to do so.

### *Terminology*

In this report the term separated child is used, but it is important to specify the terminological definitions adopted in the Italian context. First of all, Italian institutions and private organizations use the term “unaccompanied children”, which can be considered as a synonymous term of “separated children”. Secondly, they define and implement their activities and projects on the basis of a clear

distinction between separated children who are asylum seekers, whose responsibility lies with the jurisdiction of the National Commission for the Right of Asylum of the Ministry of the Interior, and separated children who are not asylum seekers, whose responsibility remains with the jurisdiction of the Committee for Foreign Minors<sup>6</sup>.

The definition of “unaccompanied children” (not asylum seekers) is specified in Article 1, paragraph 2 of the Regulation on the tasks of the Committee for Foreign Minors (President of the Council of Ministers Decree 535 of 9 December 1999), according to which the “unaccompanied foreign minors on the Italian territory” are “children without Italian or any other EU country’s citizenship, who – *not having applied for asylum* – find themselves in Italy without care and representation of parents or other legal guardians (either officially recognized guardians or relatives within the third degree) according to the Italian laws” [*emphasis added*].

It is also worth mentioning that in the Legislative Decree 85 of 7<sup>th</sup> April 2003 – implementing Directive 2001/55/EC on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States – there is another national definition, according to which the “unaccompanied minors” are “nationals of non-EU countries or stateless persons below the age of eighteen, who enter the country unaccompanied by an adult, until they are effectively taken into care by a responsible person, or minors who have been abandoned, after they have entered the national territory” (Art. 2, para. 1, letter f).

## 6. Legal framework guardianship

### *International framework*

As a State Party to the UN Convention on the Rights of the Child, which was ratified through Law 176 of 27 May 1991, as well as to the two Optional Protocols to the Convention concerning the involvement of children in armed conflicts and measures to combat the sale of children, child prostitution and child pornography, implemented by Law 46 of 11 March 2002, Italy recognizes the status of the child as entitled to rights as an individual and also within the family and social community in which he/she lives and grows.

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<sup>6</sup> The Committee for Foreign Minors stemmed from the Committee for the Protection of Minors – which was established in 1994 by the Presidency of the Council of Ministers – when the composition and competences were changed by Legislative Decree 286 of 25 July 1998 (Art. 33). The President of the Council of Ministers Decree 535 of 9 December 1999 issued its Regulation, which reduced the amount of members to 9 only: they represent the Ministry of Labour and Social Policies; the Ministry of Foreign Affairs; the Ministry of the Interior; the Ministry of Justice; the Italian Municipalities National Association (ANCI); the Union of Italian Provinces; the United Nations High Commissioner for Refugees (UNHCR) and finally there is a representative of a relevant association working on social and family issues.

Italy has therefore undertaken to ensure the full respect for the rights to which children, both Italian and foreign, are entitled. This undertaking has been reinforced through participation in other international legal instruments for the protection of children. These include:

- the Hague Convention of 5 October 1961 concerning the Powers of Authorities and the Law applicable in respect of the Protection of Minors, ratified through Law 742 of 24 October 1980 (which entered into force on 23 April 1995)
- the European Convention on the Repatriation of Minors of 28 May 1970, ratified through Law 396 of 30 June 1975
- the European Luxemburg Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children of 20 May 1980 and the Hague Convention on the Civil Aspects of International Child Abduction of 25 October 1980, both ratified through Law 64 of 15 January 1994
- the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption of 29 May 1993, ratified through Law 476 of 31 December 1998
- the United Nations Convention against Transnational Organized Crime of 12 December 2000 and its Protocols regarding the trafficking of persons, especially women and children, and migrants, ratified through Law 146 of 16 March 2006
- the European Convention on the Exercise of Children’s Rights of 25 January 1996, through Law 77 of 20 March 2003

Furthermore Italy signed the Convention on Contact concerning Children and the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, respectively on May, 15th 2003 and November, 7th 2007. This commitment was reiterated through Italy’s participation in the Special Session of the UN Assembly dedicated to children, which took place in New York in May 2002, and the implementation of the final Declaration and Programme of Action commitments by elaborating and introducing on March 2007 the “Plus 5” review Italian National Progress Report as international commitment assumed at the end of the UN Special Session<sup>7</sup>.

### *Legal framework guardianship*

As in many other countries, in Italy rules affecting separated children’s rights and status are partly provided by common child protection law (that applies also to Italian children), and partly by immigration and asylum laws.

According to the Italian legal system, the foreign minor’s legal status is linked to the legal status of their parents, relatives or officially recognized legal guardians. The Italian legal culture envisages the

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<sup>7</sup> For the compilation of the “Plus 5” review Italian National Progress Report, published in March 2007, as international commitment assumed by Italy at the end of the UN special session, the Interministerial Committee for Human Rights, which operates in the Ministry of Foreign Affairs (MFA) and whose remit is to draw up and present to the United Nations the Government’s reports on the implementation in Italy of the main Conventions on the protection of human rights, worked together with the Ministry for Social Solidarity, also with the support of the National Centre for Documentation and Analysis of Childhood and Adolescence.

presence of foreign minors on Italian soil only if they are accompanied by parents or close members of their family, also recognizing forms of custody derived from other legal systems (for instance, the kafala from Islamic Law, see Cass., Sez. I, 20/03/2008, n.7472)<sup>8</sup>.

On the one hand, Art. 33 of Law 184 of 4 May 1983 on Adoption prohibits, only with exception for particular cases, the access to the national territory to minors without care and representation of parents or other legal guardians according to the Italian laws (either officially recognized guardians or relatives within the third degree). On the other hand, Art. 31 of Legislative Decree 286 of 25 July 1998 on Immigration and Legal Status of Foreigners provides that the foreign minor has his/her name endorsed on his/her parents or foreign guardian's residence permit until he turns 14 and then he/she receives his/her own residence permit for family reasons. These provisions clearly state the fundamental principle of the unity of the family and the right of the child to live with his/her family (recalled also by Art. 28 of Legislative Decree 286 of 25 July 1998 and by European Union Council Resolution of 26 June 1997, 97/C 221/03).

According to this principle, in the Italian legal framework it is provided that:

- if a parent or a foster parent is expelled, the child has the right to follow him/her (Art. 19 of Legislative Decree 286 of 25 July 1998);
- a residence permit for family reasons is granted to the parent of a legally resident child, even if the parent has resided illegally but still in full powers of parenthood (Art. 30 section 1d of Legislative Decree 286 of 25 July 1998);
- the entry of a parent of a legally resident child can be authorized, even if he/she would not be allowed to enter "for serious reasons connected to the child psychological and physical development and according to the child age and health conditions" (Art. 31 of Legislative Decree 286 of 25 July 1998);<sup>9</sup>

As regards the admission conditions for separated foreign children since they cannot be expelled according to Art. 19 of Legislative Decree 286 of 25 July 1998 (except for reasons of public order and State security, in which case the Juvenile Court will order the expulsion), they're reported residing in Italy without their parents or any other adult who can be legally responsible for their representation or assistance.

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<sup>8</sup> Betti, M., *Minori Stranieri Non Accompagnati*, Incontro di studio CSM, 23 giugno 2009, p. 3.

<sup>9</sup> Ivi, p. 2. The Supreme Court recognized the pre-eminent interest of children to live with both their parents in order to ensure their psychological and physical development, hence admitting parents without a residence permit to stay in Italy with their children (Supreme Court, Joint Civil Sections 16/10/2006 nr. 22216; I Civil Section 16/10/2009 nr. 22080; 19/01/2010, n.823). Recently, the Court deemed general interest in border protection as prevailing, therefore denying a residence authorization to the applicant parents (Supreme Court I Civil Section 10/03/2010, n. 5857 e n. 5856).

All children, irrespective of their nationality, are granted the right to education, to health care and to labour protection and must be provided with a secure shelter when found in a situation of temporary lack of an adequate household (Article 403 of the Civil Code). Further protection falls primarily under the Juvenile Court area of competence which may dispose foster care and guardianship, or the adoption of the concerned child (Article 1 section 4 of Law 184 of 4 May 1983). When the Court regards the situation as adequate, according to the age and the protection measures already activated by welfare authorities, it will relinquish its responsibility (“dichiarazione di non luogo a provvedere”) and pass the case to the Tribunal (Guardianship Judge) in order to appoint a guardian to the child.

When not in foster care or adopted, the competence of relevant authorities to dispose where and how children are raised, as well as on the exercise of parental powers falls with the Tribunal – Guardianship Judge (Articles 318, 337, 343, 371 of the civil Code). When the parents are absent or cannot exercise their powers, the judge appoints a guardian who acts as the child's legal representative.

In the Italian context guardianship is enforced with a judiciary measure and it is carried out under the judiciary system’s supervision and monitoring: it represents therefore a “space” in which the public intervention of the State, through the active involvement and the monitoring responsibilities of the judiciary authorities, is stronger than in other cases.<sup>10</sup>

There are no specific provisions for the appointment of a guardian for separated children who are not asylum seekers. The general laws on guardianship are applied in this case: in particular, Articles 343 to 389 of the Civil Code and Law 184 of 4<sup>th</sup> May 1983, as modified by Law 149 of 28<sup>th</sup> March 2001.

Separated children asylum seekers represent a different case and the Directive of the Ministry of the Interior of 7<sup>th</sup> December 2006 aimed to solve their specific problems. According to this Directive, in case a separated child applies for international protection, the authority receiving the application immediately suspends the usual procedure followed by the Committee for Foreign Minors for the time being; then the asylum application is brought to the attention of the Juvenile Courts and the Tribunal - Guardianship Judge having territorial jurisdiction; and finally the application itself is confirmed by a guardian, who is appointed by the Tribunal - Guardianship Judge and will provide assistance during the whole procedure of application examination (Art. 26 of Legislative Decree 25 of 28 January 2008).

According to the Italian Civil Code the guardianship is a legal institution aimed at protecting personal and economic interests of the child when both his/her parents are dead or when for some other reasons they cannot fulfill their parental responsibility (Art. 343, Civil Code). The rules apply in every

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<sup>10</sup> Occhiogrosso, F.P., *Tutela e protezione dei minori*. Intervento formativo “Scuola per tutori volontari per minori”, Udine, 7 febbraio 2009, p. 4.

case in which parents do not exercise their rights and fail to fulfill their obligations of representation, care and protection of the interests of their child<sup>11</sup>.

Upon notification, a guardian is appointed by the Tribunal - Guardianship Judge of the jurisdiction where the child has his/her interests.

The notification is compulsory within 10 days for civil servants, notaries and professionals of the judiciary system (in this case the time limit is within 15 days), children's family members within the third degree, communities and reception centers professionals (in this case the time limit is within 30 days) who are informed of the necessity (Art. 345, Civil Code). Also other parties can give notice to the Tribunal - Guardianship Judge, as Police Officers and local Social Services. The delay or omission of the notification on the part of civil servants constitutes a criminal offence (Art. 362, Criminal Code).

The Juvenile Court is in charge of the appointment of a "temporary guardian" only in case of suspicion of child abandonment (Art. 10, paragraph 3 of Law 149/2001) and of a "definitive guardian" when it declares the condition of adoptability of the child (Art. 19 of Law 184/1983).

Because of the lack of a common interpretation of the above mentioned laws, procedures and competences, separated children's right to have a guardian is not always adequately respected: in some cities all the separated children are considered as abandoned, their condition is brought only to the attention of the Juvenile Court for the implementation of adoption, custody or other urgent measures (Artt. 9 and 10 of Law 184/1983), and sometimes a guardian is not appointed at all<sup>12</sup>.

The discrepancies among the procedures and the law's interpretations in the various local contexts represent a crucial problem in Italy, as stated by all the adults interviewed:

*"Since the last year on in our city the procedure for the appointment of a guardian has changed. The previous procedure, reflecting the previous Juvenile Judge's interpretation, was based on the idea that a separated child of more of 14 years was not to be considered as abandoned. Therefore the Tribunal - Guardianship Judge was considered in charge of the appointment of the guardian, upon notification of all the parties involved (Social Services, Police Officers, communities' responsible etc., etc.). The time needed for the appointment was a maximum of one month. When another Juvenile Judge arrived, the situation had changed: according to his interpretation all the separated child must*

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<sup>11</sup> *Ibidem*, p. 3.

<sup>12</sup> See Giovannetti, M., *L'accoglienza incompiuta. Le politiche dei comuni italiani verso un sistema di protezione nazionale per i minori stranieri non accompagnati*, Bologna: il Mulino 2008, pp. 159-160, Tarzia, G., *Il minore straniero non accompagnato: quale tutela nel sistema legislativo italiano?*, *Minorigiustizia* 3/2008, p. 196 and Turri, G. C., *Un tutore per i minori stranieri non accompagnati*, intervento al Convegno dal titolo "L'infanzia "privata". Il ruolo tutela dell'adulto, Ancona, 4 dicembre 2004, pp. 1-4.



*be considered as abandoned. Then the condition of abandonment and adoptability must be verified by the Juvenile Court. Today, upon the notification of all the parties involved, the Juvenile Court is in charge of all the required measures and the guardian is appointed by the Juvenile Court. The time needed for this procedure is therefore prolonged and this can imply serious violations for separated children's rights. Recently, as a municipality, we made an agreement with the Juvenile Judge which allows the municipality to ask the Tribunal - Guardianship Judge for the appointment of the guardian if the time required from the Juvenile Court is excessively prolonged". (ITA 2, Female, Municipality Social Services and Guardianship Services Head Officer)*

Moreover, the Regulation of the Committee for Foreign Minors envisages that *"In case of necessity, the Committee gives notice to the competent Tribunal - Guardianship Judge, for the possible appointment of a guardian" [emphasis added]* (Art. 3, paragraph 6 of the President of the Council of Ministers Decree 535 of 9 December 1999), while, as stated by many scholars, professionals and institutions and judiciary system representatives, "the lack of independent, dedicated and well trained guardians and often the lack of any guardian is a fundamental problem that hinders the protection and promotion of separated children's rights in all the administrative and judicial procedures affecting them"<sup>13</sup>.

In fact, according to another interpretation of the same Italian laws, which can be defined as more informed by a "children's rights approach"<sup>14</sup>, should separated child come to attention of Police Officers, local Social Services, communities and reception centers' professionals, other persons or authorities involved, he/she should be reported to the Juvenile Courts and always also to the Tribunal - Guardianship Judge of the jurisdiction where the child has his/her interests for the immediate appointment of a guardian.

According to the Italian Civil Code, the Tribunal - Guardianship Judge will assign responsibility to the person named in the Last Will and Testament of the deceased parents, to a family member or to other citizens available, of high moral standing and who are equipped to safeguard the child's right to education and protection and to take into account their capacities, desires and aspirations (Artt. 348 and 147, Civil Code). Before appointing the guardian, the Tribunal - Guardianship Judge must listen to and take into account the opinion of the child aged 16 years or over (Art. 348 of the Civil Code).

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<sup>13</sup> Rozzi, E., The situation of EU and non-EU separated children in Italy, *E-Migrinter* 2/2008, p. 17. See also Giovannetti, M., *L'accoglienza incompiuta. Le politiche dei comuni italiani verso un sistema di protezione nazionale per i minori stranieri non accompagnati*, Bologna: il Mulino 2008, Tarzia, G., Il minore straniero non accompagnato: quale tutela nel sistema legislativo italiano?, *Minorigiustizia* 3/2008, and Turri, G. C., *Un tutore per i minori stranieri non accompagnati*, intervento al Convegno dal titolo "L'infanzia "privata". Il ruolo tutela dell'adulto, Ancona, 4 dicembre 2004.

<sup>14</sup> Rozzi, E., The situation of EU and non-EU separated children in Italy, *E-Migrinter* 2/2008, p. 23. See also Giovannetti, M., *L'accoglienza incompiuta. Le politiche dei comuni italiani verso un sistema di protezione nazionale per i minori stranieri non accompagnati*, Bologna: il Mulino 2008, pp. 159-160.

Persons who have been in contact with the child and those explicitly excluded from the child's life by the deceased parents, those who have been declared unable to become guardians, to fulfill their parental responsibility and to manage their financial affairs and/or are enrolled in the Individual Insolvency Register cannot be appointed as guardians (Art. 350).

Art. 3 paragraph II of Law 184 of 4 May 1983 prohibits the appointment as guardians of legal representatives or professionals of the reception centers and communities where the child lives, even if the same Article envisages that, in order to ensure the implementation of the urgent and necessary protection measures for separated children, private and public reception centers and communities carry out a "provisional guardianship" (so called "potestà tutelare interinale"), which lasts for a month after the care placement of the child.

On the other side, some people can present a request to be exempted from the office of guardian, as: high representatives of the national institutions, religious authorities, members of the Military Forces, persons over the age of 65 years, persons who have more than three children, who have already been appointed as guardians, who have health's problems, who are civil servants working abroad (Art. 352).

In practice, foreign residents (so-called "homocultural guardianship"), skills-based volunteers or representatives of the Municipality where the child resides (Artt. 348 and 354, Civil Code) can be appointed as guardians.

Before undertaking the duties of his office, the guardian must take an oath before the Tribunal - Guardianship Judge which is a statement of loyalty and diligence (Art. 349 of the Civil Code).

The Civil Code also envisages the appointment of a pro-guardian (Art. 360 of the Civil Code) who is not a vice-guardian since he plays an independent and autonomous role<sup>15</sup>. He/she has the duty to cooperate with the Tribunal - Guardianship Judge in the guardian's monitoring and control activity, but he/she cannot support the guardian in his/her duties nor can he/she consult him/her. He/she represents the minor in case of conflict between the interest of the guardian and the superior interest of the child. The pro-guardian can also substitute the guardian in case he leaves his office or he dies and, in these cases, he has the duty to ask the Tribunal - Guardianship Judge for the appointment of another guardian<sup>16</sup>.

Most Tribunal - Guardianship Judges, however, do not apply this rule and do not appoint the pro-guardian.

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<sup>15</sup> Region of Veneto – Public Guardian for minors Office, *Orientamenti per I tutori legali dei minori di età. Funzioni, responsabilità e buone prassi, Linee guida e orientamenti per la promozione e la cura dell'infanzia e dell'adolescenza. Quaderni 03/2009*, pp. 76-77.

<sup>16</sup> For more details, see *ibidem*.

### **Recommendation 1:**

In accordance with suggestions from all the guardians and experts who have been interviewed, it is recommended that immediately when a separated child is identified, or where an individual claims to be a separated child, he/she is reported to the Tribunal - Guardianship Judge and an independent guardian is always and immediately appointed to advise and protect him/her, while implementing other measures and procedures (identification, age assessment, reception etc., etc.). This reflects the right to special protection and assistance (Art. 20 CRC).

### **Recommendation 2:**

In accordance with suggestions from some of the experts who have been interviewed, it is recommended that laws and procedures on guardianship are revised and harmonized at national level, in order to avoid restrictive interpretations and discrepancies among interpretations of them, which can imply serious violations for children's rights to be adequately protected and supported. This reflects the duty of the State to undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the CRC (Art. 4 CRC).

## **7. Who is the guardian in Italy?**

### **7.1 Appointment of the guardian**

The Italian system for the protection of children's rights is affected by heterogeneous and fragmented procedures for the appointment of guardians for separated children.

In most cases, a representative of the Municipality (e.g., Major or Vice Major) or of the local Social Services is appointed as a guardian, which may lead to problems in conflict of interests, lack of external monitoring and independence: being that the Municipality is financially responsible for the reception of children (see paragraph 8.3.5) therefore it may be interested in reducing the number of separated children present in its territory even against their best interests, in a situation in which no system of external and independent monitoring can be implemented.

Moreover, due to the large number of children, an institutional representative can hardly ensure the development of a relationship or a bond of trust with children, as underlined in one of the experts' answer who also affirms that it is nevertheless possible for an "institutional" guardian to guarantee that children's rights are respected and promoted:

*"In our city, the Major of the city is appointed as guardian of the separated children. In practical terms, due to the relevant number of children, at the moment of the appointment of the Major the functions connected to the implementation of the guardianship are delegated to the Vice Major of the city and then to the social assistants. In theory the role of the guardian is to be the substitute for parents, but, in practice, the institutional guardian has a different role: he has to guarantee that every decision is taken with respect to the rights, needs, opinions and well-being of the child. He has*

*the role of a guarantee, while the emotional and relational aspects of the guardianship are practically speaking delegated to the responsible of the specialized reception centers for minors and to the social workers. I think that this system, the fact that different people are involved and are responsible for the protection of children, is effective and efficient in assuring to the children their rights and in responding to their needs: (...) a good guardian should be defined more with reference to the quality of his work than only with reference to the support for a model or another (public or private guardian). The role of the guardian is very important, especially under an educational perspective, and in both cases (public or private model) it is possible, in my opinion, to guarantee all the competences required, even if through different ways and solutions. I think that it is important to have, also within the model of private guardians, the role of guarantee represented by the public institutions". (ITA2, female, Municipality Social Services and Guardianship Services Head Officer)*

On the contrary, for some of the experts who have been interviewed the problem of the possible conflict of interests is a crucial issue, especially when considering the child's perception, even if it does not concern only the representatives of the Municipalities but also the lawyers when they are also the lawyers of separated children:

*"In my experience, in case of a public/institutional guardian, children can hardly understand if this person is acting as a guardian or as a Social Services officer/representative of the Municipality. This represents a serious problem for them." (ITA1, male , lawyer)*

*"First of all, a guardian should not be a representative of a Municipality, for evident reasons of conflicting interests and consequent lack of an adequate external control on the activities of the local institution. (...) Also for lawyers there is a delicate question regarding their potential "double" role, as guardian and as lawyer of the child. This could represent simply a way to get more clients and to get extra money: even if the guardian himself is not paid, when a lawyer is appointed by the judge as guardian, because of his recruitment, he has to be paid by the judiciary administration". (ITA1, male, lawyer)*

*"It is crucial to have a guardian who is a "third person", different from Social Services representatives and able to promote the protection of children's aspirations and desires. This is also important, for instance, if a child doesn't feel safe with his accommodation and needs to be moved: he cannot express his concerns to the Social Services, who decided for the care placement, but he will tell this to his guardian. (...) it is also important to distinguish between a guardian and a lawyer. The effective representation of children's interests needs an external, independent, third person." (ITG5, male, 7 years of experience)*

On the other hand, in some regions (e.g. Region of Veneto or Region of Friuli Venezia Giulia) or cities (e.g. the cities of Naples, etc.) of Italy specific training courses for volunteers who want to become

guardians are organized (for more details, see Annex 4.b). In those cases, the Tribunal - Guardianship Judge can choose among the list of volunteers who can be appointed as guardian.

In general, even if the Tribunal - Guardianship Judge should listen to and take into account the opinion of the child when he turns 16 years old (art. 348 of the Civil Code), all the children reported that they have never been asked for their opinions.

*“No, I wasn’t asked my opinion as to the choice of my guardian [he laughs].” (IT 4, Male, 17 years old, Reception Center)*

Separated children and guardians who have been interviewed state the following on the possible elements that can be considered as to the choice of a guardian:

*“I did not have any problems with the fact that my guardian was a female, and I did not have any choice. I think that it doesn’t matter if the guardian is a man or a woman”. (IT14, Male, 19 years old, Flat share)*

*“(…) I did not have any problems with the fact that all my pupils were male. With one of them we also discusse sex and about the importance of using condoms”. (ITG15, female, 3 years of experience)*

*“In my opinion it would be better for female children to have female guardians”. (ITA3, female, Social psychologist)*

### **Recommendation 3:**

In accordance with suggestions from some of the guardians, it is recommended that the views and wishes of separated children are sought and taken into account as to the most favorable and effective choice of a guardian, according to their age, maturity, sex and cultural background. This reflects the right to expression (Art. 12 CRC).

### **Recommendation 4:**

In accordance with suggestions from all the guardians and some of the experts who have been interviewed, it is recommended that guardians do not hold positions, which could lead to a potential conflict of interest with the best interests of the child. This reflects the duty to take the best interests of the child as a primary consideration (Art. 3 CRC).

## **7.2 Timing of the appointment and age assessment**

In many Italian cities the appointment of a guardian can take up to several months, with all the subsequent serious legal problems (impossibility of applying for a residence permit, for asylum, etc.,

etc.) and sometimes a guardian is not appointed at all. According to the Third National Report on Separated Children (2009), promoted by the National Association of Italian Municipalities (A.N.C.I.) and edited by Monia Giovannetti, in 2008 only 36% (equal to 1,391 minors) of the total amount of minors hosted in the second reception<sup>17</sup> (3,841) were minors for whom a guardian had been appointed.<sup>18</sup>

The above mentioned percentage varied a lot from Region to Region, for instance from the 96.1% of Region Piedmont to the 34% of Region Sicily<sup>19</sup>, and from city to city. In particular, the percentage was low in small cities (of less than 5,000 inhabitants), where it became equal to 28.6%, as well as in large cities (of more than 100,000 inhabitants), where it was equal to 32.1%<sup>20</sup>.

Therefore it is evident that a guardian is never present when the identification and age assessment procedures are implemented, which can imply serious violations of children's rights:

*"In my experience, the age assessment is carried out by the Police Officers through wrist-bone X-ray promptly when a separated children is identified, but before the appointment of the guardian and without the presence either of a cultural mediator or of any other type of person (social workers, etc., etc.)."* (ITA2, female, Municipality Social Services and Guardianship Services Head Officer)

Moreover, the fact that the appointment of a guardian can take up to several months represents a serious problem in the Italian context, as underlined in separated children's answers, who very frequently do not know precisely when their guardians have been appointed:

*"I had only one guardian for a short period. I have been in Italy for a long period without having a guardian"* (IT3, Male, 18 years old, Community for separated children)

*"My guardian has been appointed a few months after my arrival. I don't remember precisely the date."* (IT1, Male, 16 years old, Community for separated children)

*"I met my guardian 6 months after my first arrival at the detention center."* (IT 5, Male, 18 years old, Flat share)

*"I do not remember precisely the date, but I think that my guardian had been appointed 6 or 8 months after my arrival in Italy."* (IT14, Male, 19 years old, Flat share)

The same concerns are raised in most of the guardians and experts' answers:

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<sup>17</sup> For the distinction between first and second reception, see paragraph 8.3.5.

<sup>18</sup> NATIONAL ASSOCIATION OF ITALIAN MUNICIPALITIES (A.N.C.I.), *Minori stranieri non accompagnati. Terzo Rapporto ANCI 2008* (edited by GIOVANNETTI MONIA), Rome 2009, p. 95.

<sup>19</sup> *Ibidem*, p. 96.

<sup>20</sup> *Ibidem*.

*“My appointment as guardian took a very long time, even if some of my pupils were in a very traumatic situation. I think that it took at least 8 months.” (ITG15, female, 3 years of experience).*

One of the experts also proposed, as a practical solution to the prolonged appointment timing, to consider the opportunity of having two different levels of guardianship, an urgent and provisional one, through the immediate appointment of a “temporary” guardian, and a more structured and final one, resulting in the appointment of a guardian able to support the children according to their specific needs and desires:

*“The guardian of such children should be appointed according to every child’s specific needs. The appointment of a guardian should also be considered not only as the starting point of the protection process but also as the goal of this process. It could be useful to think of two levels of guardianship, one more rapid, able to answer to the children’s urgent needs and another more structured and intended as a result of a more in-depth process of analysis and mutual knowledge with children” (ITA3, female, Social psychologist)*

On the other hand, it is worth underlining that in case a list of volunteers to be appointed is established at local or regional level (for more details on some of these cases, see Annex 4.b), the appointment timing is in general less than in other cases:

*“After the approval of our Cultural Guardians Project<sup>21</sup> we created an effective and efficient network and cooperation system with the other parties involved. With this Project my colleagues and I are usually appointed as guardians and the appointment is immediate (1-3 days), especially because in general we already know these children”. (ITG14, male, 3 years of experience)*

*“In my experience guardians are appointed, in Rome, almost 1 month after the placement in care of the child, while in Naples, where guardians are selected among a list of volunteers (...) the appointment can be completed in 3 days.” (ITA1, male, lawyer)*

*“With reference to our Guardians Training Project<sup>22</sup>, after the request of the Tribunal - Guardianship Judge, we are able to appoint a guardian within 24/48 hours.” (ITG11, male, 10 years of experience)*

#### **Good practice 1:**

From the respondents we learned that when the guardian is selected among a list of volunteers established at local or regional level on the basis of a specific agreement among all the involved

<sup>21</sup> For more details on this Project, see Annex 4.b.

<sup>22</sup> For more details on this Project, see Annex 4.b.

parties (Municipality, Tribunal - Guardianship Judges, third sector's organizations), the appointment timing is less than in other cases.

#### Recommendation 5:

In accordance with suggestions from all the respondents, it is recommended that the appointment of a guardian is taken in a timely fashion taking into account the child's perception of time and their specific need of protection, in particular with reference to delicate procedures as the identification and age assessment procedures. This reflects the right to special protection and assistance (Art. 20 CRC).

### 7.3 What are the (legal) responsibilities and tasks of the guardian?

Before analyzing what the legal responsibilities and tasks of the guardian in Italy are, it is important to underline, as stated by some of the experts who have been interviewed, that rules concerning guardianship date back to 1942 and they may be considered obsolete under some circumstances: they were conceived in a different historical context and were primarily focused on the need to ensure the financial management of the properties of children without parents<sup>23</sup>.

Nowadays the situation has changed: in particular, the growing number of separated children entering Italy with their personal backgrounds and their specific needs and rights, should result in a process of rethinking of guardians' functions and roles<sup>24</sup>.

*"Rules concerning guardianship in Italy date back to 1942. They are obsolete under some circumstances. They were conceived in and for a different historical context and they were primarily focused on the financial management of the properties of children without parents."* (ITA12, female, lawyer)

As to the duties and responsibilities of a guardian<sup>25</sup>, Art. 357 of the Civil Code states that the guardian:

- has to take decisions relating to the child's welfare, upbringing and education
- he/she is the legal representative of the child, with the power to represent the child in court proceedings and in other legal matters, both in criminal and in civil or administrative matters.

<sup>23</sup> See Region of Veneto – Public Guardian for minors Office, Orientamenti per I tutori legali dei minori di età. Funzioni, responsabilità e buone prassi, *Linee guida e orientamenti per la promozione e la cura dell'infanzia e dell'adolescenza. Quaderni 03/2009*, pp. 37-46.

<sup>24</sup> *Ibidem*, p. 39.

<sup>25</sup> For what concerns the duties of the pupil, according to the Italian Civil Code he has the duty to respect and obey his guardian and not to leave his accommodation without his consent (Art. 358 of Civil Code).



- He/she is responsible for managing the minor's ordinary financial affairs.
- He/she is also, under some circumstances and in civil affairs, responsible for damages caused to third persons by the child while he/she is under his/her supervision (so called “culpa in vigilando”) and he/she is responsible for any damage he/she causes to the child.<sup>26</sup>

As summarized by one of the guardians who has been interviewed:

*“The guardian has the duty to monitor that everything, every process and activity is realized with the full respect to the child’s interests, needs and rights”. (IT G15 , female, 3 years of experience)*

The need for child representation is very important in case of criminal matters, both in case of a child who has been victim of a criminal offence or in case of a child who has been charged with a criminal offence. In the latter case, the Decree of the President of the Republic 448 of 22 September 1988 states that the guardian, not only should hire a lawyer, monitor his/her activity and inform the child, but also he/she can accompany the child in court hearings and he/she can promote an appeal against a sentence.<sup>27</sup>

Therefore the guardian has also a crucial role to play concerning the submission of the asylum application: he/she has to express his/her approval in order to complete the procedure for the submission of the application, he/she assists the separated child during the hearing before the National Commission for the Right of Asylum and informs him/her about every aspect of the procedure and its possible consequences, he/she can appeal to the Court to contest the refusal of the status recognition by the Commission. Similarly, the guardian of a separated child non asylum seeker may appeal to the Courts (Ordinary Court or Tar – Regional Administrative Tribunal) in order to contest the authorization for their return (for more details see the following section on Migration Procedures).

*“The function of legal representation of the child is crucial in the case of an asylum application. The Commission promotes an investigation on the child’s personal background and history, but this kind of investigation is perceived by the child as a “migration authorities investigation”. Usually the child doesn’t feel safe and does not always tell the truth about his/her situation. In this case the presence of the guardian is very important: knowing the child and his/her personal background, he/she can ensure the protection of his/her rights and needs, by representing, not only in a technical or formal way”. (ITG15, male, 7 years of experience )*

Since the majority of the guardians’ responsibilities and tasks envisaged by the Civil Code reflect the historical context in which it has been elaborated, according to scholars, practitioners and the

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<sup>26</sup> For more details see Region of Veneto – Public Guardian for minors Office, Orientamenti per I tutori legali dei minori di età. Funzioni, responsabilità e buone prassi, *Linee guida e orientamenti per la promozione e la cura dell’infanzia e dell’adolescenza. Quaderni 03/2009*, p. 50.

<sup>27</sup> Turri, G., *Un tutore per i minori stranieri non accompagnati*, intervento al Convegno dal titolo “L’infanzia “privata”. Il ruolo tutela dell’adulto, Ancona, 4 dicembre 2004, p. 2.

guardians who have been interviewed, other important guardian's duties and functions not explicitly mentioned in the Civil Code are:

- a more general function of "negotiation", based on the protection of the best interests of the child, with all the parties involved in the child's integration process, as highlighted in some of the guardians' answers;

*"Another important guardian function is constituted by the function of negotiation: the main objective is in fact to negotiate with the other actors involved, and in particular with the local Social Services, the most suitable definition and implementation of the children's projects of integration. In order to ensure the effective protection of the children's rights and needs, it is therefore crucial to have a guardian who is a "third person", different from Social Services representatives. (...) This function of negotiation can be considered as bidirectional: from the child to the Social Services and other authorities and from the Social Services and authorities to the child. The aim is to promote cooperation, dialogue and mutual understanding between children and institutions (ITG5, male, 7 years of experience)*

- the listening to the child,<sup>28</sup> intended as the most important instrument not only for the comprehension of his intentions and projects and for the effective taking care of the child, but also for the most reliable representation of his/her opinions, ideas and desires and for the immediate recognition and protection of children victims of abuse, violence, trafficking, etc., etc., as underlined by all the interviewees;

*"A guardian should be a person able to listen to the child, to "recognize" him/her, to communicate to others his/her identity, to understand and respect his/her personal history, in order to facilitate the process of integration in our culture" (ITA3, female, Social psychologist)*

The importance of this function emerged also in some of the answers given by the children who have been interviewed:

*"I think that a guardian should help children in solving their problems, should know and protect them. Unfortunately my experience with my guardian was different: the guardian asked him for signatures for some documents (for the school and for other things), but he has never answered me. (...) When we finally met, he did not know who I was" (IT4, Male, 17 years old, Reception Center)*

As above stated, the guardianship gives the guardian the exercise of parental responsibility, even if he/she cannot be compared to a parent because his/her activities have to be monitored by the judicial authorities and, under some circumstances, authorized by the Tribunal - Guardianship Judge.

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<sup>28</sup> Occhiogrosso, F.P., *Tutela e protezione dei minori*. Intervento formativo "Scuola per tutori volontari per minori", Udine, 7 febbraio 2009, p. 9.

Some of the guardians we met highlighted that in general it is very difficult to have a direct relationship with the Tribunal - Guardianship Judges, since they are not easily reachable and always very busy. Also the Judges' monitoring activities are limited and not effective: according to Art. 362 and 380 of the Civil Code, in fact, guardians have the only duty of presenting to the Tribunal - Guardianship Judge the inventory of the child's possessions, of keeping the general accounts and of submitting each year to the Judge an annual financial report<sup>29</sup>.

For these reasons, where some local Training Projects for guardians are implemented, other monitoring systems are provided for (for more details see Annex 4.b):

*"In our Guardians Training Project<sup>30</sup>, we adopted an external monitoring system of the guardians' activities, competences and capabilities. When we realize (on the basis of the monitoring reports and/or in occasion of the periodical meetings with guardians) that a guardian is not adequate to his responsibilities and tasks we make sure that he is not appointed as guardian anymore. This has happened only for 10 guardians out of a total of 890 guardians trained in 10 years" (ITA12, female, lawyer).*

#### **Good practice 2:**

From the respondents we learned that some of the training projects for guardians realized at local level provide for monitoring systems of guardians' activities and adequacy in addition to the monitoring realized by the judicial authorities.

#### **Recommendation 6:**

In accordance with suggestions from all the respondents, it is recommended that a general process of rethinking of guardianship is promoted and further legislation, policy, standardization and monitoring measures on guardianship are implemented. This reflects the duty of the State to undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the CRC (Art. 4 CRC).

## **7.4 What is the caseload of a guardian in Italy ?**

In the Italian legal system there are no general rules concerning guardian's caseload, while answers to this question are given at local level, in particular where specific training courses for guardians are realized (see Annex 4.b).

<sup>29</sup> For more details on the rules concerning the management of children's financial affairs envisaged in the Civil Code, see Artt. 362, 363, 365-368. See also Region of Veneto – Public Guardian for minors Office, Orientamenti per I tutori legali dei minori di età. Funzioni, responsabilità e buone prassi, *Linee guida e orientamenti per la promozione e la cura dell'infanzia e dell'adolescenza. Quaderni 03/2009*, p. 38.

<sup>30</sup> For more details on this Project, see Annex 4.b.

Because of the lack of adequate national legislation and policies, the limit on caseload is established only in the context of these local training projects, but not at national level, as stated in some of the guardians and experts' answers:

*"There is no caseload when a representative of the local authority is appointed as guardian (in Rome, for instance, the mayor of the city is always appointed as the guardian of the separated children and he can easily become the guardian of 100 or 200 pupils). While, when a volunteer is appointed as guardian, in general there is a limit on caseload for evident reasons of availability of time. The association of "cultural" guardians I collaborate with established a maximum of 5 children per guardian." (ITA1, male, lawyer)*

*"In our Guardians Training Project, we established a maximum of children 5 per year per guardian." (ITG11, male, 10 years of experience)*

### **Good practice 3:**

From the respondents we learned that all the training projects for guardians realized at local level provide for the definition of the guardians' caseload, usually equal to a maximum of 5 pupils per guardian.

### **Recommendation 7:**

In accordance with suggestions from all the respondents, it is recommended that a limit on caseload for guardians is identified and fixed at national level, in order to allow guardians to be able to effectively have a personal relationship with children and effectively promote the respect for their rights. This reflects the duty of the State to undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the CRC (Art. 4 CRC).

## **7.5 Should guardians be paid or be volunteers?**

For what concerns the payment of guardians, according the Civil Code "the office of guardian is for free" (Art. 379 of the Civil Code). Only in specific cases (difficulties connected to his/her duties, with particular reference to his/her economic and financial administration tasks) the Tribunal - Guardianship Judge can recognize the guardian as requiring some resources as "fair reimbursement" (Art. 379).

Some of the experts and guardians who have been interviewed think that the fact that guardians are not paid is useful both in order to avoid any possible forms of abuse for "business" purposes and to make the children feel more confident on guardian's genuine intention:

*"According to the Italian Civil Code the guardian must not be paid for his/her work, even if the judge can recognize him/her, in specific cases, a compensation for some of the extraordinary expenses"*

*incurred during his/her activities . I think that this represents a good provision in order to avoid any form of abuse for “business” purposes”. (ITA1, male, lawyer)*

*“(…) I think that children feel that a volunteer is a more reliable person, because he/she is there only to help them and not to earn money or protect his/her interests. They are surrounded by persons who are paid from the institutions or other bodies and when they find a person who accepts to support them without any economic ambition, they feel that they can rely on this person”. (ITG15, female, 3 years of experience).*

On the contrary, some other guardians and experts think that volunteers should receive at least a “symbolic” form of reimbursement or compensation for the extraordinary expenses incurred during their activity and should be able to take short paid leave for their guardians’ duties, while currently they are not entitled to that.

*“In case of volunteers who are guardians, a form of reimbursement or compensation for their expenses must be conceived in order to be sure that a person can decide to become a guardian. Of course there must be a form of control on their expenses realized by the public institutions. Otherwise I think that it is impossible to envisage a system completely based on a voluntary basis” (ITA2, female, Municipality Social Services and Guardianship Services Head Officer)*

*“In our Guardians Training Project, volunteers receive a form of reimbursement for the extraordinary expenses incurred during their activities, equal to a maximum of 100 euros per year as a “symbolic payment”. (ITA12, female, lawyer)*

*“I think that it would be extremely important for volunteers to be able to take paid leave , in order to be able to be a good guardian, while respecting their work tasks and responsibilities”. (ITG7, female, 4 years of experience)*

#### **Good practice 4:**

From the respondents we learned that some of the training projects for guardians realized at local level envisage a form of reimbursement or compensation for the extraordinary expenses incurred by the guardians during their activities.

#### **Recommendation 8:**

In accordance with suggestions from all the respondents, it is recommended that voluntary guardians receive a form of reimbursement or compensation for the extraordinary expenses incurred during their activities and also that they can take short paid leave for the fulfillment of their guardians’ duties. This reflects the duty of the State to undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the CRC (Art. 4 CRC).

## 7.6 Which education/training has the guardian received?

Within the Italian legal system there are no general rules concerning guardian's education and training, while various answers to these questions are given at local level, in particular where specific training courses for guardians have been realized (see Annex 4.b).

Because of the lack of adequate national legislation and policies and of a national system for the recruitment and training of guardians, practices and competences vary a lot from city to city and from region to region.

*"In my experience, in general there is a low level of awareness and competences in dealing with the ensemble of "differences" separated children are bringing with them" (ITA13, female, social psychologist)*

In general, if a representative of the Municipality is appointed as guardian, no specific training course is organized because it is assumed that a person who works in the Municipality already has a high level of competence:

*"In our case (the Vice Major is appointed as guardian), the fact that there are different competences activated through the process of guardianship (Vice-Major, responsible of the reception centre, Social Services workers,) can of course guarantee an adequate level of knowledge of migration issues and of children's rights. It is important to highlight that such a type of knowledge is very important for every person who works with separated children and need to be kept up-to-date with regularity and with discipline." (ITA2, female, Municipality Social Services and Guardianship Services Head Officer)*

On the other hand, in case a volunteer is appointed as guardian, he/she has to frequent dedicated training courses on guardianship organized by the Municipalities or Regions, whose contents have been updated according to the specific needs of separated children:

*"In our Guardians Training Project, through the years we have changed progressively the contents of our training modules for guardians and we have also become more explicit in the duties and problems connected to guardianship, in particular in relation to the condition of the growing number of separated children with dramatic backgrounds living in Italy. In particular, we have added some modules on psychosocial, intercultural, migration and cultural mediation issues connected to the guardianship, in order to be sure that guardians are able to build a relationship with foreign minors. Instead of cultural qualifications I would talk of cultural and intercultural training". (ITA12, female, lawyer)*

*"I have frequented the Guardians Training Course organized by my Region and I think that it would be useful to have some advanced courses on the legal issues concerning separated children (types of residence permits, migration rules, ect.etc.) and also on cultural mediation and psychosocial issues,*

*even if a guardian can also learn a lot by doing its functions. Experience “in the field” is very important.” (ITG16, female, 5 years of experience)*

*“I am a cultural mediator and I have frequented the training course organized by the Municipality. I always try to keep myself up to date, even if sometimes it is difficult because procedures and norms change quickly, especially after the passing of the new migration law.” (ITG13, female, 3 years of experience)*

#### **Good practice 4:**

From the respondents we learned that some of the training projects for guardians realized at local level have progressively adapted the contents of the training modules to the needs of separated children, in particular by focusing more and more on migration laws and procedures, on cultural mediation and intercultural relationships issues.

#### **Recommendation 9:**

In accordance with suggestions from all the respondents, it is recommended that all the guardians receive specific and continuous training not only on guardianship issues, children’s rights and needs, and psychological and educational skills but also on migration issues, migration and asylum procedures and laws, cultural mediation, intercultural relationships. This reflects the duty of the State to undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the CRC (Art. 4 CRC).

### **7.7 What is the methodology of the guardian(ship institution)?**

As stated in the previous paragraphs, within the Italian legal system there are no general rules concerning guardian’s work methodology. Only where specific training courses for guardians are realized a general work methodology is defined. In some of these training projects, guardians are provided with papers, handbooks and/or guidelines, which in general are also available on the web-sites of the institutions organizing the training course, including the training materials and the main legal references and instruments for the implementation of their activities. Work practices can therefore vary a lot from city to city or from region to r-region, depending on the individual person’s competences, intentions and availability of time.

#### **Recommendation 10:**

In accordance with suggestions from some of the respondents, it is recommended that a general methodology of work for guardians is identified at national level, including more detailed descriptions of tasks and duties (e.g. procedures for the first contact with the child, minimum frequency of meetings with children, methodology for the definition of an individual project of integration with the involvement of the child. This reflects the duty of the State to undertake all

appropriate legislative, administrative and other measures for the implementation of the rights recognized in the CRC (Art. 4 CRC)

### 7.7.1 *The first contact: information of the child and relationship of trust*

With regards to the first contact with children, which in general is carried out at the reception facility where the child resides, all the guardians who have been interviewed stated that they did not follow a standard procedure: some of them try to explain as much as possible, some others try to let the minor speak about himself, his desires and intentions and do not delve into specific subjects.

*“My work methodology changes with every child, because with every child a new story begins, a new relationship is built and there is always something to learn and to change.” (ITG13, female, 3 years of experience)*

Most of the guardians also indicated that they try to give the child information about their role, explain the limit of their responsibility and where they have no authority to act, in order to be sure the child has the appropriate expectations about them. This relates in particular to the time needed for the release of the residence permit or for the outcomes of the asylum claim or other residence procedures. The age and the condition of the child are factors which appeared to play a role in the way the guardian explained his or her role and the amount of information given.

*“Young children get often frightened because of the complexity of the legal procedures. In response to that I always try to give them emotional support and, most important, to be honest” (ITG16, female, 5 years of experience)*

Some of them also highlighted that the first contact is very important to make sure from the very beginning that the child understands their commitment to them and their intention to do their best to help them, as confirmed also by all of the children who have been interviewed.

*“At the very beginning I explain to them what my functions and responsibilities are, and I also try to immediately build a relationship of trust with them, by introducing myself, by expressing my sincere and honest commitment to them and to their protection and support”. (ITG15, female, 3 years of experience)*

*“I had one case where the minor had lived terrible things, and in this case the first contact has been crucial: we have talked for a very long time and at the end he was reassured and accepted to give me his mobile phone number, and I gave him mine. I think that it is very important the children can perceive from the very beginning that you are honest, with genuine intentions and committed to them. I think that the first contact represents the most important opportunity to have with children is a relationship based on trust”. (ITG13, female, 3 years of experience )*



*“When I met her I immediately realized that I could trust her. She talked to me a lot, she told me that she was there for me and she opened herself to me, she told me something about her life, her family, and nobody had ever acted in this way to me, had never said these things to me.” (IT14, Male, 19 years old, Flat share)*

#### **Good practice 5:**

From all of the respondents we learned that in order to build a relationship of trust with children, the first contact with them should be considered as the most important chance to do so. We also learned that during the first meeting it is useful for guardians to introduce themselves, to tell the children something about their lives and families, because this represents a good starting point to build such a relationship.

#### **Recommendation 11:**

In accordance with suggestions from all the respondents, it is recommended that from the very first contact with the child the guardian gives the child information about his/her responsibilities and role, makes sure that the child has the appropriate expectations about him/her and has the perception that he/she is honest and committed to him/her. This reflects the right to information (Art. 13 CRC).

#### *7.7.2 Dealing with cultural differences*

All guardians who have been interviewed mentioned giving specific attention to handling cultural differences. Cultural awareness was generally considered very important and many guardians had tried to inform themselves about the religious and cultural habits of their pupils.

*“ I always read books and watch movies that can help me in understanding the culture and day-to-day life of the countries children come from.”(ITG15, female, 3 years of experience)*

*“I think that the most important thing is to be able to speak the same “language” of children, in the broader sense of the term, since this is very beneficial for the communication with them, for the respect for their identity and personal history and for their effective protection.” (ITG14, male, 3 years of experience)*

*“Intercultural competences are crucial in order to be able to understand the children’s personal history, because without knowing their history we are not able to respect them and to treat them as people”. (ITA8, female, honorary Judge to the juvenile courts)*

On the other hand, some of the guardians also underlined that the guardian should also try to find a balance between the cultures, since he/she should also be able to build a “bridge” between the child’s culture and the Italian culture in order to facilitate integration.

*“The guardian represents also a “bridge” between the culture of the host country and the culture of the child: he/she has to support the child in the process of integration and in understanding the new culture, but he/she also has a crucial role in promoting and advocating for the respect of the child’s identity. He/she is the person who can “give” the children their dignity and identity” (ITA3, female, social psychologist)*

**Recommendation 12:**

In accordance with suggestions from all the respondents, it is recommended that the guardian respects and knows the culture of origin of the child, supports him/her in the process of integration and in understanding the culture of the host country. The guardian should consider himself/herself as a bridge between the cultures. This reflects the right to enjoy his/her culture (Art. 30 CRC)

### 7.7.3 Frequency and locations of the contact

The frequency of contact varies according to the facilities in which the minors reside in, the geographical distance, the date of arrival of the minor (just arrived or already settled in), the condition of the child, the emotional support needed by the minor, and their residency status. Another important factor is represented by the availability of time of every guardian. To be as available and reachable as possible, some of the guardians also decided to give the children their mobile phone number. The frequency of contact revealed by the guardians, the minors, and the workers of the housing facilities varied between weekly and monthly contact.

*“I meet children whenever it is necessary. Having a store, they can also easily reach me. All my pupils have my mobile phone number and I have theirs. I am also in contact with children who have already turned 18 years”. (ITG15, female, 3 years of experience)*

*“In general, I meet children in the community where they live once a month and I am always informed of their activities and condition by the workers of the community”. (ITG16, female, 5 years of experience)*

*“When I was a minor I used to meet my guardian frequently, in general three or four times a week. The first day we met she gave me her mobile phone number and I gave her mine. I have often called her when I had problems or needed some help. Even now that I am 19 years old we meet frequently”. (IT14, Male, 19 years old, Flat share).*

### 7.7.4 The decision making process and the participation of the child

All the guardians who have been interviewed stated that they always ask for and take into account the opinion of the child, his/her desires and doubts. All of them also check if the child is aware of every possible consequence of the decision to be made and support them in the decision making, in

relation to their age. No guardian or child reported having problems in understanding each other; in general, in fact guardians are appointed a very long time after the arrival of the children, who in the mean time learn, usually very well, Italian. One of them, in one case, also decided to inform the child's family of the decision to be made. The involvement of the child is confirmed by all the answers given by the children in relation to this topic:

*"My guardian is good! From the very beginning he has always asked for my opinion on the things to be decided or done and he has always explained to me the possible consequences of every decision I have made"* (IT 14, Female, 16 years old, Community for separated children)

As regards to the communication with other parties involved in the children's life, such as social workers, workers of the reception facilities, lawyers, teachers, friends of the child, migration authorities etc., some of the interviewed guardians reported that sometimes they have had problems in cooperating with the workers of the housing facilities or with some of the representatives of the migration authorities because they did not easily recognize the legitimacy of their requests or activities, but in all of these cases they managed to make sure that their role and responsibilities are understood and respected and finally developed a cooperation methodology between themselves. For what concerns the relationship with other parties, all of the guardians stated that they have effective and efficient links with them.

*"We have effective and efficient links with all the agencies and institutions involved in the children's reception, integration and assistance process. Sometimes we had problems with some of the workers of the communities of children, because at first they did not recognize and respect our role and functions, but in the end we managed to cooperate, communicate and have links also with them"* (ITG13, female, 3 years of experience)

Where local training courses for guardians are realized, specific formal agreements between the guardians training projects and the local authorities, judiciary institutions and other agencies involved have been made in order to ensure the effective and efficient cooperation of all the actors (for more details see Annex 4.b).

As summarized in one of the guardians' answer, the guardian has in fact also an important function of "intermediation" with all the other parties involved:

*"I think that in order to ensure the full protection of children's rights, a guardian should consider himself/herself as a proactive "intermediate", as a link between the child and other actors involved, such as workers of the communities, teachers, social workers, lawyers, migration authorities, etc., etc."* (ITG15, female, 3 years of experience)

#### Good practice 6:

From some of the respondents we learned that in the local contexts where local training courses for guardians are realized, specific formal agreements between the guardians training projects and the local authorities, judiciary institutions and other agencies involved have been made in order to ensure the effective and efficient cooperation of all the actors.

**Recommendation 13:**

In accordance with suggestions from all the respondents, it is recommended that the guardian always ask for and take into account the opinion of the child, his/her desires and doubts and check if the child is aware of every possible consequence of the decision to be made and support them in the decision making, in relation to their age and condition. This reflects the right to information (Art. 13 CRC) and the right to participation (Art. 12 CRC)

**Recommendation 14:**

In accordance with suggestions from all the respondents, it is recommended that the guardian consider himself/herself as a proactive “intermediate”, as a link between the child and other actors involved and consider himself/herself as the case manager of contacts for the child. This reflects the duty to take the best interests of the child as a primary consideration (Art. 3 CRC)

## 7.8 Assessment of the best interest of the child

For what concerns the answers given regarding the assessment of the best interests of the child, a specific methodology or tool to define it did not emerge. All the guardians declared that they assess the best interests of the child by trying to find a balance between the children’s aspirations and desires and the measures implemented by the institutions.

Even from a theoretical point of view, only one guardian explicitly said that he and his institution’s staff take the Convention of the Rights of the Child as the most important legal and methodological basis for their work and for the assessment of children’s best interests, while for the other guardians it seems that it is rather considered as an “implicit” reference:

*“According to the CRC principles, we have to pay close attention to the fundamental respect for the individuality of every child, for his/her right to be heard. This is why it is very important to raise the awareness of guardians, their competences, their ability to provide children with emotional support, their skills. Children have of course other points of reference (their parents, the Social Service responsible, etc., etc.) but the role the guardian should have is different: he/she should have a personal relationship with the child in order to monitor the respect for his/her rights, his/her civil but also relational rights. Therefore I think that it is very important to be sure that all the guardians consider, as we do, the children’s rights and needs as stated in the CRC as the basis for their day-to-day work.” (ITG11, male, 10 years of experience)*

### Recommendation 15:

In accordance with suggestions from some of the respondents, it is recommended that guardians are equipped with practical work methodologies and tools based on the CRC, allowing them to better assess the child's best interest and specific needs. This reflects the duty of the State to undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the CRC (Art. 4 CRC).

## 7.9 Sleepless nights

For what concerns the emotional aspect of their work, all of the interviewed guardians declared they take home issues from work, but none of them have serious problems in dealing with work concerns. Most of the guardians stated that it depends a lot on the child's specific situation and personal background but in general they all managed to cope with the emotional pressure connected to their role.

*"The guardian is responsible for child but he/she must not get too emotionally involved with them, he/she must not feel too much like a parent. He/She has to let the child make their own decisions, supporting them but replacing their own or their families place in taking such decisions." (ITG13, female, 3 years of experiences)*

*"The guardian is not a foster parent, he/she has to protect children and to monitor how their rights are protected and implemented. He/she should not have too strong an emotional impact on the child's life but mostly he/she should represent an important focal point for all the actors involved and for the correct representation of the child's rights, specifically in order to avoid any conflict of interests among all the actors" (ITA8, female, honorary judge to juvenile courts)*

*"The role of a guardian is clearly a role which implies an emotional involvement. At the very beginning of my experience I was worried about that, but finally I have found out it is life that gives us "rules" and I have realized that it is very important for children to have some focal points, even from an emotional point of view. I have realized that it is necessary to be present in children's lives and I have worked a lot on my personal and my family's emotional relationship with them." (ITG16, female, 5 years of experience)*

*"I never had psychological or emotional problems connected to my work with children, probably because I have a lot of experience in working with children with traumatic personal background (e.g. young women with a history of depression or victims of abuse and violence). (...) Moreover I found that these children, even if they had dramatic experiences, are able to think more about their future than their past, they have their personal migration project and they are very focused on that. I really think that fortunately they are able to look to their future. What I am seriously worried about is our realistic chance to offer them a future. " (ITG15, female, 3 years of experience )*

Guardians often have to solve their issues by themselves, thanks to their past experiences or personal resources. When they are part of a guardians training project they can also share their reflections with other guardians and professionals in periodical meetings (see Annex 4.b).

*“I had the chance to describe my experience as guardian at one of the periodical meetings organized within our Guardian Training Project and I think it is very useful to have such meetings not only for me or for other guardians and professionals but also for the enhancement of the Project.” (ITG16, female, 5 years of experience)*

#### **Good practice 7:**

From some of the respondents we learned that in the local contexts where local training courses for guardians are realized, guardians have periodical meetings with other guardians, professionals and training project colleagues, whom are very useful to discuss and share their problems with. This supports the guardians in their job and ability to cope with different responsibilities and represents an instrument to enhance the quality of the training projects.

#### **Recommendation 16:**

In accordance with suggestions from all the respondents, it is recommended that group meetings among guardians and other professionals and supervision procedures are introduced as instruments for the continuous qualification and support of guardians. This reflects the duty of the State to undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the CRC (Art. 4 CRC).

### **7.10 The qualifications of a guardian in relation to return and contacts with families**

A summarized overview on the main problems and issues concerning the policy for return for separated children in Italy will be given in paragraph 8.3.4 .

At this stage, it is important to highlight that the role of the guardian in relation to return is not clear in procedures or in practice yet. Only one guardian had a dramatic experience with the attempt of implementing a “collective” measure of return for a group of children, which he strongly contested. Finally he obtained the cancellation of this measure. The other guardians we met, did not have any experience with return, perceived as more an emergency measure than an equitable measure but they did think that it would be very difficult to know what happens to the children once they have returned to their country of origin.

*“Fortunately, I did not have an experience with the return of a child”. (ITG14, male, 3 years of experience)*

All the guardians who have been interviewed talk with children about their country of origin and try to find information on their countries. Some of them also talked with their families or parents (by phone or through skype), but only to reassure the children’s family members about the well-being and condition of their children and never to discuss the possibility of their return.

*“Recently I talked with the mother of a child through skype. He asked me to talk with her because is going to get married and it was important for him”. (ITG15, female, 3 years of experience)*

*“I always talk with the children’s parents or family members, both with those who are in Italy and with those who are in their countries of origin. They trust me and they are happy that there is someone who wants to help their children.” (ITG14, male, 3 years of experience)*

**Recommendation 17:**

In accordance with suggestions from some of respondents, it is recommended that the role and responsibilities of the guardian in relation to return are defined at national level, that guardians are informed about the situation in their pupils’ countries of origin, and are informed about the situation of separated children who have returned to their country of origin. This reflects the right to protection (Art. 19 CRC).

**7.11 When a minor reaches the age of 18 years**

As we will see more in detail in paragraph 8.3.7 , there are a lot changes when a separated child turns eighteen, in particular after the approval of the lastest Migration Law 94/2009.

For some children this means that their regular residence permit cannot be converted and for all children it means that the guardian is not responsible for them anymore. Most of the interviewed children are aware that reaching the age of 18 does implicate a lot of changes, but most of them also think that their guardians will try to help them even after turning 18.

*“I know what will happen when I reach the age of 18, L. [his guardian] told me everything. But I also know that he will not leave me alone.” (IT10, male, 17 years old, Community for separated children)*

*“My guardian did a lot of things for me. She supported me, encouraged me to go to school, because I did not want to. She explained to me why it was so important for my future. She also helped me a lot after I have turned 18 and I did not know where to go or what to do: she hosted me at home and helped me find work “. (IT14, Male, 19 years old, Flat share)*

The role of guardian at this point of transition is therefore very important, as stated by one the interviewed experts:

*“The role of guardian is crucial in every moment of change in the child’s integration process: when they have to move from a community to another, when they turn 18, etc. He/She should represent a “fils rouge” for their fragmented lives. (...) He/She answers to their need for individual recognition”* (ITA3, female, social psychologist)

In fact, all the guardians we have interviewed try to stay in contact with their former minors.

#### **Recommendation 18:**

In accordance with suggestions from all guardians, it is recommended that guardians inform children about the legal procedures concerning their situation, including provision of a plan for when they turn eighteen and try to stay in contact with them even after this. This reflects the right to protection (Art. 19 CRC) and to information (Art. 13 CRC).

#### **7.12 What makes a guardian proud?**

Guardians feel proud of themselves when they can fulfill their duties and tasks with positive results for the children, when children can accomplish their integration process and satisfy their desires and aspirations or when they can help in solving some of the problems children are facing.

It is possible to summarize the contents of their answers with the following:

*“I feel proud of myself, happy and completely satisfied when children are able to realize their projects and when the projects reflect their identity and desires.”* (ITG13, female, 3 years of experiences)

## **8. Who is the separated child in Italy?**

### **8.1 Data and statistics on separated children**

Data on children and adolescents are in general collected from various sources by several players which, for different reasons, are competent on this issue. Among these players, the most significant are certainly ISTAT (Italian Statistics Institute), the Ministries (Ministry of the Interior; Ministry of Labour, Health and Social Policies; Ministry of Justice, the Ministry of Education, University and Research), the Regions and the Autonomous Provinces by means of their Centres and Observatories on children and adolescents, as well as the CISIS (Interregional Centre for IT, Geographical and Statistical Systems) and the Italian National Childhood and Adolescence Documentation and Analysis Centre.

In Italy there are also several statistical publications on migration and asylum published on a regular basis. Usually these are reports directly promoted by public organizations and institutions (such as the Committee for Foreign Minors, the National Programme for the Protection of Separated



Children, the National Commission for the Right of Asylum, the System of Protection for Asylum Seekers and Refugees (SPRAR), Ministries, local governments, etc.) which benefits from a wide cooperation of private sector and university researchers, especially in terms of data analysis, or reports published by national and international organizations, such as UNHCR, NGOs and local associations.

Nevertheless, in Italy reliable data on separated children is not easy to obtain and can appear incomplete. Data is in fact often collected by different institutions and actors with a not so standardized and comparable methodology and in most cases the delays and errors in registering and/or reporting children results in discrepancies between the cumulative totals. In addition, due to structural difficulties and delays in registering children, some of the available data is often not updated and in general it does not reflect accurately changes that occurred in the child's condition after their arrival or first report<sup>31</sup>.

When considering national or international statistics on separated children, a first important distinction should be made between inflow data, concerning the number of separated children that *entered* the territory of the country during the reference period, and stock data, concerning the number of separated children *present* in the country at the end of the reference period. The stock and the inflow reflect two relevant and interlinked aspects of the phenomenon, but it is often very difficult to differentiate between the two types of statistical data, since in most cases they are not reported separately.

### **Inflow statistics**

As to the inflow data, according to the Ministry of Interior, the total amount of minors who landed on the Italian coastline increased from 2,180 in 2007 to 2,751 in 2008, and among them the number of separated children increased from 1,700 in 2007 to 2,124 in 2008. The most critical situation was recorded in 2008 in the Sicilian island of Lampedusa, where 1,948 separated children arrived in the course of the year<sup>32</sup>.

In 2008, according to the data elaborated on by the National Commission for the Right of Asylum, the new asylum claims made by separated children were 302: 70 of them were granted refugee status, while 210 of them were granted other forms of international protection.

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<sup>31</sup> With reference to data concerning the number of separated children asylum seeking, it is important to underline that UNHCR in its Report on *Trends in unaccompanied and separated children seeking asylum in industrialized countries, 2001-2003*, Geneva 2004, stated that Italy, with other countries like United States, Australia, Canada and France, was not included in the above mentioned Report «because data was not available, incomplete or not comparable enough to be included»: p. 2.

<sup>32</sup> The data were furnished by the Ministry of the Interior during a hearing before the Parliamentary Commission (25 February 2009). The transcription of the hearing is available on the website of the Ministry of Interior at:  
[http://www.interno.it/mininterno/export/sites/default/it/sezioni/sala\\_stampa/interview/Interventi/2100\\_500\\_ministro/0990\\_2009\\_02\\_25\\_commissione\\_infanzia.html\\_1079446651.html](http://www.interno.it/mininterno/export/sites/default/it/sezioni/sala_stampa/interview/Interventi/2100_500_ministro/0990_2009_02_25_commissione_infanzia.html_1079446651.html)

For what concerns the 2009 inflow data, the only available information is that the number of separated children who arrived in Italy up to 23<sup>rd</sup> February 2009 was of 138. Additional flow and age-disaggregated data concerning 2009 are not available so far<sup>33</sup>.

### Stock statistics

As to the stock statistics, the first source to take into consideration is represented by the data collected by the Committee for Foreign Minors, to which only separated children non asylum seekers should be reported by Judiciary Courts, municipalities, reception centers, living communities and other authorities.

The number of separated children non asylum seekers whose presence has been reported to the Committee for Foreign Minors since 2000 is comprised of between 7,000 and 8,000 separated children, mostly coming from Albania, Morocco and Romania (up to January 1, 2007 when Romania joined the European Union<sup>34</sup>).

**Table 1. Stock data on separated children non asylum seekers reported to the Committee for Foreign Minors(2000-2008)**

	2000	2001	2002	2003	2004	2005	2006	2007	2008
<b>Total</b>	8,307	8,146	7,040	8,194	8,100	7,583	6,453	7,548	7,797
Identified	-	-	1,157	881	2,151	2,034	2,180	1,917	1,797
% Identified	-	-	16.4	10.7	26.6	26.8	33.8	25.4	23.0
Unidentified	-	-	5,883	7,313	5,949	5,549	4,273	5,631	6,000
% Unidentified	-	-	83.6	89.2	73.4	73.2	66.2	74.6	77.0

SOURCE: Committee for Foreign Minors within the Ministry of Labour, Health and Social Policies

The number of separated children non asylum seekers whose presence has been reported to the Committee for Foreign Minors up to 30<sup>th</sup> September 2009 was 6,587<sup>35</sup>. They come from Morocco (15%), Egypt (14%), Albania (11%), Afghanistan (11%), Palestine (7%), Somalia (4%), Eritrea (4%), Nigeria (4%) and Serbia (4%).

<sup>33</sup> The Ministry of the Interior recently has made available only aggregated data on the number of immigrants who have entered Italy from 1 August 2009 to 31 July 2010: the total amount was of 3,499 persons, while from 1 August 2008 to 31 July 2009 it was of 29,076 (statistics available at [http://www.libertaciviliimmigrazione.interno.it/dipim/site/it/documentazione/statistiche/politiche\\_immigrazione\\_asilo/Dati\\_su\\_sbarchi\\_immigrati\\_al\\_31\\_7\\_2010.html](http://www.libertaciviliimmigrazione.interno.it/dipim/site/it/documentazione/statistiche/politiche_immigrazione_asilo/Dati_su_sbarchi_immigrati_al_31_7_2010.html)). According to the Ministry of the Interior data in 2009 the total amount of the new asylum claims made was of 17, 603 (statistic available at: [http://www.interno.it/mininterno/export/sites/default/it/assets/files/16/0462\\_dati\\_asilo\\_gen\\_2009.pdf](http://www.interno.it/mininterno/export/sites/default/it/assets/files/16/0462_dati_asilo_gen_2009.pdf)).

<sup>34</sup> For minors coming from countries which have recently joined the EU, a specific Central Body for the protection of unaccompanied minors (called "Organismo Centrale di Raccordo per la tutela dei minori stranieri non accompagnati") has been established at the Ministry of the Interior.

<sup>35</sup> CARITAS/MIGRANTES, *Immigrazione Dossier Statistico 2010*, Rome: Idos 2010, p.182.

Their age range was between 15 and 17 (88%) and with regard to the gender composition, there was a progressive predominance of males, whose percentage increased from about 70% in 2004 to over 90% in 2009<sup>36</sup>.

This figure should be considered an underestimation because, on the one hand, it does not include separated children asylum seekers and EU citizens: for instance, this figure does not include minors who come from a very important country of origin, Romania, who until recently represented the majority of the separated children reported in Italy (approximately one-third of the total since 2004). Moreover it does not take into account all those separated children who have never taken advantage of the national reception system.

As showed in Table 1, since 2002 the Committee for Foreign Minors has distinguished between identified minors – children holding a residence permit and under the care of the Committee - and reported but unidentified ones, children whose family could not be tracked down in their country of origin. The percentage of identified minors has varied during the years, without ever exceeding one-third of the total and remaining constant around 2,000 children - in absolute terms. Therefore, in 2008 the unidentified separated children under the care of Social Services amounted to 6,000, while the identified ones were 1,797.

Different data concerning 2008 are presented in the Third National Report on Separated Children realized by ANCI. In this Report data was collected by means of a different methodology focusing on distance consultation, through a specific questionnaire, of Italian municipalities (in 2009 5,784 municipalities out of 8,101 answered to the questionnaire).

According to the ANCI Report, the amount of separated children non asylum seekers decreased from a total of 7.870 in 2006 to 5.543 in 2007 and again increased to 7.216 in 2008.

The majority of them were male (89.7%), close to coming age (16-17: 74.6%, 15: 11.3%, 11-14: 10.5%, 0-10: 2.2%) and coming from Afghanistan (16%), Albania (16%), Egypt (9.3%), Morocco (9,1%), Nigeria (4.5%) and Tunisia (2.8%)<sup>37</sup>.

According to this Report, the amount of separated children asylum seekers present in Italy, thus considering both new and repeat asylum applications and children still waiting for the outcome of the asylum procedures, increased significantly in recent years: from a total of 482 in 2007 to 879 in 2008.

In 2008 the majority of separated children asylum seekers was represented by males close to coming of age (86%) and coming from war-torn countries as Afghanistan (49%), Somalia (8.9%), Nigeria (8.8%) and Eritrea (6.4%).

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<sup>36</sup> *Ibidem*.

<sup>37</sup> NATIONAL ASSOCIATION OF ITALIAN MUNICIPALITIES (A.N.C.I.), *Minori stranieri non accompagnati. Terzo Rapporto ANCI 2008* (edited by GIOVANNETTI MONIA), Rome 2009, pp. 25-43.

409 out of the total amount of separated children asylum seekers were hosted in the *System of Protection for Asylum Seekers and Refugees* (SPRAR) structures<sup>38</sup> (for further details see paragraphs 8.3.3, 8.3.5 and Annex 4.b).

The majority of these 409 minors were males (89%), close to coming of age (16-17 years: 99%) and mainly coming from Afghanistan (40%), Somalia (19%), Nigeria (10%), Eritrea (8%), Ivory Coast (5%), Ghana (4%) and Ethiopia (3%)<sup>39</sup>.

As regards separated children victims of trafficking or exploitation, between 2001 and 2008, as referred to by the Department for Rights and Equal Opportunities, the total amount of identified minors victims of trafficking was 1,020, 82 of whom in 2008 only<sup>40</sup>.

#### **Recommendation 19:**

It is recommended that data on separated children furnished by the national official statistical sources are systematized in an attempt to make a picture as exhaustive, updated and coordinated as possible of data available at national and regional level and that this data is widely disseminated and made available on dedicated websites in a timely fashion. This reflects the duty of the State to undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the CRC (Art. 4 CRC).

## **8.2 Children's motivations for seeking entry in Italy**

The whole process of child migration should be analyzed in its complexity and in relation to its various components. Even if some motivations and choice factors are more decisive than others, it is important to emphasize the interdependence of multiple factors, as it emerged during the interviews with children and as was confirmed by other reports and studies. It is also important to highlight that knowing the motivations for migration of every single child constitutes an important element for guardians and other actors involved, since different motivations and aspirations imply different needs and responses.

By analyzing the interviewed children's countries of origin, it can be noted that they come from the periphery of the world's economic system. The testimonies given by the children and the analysis of the living conditions in their countries of origin (collected by researchers in more or less recent years) suggest that migration is perceived as one of the most important ways to improve their future as well

<sup>38</sup> SPRAR, *Rapporto annuale del Sistema di protezione per richiedenti asilo e rifugiati. Anno 2008/2009*, Rome 2009, p. 82.

<sup>39</sup> *Ibidem*, p. 84.

<sup>40</sup> European Migration Network – Italian National Contact Point, *Unaccompanied Minors: Quantitative aspects and Reception, Return and Integration Policies. Analysis of the Italian Case For a Comparative Study*, (edited by F. Pittau, A. Ricci, L. Ildiko Timsa), Rome 2009, p. 23.

as their families' socio-economic conditions. The socio-economic conditions of children's families of origin have direct influence on the migration choice of the children: the poverty combined with a low socio-educational status and the scarcity of local job opportunities, encourages children to migrate in the hope of finding better jobs, or at least better salaries, and better opportunities to secure career prospects<sup>41</sup>. This can be properly considered as their main reason for migration, as stated by the children and guardians who have been interviewed.

*"I have decided to come to Italy because my family is very poor and I needed to get a job to help them. I have found out that is very difficult to find a job in Italy and I don't know if I will stay here anymore. Me and my girlfriend would like to move to Australia, because we have friends there and we think it will be easier to find some job opportunities there."* (IT14, Male, 19 years old, Flat share)

*"I made a long, very long trip. Now I am here and would like to stay in Italy because I need to send money to my family, I need to work and to earn money as soon as possible."* (IT 15, Male, 18 years old, community for separated children)

At the origin of minors' migration, in fact, there are the so-called "push-factors" (conflicts, wars, generalized poverty, social instability, negative perspectives for their future creating a premature sense of responsibility, etc.), as well as the "pull-factors", such as Italy's image, as represented both by the positive feedbacks from their emigrated relatives/friends and by mass-media, especially television channels broadcasting in their countries. The choice of Italy as a country of destination, is determined by another important factor reported by the children, this being the geographical proximity of Italy to the countries of origin of separated children (in particular to the countries of the North and Central Africa) and also because of its geographical conformation. Regardless of the increasingly common mirage of the West, in the imagination of the children, Italy is seen as the bridge to their new life, as a "safe and prosperous place", although their expectations are not always realized.

*"The children I met told me that they have decided to come to Italy because their friends or relatives live here. They thought it would have been easier to find a job and they told me that their image of Italy was completely different from the reality they are now facing. In particular, they are concerned for the timing required in Italy for the concession of the residence permit and the other documents. Anyway, one of them told me that he would like to stay in Italy because he has found greater opportunities and kindness on the part of the professionals he met."* (IT G16 , female, 5 years of experience)

An interesting reference for the further comprehension of the children's motivations for seeking entry to Italy is also represented by the work of Monia Giovannetti. By analyzing the biographies of

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<sup>41</sup> European Migration Network – Italian National Contact Point, *Unaccompanied Minors: Quantitative aspects and Reception, Return and Integration Policies. Analysis of the Italian Case For a Comparative Study*, (edited by F. Pittau, A. Ricci, L. Ildiko Timsa), Rome 2009, pp. 8-9.

migrant children, she outlined four profiles of separated children in Italy, highlighting the characteristics of the main “push and pull” factors that determine their migration choice<sup>42</sup>:

- *Minors fleeing wars, persecution, conflicts*, who, forced by objective reasons to leave their country without a clear destination, undertake a gripping journey; this is, for example, the case of some Afghan children who stop in other countries before choosing Italy.
- *Minors “dispatched”, driven to migrate for economic reasons in search of job opportunities*, who choose Italy because, after gathering information both by their family members and friends who have had positive experiences of migration and by media, “have built” an image of Italy as a country offering the best socio-economic opportunities. Most of these cases were represented by Albanian minors who have a “wide range of knowledge” and high expectations from Italy, despite the lack of labour and housing opportunities.
- *Minors attracted by “new models and styles of life”*, who migrate in order to experience a new way of life, advertised by television images which nourish such a desire, sometimes since a very early age.
- *Minors motivated by the crumbling of society*, who opt for migration as a consequence of the departure of their family members or group of friends.

#### **Recommendation 20:**

In accordance with suggestions from some of the guardians and experts, it is recommended that guardians identify the motivation for migrating for every single child and his/her previous background and consider these important factors in the definition of the individual’s integration project. This reflects the right to special protection and assistance (Art. 20 CRC) and the right to protection (Art. 19 CRC).

### **8.3 Migration policy for separated children**

As already mentioned, children’s forced return is prohibited (except for the children’s right to follow their parents or foster parents under expulsion and when they pose a threat to public order and State security, according to the Art. 13 and Art. 19 of Legislative Decree 286 of 25 July 1998), as well as their detention at the Centres for migrants.

Currently, as underlined in several NGO reports<sup>43</sup>, the main problems affecting the reception and assistance of migrant children are related to the procedures for the identification on arrival, age

<sup>42</sup> Giovannetti, M., *L’accoglienza incompiuta. Le politiche dei comuni italiani verso un sistema di protezione nazionale per i minori stranieri non accompagnati*, Bologna: il Mulino 2008, pp. 105-114.

<sup>43</sup> Among others, see European Migration Network – Italian National Contact Point, *Unaccompanied Minors: Quantitative aspects and Reception, Return and Integration Policies. Analysis of the Italian Case For a*

assessment, distribution, quantity and quality of goods and services provided, hosting conditions, competences, skills and profiles of the professionals working with children and presence of cultural mediation services and legal information activities.

### 8.3.1 Identification and age assessment procedures

A first critical step to protect separated children is represented by the identification and age assessment procedures, both at the border and inside Italian territory<sup>44</sup>.

At the moment there are no laws (except within criminal justice proceedings) or procedures provided at national level regarding when and how identification of separated children and, in particular, age assessment must be carried out<sup>45</sup>. Moreover, there are no laws determining the legitimacy of the expulsion or detention of a young person whose age is in dispute<sup>46</sup>.

Assessing a migrant child's age and identity is often made difficult because sometimes young people arrive without identification documents or with incomplete documents, their birth has not been registered in their country of origin, they don't know their date of birth, they lie about their age and identity, or it is difficult to make calendar conversions.

Due to these problems and to the lack of adequate policies and laws on identification and age assessment, a number of separated children are not identified, their age is in dispute or are wrongly identified as adults or as children accompanied by parents and therefore deported, detained or not protected as separated children<sup>47</sup>.

In addition, very often children are not identified at the border but inside the territory: the fact that separated children are not immediately identified and placed in the child welfare and protection system upon their arrival and that they often do not get in touch with any kind of institution for a long time after they have entered Italy, exposes them to risks of neglect, exploitation and other serious child rights violations<sup>48</sup>.

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*Comparative Study*, (edited by F. Pittau, A. Ricci, L. Ildiko Timsa), Rome 2009, Amnesty International, *Invisibili. Minori migranti detenuti all'arrivo in Italia*, Torino: EGA 2006, Save the Children - Italia, *L'accoglienza dei minori via mare. Rapporto finale di monitoraggio delle comunità alloggio per minori in Sicilia*, Rome, April 2009.

<sup>44</sup> Rozzi, E., The situation of EU and non-EU separated children in Italy, *E-Migrinter* 2/2008, p. 15.

<sup>45</sup> It is also important to underline that the identification and the age assessment procedures, even if strictly interconnected, represent two different procedures and should not be considered and implemented as a single procedure. In particular, the age of a person is only one of the elements constituting his/her identity and its assessment represents a delicate issue. See Progetto Equal Palms, *Strumenti e ricerche*, vol. II, *Pratiche di accoglienza II. Identificazione, regolarizzazione, tutela e affidamento*, Rome 2007, p. 19 (for further details on the Project partners and contents see <http://www.progettopalms.it>).

<sup>46</sup> Rozzi, E., The situation of EU and non-EU separated children in Italy, *E-Migrinter* 2/2008, p. 19.

<sup>47</sup> *Ibidem*, p. 15.

<sup>48</sup> *Ibidem*, p. 16.

Identification capabilities vary from region to region, and only some regions reach a very high level of positive identification (more than 50%), such as in Trentino Alto Adige, Friuli Venezia Giulia and Piedmont<sup>49</sup>. As already mentioned, in fact, only an average of one out of four separated children who have been reported to the Committee for Foreign Minors were identified.

Also the procedures implemented for the identification and age assessment of children vary significantly, very often not respecting the recommendations of the United Nations Committee for the Rights of the Child on this matter<sup>50</sup>.

The child's identity has to be verified by the Police authorities, if necessary with the cooperation of the diplomatic authorities from the child's country of origin (Art. 5, paragraph 3, President of the Council of Ministers Decree 535 of 9 December 1999). In the absence of a valid passport, a photograph and fingerprints are normally taken<sup>51</sup>.

Usually the age verification – often carried out without the minor's or his/her guardian's consent – is required only if there are doubts about the minor's actual age. Until the research does not prove the contrary or in case of doubts, he/she continues, as recalled by the Ministry of Interior Memorandum of 9<sup>th</sup> July 2007, prot. 17272/7, being considered a minor and is granted protection like any other separated child.

Following this Memorandum, the benefit of the doubt principle must be applied to all separated children, not only to children who are under criminal procedures (as stated by Art. 8 of Decree of the President of the Republic 448 of 22 September 1988).

Currently, the investigation methods to determine the age of minors without identity papers include radiography (wrist, teeth) and anthropometric measures. The first method has been harshly criticized for the possible effects on children's health, but also the second one, even if not involving exposure to radiation, have been criticized because it does not take into account variations related to the subject's ethnicity and state of nutrition<sup>52</sup>.

In June 2008, an interministerial working group was created (with the support of various scientific experts) in order to accurately study the scientific publications as well as the documents published by international bodies on the issue. A first result of these research activities is represented by the Opinion of the High Committee on Health (so called "Consiglio Superiore di Sanità"), section II, of 25<sup>th</sup> February 2009, proposing the application of a "Multidisciplinary protocol for the age assessment of

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<sup>49</sup> European Migration Network – Italian National Contact Point, *Unaccompanied Minors: Quantitative aspects and Reception, Return and Integration Policies. Analysis of the Italian Case For a Comparative Study*, (edited by F. Pittau, A. Ricci, L. Ildiko Timsa), Rome 2009, p. 18.

<sup>50</sup> Rozzi, E., The situation of EU and non-EU separated children in Italy, *E-Migrinter* 2/2008, p. 15.

<sup>51</sup> *Ibidem*, p. 17.

<sup>52</sup> European Migration Network – Italian National Contact Point, *Unaccompanied Minors: Quantitative aspects and Reception, Return and Integration Policies. Analysis of the Italian Case For a Comparative Study*, (edited by F. Pittau, A. Ricci, L. Ildiko Timsa), Rome 2009, p. 21.



separated children” based not only on radiographic and anthropometric measures, which should be carried out in public and equipped with paediatric medical centre health services, but also in tandem with a sensitive interview procedure along with the support of a cultural mediator<sup>53</sup>.

In any case, as stated by some of the experts and the children who have been interviewed, the age assessment procedure is carried out before the appointment of the guardian and often not respecting children’s rights:

*“In my experience, the age assessment is carried out promptly when a separated children is identified, but before the appointment of the guardian and without the presence either of a cultural mediator or any other type of person (social workers, etc., etc.) by the Police Officers through wrist-bone X-ray” (ITA2, female, Municipality Social Services and Guardianship Services Head Officer)*

*“In my experience, during the process of the age assessment of the child as it is implemented in Rome, the guardian is never present. Besides that, it is important to underline that, in most cases, there is no respect for the specific recommendations of the UN Committee for the Rights of the Child (presence of the cultural mediator, scientific, safe and gender-sensitive and fair manner, according the benefit of the doubt, etc, etc) and for the children’s basic rights” (ITA1, male , lawyer)*

*“When I first arrived in Lampedusa they did not verify my age with any particular procedures. They only looked at me and at my teeth. I did not have any guardian and I did not understand what they were saying and doing” (ITC10, Male, 17 years old, Community for separated children).*

A critical situation is represented by the procedures implemented at the Centres for migrants operating on the isle of Lampedusa<sup>54</sup>, which is the most southern isle of Europe.

According to Save the Children Italy, the massive recourse to age verification procedures in these Centres raises relevant concerns. Specifically, these concerns regard the effective respect for children’s rights, due to the absence of any indication of the margin of error on the examination results and the missed delivery of a copy of the results, the timing needed for the examination, the

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<sup>53</sup> An important reference for the implementation of a cultural sensitive approach to health services for migrants is represented by Dr. Carlo Bracci’s work. For an interesting overview of his methodology see Bracci, C. (edited by), *La tutela medico legale dei diritti dei rifugiati*, Associazione Umanitaria “Medici contro la “Tortura”, Rome: Sviluppo locale edizioni, 2009, available at: <http://contextus.org/vulnerabilita/strumenti/52-strumenti-operativi-e-manualistici.html>.

<sup>54</sup>On the isle of Lampedusa in 1998 was established a Temporary Detention and Assistance Centre (CPTA) for migrants which in 2006 became a First Aid and Reception Centre (CSPA). In 2009 also a Centre for Identification and Expulsion (CIE) was established on the isle. See <http://www.interno.it/mininterno/export/sites/default/it/temi/immigrazione/sottotema006.html>.

lack of legal information and assistance and the prolonged permanence of children in these Centres, due to lack of availability of places in the appropriate facilities<sup>55</sup>.

**Recommendation 21:**

It is recommended that, due to the delicate nature of the matter, children are all identified at the border and all receive information, support and legal assistance and that identification and age assessment procedures are based on the full respect for children's rights and implemented according to a standardized methodology at national level. This reflects the right to special protection and assistance (Art. 20 CRC) and the right to protection (Art. 19 CRC).

*8.3.2 Reporting procedures for separated children non asylum seekers*

As already mentioned, in the Italian context there is a clear distinction between asylum seeking and non asylum seeking separated children, and this distinction implies two different reporting procedures and the involvement of different administrative bodies.

The condition of separated children who are non asylum seekers in the Italian context is considered separately, and its jurisdiction is assigned to the Committee for Foreign Minors, an interministerial<sup>56</sup> administrative body whose remit, according to Legislative Decree 113 of 13 April 1999 and the President of the Council of Ministers Decree 535 of 9 December 1999, is to "protect separated children's [*non asylum seekers*] rights" (Art. 2, paragraph 1) through various functions: overseeing the residence conditions of minors; working in cooperation with the involved administrations; verifying the separated minor's condition; implementing the assisted return procedures; and, finally, making a census of the separated children residing in the territory.

The procedures for separated children that do not submit an asylum application are the following: their presence on the territory should be officially reported to the Social Services of the municipality where the child resides, which should provide for hospitality and assistance, to the Juvenile Courts having territorial jurisdiction and the Tribunal - Guardianship Judge for the appointment of a guardian and other measures of assistance and protection and to the above mentioned Committee for Foreign Minors.

Once their presence is reported, they should be issued a temporary residence permit "for minor age" (President of the Republic Decree 394 of 31<sup>st</sup> August 1999, Art. 28, as modified by President of the Republic Decree 334 of 18<sup>th</sup> October 2004) which allows an investigation into their family and on the possibility to organize their assisted return.

<sup>55</sup> Save the Children - Italy, *Accoglienza e tutela dei minori nel centro di Lampedusa*, Rome, January 2009.

<sup>56</sup> For more details on the composition of this Committee please see footnote n.6. .

### 8.3.3 Reporting procedures for separated children asylum seekers

According to the Directive of the Ministry of the Interior of 7<sup>th</sup> December 2006 (recalling the existing Italian laws on immigration, including both the Law 39 of 28 February 1990 and the Decree of the President of the Republic 303 of 16 September 2004), separated children have the “right to receive all the information regarding the possibility of applying for asylum - and the consequences connected to the application according to the current legislation - as well as the right of expressing their own opinion”. To this end, a cultural mediator or an interpreter should provide the necessary assistance.

In case a separated child applies for international protection, the authority receiving the application immediately suspends the usual procedure followed by the Committee for Foreign Minors for the time being; then the asylum application is brought to the attention of the Social Services of the municipality where the child resides, as the Juvenile Courts have territorial jurisdiction and to the Tribunal - Guardianship Judge for the appointment of a guardian and other measures of assistance and protection (see Art. 2 of the Directive of the Ministry of the Interior of 7 December 2006). At the same time, the minor is reported to the Committee for Foreign Minors, which would be responsible for him/her in case of a negative response to the asylum application.

The Social Services of the Municipalities have the duty to immediately report the minor to the Central Service of the *System of Protection for Asylum Seekers and Refugees* (SPRAR)<sup>57</sup> so that they can receive the protection provided by the System and can have access to all the reception services of the SPRAR. If the SPRAR cannot immediately accommodate the minor in its facilities, hospitality and assistance should be provided by the Municipality.

#### **Recommendation 22:**

It is recommended that, children are all reported to the relevant authorities and that the reporting procedure is implemented in a timely fashion and according to a standardized methodology at national level. This reflects the right to special protection and assistance (Art. 20 CRC) and the right to protection (Art. 19 CRC).

### 8.3.4 The assisted return procedure

As stated above, according to the legislation in force the expulsion of minors under 18 years old is forbidden unless for reasons of public order and security of the State or for following the parent or the foster parent who is to be expelled. Still, a decision of assisted return may be adopted by the

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<sup>57</sup> The *System of Protection for Asylum Seekers and Refugees* (SPRAR) is comprised of local bodies that are grant access, within the threshold of available resources, to the *National Fund for asylum policies and services*, for the performance of projects for “*integrated reception*”. At a local level, the local bodies, with the support of actors of the third sector, ensure “*integrated reception*” activities that go far beyond the mere supply of accommodation and meals, since they provide for complementary activities to information, assistance, support and guidance through the definition of customized pathways to socio-economic inclusion. For further details see Annex 4.b.

Committee for Foreign Minors “in order to protect and guarantee the right to family unity” (Art. 2, paragraph 2, letter g) of DPCM 535/1999) and it shall respect the rights of the child enshrined in the international conventions, the laws and judiciary measures and the integrity of the child’s psychosocial conditions until the reunification with his/her family or the care placement is provided for by the local authorities (Art. 7 of DPCM 535/1999).

The assisted return of the separated child follows a special procedure according to ad hoc agreements and conventions between the Italian administration and some NGOs, as defined by Art. 3 of the Law Decree 286 /1998<sup>58</sup>. As mentioned above, the administrative body which is in charge of the investigation on separated children’s families and on the possibility to organize their assisted return is the Committee for Foreign Minors through agreements with national humanitarian organizations or associations (such as Vis, AIBI, etc.) or with international ones (such as the International Social Service, the International Organization for Migration or the Italian Red Cross) for the implementation of programs which aim at tracking down the separated child’s family in his country of origin. Another important factor is represented by the collaboration and exchange of information with the Social Services of the Italian municipality where the child resides.

After the hearing with the child, the local Social Services should send their reports to the Committee; then, after evaluating the situation, the Committee within 60 days alerts the NGO or international organization, whose main duties consist of gathering, with the support of local organizations and Social Services, information on the minor’s family of origin and submitting the results, as well as their opinion about a possible assisted return, gathered by the social workers who completed the investigation, to the Committee.

This kind of research, which should be carried out in the best interest of the minor, must be absolutely confidential, in order to protect the safety of the minor who applies for international protection (Art. 8, paragraph 5 of Legislative Decree 140 of 30 May 2005). The family investigations basically include talks with the family of origin, in order to obtain clear information about their socio-economic situation, the relationship between parents/relatives and the minor, the reasons behind his/her migration choice and the family’s willingness and ability to welcome the minor and take care of him/her in a proper way<sup>59</sup>.

If possible, in the interests of the minor and in order to guarantee the right to family unity, the minor is reunited with his/her family through apposite projects of assisted return, including accompanying the minor to his/her country of origin, his family reunification and his gradual reintegration (school, work, etc.). In this case, once the investigations are successfully completed and the individual

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<sup>58</sup> European Migration Network – Italian National Contact Point, *Programmes and strategies in Italy fostering assisted return and re-integration in third countries*, (edited by F. Pittau, A. Ricci, G. Urso), Rome 2009, p.23.

<sup>59</sup> European Migration Network – Italian National Contact Point, *Unaccompanied Minors: Quantitative aspects and Reception, Return and Integration Policies. Analysis of the Italian Case For a Comparative Study*, (edited by F. Pittau, A. Ricci, L. Ildiko Timsa), Rome 2009, pp. 27-28. See also Progetto Equal Palms, *Strumenti e ricerche*, vol. I, *Pratiche di accoglienza I. Aggancio, inserimento, mediazione, rimpatrio*, Rome 2007, pp. 54-58. (for further details on the Project partners and contents see <http://www.progettopalms.it>).

insertion program is elaborated, the Committee for Foreign Minors informs the Juvenile Court, which then issues an authorization for the return - unless there are judicial proceedings to be borne by the minor or mandatory procedural requirements<sup>60</sup>.

The Committee takes its decisions for or against the return of unaccompanied minors based on criteria which are not rigidly established by law and it should take into account the Italian Social Services' opinion as well as the opinion expressed by the social workers who completed the investigation in the country of origin; for these reasons, it is important that the Committee has the widest possible range of information in order to assess the risks and opportunities, as well as evaluate the will of the minor.

The repatriation is then carried out by the Police, the social services and/or the organizations which had completed the investigation in the country of origin.

After the return measure has been established, the case passes under the jurisdiction of the above mentioned organization or NGO which, besides carrying out investigations on the family of origin after receiving the reports by the Committee, has also other responsibilities as technically organizing the activities connected to the assisted return, following minors' situation after their return and starting reintegration projects in their country.

The minor, through his parents or his guardian, may appeal to the Courts (Ordinary Court or Tar – Regional Administrative Tribunal) in order to contest the authorization for the return.

In the absence of the necessary and indispensable conditions for the assisted return, whenever the return might assume risks for the minor, or when his relatives could not be tracked down or whose inadequate behavior would discourage reunification, the Committee decides for a non-suit, then reports the situation to the Social Services, to the Tribunal - Guardianship Judge and the Juvenile Court, which have to provide for the custody of minors (Law 183/1984) and start a project of social and civil integration of the children.

Concerns have been raised about the inadequacy of the current Italian legislation, especially regarding the fact that such competences are delegated to an administrative body without envisaging any judicial control and any procedure for the submission of appeals against its decisions, the absence of criteria established by law for the determination of the minor's best interests before the return decision and for the evaluation of the risks in case it is enforced<sup>61</sup>.

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<sup>60</sup> European Migration Network – Italian National Contact Point, *Unaccompanied Minors: Quantitative aspects and Reception, Return and Integration Policies. Analysis of the Italian Case For a Comparative Study*, (edited by F. Pittau, A. Ricci, L. Ildiko Timsa), Rome 2009, pp. 14-15.

<sup>61</sup> For an in depth analysis of the most controversial concerns under a legal perspective, see Miazzi, L., *Il rimpatrio assistito del minore straniero: ancora un caso di diritto speciale?*, *Diritto Immigrazione e Cittadinanza* 2/2000, pp. 34-49 and Pratelli, F., *L'espulsione del minore extracomunitario in Italia*, available at: <http://www.altrodiritto.unifi.it/ricerche/migranti/pratelli/index.htm>.

Despite the provisions of the Convention on the Rights of the Child, the minor's right to be heard (taking into account his choice as well as his age) is sometimes violated due to the lack of judicial control over the procedures, even when the return procedure is established against his will<sup>62</sup>. Moreover, not only are the investigations and the reporting of outcomes by the Committee for Foreign Minors delayed, but usually the Italian Social Services do not receive the reports elaborated by the organization in charge of the investigation, despite the usefulness of this information exchange for an effective protection of the minor<sup>63</sup>.

As stressed in the European Migration Network 2009 Report, it is also important to highlight that often the Committee does not take any decision and that the amount of assisted return measures is continuously decreasing. From 2000 to 2006 the Committee issued only 2.108 decisions, 39% of which were decisions for the assisted returns and 61% of which were non-suit decisions: if in 2003 the assisted returns measures accounted for 10.3% of the identified minors, in 2006 there were only 8 minors who returned to their countries, equal to 0.40% of the total amount of the identified minors<sup>64</sup>.

Moreover, as underlined by Monia Giovannetti, social workers and officers in general don't perceive the assisted return as an answer to the child's right to family unity or best interests, but as an emergency instrument implemented in response to the national lack of resources and/or problems.<sup>65</sup>

The decision of assisted return can be problematic also because it does not monitor the post-return, except when specific projects involving the Italian municipalities or Regions and the countries of origin are implemented<sup>66</sup>.

### **Recommendation 23:**

It is recommended that, due to the delicate nature of the matter, the criteria for the determination of the minor's best interests before the return decision and for the evaluation of the risks in case it is enforced are fixed by law, children's opinions are always heard and taken into account, a more effective system for the exchange of information between the Committee for Foreign Minors, the local municipalities and the organizations involved in the investigation in the countries of origin is identified and decisions are taken in a timely fashion in order to fully promote the respect for

<sup>62</sup> Rozzi, E., The situation of EU and non-EU separated children in Italy, *E-Migrinter* 2/2008, p. 21.

<sup>63</sup> Progetto Equal Palms, *Strumenti e ricerche*, vol. I, *Pratiche di accoglienza I. Aggancio, inserimento, mediazione, rimpatrio*, Rome 2007, pp. 56-57. (for further details on the Project partners and contents see <http://www.progettopalms.it>).

<sup>64</sup> Giovannetti, M., *L'accoglienza incompiuta. Le politiche dei comuni italiani verso un sistema di protezione nazionale per i minori stranieri non accompagnati*, Bologna: il Mulino 2008, pp. 168-169.

<sup>65</sup> *Ibidem*.

<sup>66</sup> For the analysis of two effective local projects on assisted return, promoted by the municipality of Turin and of Bologna respectively, see Progetto Equal Palms, *Strumenti e ricerche*, vol. I, *Pratiche di accoglienza I. Aggancio, inserimento, mediazione, rimpatrio*, Rome 2007, pp. 62-65. (for further details on the Project partners and contents see <http://www.progettopalms.it>).

children's rights. This reflects the right to special protection and assistance (Art. 20 CRC) and the right to protection (Art. 19 CRC).

### 8.3.5 Reception and assistance procedures

In the Italian context, the activities aimed at giving assistance and protection to children are left, according to Article 33, paragraph II, letter b of Legislative Decree 286 of 25 July 1998, to the local authorities, which have to manage and monitor the assistance given.

The Decree of the President of the Republic 616 of 24 July 1997 and Law 328 of 8 November 2000 in fact state that Municipalities have to program and implement, in accordance with other actors involved, an integrated system of intervention and social services and that they have to provide Italian as well as foreign children with suitable care placements.

As for the standards of provision, the above mentioned Law 328 of 8 November 2000 and Law 149 of 28 March 2001 envisage that every Region must define, by respecting the national standards fixed by the State through the Presidency of the Council of Ministers – Department of Social Solidarity Decree 308 of 21 May 2001, the minimum quality standards of provision and monitor their implementation.

Therefore if, on the one hand, every Region can establish its own “welfare system” by adopting specific legal, financial and administrative measures according to its local needs and resources, on the other hand, the lack of adequate national financial support can explain the discrepancies among the various Regions and municipalities in the application of the national and regional legislation and standards. The reception procedures differ also depending on the situation of minors when they come in contact with social services.

Recently Amnesty International documented that a large number of children that arrived in Sicily have been held in administrative detention centers for a long period of time and without any guarantees for the protection of their specific rights<sup>67</sup>, as confirmed also by one of the children who has been interviewed:

*“I arrived in Sicily, then I ran away from the detention facility [CPA – Centro di Prima Accoglienza] and I came to Rome”, (Male, 17 years old, Reception Center, IT 4 C)*

It is therefore urgent to reach a standardization of intervention measures and facilities, and to move from an emergency phase to a more structured one. This is the reason why a National Program for Protection of Unaccompanied Foreign Minors was launched in 2007. This Program was financed by the fund for social inclusion of immigrants of the Ministry of Labour, Health and Social Policies, and carried out by the National Association of Italian Municipalities (ANCI), and it represents a testing ground for the implementation of a national system of assistance and integration for separated

<sup>67</sup> Amnesty International, *Invisibili. Minori migranti detenuti all'arrivo in Italia*, Torino: EGA 2006.

children non asylum seekers, with specific regard to the first reception phase (for more details see Annex 4.b).

In general, separated children are almost always placed in reception communities, with only a few local authorities (such as Parma, Modena, Genoa and Bologna) opting to place the children in families belonging to the same ethnic group, trying out what is called “homocultural foster care”.

With regard to the reception communities, it can be said that they have gradually changed in terms of both their organization and their staff’s composition, partially as a result of the fact that the children entering these communities have changed over the last 15 years. Instead of Italian children, they are now hosting mainly foreign children, most of whom are separated children. An example of one of the changes that have taken place concerns the provision of cultural mediation/translation services as well as the provision, in addition to a general school education, of vocational training , job training schemes and of Italian language courses.

The number of communities has increased and they have become more and more specialized with regard to the specific needs of the hosted children.

For what concerns separated children asylum seekers, according to the Directive of the Ministry of the Interior and of the Ministry of Justice of 7 December 2006, the Social Services of the Municipalities have the duty to immediately report the minor to the Central Service of the *System of Protection for Asylum Seekers and Refugees* (SPRAR) <sup>68</sup> so that they can receive the protection provided by the System and can have access to all the reception services of the SPRAR. If the SPRAR cannot immediately accommodate the minor in its facilities, hospitality and assistance should be provided by the Municipality. In case the minor’s application is not confirmed or the international protection status is not granted, the matter comes within the competence of the Committee for Foreign Minors and the minor receives the same suitable care placement as separated children non asylum seekers.

The reception of separated children, both asylum seekers or non asylum seekers, comprises two phases: the first reception phase and the second reception phase<sup>69</sup>.

This first reception is temporary, in fact it can last from thirty days to one hundred and twenty days at the longest; its purpose consists in offering separated children immediate and temporary shelter through adequate measures, as well as proposing a plan of action after having reported their presence to the Committee for Foreign Minors, the Police authorities, the Juvenile Courts and the Tribunal - Guardianship Judge and, eventually, to the SPRAR.

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<sup>68</sup> See footnote number 57. For further details see also Annex 4.b.

<sup>69</sup> Giovannetti, M., *L'accoglienza incompiuta. Le politiche dei comuni italiani verso un sistema di protezione nazionale per i minori stranieri non accompagnati*, Bologna: il Mulino 2008, p. 161.



As stated above, the standards of quality, the monitoring system, the types of hosting facilities and also their efficiency vary a lot from one Region to the other, and, moreover, even inside the same Region, from one Municipality to the other.

Within this heterogeneous context it is nevertheless possible, as proposed in the Third National Report on Separated Children realized by ANCI, to distinguish among three main types of hosting facilities:

- *public facilities* (administered by the local Municipality or the national government)
- *private contracted facilities* (which have a close relationship with the local Municipalities)
- *private facilities* (which don't have a stable relationship with the local Municipalities or Regional authorities).

In 2008 the 90.5% of the total number of separated children non asylum seekers in the first reception phase was hosted in private facilities: the 57.9% of them was hosted in private contracted facilities and the remaining 32.6% was hosted in private facilities<sup>70</sup>. Only the 9.9% of the separated children in the first reception phase were placed in a family, Italian, of the same nationality as the child or composed by at least one of his/her family members<sup>71</sup>.

It is worth mentioning that in general Regions with a relevant number of separated children non asylum seekers are referred to public facilities, with the exception of Region Sicily and Region Puglia where children are hosted in private facilities which don't have stable relationship with the local Municipalities or Regional authorities<sup>72</sup>.

The second reception phase, instead, aims at integrating separated children through long-term education and professional training projects which last until they come of age.

This phase involves a long-term project of integration in residential communities, a specific program for the minor (frequency of school courses and/or vocational training courses, socio-educational activities, etc.) and the request for a residence permit in accordance with art. 2 of Law 184 of 4 May 1983 (for more details see the following paragraph), even if in 2008 the 57.2% of separated children non asylum seekers in the second reception phase had not yet received any type of residence permit<sup>73</sup>.

The reception procedure for separated children victims of trafficking or exploitation is different: they receive the reception, assistance and support services provided for by targeted local projects for the social protection of victims, promoted by local authorities and financed by the Department for Equal

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<sup>70</sup> NATIONAL ASSOCIATION OF ITALIAN MUNICIPALITIES (A.N.C.I.), *Minori stranieri non accompagnati. Terzo Rapporto ANCI 2008* (edited by GIOVANNETTI MONIA), Rome 2009, p. 40 and pp. 60-61.

<sup>71</sup> *Ibidem*, p. 64.

<sup>72</sup> *Ibidem*, p. 62.

<sup>73</sup> *Ibidem*, p. 96.

Opportunities through public announcement: according to data elaborated by the Department for Equal Opportunities, from 2000 to 2008 the total amount of children inserted in the 533 local social protection projects that have been realized is of 938<sup>74</sup>.

**Recommendation 24:**

It is recommended that guardians cooperate with other actors involved for the effective monitoring and standardization of the conditions of accommodation of children. This reflects the right to special protection and assistance (Art. 20 CRC) and the right to a adequate standard of living and housing (Art. 27 CRC).

### 8.3.6 Children leaving with unknown destination

Separated children disappear from every type of facility, even if, as underlined in the Third National Report on Separated Children realized by ANCI, besides the local and regional differences it is important to distinguish between data concerning the first reception phase and data concerning the second reception phase.

In 2008 the percentage of children non asylum seekers in the first reception phase who stayed in the hosting facilities for more than one month progressively increased from 27% in 2004, to 34.5% in 2006, 44.8% in 2007 and 52.6% in 2008.

At the same time, the percentage of children who fled from the first reception facilities progressively decreased from 62.3% in 2006, 46.5% in 2007 to 40.1% in 2008 (equal to four out of ten children hosted).

It is also important to underline that since the most part of children non asylum seekers in the first reception phase were hosted in private facilities (90,5 % of the total amount), the private facilities registered also the highest percentage (93,7%) of children who fled in 2008.<sup>75</sup>

Even though the above mentioned improvements as to the length of the stay and to the number of children disappeared from the first reception facilities, it seems that this first phase remains the most crucial as to the effective protection of children's rights, as underlined also in some of the answers given by the children who have been interviewed:

*"I had a bad experience in the first community I was hosted in after my arrival. Unfortunately I have been there for a long time, till I have turned 18. It was a small community for separated children, which has been closed now, and the main problems were connected to the low level of experience*

<sup>74</sup> Data available at

[http://www.pariopportunita.gov.it/images/stories/documenti\\_vari/UserFiles/Il\\_Dipartimento/Art\\_18\\_aggiornato.pdf](http://www.pariopportunita.gov.it/images/stories/documenti_vari/UserFiles/Il_Dipartimento/Art_18_aggiornato.pdf)

<sup>75</sup> NATIONAL ASSOCIATION OF ITALIAN MUNICIPALITIES (A.N.C.I.), *Minori stranieri non accompagnati. Terzo Rapporto ANCI 2008* (edited by GIOVANNETTI MONIA), Rome 2009, p. 63.

*and competences of the educators and professionals who work there. I tried to talk with the person responsible for the community, but he didn't listen to me and didn't care about what I was saying. When finally I had a guardian, it was late because I was close to the coming of age and I left this facility. Moreover they didn't give us enough pocket money, only 7 euros per week". (IT14, Male, 19 years old, Flat share)*

*"I have seen him [my guardian] only once. I had a problem when I was in the first reception community and then, on this occasion, I met him" (IT4, Male, 17 years old, Reception Center)*

As to data concerning the second phase reception facilities, the percentage of separated children non asylum seekers in the second reception phase who stayed in the hosting facilities for more than one month decreased from 84.4% in 2007 to 75.1% in 2008, while the percentage of children who fled from the second phase reception facilities rose from 19.6% in 2006, to 33% in 2007 and decreased to 23% in 2008.

#### **Recommendation 25:**

It is recommended that guardians cooperate with other actors involved for the immediate reporting of the disappeared children in order to collect and disseminate at national level this data and information. This reflects the right to protection (Art. 19 CRC).

#### *8.3.7 Types of residence permit*

In the Italian legal framework, there are several kinds of residence permit for foreign children:

- for family reasons or for fostering (Artt. 2 and 4 of Law 184/1984)
- for asylum application (Art. 2, par. 4 of the President of the Republic Decree 303/2004 and Art. 26, par. 4 of the Legislative Decree 25/2008)
- for asylum (Art. 23 of Legislative Decree 251/2007)
- for humanitarian reasons (Art. 5, par. 6 of Legislative Decree 286/1998 and Art. 11, letter c-ter of the President of the Republic Decree 334/2004)
- for subsidiary protection (Art. 23 of Legislative Decree 251/2007)
- for justice reasons (Art. 5 of Law 39/1990 and Art. 11 of the President of the Republic Decree 334/2004)
- for social protection (Art. 18, par. 1 and 6 of Legislative Decree 286/1998)
- for minor's integration (Art. 32, par. 1 bis and ter of Legislative Decree 286/1998 and Art. 11, letter c-sexies of the President of the Republic Decree 334/2004)
- for minor age (Art. 28, par. 1 letter a) of the President of the Republic Decree 394/ 1999 as modified by the President of the Republic Decree 334/2004)

Children holding a residence permit have the right to access the most important assistance and protection services (health services, work, school). The application for a residence permit should be presented to the Police Headquarters, and for some kinds of residence permits, to the Post Office by the child's guardian, the legal representative of the reception centre or community where he/she is hosted or by the legal representatives of the municipality where the child resides.

According to the law, the decision upon the release of the residence permit should be taken within 20 days from the submission of the application (Art. 5 of Legislative Decree 286/1998), but usually the time needed is extremely long: as already mentioned, even after a long period of care placement and assistance, the 57.2% of separated children non asylum seekers hosted in the second reception facilities in 2008 had not yet received any type of residence permit<sup>76</sup>.

A residence permit "for asylum seeking" is issued once the asylum application has been submitted (after the guardian's approval). When the international protection status is granted, the relevant residence permit (for asylum, humanitarian reasons or subsidiary protection) is then issued.

If a separated child's adult family member regularly residing in Italy is tracked down, the relevant judicial authority shall entrust the minor to him/her and he/she is entitled to a residence permit for "family reasons". Both in this case and in the specific case that a minor is under the custody of a regularly residing non-EU citizen, he/she may have his/her name endorsed on his/her foster parent's residence permit until he/she turns 14 and then he/she receives his/her own residence permit for family reasons. The residence permit for family reasons allows him/her to work, and can be converted into a residence permit for study or work when the minor comes of age.

Otherwise, in the absence of an appropriate family environment, the minor is fostered by a family or a community, according to art. 2, paragraphs 1 and 2 of Law 184/1983 and therefore a residence permit for "fostering" is issued. The custody may be ordered by the Juvenile Court or by the municipality's Social Services and then enforced by the Tribunal - Guardianship Judge. Also the residence permit for fostering allows the child to work and can be converted into a residence permit for study or work when the child comes of age (Circular of the Ministry of the Interior of 9 April 2001).

As mentioned above, the Immigration Law provides also that a residence permit "for social protection reasons" can be issued to a foreign citizen (adult or child) who is victim of organized crime with aims of exploitation or violence<sup>77</sup> (the so called "art. 18" residence permit that is well known as a best practice in terms of policies aimed at protection of victims of trafficking). This measure is mainly applied to victims of sexual exploitation, but sometimes also to victims of labor exploitation. According to the law, this kind of residence permit can be issued even if the victims do not denounce

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<sup>76</sup> NATIONAL ASSOCIATION OF ITALIAN MUNICIPALITIES (A.N.C.I.), *Minori stranieri non accompagnati. Terzo Rapporto ANCI 2008* (edited by GIOVANNETTI MONIA), Rome 2009, p. 96.

<sup>77</sup> According to Art. 18, paragraphs 1-6 of 18 of Legislative Decree 286 of 25 July 1998.

their exploiters. However, in a number of cities Police authorities do not apply the law and require that the victim denounces the exploiters<sup>78</sup>.

A residence permit “for social protection reasons” may also be issued to those who have served a sentence for crimes committed as minors and have taken part in an integration programme. This is a very positive rule that would contribute to promote social reintegration of children in conflict with the law, but in practice it is seldom applied<sup>79</sup>.

For what concerns the other types of residence permits, the residence permit “for minor age” represents good practice in comparison with other countries where separated children receive a residence permit only if they apply for asylum. It can be issued only in case of absence of the conditions for the release of other types of permit, such as fostering, family reasons, or others (Circular of the Ministry of the Interior of 23 December 1999, Title IV), and, when it comes to their case, it must be converted into the relevant other types of permit (Circular of the Ministry of Interior of 9 April 2001).

Between 2000-2001 some Ministry of Interior’s memorandums (in particular the Memorandum of the Ministry of the Interior of 13 November 2000) provided that residence permits “for minor age” did not allow children to work (whilst Italian minors can work after the age of 16 and after having attended statutory education) and could not be converted into a permit for study or employment purposes at the age of 18. This was unless the Committee for foreign minors decided that the child had not to be repatriated. As already mentioned, the Committee was very inefficient and slow in issuing these “non return decisions”, so most of separated children could not get any residence permit once they have become of age, therefore they become illegal migrants<sup>80</sup>.

A number of appeals were lodged against both these provisions, and various Regional Administrative Courts<sup>81</sup> ruled that separated children entitled to residence permits for minor ages are allowed to work. On the other hand, also the provision envisaging that residence permits for minor ages was to be considered as not convertible at the age of 18 as well as being highly contested for the fact that it entailed that children, even if allowed to stay in Italy, were not offered a real possibility of regular integration into Italian society after they have turned 18.

A new Migration Law was approved in 2002, Law 189 of 30 July 2002, which provided that separated children might be issued with a permit for study or employment purposes at the age of 18 if they had

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<sup>78</sup> Rozzi, E., The situation of EU and non-EU separated children in Italy, *E-Migrinter* 2/2008, p. 18.

<sup>79</sup> *Ibidem*.

<sup>80</sup> See Giovannetti, M., *L'accoglienza incompiuta. Le politiche dei comuni italiani verso un sistema di protezione nazionale per i minori stranieri non accompagnati*, Bologna: il Mulino 2008, p. 145, Rozzi, E., The situation of EU and non-EU separated children in Italy, *E-Migrinter* 2/2008, p. 22, and Progetto Equal Palms, *Strumenti e ricerche*, vol. II, *Pratiche di accoglienza II. Identificazione, regolarizzazione, tutela e affidamento*, Rome 2007, pp. 28-34 (for further details on the Project partners and contents see <http://www.progettopalms.it>).

<sup>81</sup> See decision of TAR of Piedmont n. 620 of 7 June 2001, decision of TAR of Emilia Romagna n. 716 of 29 August 2001, decision of the Court of Turin of 21 November 2001.

been in Italy for at least 3 years, thus had entered Italy before the age of 15, and had been involved in an integration programme for at least 2 years.

Also this provision produced some serious interpretation uncertainties and undesirable effects, on the one hand somehow inducing children to enter Italy before the age of 15, in order to have the opportunity of obtaining a residence permit, and, on the other hand, not taking into consideration that the majority of separated children usually enter the country after the age of 15.

Again a number of appeals were lodged and important Regional Administrative Courts and Supreme Courts' decisions and sentences were issued in order to contest the restrictive interpretations of the law and to promote an interpretation of the above mentioned provision, more informed by the respect for the Italian Constitution and the international conventions on children's rights.<sup>82</sup>

Following the above mentioned sentences, the Memorandum of the Ministry of the Interior of 28<sup>th</sup> March 2008 seemed to definitively put an end to the restrictive interpretation of the legislation, providing that:

- both guardianship and any type of fostering were valid requirements for obtaining a residence permit at the coming of age;
- separated children entitled to guardianship or fostering might be issued a residence permit when they have turned 18, irrespective of the child's date of entry in Italy, of the child's insertion in an integration programme and of the Committee for Foreign Minors' decision on return;
- separated children not entitled to fostering or guardianship might be issued a residence permit when they have turned 18 if they had been living in Italy for at least 3 years and had been attending an integration program for at least 2 years;

Soon after the issuing of this Memorandum, as a consequence of the new political scene since April 2008, some changes in the migration regulations have been introduced by Migration Law 94 of 15<sup>th</sup> July 2009, whose approval was accompanied by an aggressive media and government discourse against migrants.

Even if it is not possible to analyze here in detail all the measures introduced or abrogated by the new law on "public security"<sup>83</sup>, it is important to highlight that a number of controversial issues have been raised since it came into force on 24<sup>th</sup> July 2009 by Courts and third sector organizations, all challenging the law's constitutionality, for reasons including the criminalization of mere "social and

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<sup>82</sup> See Constitutional Court decision of 23/05 – 05/05/2003 nr. 198. The Council of State accepted that interpretation (sentences nr. 1680/2005; 12/02/2007 nr. 564; 27/06/2007 nr. 3690; 22/04/2008 nr. 2437; 31/03/2009 nr. 1886; 13/05/2009 nr. 2591).

<sup>83</sup> For an useful list of bibliographical sources on the analysis of consequences of Law 94/2009 see Segnalazione bibliografiche, edited by M. Giovannetti and M. Pastore, *Diritto immigrazione e cittadinanza XI, 4-2009*, pp. 311-315.

personal conditions” rather than acts committed willfully and the law being “unreasonable” along with a serious threat to the protection and the full respect for migrants’ rights.

The most worrying and controversial consequences for the protection of separated children’s rights being that the new law has reintroduced a restrictive interpretation of the previous migration laws, providing that separated children may be issued a residence permit when they have turned 18 only if:

- they are entitled to fostering or guardianship
- they have been living in Italy for at least 3 years
- they have been attending an integration program for at least 2 years

It becomes clear that this provision, requiring the fulfillment of all the three above mentioned conditions, *de facto* precludes all minors over 15 from accessing a real possibility of regular integration into Italian society after they have turned 18<sup>84</sup>.

Since the majority of separated children residing in Italy are close to coming of age (in 2008 the 74.6% of the total amount of children present in Italy was of 16-17 years), this provision implies that most of these children, regardless of their needs and rights and of the resources invested in their reception and assistance, will be pushed to flee from the reception centers and communities against their and other persons’ “security”.

#### **Recommendation 26:**

It is recommended that, due to the delicate nature of the matter, migration regulations affecting separated children’s possibility of regular integration into Italian society after they have turned 18 are revised according to an approach more informed by the respect for the Italian Constitution and the international conventions on children’s rights and that residence permits are issued in a timely fashion. This reflects the right to special protection and assistance (Art. 20 CRC) and the right to protection (Art. 19 CRC).

## **8.4 Do children feel safe?**

The level of safety the child experiences depends on the quality of the relationships he/she can have with adults surrounding him/her, on the location where the child is staying and it is strictly connected with the possession of a residence permit.

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<sup>84</sup> For an in depth analysis of all the worrying consequences for separated children of the introduction of the immigration law, see Miazzi, L., Perin, G., Legge 94/2009: peggiore la condizione dei minori stranieri, *Diritto Immigrazione e Cittadinanza* 4/2009, pp. 178-209.

Some of the children who have been interviewed reported some negative experiences with their current or previous accommodation, but all of them also reported that they have felt safe once they finally met adults (their guardians or other persons, such as educators or responsible people from their project of integration) they could rely on and once they finally got a residence permit, as stated by one of these children:

*“Now I feel safe. I am now staying in an apartment with other guys and I am fine. But when I was in the first reception center I felt like I was detained. There was no space and no fresh air, I could not sleep and I protested a lot. Then I have come here and I have met my guardian, the educators and social workers working here and now I feel safe and supported, especially because they have helped me in obtaining my residence permit” (IT 5, Male, 18 years old, Flat share)*

## **8.5 How many guardians does a child have during his/her stay in the country?**

As already mentioned in the previous paragraphs, in Italy the most serious problem is represented by the fact that the appointment of guardians can take up to several months. Changing guardians does not happen therefore too frequently, only because most of the children residing in Italy are close to the coming of age and then separated children experience a change in guardians.

All the interviewed children, in fact, reported that they have or have had only one guardian.

## **8.6 Legal knowledge of separated children**

As showed in various reports and research<sup>85</sup>, separated children residing in Italy in general do not have an adequate level of awareness and knowledge of the rights they are entitled to and what their legal situation means once they have entered Italy, mostly because they often receive conflicting information from their friends or families and they do not receive sufficient information about their situation from the authorities they get in contact with.

These concerns are also expressed in some of the answers given by the guardians and experts who have been interviewed:

*“Children do not know exactly what rights they are entitled to: they come to Italy to get a job and they do not have a sufficient level of knowledge of their situation. We always explain to them what is*

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<sup>85</sup> Among others, see Amnesty International, *Invisibili. Minori migranti detenuti all'arrivo in Italia*, Torino: EGA 2006, Save the Children - Italia, *L'accoglienza dei minori via mare. Rapporto finale di monitoraggio delle comunità alloggio per minori in Sicilia*, Rome, April 2009.



*their situation is like according to the Italian law and what are their rights.” (ITG13, male, 3 years of experience)*

## **8.7 What do separated children have to say about return to the country of origin?**

It was difficult to talk with separated children about a possible return to their country of origin. After having met some children with traumatic personal backgrounds and family situations, we preferred, due to the sensible nature of this matter, to be sensitive to the topics the children do not want to talk about and not to ask this question anymore.

From the content of the answers given to other questions, it emerged that children have taken the decision to leave their countries because they have no working opportunities, they have lost their parents and/or did not feel safe in their countries. They stated that they do not want to return to their countries because living and to finding a job in a European country represents the main goal for them and for the realization of their life prospects.

## **8.8 Do separated children know where to complain about their guardian?**

No separated children or guardians interviewed for this project knew where children can complain if they had problems with a guardian. Only one guardian answered that:

*“This has never happened. I think that in case of problems between a pupil and his/her guardian, the child can express his/her feelings of dissatisfaction or resentment to the responsible person of our cooperative [the cooperative they work for]. I also think that children can also express their concerns to other people (the responsible person of the community they are hosted in, the educators, etc., etc.)” (ITG13, female, 3 years of experience)*

## **8.9 Do children want to do fun things with their guardian?**

All of the guardians who have been interviewed recognize the importance of spending time with children beyond their formal tasks: some of them invite children to spend some days with their families at home, others manage to do other fun things (play football, have a pizza or an ice cream, go to the cinema etc., etc). Other guardians, thus recognizing that it would be useful to do some fun activities with children, reported that they have very little time and therefore cannot invest time in building this kind of relationship with children.

On the contrary, most separated children mentioned that they did not want to do fun things with their guardian because they think that it is important that guardians are able to help and support them more in solving problems and in obtaining a residence permit than in doing this kind of activities.

## 8.10 Other needs and rights

As already mentioned and as underlined by various authors like Giovanni Tarzia, foreign minors in Italy are granted the same right to education, to health care, and to the same labour protection as the Italian minors<sup>86</sup>. These rights cannot be limited or restricted due to any immigration regulations or policy. Addressing some crucial children's needs, these rights must therefore be interpreted as interconnected and not divisible.

The children's education and training, recreation, health and safety represent different subjects which need to be realized and monitored by the guardian of a separated child. Still, as it emerges in some research and reports and in some of the answers given, practices and procedures vary a lot from one city to another and sometimes they are not respected or fully implemented.

### 8.10.1 Education

All foreign children are granted the right to education and are obliged, as the Italian children are, to attend statutory education. Moreover, they have the right to be enrolled, in any period of the year, in any kind and grade of schooling, and to be awarded a certificate upon conclusion of their studies (even if they conclude their studies after they turned 18)<sup>87</sup>.

Also children without a residence permit or identity documents have the right to enter school, even if recently some worrying uncertainties about that possibility have been raised due to the restrictive and incorrect interpretation of the recent Migration Law 94/2009 and even if, in practice, some schools and most professional training centers do not accept children without a residence permit.<sup>88</sup>

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<sup>86</sup> Tarzia, G., Il minore straniero non accompagnato: quale tutela nel sistema legislativo italiano?, *Minorigiustizia* 3/2008, pp. 190-194.

<sup>87</sup> On the jurisprudence supporting this interpretation see Miazzi, L., Perin, G., Legge 94/2009: peggiore la condizione dei minori stranieri, *Diritto Immigrazione e Cittadinanza* 4/2009, pp. 202-204.

<sup>88</sup> Rozzi, E., The situation of EU and non-EU separated children in Italy, *E-Migrinter* 2/2008, p. 20. Some restrictive and not correct interpretations of the recent Migration Law 94/2009 have raised some worrying uncertainties about the possibility of registering separated children without a residence permit at school: as clarified by a relevant number of third sector's analysis, in the Italian legislation there is no room for such an interpretation, which is in contrast with the Italian Constitution and the Convention on the Rights of the Child ratified by the Italian government. Therefore every child, even if he has not a residence permit, can be enrolled at school. For more details, see Rozzi, E., Il diritto dei minori stranieri privi di permesso di soggiorno all'istruzione, alla formazione e all'accesso ai servizi socio-educativi dopo l'entrata in vigore della legge n. 94/09, 15 December 2009, available at [http://www.asgi.it/public/parser\\_download/save/scuola\\_minori\\_nota\\_rozzi\\_dicembre\\_2009.pdf](http://www.asgi.it/public/parser_download/save/scuola_minori_nota_rozzi_dicembre_2009.pdf) and Miazzi,

Education of the separated child is one of the main tasks of a guardian. In collaboration with the person responsible for the child and the social assistant of the reception facility, the separated child is registered by the guardian at a school. The guardian also monitors school absences of his pupil. Furthermore a guardian often attends school meetings.

During the interviews it emerged that there can be problems with children who do not want to attend school. In general they do not understand the importance of obtaining a school certificate and in this case the role of guardian is very delicate and important, as expressed in the following children's and guardians' answers:

*" Fortunately, my guardian strongly encouraged me in attending school: she explained to me why it was so important for me and for my future and often drove me at school, in order to be sure that I was attending classes. "* (IT14, Male, 19 years old, Flat share)

*"In particular, with one of my pupils I strongly encouraged him in concluding his studies, even if he didn't want to. I explained to him that it would have become more difficult to find a job without a school certificate and sometimes I drove him to school."* (ITG15, female, 5 years of experience)

*"My last pupil suffered a lot during his studies and probably I would have been more sensitive to his feelings and frustrations. He felt humiliated by the fact he was attending school classes with other guys more skilled than him. Probably I would have managed things differently in order to prevent him to be excessively hurted."* (ITG16, female, 3 years of experience)

#### **Recommendation 27:**

It is recommended that all guardians advocate for a continuous education for separated children, even if they don't have a residence permit, and for their access to other services related to education (i.e. support for learning Italian as a second language, presence of cultural mediators in school, etc., etc.). This reflects the right to education (Art. 28 CRC).

#### **8.10.2 Healthcare**

According to Migration law and regulations, separated children who are documented with every type of residence permit are registered with the National Health System and have access to healthcare on an equal basis with Italian citizens.

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L., Perin, G., Legge 94/2009: peggiore la condizione dei minori stranieri, *Diritto Immigrazione e Cittadinanza* 4/2009, pp. 198-205.

Foreign children who are not documented with a residence permit, often because of delays in administrative or judicial procedures, cannot register with the National Health System. Nevertheless, these children are entitled to receive a “Foreigner Temporarily Present” card (so called “tessera STP - Straniero Temporaneamente Presente”) which allows them care, both with a general practitioner and in hospital for urgent or essential ongoing treatment. They can also have access to preventive medicine programmes.

Promoting and ensuring separated children’s access to adequate healthcare services is another important task of a guardian. Separated children we interviewed did not have any problems receiving healthcare, nor did the guardians we met in reporting any particular problem about accessing healthcare services.

**Recommendation 28:**

It is recommended that all guardians promote and ensure that separated children can access adequate healthcare services and other services related to them (i.e. presence of cultural mediators in health services, etc., etc.). This reflects the right to health (Art. 24 CRC).

*8.10.3 Work and professional training*

Foreign children are entitled to the same labour protection as the Italian minors, including the prohibition of working if the minor is below 15 years of age and if he has not fulfilled school obligations yet.

According to the Italian education regulations, children have the right to access dedicated work and/or professional training schemes allowing them to work while continuing their studies<sup>89</sup>.

Promoting the best solution for the professional training and work insertion of separated children represents an important task of the guardian, especially because all the children we met underlined that for them, due to their personal and their family’s situation, it is very important to be able to work, to find a job and to earn money as soon as possible.

**Recommendation 29:**

It is recommended that all guardians promote and ensure that separated children can access, according to the Italian child work regulations, dedicated work and/or professional training schemes, allowing them to work while continuing their studies. This reflects the right to education (Art. 28 CRC).

<sup>89</sup> For further details on the education regulations and local practices for the promotion of the children’s work, see Progetto Equal Palms, *Strumenti e ricerche*, vol. II, *Pratiche di accoglienza II. Identificazione, regolarizzazione, tutela e affidamento*, Rome 2007, pp. 29-32. (for further details on the Project partners and contents see <http://www.progettopalms.it>).

### 8.11 Do separated children see their guardian as a person they trust?

According to some of the guardians who have been interviewed, children saw their guardian as their mother or father, but this was not fully reflected in separated children's and other experts' answers.

Thus recognizing the importance of an emotional and close relationship between a guardian and his/her pupil, children and experts in fact highlighted that children saw their guardian as one of the people they trust or they rely on, but not necessarily as the only one or as a substitute for parents.

In particular, children's perception and emotional investment is strictly connected to the consciousness of the support and help they can receive from their guardian and to the release of documents or the implementation of the migration or asylum procedures.

As clearly stated by some of the experts who have been interviewed:

*"In general, children don't ask for other parents: on the one hand, a guardian has to respect the children's emotional and private background, their relationship with their family and, most of all, their life projects and objectives; while, on the other hand, it is very important to highlight that for children it is of crucial importance to have a stable and personal relationship with their guardians, based on trust and confidentiality. (...) A guardian represents an important focal point for children: (...) to have a guardian constitutes a "goal" for them, because they know that with his/her help and support they will be able to apply for a residence permit. Usually adults don't take into account this psychological and emotional element" (ITA3, female, social psychologist)*

*"A guardian is a person who has to support children in the expression and implementation of their rights, especially those rights children cannot "implement" by themselves. The guardian is the "emergency" substitute for parents under a legal perspective, he supports the children's decision making process (...). First of all, he has to support children in every "activity" that is connected with the legal exercise of their rights, but, secondly, he has of course to get and stay in touch with them, to create a close relationship of trust with them, to listen to them and to be available for them" (ITA1, male, lawyer)*

### 8.12 What would separated children do if they would become a guardian?

Most separated children did not want to become a guardian themselves since they think that it would imply too many responsibilities and tasks and in general they do not feel adequate for this task. If they would become a guardian they would do the following:

*"I would help other people" (IT3, Male, 18 years old, community for separated children)*

*“I would like to become a guardian if I would have time. I think he is very helpful” (IT1, Male, 16 years old, community for separated children)*

*“Yes, I would like to become a guardian, even if I think that I have to think about my future first. Anyway, I think that it is important for children to have someone who can help and support them. I have always tried to help the other guys I met, even if I wasn’t their guardian” (IT14, Male, 19 years old, Flat share)*

*“Yes, I really would like to help other guys, to become like Andrea [which is the name of his guardian]” (IT6, Male, 17 years old, small living community for separated children)*

## 9. The qualifications of a guardian

From the responses of the separated children, the guardians and of the experts who have been interviewed it appears that the qualifications needed from a guardian need to be based, first of all, on their skills and competences. Most of the answers in fact highlight the importance for guardians of having:

- educational, psychosocial, communication and relational competences;
- competences in cooperating with other local and national actors and authorities;
- a firm knowledge of migration laws, procedures and other connected legal issues;
- cultural mediation, intercultural and linguistic skills;
- experience in dealing with trafficking of people and other forms of exploitation or abuse;

Other answers are more focused on the personal background that guardians should have and highlight that the most important requirements should be, for instance:

- a personal experience of migration;
- ability in understanding and respecting the personal history and background of separated children;
- previous experience in work with children, in social work, or in work against trafficking in human beings and other forms of exploitation and abuse;
- previous experience in other social fields, such as in the prevention of abuse of alcohol, drugs, in the support of children with a history of depression, etc., etc.;
- a cultural attitude towards the acceptance of differences;
- ability and previous experience in promoting the cooperation between the children and other parties involved, in becoming an intermediate between the children’s needs and the authorities requirements and resources.

## 10. Conclusion

From the responses given by the children and adults who have been interviewed it clearly emerges that guardianship should be conceived as one of the most important criteria for the evaluation of the respect and promotion of children's rights in a legal national framework: the omitted or delayed appointment of a guardian not only may imply serious violation of separated children's basic rights, but it also may hinder their life prospects, future possibilities of social and economic integration and personal and emotional development and well-being.

Guardians have a crucial and irreplaceable role in knowing and understanding the children's personal history, background and experience and in promoting the adoption of a durable solution for their assistance, protection and integration, according to their best interests, desires and aspirations.

Besides their important legal functions and responsibilities, guardians have also an important role in facilitating the communication, negotiation and mediation between the children's needs and the authorities' resources and requirements, in promoting the cooperation and coordination among all the actors involved, in monitoring and controlling that children's rights are always fully respected.

Moreover, they have a crucial relational and emotional role in promoting the knowledge, support and respect for the children's identity and dignity. They represent the most effective "bridge" and "intermediary" between the culture of the host country and the culture of the children's country of origin.

The main results of the research clearly show that in Italy separated children's right to have a guardian is not always adequately respected and the special needs of separated children are not always taken into account.

In many Italian cities the appointment of a guardian can take up to several months, with all the subsequent legal problems, and sometimes a guardian is not appointed at all.

The level of protection and care separated children receive from their guardians depends upon the Region and/or the city which they have (often randomly) entered or moved to.

Moreover, rules concerning guardianship in Italy date back to 1942 and they may be considered obsolete under some circumstances: they were conceived in a different historical context and were primarily focused on the need to ensure the financial management of the properties of children without parents.

Because of this legislation gap, a number of fundamental and urgent issues are dealt with by some Ministerial Memorandums, while others are just left to the discretionary power and to the available resources of local authorities.

The Italian system for the protection of children's rights is therefore affected by heterogeneous practices and procedures for what concerns the appointment, appropriate training, work methodology, accessibility and monitoring of guardians for separated children: very often practices vary a lot from one city to the other of the same Region or even from one single authority to another.

In some Regions and cities of Italy training courses on guardianship for volunteers are promoted and volunteers trained can be appointed as guardians, while in many cases a representative of a Municipality is appointed as guardian for all of the separated children residing in the municipal territory, which may lead to problems of conflicting interests (financial interest in reducing the number of separated children), lack of external monitoring and independence, and can hardly ensure, due to the large number of children, the development of a close relationship and of a bond of trust with children.

The urgent need to reach a standardization of guardians appointment, training and monitoring procedures should also be considered in the light of the Italian general legal framework and institutional context.

Although a number of legally binding national and international instruments envisaging the promotion and protection of children's rights are in place, they are often not yet effective or fully implemented, due also to the lack of adequate financial support, of an effective monitoring mechanism and of coordination between central and local authorities and institutions.

As in many other countries, in fact there is a discrepancy in the Italian legislation, policies and practices between a child rights approach, protecting the best interest and the rights of children, and an immigration approach, reflecting the political climate increasingly hostile to immigrants and more and more focused on State security issues<sup>90</sup>.

In conclusions, while the urgency of further **legislation, standardization, monitoring and financial support measures** seems highly desirable, some of the good practices and recommendations proposed can represent effective and efficient ways to better promote and protect children's rights and to ensure **the immediate appointment, the effective monitoring and the adequate qualification of guardians for separated children**.

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<sup>90</sup> Rozzi, E., The situation of EU and non-EU separated children in Italy, *E-Migrinter* 2/2008, pp. 22-23.



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## 12. List of Annexes

- **Annex 1:** *Question list interviews with separated children*
- **Annex 2** *Question list interviews with guardians/experts*
- **Annex 3:** *List of Recommendations*
- **Annex 4.a:** *List of Good practices*
- **Annex 4.b:** *Overview of local and national Good practices*
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## Annex 1: Question list interviews with separated children

### Question list interviews with separated children

These questions are a guideline for the interviews with the children. You do not have to ask these questions one at a time. You can have a conversation with the child and check by the end of the interview if you have an answer to the questions.

Start by explaining the project, your organization and potentially something about yourself. Discuss the informed consent document and explain that everything discussed is confidential.

#### **1. General information**

- Name and contact information:
- Gender:
- Date of birth:
- Country of origin:

Make notes of non-verbal communication and describe the setting of the interview.

- Can you tell me something about how your day normally looks like? What do you do? What would you like to do?
- Could you tell me something about your guardian (and the previous guardians you had)? And could you give an example of a situation that your guardian handled very well?
- Would you like to become a guardian? What would you do when you were a guardian? (question that can be added: How would you make a separated child feel safe if you were a guardian?)

#### **2. Situation analysis**

- How long are you staying in the country?
- Did you have your age assessed when you entered the country? Was a guardian present? Did your guardian or anyone else inform you about this procedure? What are your thoughts about the age assessment process?
- Can you tell me something about the location where you are staying now (detention center, on the streets, in a foster family, living group etc.)? How do you feel about the place you are staying at now? Who (is in) (shares?) the accommodation with you? If you had a choice, where would you like to live right now? Have you lived in different places before reaching the one you are staying now?

- Do you feel safe where you are staying now? This question can also come up later when you do not feel it is appropriate to ask this question at the beginning of the interview.
- Legal info/knowledge. What do you know about the legal procedure or your permit to stay? Did somebody tell you what rights you are entitled to as a minor (everybody with reference to his country)?
- Do you know if something (your status) changes when you turn 18? If so, what? Whom would you speak to about these changes?
- *Can you tell me something about your journey and the reasons why you came to this country?* This question is not always necessary. It can be good to get a picture of the context and situation of the separated child. But you shouldn't ask this question at the beginning of the interview. It sounds like a "migration office" interview question. Maybe the child will explain spontaneously how he came to the country.

### 3. Appointment of a guardian

- Do you have a guardian now? How many guardians did you have?
- Did you get a guardian immediately on the moment you arrived? When did you first meet your guardian? Did you have the interviews with the immigration authorities already? Do you remember if your guardian was always with you or if sometimes, you had to do some interviews on your own?
- Did you have a choice? Do you prefer a man or a woman? Religion? Age? And why?
- Did you understand the role of the guardian when you first met him/her?
- Was/is translation needed? Is it possible for you to get translation if needed? How do you feel about communicating with a translator?

### 4. Qualifications of the guardian

- What do you think a guardian should help you with?/What would you like your guardian to do for you?
- What have you been told about the guardianship institution and the tasks and responsibilities of your guardian?
- How often would you like to see you guardian? In which way is there contact (skype, phone)? Can you reach him/her when you have a problem?
- What do you know about your guardian? What would you like to know about your guardian?
- Do you understand what your guardian tells you?
- What do you do when you have a problem? Who would be your trust person?
- Do you feel your guardian defends you? If yes, how? If no, why?
- Do you feel your guardian is listening to your thoughts and feelings and that they are taken into account in matters that concern you?

### 5. Return/reunification

- Has your guardian talked to you about the situation in your country of origin? If yes, when and how did your guardian talked to you about that?
- Does your guardian support you in your contact with your family in your country of origin? If yes; in what way, if no: why not?
- Do you know how you can search for your family?
- Has a family member talked to your guardian? What feedback have you gotten from your family and/or guardian regarding this communication?
- When children return, do you think a guardian should join them? What else do you feel the guardian should support this child with?

#### 6. Other needs and rights

- Education: are you going to school? What are the subjects you are taking in school? Do you think your guardian is interested? Does he/she advise you? Does he/she attend meetings at school?
- Healthcare: have you been ill/has your guardian helped you? Did you experience difficulties receiving healthcare?
- Do you get enough to eat? What do you think of the food?
- How much money do you receive? What kind of expenses can you do with this money?
- Social life: do you have friends? Where are they coming from? Do you tell your guardian anything about them? What are other thoughts you have about making friends in this country?
- Emotional support: depending on age of the child. What are things in your life that makes you happy? What are things in your life that makes you unhappy? Whom do you discuss your feelings with?
- Do you feel secure? Can be in social life, education, residence situation etc.
- If you for some reason felt unhappy about your guardian, would you know how and where to complain about her/him? Do you think you could ask for a new guardian if you don't like the one you have? What do you think would happen if you complain about your guardian?
- Participation/right to be heard: Does your guardian ask for your opinion on decisions to be made?
- What kind of information would you like to receive? In what way (brochure, internet)? If you could wish/decide, what do you think would be the best way to inform children about their rights and the support they can get from the guardian? What type of information would children like to know about their rights and the support they can get from the guardian?

#### 7. Is there anything else you would like us to know about your experiences with your guardian(s)? Do you have any questions for me?

## Annex 2: Question list interviews with guardians/experts

### Question list guardians/experts

These questions are a guideline for the interviews with the guardians. You do not have to ask these questions one at a time. You can have a conversation with the guardian and check by the end of the interview if you have an answer to the questions.

Start by explaining the project, your organization and potentially something about yourself. Discuss the informed consent document and explain that everything discussed is confidential. Do not discuss things a child mentioned about this guardian.

#### **1. General information**

- Name and contact information:
- Gender:
- Date of birth:
- Country of origin:
- Education, training:
- How long are you working as a guardian?

Make notes of non-verbal communication and describe the setting of the interview.

- Why have you become a guardian at the guardianship institution for separated children?
- If you were an unaccompanied minor asylum seeker, what would you like your guardian to do for you?
- How would you describe an 'ideal guardian' (maybe think of a colleague you really appreciate as a good guardian) Which qualifications and qualities does a good guardian need?
- Could you tell me something about your organization? What training do you receive prior to being a guardian and during your work as a guardian? Are you coached in your work by the organization?

#### **2. Introduction/Situation analysis**

- How would you describe the role of a guardian?
- Can you tell me something about how your day/week normally looks like? What do you do? What would you like to do? If you could choose, what part of your job would you like to focus on? What part of your job as a guardian would you like to work less with? Is there anything you would like to add to your role as a guardian?
- What do you like most about being a guardian? What do you like least about being a guardian?

### **3. Appointment of a guardian**

- In what place/office do you normally work as a guardian? How many days per week?
- What is your caseload and how do you arrange/prioritize this caseload? How do you divide your time?/ Do you have time to accompany a child when he has an interview, court hearing?
- How many times do you meet a child?
- Are you present when an age assessment takes place? What are your reflections regarding the age assessment process? What reflections have you heard from the separated children that you have worked with as a guardian?
- At what time are you appointed as a guardian (how long does this take)? What are your thoughts about this timing of meeting the child for the first time?
- Is your organization paid for the work done in this pre-guardianship period?
- How does your first meeting with a child look like? What do you talk about? What is the setting? What are your thoughts about this environment?
- What is your role in informing the separated children about their rights and the legal procedure? What are your reflections related to this issue? How do you make sure that a child understands what you are telling him/her? Do you experience a lot of differences between the level of understanding of children (when it comes to explaining the procedures etc.). If yes, how do they differ and how do you handle them?
- What do you do/ Who do you turn to when you have questions about a legal procedure of the child?
- What type of training/education/capacity building activities have you received to prepare you for your work as a guardian? Do you feel confident about your knowledge about the migration procedure and children's rights? If no, on which areas would you like to increase your knowledge?

### **4. Qualifications of the guardian**

- How would you describe your role as a guardian? Could you tell me about a situation in your daily work as a guardian that you are proud of?
- Could you tell me something about your methodology? Has it changed over the years? What do you think is good about it? What would you do differently?
- How do you assess the best interest of the child in practice? And how do you defend this best interest?
- How do you explain to a child what your role is as a guardian?
- Do you think a child –after you explained so- understands what your role is?
- Do you experience that children have different expectations of you?
- Do you think a guardian is responsible for doing fun activities with a child?
- How can a child reach you whenever he or she has a problem?
- What do you tell children about yourself?
- How do you deal with language and cultural differences? Can you tell me something about your experiences with that?

- Do you think a guardian should be a professional? Should the guardian always be a paid person? What are the benefits/risks of having paid/unpaid guardians?
- How would you describe the communication/relation with lawyers, mentors etc? Are you in contact on regular basis? Could you give some examples of when the cooperation with the other professions have worked out well, and situations when it is more difficult to cooperate with these professions?
- How do you work on a bond (of trust) with the child?
- Which kind of training would you attend? What would you like to learn more? How should this training look like?
- Do you think guardians need different skills on the basis of the location/facility where they work (for example different skills for a guardian working in a detention facility or a guardian of a child in a foster family). Why?
- Do you have experiences with children leaving with unknown destination? How did you cope with that?

#### **5. Return/reunification**

- What do you think your role as a guardian is in relation to return? What do you think is necessary for a successful return of a child? What is necessary for a successful family reunification?
- How and when do you discuss the possible return of the child to the country of origin? What are common concerns, questions and comments from the separated children on these issues?
- How do you assess the situation in the countries of origin? Are you in contact with authorities over there? What would you like to know about these countries?
- Have you ever been in contact with a child after they have returned? If so, what are their experiences.
- Do children often have contact with their family (maybe in other European countries)? Do you support this contact and how?
- When children return, do you think a guardian should join them?
- What changes in the legal status when a separated child turns 18 in this country? How do you discuss this change with the child? What are the children's normal reactions to this? How do you prepare a child for turning 18? What is the role of the guardian after the child turns 18?
- How do you assess signs of trafficking? Are you trained to look for these signs?

#### **6. Other needs and rights**

- Education: how do you act when a child has difficulties at school? Do you have contact with teachers?
- Healthcare: have you ever experienced difficulties receiving healthcare for the child?
- Social life: Do children talk easily about friends? About their daily life (school etc)? About their history?



- How do children get information about when and where they can complain about a guardian?
  - If you need to get support for your role as a guardian, whom do you turn to for information and help? Do you have regular consultations with your colleagues?
  - Do you ever experience difficulties when you maybe get too involved with the child (sleeping problems etc.)
  - Have you ever experienced a conflict of interest (for example that you needed to breach the confidentiality). How do you deal with this?
  - Participation/right to be heard: How do you involve the child in the decision making process?
  - Do you have ideas how we can inform children about their rights and the role of the guardian?
7. Are there any aspects of your work as a guardian for separated children that I have not asked about, and that you think is good for me to also get information about?

### **Annex 3: List of Recommendations**

#### **Recommendation 1:**

In accordance with suggestions from all the guardians and experts who have been interviewed, it is recommended that immediately when a separated child is identified, or where an individual claims to be a separated child, he/she is reported to the Tribunal - Guardianship Judge and an independent guardian is always and immediately appointed to advise and protect him/her, while implementing other measures and procedures (identification, age assessment, reception etc., etc.). This reflects the right to special protection and assistance (Art. 20 CRC).

#### **Recommendation 2:**

In accordance with suggestions from some of the experts who have been interviewed, it is recommended that laws and procedures on guardianship are revised and harmonized at national level, in order to avoid restrictive interpretations and discrepancies among interpretations of them, which can imply serious violations of children's right to be adequately protected and supported. This reflects the duty of the State to undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the CRC (Art. 4 CRC).

#### **Recommendation 3:**

In accordance with suggestions from some of the guardians, it is recommended that the views and wishes of separated children are sought and taken into account as to the most favorable and effective choice of a guardian, according to their age, maturity, sex and cultural background. This reflects the right to expression (Art. 12 CRC).

#### **Recommendation 4:**

In accordance with suggestions from all the guardians and some of the experts who have been interviewed, it is recommended that guardians do not hold positions, which could lead to a potential conflict of interest with the best interests of the child. This reflects the duty to take the best interests of the child as a primary consideration (Art. 3 CRC)

#### **Recommendation 5:**

In accordance with suggestions from all the respondents, it is recommended that the appointment of a guardian is taken in a timely fashion taking into account the child's perception of time and their specific needs of protection, in particular with reference to delicate procedures as the identification and age assessment procedures. This reflects the right to special protection and assistance (Art. 20 CRC).

#### **Recommendation 6:**

In accordance with suggestions from all the respondents, it is recommended that a general process of rethinking of guardianship is promoted and further legislation, policy, standardization and monitoring measures on guardianship are implemented. This reflects the duty of the State to undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the CRC (Art. 4 CRC).

**Recommendation 7:**

In accordance with suggestions from all the respondents, it is recommended that a limit on caseload for guardians is identified and fixed at national level, in order to allow guardians to be able to effectively have a personal relationship with children and effectively promote the respect for their rights. This reflects the duty of the State to undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the CRC (Art. 4 CRC).

**Recommendation 8:**

In accordance with suggestions from all the respondents, it is recommended that voluntary guardians receive a form of reimbursement or compensation for the extraordinary expenses incurred during their activities and also that they can take short paid leaves for the fulfillment of their guardians' duties. This reflects the duty of the State to undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the CRC (Art. 4 CRC).

**Recommendation 9:**

In accordance with suggestions from all the respondents, it is recommended that all the guardians receive specific and continuous training not only on guardianship issues, children's rights and needs, and psychological and educational skills but also on migration issues, immigration and asylum procedures and laws, cultural mediation, intercultural relationships. This reflects the duty of the State to undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the CRC (Art. 4 CRC).

**Recommendation 10:**

In accordance with suggestions from some of the respondents, it is recommended that a general methodology of work for guardians is identified at national level, including more detailed descriptions of tasks and duties (e.g. procedures for the first contact with the child, minimum frequency of meetings with children, methodology for the definition of an individual project of integration with the involvement of the child. This reflects the duty of the State to undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the CRC (Art. 4 CRC)

**Recommendation 11:**

In accordance with suggestions from all the respondents, it is recommended that from the very first contact with the child the guardian gives clear information about his responsibilities and role, makes

sure that the child has the appropriate expectations about him/her and perceive he/she is honest and committed to him/her. This reflects the right to information (Art. 13 CRC).

**Recommendation 12:**

In accordance with suggestions from all the respondents, it is recommended that the guardian respects and knows the culture of origin of the child, supports him/her in the process of integration and in understanding the culture of the host country. The guardian should consider himself/herself as a bridge between the cultures. This reflects the right to enjoy his/her culture (Art. 30 CRC)

**Recommendation 13:**

In accordance with suggestions from all the respondents, it is recommended that the guardian always ask for and take into account the opinion of the child, his desires and doubts and check if the child is aware of every possible consequence of the decision to be made and support them in the decision making, in relation to their age and condition. This reflects the right to information (Art. 13 CRC) and the right to participation (Art. 12 CRC)

**Recommendation 14:**

In accordance with suggestions from all the respondents, it is recommended that the guardian consider himself/herself as a proactive “intermediate”, as a link between the child and other actors involved and consider himself/herself as the case manager of contacts of the child This reflects the duty to take the best interests of the child as a primary consideration (Art. 3 CRC)

**Recommendation 15:**

In accordance with suggestions from some of respondents, it is recommended that guardians are equipped with practical work methodologies and tools based on the CRC, allowing them to better assess the child’s best interest and specific needs. This reflects the duty of the State to undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the CRC (Art. 4 CRC).

**Recommendation 16:**

In accordance with suggestions from all the respondents, it is recommended that group meeting among guardians and other professionals and supervision procedures are introduced as instruments for the continuous qualification and support of guardians. This reflects the duty of the State to undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the CRC (Art. 4 CRC).

**Recommendation 17:**

In accordance with suggestions from some of respondents, it is recommended that the role and responsibilities of the guardian in relation to return are defined at national level, that guardians are

informed about the situation in their pupils' countries of origin, and are informed about the situation of separated children who have returned to their country of origin. This reflects the right to protection (Art. 19 CRC).

**Recommendation 18:**

In accordance with suggestions from all guardians, it is recommended that guardians inform children about the legal procedures concerning their situation, provide to have a plan when they turn eighteen and try to stay in contact with them even after. This reflects the right to protection (Art. 19 CRC) and to information (Art. 13 CRC).

**Recommendation 19:**

It is recommended that data on separated children furnished by the national official statistical sources are systematized in an attempt to make a picture as exhaustive, updated and coordinated as possible of data available at national and regional level and that these data are widely disseminated and made available on dedicated websites in a timely fashion. This reflects the duty of the State to undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the CRC (Art. 4 CRC).

**Recommendation 20:**

In accordance with suggestions from some of the guardians and experts, it is recommended that guardians know which has been the motivation for migrating for every single child and his/her previous background and consider these important factors in the definition of the individual integration project. This reflects the right to special protection and assistance (Art. 20 CRC) and the right to protection (Art. 19 CRC).

**Recommendation 21:**

It is recommended that, due to the delicate nature of the matter, children are all identified at the border and all receive information, support and legal assistance and that identification and age assessment procedures are based on the full respect for children's rights and implemented according to a standardized methodology at national level. This reflects the right to special protection and assistance (Art. 20 CRC) and the right to protection (Art. 19 CRC).

**Recommendation 22:**

It is recommended that, children are all reported to the competent authorities and that the reporting procedure is implemented in a timely fashion and according to a standardized methodology at national level. This reflects the right to special protection and assistance (Art. 20 CRC) and the right to protection (Art. 19 CRC).

**Recommendation 23:**

It is recommended that, due to the delicate nature of the matter, the criteria for the determination of the minor's best interests before the return decision and for the evaluation of the risks in case it is enforced are fixed by law, children's opinions are always heard and taken into account, a more effective system for the exchange of information between the Committee for Foreign Minors, the local municipalities and the organizations involved in the investigation in the countries of origin is identified and decisions are taken in a timely fashion in order to fully promote the respect for children's rights. This reflects the right to special protection and assistance (Art. 20 CRC) and the right to protection (Art. 19 CRC).

**Recommendation 24:**

It is recommended that guardians cooperate with other actors involved for the effective monitoring and standardization of the conditions of accommodation of children. This reflects the right to special protection and assistance (Art. 20 CRC) and the right to a standard of living adequate and to housing (Art. 27 CRC).

**Recommendation 25:**

It is recommended that guardians cooperate with other actors involved for the immediate reporting of the disappeared children in order to collect and disseminate at national level these data and information. This reflects the right to protection (Art. 19 CRC).

**Recommendation 26:**

It is recommended that, due to the delicate nature of the matter, migration regulations affecting separated children's possibility of regular integration into the Italian society after they have turned 18 are revised according to an approach more informed by the respect for the Italian Constitution and the international conventions on children's rights and that residence permits are issued in a timely fashion. This reflects the right to special protection and assistance (Art. 20 CRC) and the right to protection (Art. 19 CRC).

**Recommendation 27:**

It is recommended that all guardians advocate for a continues education of separated children, even if they don't have a residence permit, and for their access to other services related to education (i.e. support for learning Italian as a second language, presence of cultural mediators in school, etc., etc.). This reflects the right to education (Art. 28 CRC)

**Recommendation 28:**

It is recommended that all guardians promote and ensure that separated children can access adequate health care services and other services related to them (i.e. presence of cultural mediators in health services, etc., etc.). This reflects the right to health (Art. 24 CRC).

**Recommendation 29:**

It is recommended that all guardians promote and ensure that separated children can access, according to the Italian child work regulations, dedicated work and/or professional training schemes, allowing them to work while continuing their studies. This reflects the right to education (Art. 28 CRC).

#### **Annex 4.a - List of Good practices**

##### **Good practice 1:**

From the respondents we learned that when the guardian is selected among a list of volunteers established at local or regional level on the basis of a specific agreement among all the involved parties (Municipality, Tribunal - Guardianship Judges, third sector's organizations), the appointment timing is less than in other cases.

##### **Good practice 2:**

From the respondents we learned that some of the training projects for guardians realized at local level provide for external monitoring systems of guardians' activities and adequacy, in addition to the monitoring realized by the judicial authorities.

##### **Good practice 3:**

From the respondents we learned that all the training projects for guardians realized at local level provide for the definition of the guardians' caseload, usually equal to a maximum of 5 pupils per guardian.

##### **Good practice 4:**

From the respondents we learned that some of the training projects for guardians realized at local level progressively adapt the contents of the training modules to the needs of the separated children, in particular by focusing on migration laws and procedures, on cultural mediation and intercultural relationships.

##### **Good practice 5:**

From all of the respondents we learned that in order to build a relationship of trust with children, the first contact with them should be considered as the most important chance to do so. We also learned that during the first meeting it is useful for guardians to introduce themselves, to tell the children something about their lives and families, because this represents a good starting point to build such a relationship.

##### **Good practice 6:**

From some of the respondents we learned that in the local contexts where local training courses for guardians are realized, specific formal agreements between the guardians training projects and the local authorities, judiciary institutions and other agencies involved have been made in order to ensure the effective and efficient cooperation of all the actors.

##### **Good practice 7:**

From some of the respondents we learned that in the local contexts where local training courses for guardians are realized, guardians have periodical meetings with other guardians, professionals and



the training project' responsible, which are very useful to discuss and share their problems. This supports the guardians in their job and ability to cope with different responsibilities and represents an instrument to enhance the quality of the training projects.

#### **Annex 4.b – Overview of local and national Good practices**

If some of the Italian laws, procedures and practices may imply serious violations of separated children's rights, some other may be considered as "good practices".

For reasons of clarity it is useful to distinguish between good practices promoted at national level, aiming at addressing the general gaps and problems concerning the protection and assistance of separated children and therefore also the guardianship issue, and good practices promoted at local level and with a specific focus on guardianship.

Among others, **at national level** can be considered as good practices:

##### **1.The System of Protection for Asylum Seekers and Refugees (SPRAR)**

As already mentioned, The *System of Protection for Asylum Seekers and Refugees (SPRAR)*, established in 2002 by the Art. 32 , 1-*sexies and septies* of Law 189/02, is comprised of local bodies that are grant access, within the threshold of available resources, to the *National Fund for Asylum Policies and Services*, for the performance of projects for "integrated reception". At a local level, the local bodies, with the support of actors of the third sector, ensure "integrated reception" activities aimed at providing for not only safe accommodation and responses for basic needs to asylum seekers and refugees, but also information, assistance, support and guidance activities through the definition of customized pathways to socio-economic inclusion. The Ministry of Interior acts as *institutional guarantor*, delegating the operational aspects to the *Central Service*, to be managed by the National Association of Italian Municipalities (ANCI), with responsibilities concerning information, promotion, consultancy, monitoring and technical support for the local authorities involved in the Protection System. This process is made possible thanks to the use of an *integrated model* which absorbs and improves the different experiences of the public and private non-profit sectors present at local level also recognizing the crucial role played by Municipalities as suppliers of social welfare services and the as the main reference for the local service network<sup>91</sup>.

Within this system, special projects for separated children asylum seekers have been implemented in order to answer to their specific needs and to support them in the integration process and in the asylum procedures, and the number of children hosted in the SPRAR structures increased from 197 in 2007 to 409 in 2008<sup>92</sup>.

<sup>91</sup>For more details on the SPRAR see documents available at <http://www.serviziocentrale.it/?SPRAR&i=2&s=2>

<sup>92</sup> SPRAR, *Rapporto annuale del Sistema di protezione per richiedenti asilo e rifugiati. Anno 2008/2009*, Rome, 2009, p. 82.

## 2. The National Program for Protection of Unaccompanied Foreign Minors

In response to the problems related to the heterogeneous reception and protection practices and procedures implemented at local level, a National Program for Protection of Unaccompanied Foreign Minors was launched in 2007. This Program, financed by the Fund for social inclusion of immigrants 2007, is promoted by the Ministry of Labour, Health and Social Policies and carried out by the National Association of Italian Municipalities (ANCI). It aims at enhancing the protection of separated children non asylum seekers' rights by promoting the national standardization and qualification of the local services for separated children and supporting local Municipalities in the implementation of the identification, reception and integration activities, with specific regard to the first reception phase. Building upon the experience of targeted projects implemented by important Municipalities such as Turin, Bologna, Parma, Modena, Piacenza, etc, the Program ensure the coordination and technical support of activities linked to local projects, which are implemented by a network of Municipalities selected by public announcement.

Among others<sup>93</sup>, **at local level** can be considered as good practices:

## 3. Public Guardian for Children - Region of Veneto: Guardians Project

The Public Guardian for Children of Region of Veneto, established by Regional Law 9 August 1988, n. 42, is an independent institution whose remit is to monitor, protect and promote at regional level the rights of the children recognized the United Nations Convention on the Rights of the Child and to ensure that the best interests of the child is a primary consideration in all actions affecting children. According to Regional Law 42/1988 of the Region of Veneto, the Public Guardian should promote respect for these rights through the following activities:

Promoting the dissemination of a culture of respect for children's rights and views;  
Monitoring compliance with children's rights;  
Promoting respect for and listening to the views of children living in the Region of Veneto;  
Promoting dialogue and cooperation among institutions, third sectors actors, families and children<sup>94</sup>;

Among its activities the Public Guardians for children of Region of Veneto has also, according to Art. 2, point a of the above mentioned constitutive Regional Law, the responsibility to train, select, assess and support volunteers who want to be appointed as guardians for children<sup>95</sup>.

<sup>93</sup> Besides the projects above mentioned similar activities have been realized or are going to be realized in Regions of Lazio, Molise, Marche, Trentino Alto Adige, Toscana and Piemonte. A similar project on "civil guardianship" was also realized, from 1996 to 2000, in the city of Turin.

<sup>94</sup> For more details and interesting documents concerning the Public Guardian's activities, see the materials available at <http://tutoreminori.regione.veneto.it/home/home.asp>.

<sup>95</sup> Rech, F., *Dal Progetto ai tutori volontari*, in C. Drigo and F. Santamaria, eds, *Tutori Volontari e bambini. L'esperienza del Garante per l'infanzia del Veneto*, Guerini: Milan 2009, p. 55.

In the past years the increasing number of separated children residing in the Region and the limited number of available guardians called for new solutions to adequately ensure the representation and the protection of children's rights and needs and this is why in 2001 the Guardians Project was launched by the Office of the Public Guardian.

The Project is based on an agreement with the Regional Head Office for Social Services and with third sector actors, with the support of the Interdepartmental Centre of Research and Services on the Rights of the Person and of Peoples of the University of Padua and with the partnership of local Health and Social Services Units (so called "aziende sociosanitarie locali") and of the conference of the Mayors of the Region. Specific agreements have also been signed with the Tribunal - Guardianship Judges and with the Juvenile Courts of the Region.

The strength of this Project, which is highly appreciated at local and national level, is represented by the efficient cooperation mechanism between private and public agencies in response to children's needs, by the dynamism and personal resources of the volunteers and the legitimating, coordinating, monitoring and supporting activities offered by the Office of the Public Guardian for children and the other public institutions involved.

The Office of the Public Guardian is responsible for: the training of guardians and of local contact points (so called "referenti territoriali"), the monitoring and the support of guardians, through periodical meetings, publication and distribution of training materials, ad hoc consultancies, periodical update training courses and a shared evaluation process, the creation and the management of a database collecting names and information on the volunteers available for the appointment as guardians, the implementation of information, dissemination and raising awareness activities on the Project contents and aims and on guardianship issues, the promotion of good practices and cooperation<sup>96</sup>.

The Project is based on two different types of training courses: training courses for local contacts points and training courses on guardianship for volunteers. The local contact points (representatives of the local Health and Social Services Units and of the conference of the Mayors) represent the link between the regional and the local dimension and are responsible for the promotion and the implementation of the Project at local level, as well as for the selection and the training of the volunteers at local level.

The content focuses of the 2 courses for local contact points realized up to now (the first from December 2002 to June 2003, for a total amount of 7 training days, the second from October 2007 to January 2008, for a total amount of 5 training days) were on guardianship issues (legal, psychological and relational dimensions), children's rights laws and awareness raising, selection and training of guardians methodologies, also including a specific session on foreign children's needs. The total amount of local contact points trained up to December 2009 is of 42.

<sup>96</sup> *Ibidem*, pp. 55-99. See also C. Drigo and F. Santamaria, eds, *Un'esperienza di cittadinanza attiva. Gli esiti del percorso di riflessione sul Progetto tutori*, Office of the Public Guardian for Children of Region of Veneto: Venice/Mestre 2008, also available at <http://tutoreminori.regione.veneto.it>

The content focuses of the 34 courses (5 of them were specific courses for guardians of foreign children) for guardians realized up to now were on guardianship issues, with specific reference to the legal guardianship framework, the psychological, emotional, educational, social and cultural issues connected to the guardianship, on the needs and rights of children and on the duties and responsibilities of the guardians, also including a session for the sharing of personal experiences and a session on practical cases.

Each two-months courses is composed of 5 training days (classes are on Saturday) and the total amount of guardians trained and inserted in the database up to December 2009 is of 792<sup>97</sup>.

It is also important to highlight that for volunteers who are appointed as guardians a Professional Indemnity Insurance is issued at the expenses of the Office of the Public Guardian of the Region of Veneto, and that they also receive a reimbursement for the extraordinary expenses incurred during their activities and a maximum of 100 euros per year as a “symbolic payment”.

#### **4. Public Guardian for Children - Region of Friuli Venezia Giulia: Voluntary Guardians for Children School Project**

The Public Guardian for Children of Region of Friuli Venezia Giulia was established by Regional Law 24 June 1993, n. 49, recently modified by Regional Law 9/2008 which envisaged an ongoing normative and financial restructuring of the Office<sup>98</sup>.

Among its activities, the Public Guardians for children of Region of Friuli Venezia Giulia has also, according to Art. 21, point a of the above mentioned constitutive Regional Law, the responsibility to train, select, assess and support volunteers who want to be appointed as guardians for children.

As in the previous case, also in this context the increasing number of separated children residing in the Region and the limited number of available guardians called for new solutions to adequately ensure the representation and the protection of children’s rights and needs and this is why in 2001 a first experimental version of the Voluntary Guardians for Children School Project was launched by the Office of the Public Guardian. In 2005 the Project was finally defined and implemented every year from then on.

The strength of this Project, which is highly appreciated at local and national level, is represented by the efficient cooperation between private and public agencies in response to children’s needs, and by the dynamism and personal resources of the volunteers and the legitimating, coordinating, monitoring and supporting activities offered by the Office of the Public Guardian for children.

<sup>97</sup> Data furnished by Prof. L. Strumendo, Public Guardian for Children of Region of Veneto, at the Conference on “Which guardian for children?” held in Bologna on the 14<sup>th</sup> May 2010 and promoted by the Ombudsman for Civil Rights of Region Emilia Romagna, Prof. D. Lugli.

<sup>98</sup> In the meantime of the restructuring, the President of the Regional Council act as Public Guardian for Children.

The Office of the Public Guardian is responsible for the training of guardians, the monitoring and the support to guardians, through publication and distribution of training materials, periodical update training courses, the creation of a regional list of available guardians, the implementation of information, dissemination and raising awareness activities on the Project contents and aims and on guardianship and children's rights issues.

The Project is based on two different type of training courses: basic training courses and specialist training courses, for persons who have already passed the basic course.

The content focuses of the 6 basic training courses realized up to now (two months courses for a total amount of 70 training hours) were on guardianship issues (legal, psychological, relational and communicative dimensions), family and children's rights laws and local services' organization and structure. Only in 2005/2006 a session on practical cases was also included, for a total amount of 200 training hours (140 hours for theory and 60 hours for practical cases).

The specialist training courses are offered to persons who have already passed the final examination of the basic courses and are constituted by some periodical update training days on various issues as prevention of violence against children, relationship skills with vulnerable children (children victims of abuse and violence), specific needs of foreign separated children, organization of the living communities and reception centres for children.

The total amount of volunteers trained up to 2009 is of 184 persons. As mentioned above, the Project included also the definition of a regional list of available guardians used by the Tribunal - Guardianship Judges for the appointment. From 9 June 2010, due to the restructuring process, the regional list has been suppressed but its contents should be inserted in a specific regional law.

### **5. Dedalus Social Cooperative - city of Naples: Cultural Guardians Project**

The Dedalus Social Cooperative was founded in 1981 in the city of Naples and is composed of economists, sociologists and social workers. Its mission is to promote the interests of the social community through the implementation of projects for the human and cultural development and for the respect for human rights, social security rights and equal opportunities.

From 1986 the Cooperative is also involved in research and project activities aiming at promoting migrants' needs and rights and at supporting them with assistance, guidance and consultancy activities, with particular attention to their and their families' socio-economic inclusion and professional training and orientation.

More recently, the Dedalus Social Cooperative oriented its activities also to the provision of social services, to the social economy and the social services quality evaluation fields. From 2007 the Cooperative manages and implements professional training courses for social workers and social

services and it has obtained the official recognition of its training activities from the Region of Campania<sup>99</sup>.

Three years ago, in order to reduce the time needed for the appointment of guardians in the city of Naples, some of the cultural mediators of the Cooperative working with separated children “proposed” themselves to the Tribunal - Guardianship Judge as guardians for those children.

After this first proposal, a formal agreement was signed between the Dedalus Social Cooperative, the Municipality of Naples and the Tribunal - Guardianship Judge: on the basis of this agreement three cultural mediators (respectively of Albanese, Tunisian and Somali origin) of the Social Cooperative have been inserted in the municipal list of guardians established in 2007 by the Municipality of Naples and are appointed as guardians for separated children. The Municipality of Naples is responsible for the selection through public announcement, continuous training and monitoring of the volunteers and professional who want to be appointed as guardians.

The content focuses of the 3 training courses realized up to now (for a total amount of 20 training hours) were on guardianship issues (functions, responsibilities and related tasks) and also some specialized training course have been realized.

The total amount of volunteers trained up to 2007 is of 60 persons.

The strength of this Project, which is highly appreciated at local and national level, is represented by the professional, educational and communication skills of cultural mediators appointed as guardians, by their long experience in working with foreign children and by the fact that very often they already know and support the children who become their pupils. Moreover, these guardians, being themselves foreigner, are able to speak “the same language”, in the broader sense of the term, of children. Another interesting aspect is represented by the fact that also this Project is based, as the other Projects on guardianship above mentioned, on an efficient link between private and public responses to children’s needs, and both on the dynamism and personal resources of the volunteers and on the legitimating, training and monitoring activities offered by the Municipality of Naples.

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<sup>99</sup> For further information see <http://www.coopdedalus.it/mainmenu.htm>.

## **Annex 5 – Convention on the Rights of the Child**

### ***Convention on the Rights of the Child***

***Adopted and opened for signature, ratification and accession by General Assembly resolution  
44/25 of 20 November 1989***

***Entry into force 2 September 1990, in accordance with article 49***

#### ***Preamble***

The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the

Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth",

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules); and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict, Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child, Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

## **PART I**

### **Article 1**

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

### **Article 2**

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

### **Article 3**

1. In all actions concerning children, whether undertaken by public or private social welfare



institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

#### **Article 4**

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

#### **Article 5**

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

#### **Article 6**

1. States Parties recognize that every child has the inherent right to life.

2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

#### **Article 7**

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

### **Article 8**

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

### **Article 9**

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.
2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.
3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.
4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

### **Article 10**

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.
2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave

any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

#### **Article 11**

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.
2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

#### **Article 12**

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

#### **Article 13**

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.
2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - (a) For respect of the rights or reputations of others; or
  - (b) For the protection of national security or of public order (ordre public), or of public health or morals.

#### **Article 14**

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner

consistent with the evolving capacities of the child.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

#### **Article 15**

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

#### **Article 16**

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

#### **Article 17**

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

To this end, States Parties shall:

(a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;

(b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;

(c) Encourage the production and dissemination of children's books;

(d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;

(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of

articles 13 and 18.

#### **Article 18**

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

#### **Article 19**

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

#### **Article 20**

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

#### **Article 21**

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

(b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

(c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

### **Article 22**

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

### **Article 23**

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's

active participation in the community.

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development

4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

#### **Article 24**

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(a) To diminish infant and child mortality;

(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

(c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;

(d) To ensure appropriate pre-natal and post-natal health care for mothers;

(e) To ensure that all segments of society, in particular parents and children, are informed, have

access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;

(f) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

#### **Article 25**

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

#### **Article 26**

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

#### **Article 27**

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for



the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

### **Article 28**

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

- (a) Make primary education compulsory and available free to all;
- (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
- (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
- (d) Make educational and vocational information and guidance available and accessible to all children;
- (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

### **Article 29**

1. States Parties agree that the education of the child shall be directed to:

- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
- (c) The development of respect for the child's parents, his or her own cultural identity, language

and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

### **Article 30**

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

### **Article 31**

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

### **Article 32**

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

(a) Provide for a minimum age or minimum ages for admission to employment;

(b) Provide for appropriate regulation of the hours and conditions of employment;

(c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

### **Article 33**

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

### **Article 34**

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

### **Article 35**

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

### **Article 36**

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

### **Article 37**

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of

his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

### **Article 38**

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.

3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

### **Article 39**

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

### **Article 40**

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected. 4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

#### **Article 41**

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

- (a) The law of a State party; or
- (b) International law in force for that State.

## **PART II**

### **Article 42**

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

### **Article 43**

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.

2. The Committee shall consist of eighteen experts of high moral standing and recognized competence in the field covered by this Convention.<sup>1/</sup> The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.

3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall

expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.

7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.

8. The Committee shall establish its own rules of procedure.

9. The Committee shall elect its officers for a period of two years.

10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

#### **Article 44**

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights

(a) Within two years of the entry into force of the Convention for the State Party concerned;

(b) Thereafter every five years.

2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfillment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.

4. The Committee may request from States Parties further information relevant to the implementation of the Convention.

5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.

6. States Parties shall make their reports widely available to the public in their own countries.

#### **Article 45**

In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

(a) The specialized agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;

(c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;

(d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

### **PART III**

#### **Article 46**

The present Convention shall be open for signature by all States.

#### **Article 47**

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

#### **Article 48**



The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

#### **Article 49**

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

#### **Article 50**

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

#### **Article 51**

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General

#### **Article 52**

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

**Article 53**

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

**Article 54**

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations. In witness thereof the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

1/ The General Assembly, in its resolution 50/155 of 21 December 1995 , approved the amendment to article 43, paragraph 2, of the Convention on the Rights of the Child, replacing the word “ten” with the word “eighteen”. The amendment entered into force on 18 November 2002 when it had been accepted by a two-thirds majority of the States parties (128 out of 191).