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UNACCOMPANIED MINORS IN SWITZERLAND

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However, the views expressed in this study are purely those of the author.

Introduction¹

The Swiss authorities first became aware of the presence of unaccompanied minors in the late 1980s, as one of the increasing side-effects of the asylum procedure. Each year, several hundred children apply for refugee status in order to be entitled to settle in Switzerland.

Under Swiss law, a minor is someone who has not yet reached the age of 18². This corresponds to the definition of a child in international law. According to the United Nations Convention on the Rights of the Child, to which Switzerland has been a party since 26 March 1997, "a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier".

Minors are considered to be unaccompanied if they are not accompanied by their legal representative and their legal representative is not in Switzerland³. The Swiss Asylum Appeals Commission does not recognise brothers or sisters aged over 18 as exercising parental authority over minors. This means that even if the latter are present in Switzerland when the application is made, the minor will still be considered to be unaccompanied⁴.

However, unaccompanied minors are not solely an aspect of the refugee situation. Some of them have no intention of lodging an asylum application on arrival in Switzerland. They do not therefore claim to have suffered violence or persecution in their countries of origin. They settle in Switzerland without formal permission, and as such have no legal status and form part of the illegal immigrant population.

The processing of unaccompanied minors in Switzerland is a federal responsibility. Under Article 121 of the Swiss federal constitution⁵, asylum legislation is enacted by the parliament of the Confederation. On the other hand, responsibility for the care of asylum seekers, particularly unaccompanied minors, is shared by the central authorities and the cantons. The latter have considerable discretion in carrying out this responsibility. The treatment of unaccompanied minors can therefore vary from one part of Switzerland to another.

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² Art. 14 Swiss Civil Code. See also Art. 1 d of Asylum Procedure Order 1.

³ Art. 7 para. 2 of Asylum Procedure Order 1.

⁴ Swiss Asylum Appeals Commission – legal information service, 2004/9.

⁵ <http://www.admin.ch/ch/f/rs/101/> (in French)

1. The migratory cycle of unaccompanied minors

1.1 Main features

In absolute terms, there has been a steep decline in the number of registered unaccompanied minors under the Swiss asylum procedure. Between 2002 and 2004 it fell by more than a half, from 1673 to 824. This trend reflects a more general decline in the total number of asylum seekers registered each year. The number of unaccompanied minors as a percentage of total asylum seekers remains more or less unchanged: 6.4% in 2002, 6.9 % in 2003 and 5.7% in 2004⁶.

The Swiss authorities estimate that between 10 and 20% of these applicants claiming to be unaccompanied minors do not really fall into this category, either because it is established in the course of proceedings that they are over 18 or because they have a legal representative in Switzerland⁷.

In recent years the majority of unaccompanied minors identified in Switzerland in the course of asylum proceedings, to the extent that their identity could be established, have come from Africa. The main countries of origin include Guinea, Nigeria, Sierra Leone and Somalia. The great majority were aged between 15 and 18 and male. The percentages of girls were 10.4 in 2002, 13.6 in 2003 and 14 in 2004⁸.

It is more difficult to establish the situation of unaccompanied minors who do not lodge asylum applications and who settle in Switzerland illegally. Illegal immigration is by its nature a very imprecise phenomenon. Estimates of the total number of adults and children in this category in Switzerland vary widely. The figures range from 70 000 to 300 000⁹. In particular, the Federal Migration Office has recently estimated that there are about 90 000 illegal residents in Switzerland¹⁰. The percentage of these who are aged under 18 is not known. Suffice it to say that there are clearly illegal unaccompanied minors in Switzerland¹¹, and the number is probably even increasing. Since asylum policy is becoming more restrictive, it is possible that those concerned, particularly ones under 18, are tending to opt for illegal immigration rather than the asylum procedure¹².

⁶ According to Federal Migration Office statistics.

⁷ Federal Refugee Office, final report of the unaccompanied minors project group, 20.10.2004, p. 5.

⁸ According to Federal Migration Office statistics.

⁹ Valli M, *Les migrants sans permis de séjour à Lausanne*, Lausanne 2003, p. 27.

¹⁰ Federal Migration Office, press release, 26 April 2005.

¹¹ Wata A., *La situation des mineurs non-accompagnés en Suisse*, in conjunction with Terre des Hommes, the Swiss Foundation of the International Social Service and the Kurt Bösch university institute, 2003, p. 48.

¹² Daniel Burnat, Interview, 3 August 2005. Christoph Braunschweig, Interview, 5 August 2005

Another emerging trend in migration into Switzerland is the significant increase in the number of women arriving, and their changing role¹³. Whereas in the past, they mainly accompanied their husbands, it is now quite common to find illegal female migrants who are either alone or accompanied by a child. Many are from South America and work as domestic employees: with children, on household work or looking after the elderly¹⁴. Female employees in the domestic sector probably account for about half of all those without proper documentation¹⁵. According to a study carried out in Lausanne, these women were aged between 17 and 30¹⁶, which shows that some were minors, although it is impossible to know exactly what proportion. So although the majority of unaccompanied minors passing through the asylum procedure are boys, among illegally resident foreigners the proportion of girls seems to be rising.

The reality of illegal immigration into Switzerland therefore implies a need for a policy on the reception and treatment of illegal unaccompanied minors, with particular attention to the needs of girls. The first stage of such a policy should be to carry out a detailed assessment of the phenomenon.

Recently, the United Nations Committee on the Rights of the Child recommended that the countries concerned should develop national systems for collecting data on unaccompanied minors. This data should be detailed and integrated. It should include basic biographical data on each child, their legal status (asylum-seeker, refugee, illegal immigrant and so on), living arrangements and enrolment in school or training, number of legal representatives assigned, number refused entry, family reunifications and number returned to their country of origin. The Committee urges states to pay particular attention to unaccompanied minors who disappear and to the risks and impact of trafficking¹⁷.

¹³ Valli M, *op. cit.*, p. 3.

¹⁴ *Ibid.*, pp. 33ff.

¹⁵ Travail Suisse, "Clandestines de l'économie domestique: régularisons leur situation", Press release, May 2005.

¹⁶ Valli M, *op. cit.*, p. 39.

¹⁷ *Treatment of unaccompanied and separated children outside their country of origin*, General Comment no 6 (2005), 3 June 2005, CRC/GC/2005/6.

1.2 Reasons for the migration of unaccompanied minors

Much uncertainty surrounds the underlying causes of the migration to Switzerland of unaccompanied minors. There has never been a systematic study of the precise factors that impel these young persons to leave their families and their countries¹⁸. Although certain recurrent themes emerge from discussions with unaccompanied minors themselves and the professionals who work with them, it is difficult to quantify the relative significance of each or to determine how they might combine. Whether or not they are asylum seekers, unaccompanied minors are often motivated by several factors.

Clearly, these issues call for detailed study based on statistical data to provide the information necessary to prevent and deal with this type of migration.

One of the most frequently cited reasons, particularly by the young persons themselves, is the violence in their countries of origin¹⁹. They are rarely the personal targets of government orchestrated persecution, which would entitle them to refugee status in Switzerland²⁰. However, many have left their countries to escape wars and domestic disorders affecting their particular communities. These children become unaccompanied because their parents deliberately send them abroad for their protection, because they have lost contact with their families as a result of the very chaos they are trying to flee, or because their parents are dead.

Economic and social factors are also important²¹. Many unaccompanied minors leave their countries because of lack of income and employment prospects. The statistics show that practically all of them come from countries that are experiencing major crises.

In many cases, these young people bear the expectations of an entire family, which has assembled the necessary funds to enable them to come to Europe and to whom they are indebted. This places them under strong psychological pressure, which many of them are unable to cope with²². Their life in Switzerland and how it evolves does not just concern them but must satisfy the hopes and expectations of a whole community in their country of origin. Failure, in the form of their rapid return, can not only damage their self-esteem but also marginalise them within their own social circle.

¹⁸ Bolzman C., Rossel L., Felder A., "Jeunes requérants d'asile séparés de leurs parents: quelle transition vers la vie adulte?", *Interdialogos*, 2004, p. 3.

¹⁹ Wata A., *op. cit.*, p. 5.

²⁰ Rossel L., "Protection des enfants migrants: un statut d'exception", *Interdialogos*, no 2, 2004, p. 16.

²¹ Wata A., *op. cit.*, pp. 6 ff. see also VALLI M., *op. cit.*, p. 16.

²² Mireille Chervaz Dramé, interview, 3 August 2005.

In some cases unaccompanied minors arrive in Switzerland with a specific plan in mind, particularly that of studying. Generally, these young persons are looked after by families whom they already know. This is particularly the case with ones from Ethiopia, Eritrea and Latin American countries²³. They often find it difficult to adapt to a different education system from that of their home country. As a result they may be placed in classes that correspond to their actual educational level and therefore find themselves alongside children much younger than they are. These problems can lead to their becoming discouraged and rejecting their environment, particularly in adolescence²⁴.

Finally, many unaccompanied minors arrive in Switzerland without any particular stated reasons. Their aim is simply to “leave their country” or to “come to Europe”²⁵.

Unaccompanied minors in Switzerland are therefore a very diverse group. They include persons of different levels of education and cultural backgrounds whose motives reflect widely varying needs that are difficult to compare. Any political response to this problem must therefore take account of these differences. Thus, the priority for refugees from violence is likely to be protection and possibly medical and psychological care whereas other unaccompanied minors should be offered what is essentially a window onto the future, particularly in the form of education or vocational training. The asylum procedure by itself cannot cover all these eventualities.

1.3 Entry into Switzerland

Unaccompanied minors arrive in Switzerland in two main ways. Some enter through illegal immigration channels while others are taken in by relatives or close friends in the country²⁶. In the former case, the majority of young persons concerned come from west Africa. They probably travel overland and across the Mediterranean via north Africa and southern Europe. They then enter Switzerland with the aid of people smugglers²⁷. The journey can last for several months or even years²⁸. On the other hand they never arrive in Switzerland by air.

The children who enter via illegal immigration channels are the most vulnerable. Throughout their journey they face the risk of recruitment by networks concerned with economic or sexual exploitation²⁹. In general, it is these young people who seek asylum in Switzerland.

²³ See the example of Margarita, a young Mexican who lived in England and then Italy before settling in Switzerland: *Interdialogos*, no 2, 2004, p. 41.

²⁴ Mireille Chervaz Dramé, interview, 3 August 2005.

²⁵ Mireille Chervaz Dramé, Daniel Burnat, interview, 3 August 2005.

²⁶ For a detailed analysis of these processes, see Valli M., *op. cit.*

²⁷ Wata A., *op. cit.*, p. 14.

²⁸ Frieden J., "L'Afrique en Suisse", *Asile et migration: Eléments d'analyse et de politique*, Berne, 2002, p. 3.

²⁹ Widmer R., "Comment prévoir un projet de vie pour les enfants réfugiés", *Interdialogos*, no 2, 2004, pp. 28ff.

However, Switzerland's federal structure makes it difficult to provide a clear picture. There are still substantial gaps in co-operation between the relevant federal and cantonal authorities. The main problems are unwillingness to share information at cantonal level, lack of communication and absence of evaluation³⁰. In particular, there are no statistics on the subject.

Other unaccompanied minors are invited by family members or other relatives of friends living in Switzerland. They usually enter on a tourist visa and then remain once the visa has expired. In many cases, these unaccompanied minors represent a second generation of migrants in Switzerland. Their hosts are families who were part of a first wave of migration in the 1970s and 80s. This is the case, for example, of young people from Chile, Peru and Vietnam. Others come from new sources of immigration, for example unaccompanied minors from Bolivia³¹.

Children in this category do not apply for asylum. They come to Switzerland to work or study.

2. The law governing the reception and care of unaccompanied minors in Switzerland

The reception and care of unaccompanied minors in Switzerland is the subject of international, federal and cantonal law.

2.1 The main treaties and other international texts

The Convention on the Rights of the Child of 20 November 1989 came into force in Switzerland on 26 March 1997. It makes the best interests of the child the basic principle of any government action concerning children (Article 3). Children temporarily or permanently deprived of their family environment are entitled to all necessary protection and assistance (Articles 3 and 20). Turning to asylum, Article 22 states that:

"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

³⁰ *Report on illegal immigration*, IMES (Swiss immigration, integration and emigration office), the federal refugee office, Fedpol and the border guards service, 23 June 2004, pp. 33 ff.

³¹ Mireille Chervaz Dramé, interview, 3 August 2005.

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."

According to the Swiss Asylum Appeals Commission, this Article only applies to young asylum seekers and those who have obtained refugee status. Young persons whose asylum applications have been rejected are not therefore entitled to this protection³².

Other relevant principles in the Convention include those of non-discrimination (Article 2), the right to life, survival and development (Article 6), and the right to be heard (Article 12).

Of more direct relevance to unaccompanied minors, the Convention's supervisory body, the Committee on the Rights of the Child, has recently published a document entitled "Treatment of unaccompanied and separated children outside their country of origin"³³. Although this is not formally binding on parties to the Convention, it does represent an authorised interpretation of the relevant articles. It applies firstly to "unaccompanied children" that is ones who "have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so"³⁴. Secondly, it covers "separated children", that is ones who "have been separated from both parents, or from their previous legal or customary primary care-giver, but not necessarily from other relatives"³⁵. It also only concerns unaccompanied or separated children outside their country of origin, that is their country of nationality or, if stateless, their country of habitual residence.

The general commentary therefore offers a systematic overview of the principles and rules arising from the Convention that are applicable to these children, whether or not they are the subject of asylum proceedings. It also considers its application to certain specific areas, such as the prevention of trafficking, family reunion, reintegration in the country of origin and international adoption.

Finally, the parties to the Convention have undertaken to submit reports to the Committee on the Rights of the Child at regular intervals on measures taken to apply the Convention in their countries. On the basis of these reports and of a dialogue on their content, the Committee publishes "concluding observations" on each country concerned. Its most recent observations on Switzerland appeared in June 2006³⁶, and were based on the initial Swiss report of 1 November 2000³⁷. The Committee made the following recommendations to the Swiss government concerning refugee, asylum-seeking and unaccompanied children:

³² Swiss Asylum Appeals Commission – legal information service, 1998/13.

³³ *Treatment of unaccompanied and separated children outside their country of origin*, General Comment no 6 (2005), 3 June 2005, CRC/GC/2005/6.

³⁴ Section III.

³⁵ *Ibid.*

³⁶ Swiss Asylum Appeals Commission – legal information service.

³⁷ *Initial report of the Swiss Government on the Application of the Convention on the Rights of the Child (Initial Report of Switzerland)*, Berne, 1 November 2000, UN Doc. CRC/C/78/Add.3

Refugee, asylum-seeking and unaccompanied children

"50. While welcoming the entry into force of the federal asylum legislation (Federal Asylum Act and Ordinance 1 on Asylum Procedure) on 1 October 1999, the Committee remains concerned that the procedure used for unaccompanied minors is not always in their best interests nor fully in line with relevant provisions of the Convention. In addition, in relation to the reservation made to article 10 of the Convention, the Committee is concerned that the right to family reunification is too restricted.

51. The Committee recommends that the State party simplify its approach regarding the procedures for requesting asylum and take all necessary measures to expedite them and to ensure they take into account the special needs and requirements of children, in particular unaccompanied children; these include the designation of a legal representative, the placement of such children in centres, and their access to health care and education. In addition, the Committee recommends that the State party review its system for family reunification, notably for refugees who stay for a long period in the State party."

Other more general human rights conventions also apply to unaccompanied minors in Switzerland. The most obvious examples are the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights³⁸ and the European Convention on Human Rights³⁹.

Switzerland is also a party to the Convention relating to the Status of Refugees of 28 July 1951. This is of general application and has nothing specific to say on unaccompanied minors. Nevertheless, it has been interpreted and clarified by the United Nations High Commissioner for Refugees in the form of a series of UNHCR policy guidelines. These cover such topics as the protection and care of refugee children⁴⁰, interviewing unaccompanied minors and preparing social histories⁴¹ and policies and procedures in dealing with unaccompanied children seeking asylum⁴².

Finally, international law also lays down rules governing conflicts of law that might apply to unaccompanied minors, in the form of the so-called Hague Convention concerning the powers of authorities and the law applicable in respect of the protection of minors.

³⁸ These two treaties, adopted by the United Nations General Assembly on 16 December 1966, came into force in Switzerland on 18 September 1992.

³⁹ Entered into force in Switzerland on 28 November 1974.

⁴⁰ HCR guidelines on the protection and care of refugee children, 1994.

⁴¹ HCR Guidelines on hearings for unaccompanied minors and the preparation of social history reports, April 1990.

⁴² HCR Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum, February 1997.

2.2 Federal law

The Swiss Civil Code⁴³ offers general protection to children, and thus to unaccompanied minors. Articles 11 ff. (enjoyment and exercise of civil rights), 307 ff. (protection of children) and 360 ff. (guardianship and other supervision measures) are particularly relevant.

Under Article 121 of the Federal Constitution legislation on the residence and domicile of foreigners, and on granting asylum are federal matters.

The main legislation on the subject is the Residence and Domicile of Foreigners Act of 26 March 1931.⁴⁴

Similarly, the Federal Asylum Act of 26 June 1998, which came into force on 1 October 1999, is the centrepiece of asylum legislation in Switzerland. Section 17 is specifically concerned with unaccompanied minors. It makes the Swiss government (the Federal Council) responsible for the rules governing the treatment of children and young persons in asylum proceedings. Meanwhile in each case the relevant canton must immediately appoint a "support person" to represent the child's interests throughout the proceedings⁴⁵.

The delegation of powers to the Federal Council was given practical effect in the Asylum Procedure Order 1 of 11 August 1999, which came into force on 1 October 1999. This lays down rules for determining the age of and measures to protect unaccompanied minors and stipulates that persons hearing asylum applications from minors must take account of the various characteristics of children⁴⁶.

Finally, a Federal Refugee Office directive is concerned with asylum requests from unaccompanied minors and adults incapable of understanding⁴⁷. It offers considerable scope for flexibility. According to its opening paragraph, it is designed to clarify certain procedural aspects relating to applications of this sort and is intended for federal and cantonal authorities.

Finally, federal law also provides for conflicts of laws. The Federal Private International Law Act of 18 December 1987, which came into force on January 1989, may apply to unaccompanied minor cases. Sections 24 (stateless persons and refugees), 35 (exercise of civil rights) and 85 (guardianship and other protective measure) are particularly relevant here.

⁴³ <http://www.admin.ch/ch/f/rs/c210.html> (in French)

⁴⁴ http://www.admin.ch/ch/f/rs/142_20/ (in French)

⁴⁵ http://www.admin.ch/ch/f/rs/c142_31.html

⁴⁶ Article 7, para. 7.

⁴⁷ Directive 23.2 of 20 September 1999, entered into force on 1 October 1999.

2.3 Cantonal law

Cantonal legislation is too extensive and varied to be summarised here.

Cantonal powers and responsibilities concerning unaccompanied minors mainly relate to child protection, particularly the establishment of guardianship arrangements. They are also responsible for education and vocational training. Cantons implement national policy on the reception of and assistance to applicants for asylum, and where necessary carry out deportation orders.

3. The organisation of the reception and care of unaccompanied minors in Switzerland

The care of unaccompanied minors in Switzerland is mainly carried out under the asylum procedure. It is therefore governed by the Federal Asylum Act and Asylum Procedure Order 1. In addition, to adapt this procedure to the requirements of the Convention on the Rights of the Child, particularly the principle of the child's best interests embodied in Article 3, the Federal Refugee Office has issued a directive on asylum requests from unaccompanied minors and adults incapable of understanding.

But as already noted, a growing number of unaccompanied minors do not fall into this category. These are mainly young persons who enter and settle in Switzerland illegally, without applying for refugee status.

3.1 Reception and care of illegal unaccompanied minors

There is no real policy on the reception and care of illegal unaccompanied minors in Switzerland⁴⁸. In the absence of any specific procedure, they are covered by the child protection measures established in each canton. Practice varies from one canton to another and is partly dependent on voluntary efforts.

In Geneva, for example, responsibility for these young persons devolves on the cantonal child protection department. The department permanently supervises between 80 and 100 unaccompanied minors, most of whom are aged 12 to 18. Its main task is to approve these children's place of residence. About 80% of the unaccompanied minors supervised by the department are looked after by close acquaintances living in the canton, usually members of their extended family. The department makes sure that the children attend school and exercises a form of right of oversight. The host families therefore operate as *de facto* foster parents (see Article 300 of the Swiss Civil Code)⁴⁹.

⁴⁸ Wata A., *op. cit.*, p. 47.

⁴⁹ Mireille Chervaz Dramé and Corine Spiess, Interview, 3 August 2005.

There is generally no difficulty establishing contact with unaccompanied minors hosted by families officially resident in Geneva. The department is usually informed of their presence by the cantonal population office or the education department, via their school. The identification and protection of illegal unaccompanied minors hosted by families who are themselves in the country illegally raise more problems. The child protection department usually becomes aware of their presence in the canton as a result of police checks.

Still in Geneva, illegal unaccompanied minors can seek medical care from a mobile hospital unit while a voluntary network distributes medicines⁵⁰. In Lausanne, they are looked after in the children's hospital, where they receive free care adapted to their particular needs. They also receive social advice and assistance. However, since these young persons do not have medical insurance, they are not always certain to receive the medicines they are prescribed. Closer collaboration with pharmacies would therefore be desirable⁵¹.

Generally speaking, the only nationally co-ordinated policy concerning illegal unaccompanied minors relates to public education⁵². The Swiss conference of cantonal directors of education has recommended that all foreign children be admitted to state schools. The chair and the secretary general of the conference have also stated that school and education authorities must not report such illegal immigrant children to the immigration police. These principles appear to be complied with, even though they are not incorporated into cantonal legislation⁵³. Children without a residence permit sometimes fail to attend school, because they have not been informed of this option, are afraid of being identified by the police or have to work to survive⁵⁴.

For unaccompanied minors who are over compulsory school age, the opportunities to continue their studies or enter vocational training are limited or even non-existent⁵⁵. In particular, young illegal immigrants are not entitled to take up a formal apprenticeship.

⁵⁰ Wata A., *op. cit.*, p. 47.

⁵¹ Valli M., *op. cit.*, pp. 37ff.

⁵² *Report on illegal immigration*, IMES (Swiss immigration, integration and emigration office), the federal refugee office, Fedpol and the border guards service, 23 June 2004, p.

33. (http://www.bfm.admin.ch/fileadmin/user_upload/Aktuell/Pressemitteilungen_franz/IMES/2004/illegale1_f.pdf)

⁵³ Ibid.

⁵⁴ Valli M., *op. cit.*, p. 43

⁵⁵ Valli M., *op. cit.*, p. 43.

3.2. Reception and care of unaccompanied minors seeking asylum

3.2.1 Registration of unaccompanied minors

The right to request asylum applies strictly to the individuals concerned (Directive 23.2, chap. 2). This means that unaccompanied minors may lodge applications directly (in the case of those capable of understanding) or via a legal representative (children incapable of understanding) (Article 19 of the Swiss Civil Code)⁵⁶. The authorities have no power to intervene *ex officio*.

In accordance with the principle of the child's best interests, applications lodged by unaccompanied minors should be given priority by registration centre officials. Paragraph 3.3 states that the decision to allocate an unaccompanied minor to a canton must be made within a few working days.

Applicants receive a short hearing at the local asylum applications registration centre, if they appear to have sufficient capacity for understanding. At this stage, no decision is taken on appointing a guardian or support person. Applicants' personal data and preliminary information on their reasons for leaving their country of origin are recorded. The officials must also establish children's exact age and their capacity for understanding.

This practice has been criticised by some organisations, which believe that unaccompanied minors should not be interviewed before the appointment of a legal representative or support person and that the first meeting should be as short as possible⁵⁷. It appears that registration centre interviews tend to be fairly drawn out. As a result, unaccompanied minors may remain up to six weeks in facilities unsuited to their particular needs⁵⁸. It has also been suggested that these interviews take place not in federal reception centres but in cantonal facilities where the presence of a legal representative can be guaranteed⁵⁹.

In practice, unaccompanied minors who lack the capacity for understanding are rare. Most of them are between 15 and 18 and are therefore able to understand the purpose of the proceedings in which they are taking part.

⁵⁶ Swiss Asylum Appeals Commission – legal information service, 1996/3, 1996/5.

⁵⁷ Swiss Foundation of the International Social Service, *Switzerland: Questionnaire for Country Assessment*, Save the Children (Separated Children in Europe Programme), October 1999-April 2000, par. 4.c.

⁵⁸ Christoph Braunschweig, Interview 5 August 2005.

⁵⁹ World Organisation against Torture, *The Rights of the Child in Switzerland*, May-June 2002, p. 28

Establishing that the young person is still a minor is a crucial aspect of the proceedings. This will determine not only what procedure will be followed but also how the applicant is accommodated and looked after.

When it is clear that applicants are under 18, they are placed in the care of a canton. However, in some cases they may be sent to a third country, if they have family there who can look after them. Repatriation procedures are governed in such cases by the readmission agreement between Switzerland and the country concerned.

When it cannot be established with certainty that young persons are under 18, for example because there is no reliable documentation, preliminary steps are taken to determine their age⁶⁰. The Appeals Commission has ruled that applicants must themselves establish the "probability" that they are minors⁶¹. The burden of proof is therefore on the applicant, but it is lightened to the extent that the requirement is phrased in terms of probability rather than certainty. For example, applicants must explain why they are unable to produce their identity documents. They may also be asked how they know their age and to describe their lives so far, particularly the different stages of their education.

Where necessary, age may be estimated using scientific methods (Article 7 para. 1 of Asylum Procedure Order 1). The Swiss authorities may therefore carry out bone x-ray examinations. However, the scientific limitations of the procedure mean that the authorities can only rule that an applicant has lied at a hearing if there is more than three years' difference between the declared and estimated ages⁶². In such cases applicants are likely to be refused permission to stay in the country and deported. In any case the technique is of limited value because most applicants claim to be between 15 and 18 and beyond the age of 19 bone x-rays can no longer be used to determine persons' age.

Where doubts persist, the University of Zurich Institute of Forensic Medicine may be asked to carry out a more thorough examination, with the applicant's consent. In such cases, four tests are carried out: a paediatric history, a bone x-ray of the wrist, an examination of the wisdom teeth and a computerised tomography of the collarbones. The authorities will only find that an applicant is over 18 if this is confirmed by all four tests. Applicants therefore have the benefit of the doubt.

At each stage of the procedure, applicants have the right to be heard.

Finally, applicants are examined medically when they are registered, to identify any possible conditions that might require treatment.

⁶⁰ The Asylum Appeals Commission has ruled that this assessment, carried out before the hearing on the grounds for asylum and the appointment of a support person, is legal. Swiss Asylum Appeals Commission – legal information service, 2004/30.

⁶¹ Swiss Asylum Appeals Commission – legal information service, 2001/23.

⁶² According to the Commission's case-law: Swiss Asylum Appeals Commission – legal information service, 2000/19, 2001/23.

3.2.2 Forms of protection

When unaccompanied minors are placed in the care of cantons, the cantonal authorities must immediately initiate guardianship or other supervision measures (Articles 368 ff. and 392 ff. of the Civil Code), as soon as the appeals commission makes its decision (Article 7 para. 2 of Asylum Procedure Order 1). However, if it is not possible to apply supervision measures, the cantonal authorities must immediately appoint a support person to represent the young person's interests in the proceedings (Section 17 para. 3 Federal Asylum Act, Article 7 para. 3 and 5 of Asylum Procedure Order 1). Support persons are mainly responsible for administrative and organisational matters relating to the young person concerned. If necessary, they can request the appointment of a legal representative (Directive 23.2, para. 3.4.1). A support person's mandate comes to an end when a supervisor or guardian is appointed. In other words, the appointment of a support person is a purely temporary measure, pending the introduction of supervision measures.

There are no precise qualifications for appointment as a support person. Practice varies, but the individual must be over 18 and have the necessary skills and knowledge to assist the unaccompanied minor in the asylum procedure. In theory, support persons must satisfy similar requirements to those applicable to supervisors or guardians⁶³. The Refugee Appeals Commission has also laid down that they must have basic legal knowledge of asylum matters. However, it has also specified that this requirement should not be interpreted too strictly. For example, it has recognised that the head of a residential establishment for asylum seekers met these conditions⁶⁴.

The care of unaccompanied minors in Switzerland varies widely in practice, depending on the policies adopted by each canton⁶⁵. The large cantons have established specialist departments for this purpose whereas other approaches are adopted in the smaller ones, depending on the extent of the phenomenon and certain specific local factors. In Geneva and Basle Rural, for example, unaccompanied minors are entrusted to supervisors who not only keep track of the asylum proceedings but also undertake other legal tasks. In Lucerne, St Gallen and Zurich, on the other hand, care is the responsibility of a specialist department that decides, on a case by case basis, whether some form of formal supervision is required⁶⁶. In Grisons, a police-appointed support person attends hearings. Where appropriate, he or she may ask the relevant authorities to order a supervision measure⁶⁷.

⁶³ Philippe Tinguely, Interview, 7 July 2005.

⁶⁴ Swiss Asylum Appeals Commission – legal information service, 1998/13, 2003/1.

⁶⁵ For a description of the practice in certain cantons, see WATA A., *op. cit.*, pp. 39 ff.

⁶⁶ In Zurich, for example, supervision measures are ordered in about 10% of cases.

⁶⁷ This information on cantons was compiled by the Federal Refugee Office for a comparative study in November 2003. The conclusions cover practice in nine representative cantons. Federal Refugee Office, *op. cit.*, 21 pp.

Contrary to what is laid down in law, therefore, in practice supervision measures are not ordered systematically. The protection afforded to unaccompanied minors applying for refugee status varies from one canton to another. This means that practice is discriminatory and should be changed⁶⁸. Some commentators believe that support persons are seen as a means of dispensing with the need for legal representation of minors prescribed in the Civil Code and may lead to the appointment of persons whose interests do not necessarily coincide with those of the young applicants⁶⁹. Certain non-governmental organisations are therefore calling for supervision measures to be applied automatically to unaccompanied minors involved in asylum proceedings⁷⁰. However, the refugee commission's practice is tending to reduce such inequalities since it insists that unaccompanied minors who are capable of understanding and are unrepresented must be granted legal assistance throughout the asylum procedure (at least) until the first hearing on the grounds for asylum⁷¹. This requirement derives from the right to be heard⁷².

At all events, whatever approach is adopted, unaccompanied minors must receive full and co-ordinated care and attention. It must not be confined to assistance during the asylum procedure but should also include any other proceedings under civil law, and other aspects of their reception, care and support. To that end⁷³, the role and responsibilities of the support person should be clarified. This person's responsibility in terms of legal representation is not defined in either the Federal Asylum Act or Asylum Procedure Order 1. There is no guarantee therefore that this form of assistance will be forthcoming.

3.2.3 Reception, care and support

Arrangements for the reception, care and support of unaccompanied minors also vary from canton to canton. They may be placed in foster families, particularly the youngest ones, in specialist institutions, as in Geneva, Lausanne, St Gallen, Schaffhausen and Zurich, or in centres for asylum seekers. In the last-named case, unaccompanied minors may be accommodated with adults, for example in Jura and Grisons. They may even have to share dormitories with adults⁷⁴, which is clearly quite unacceptable. It is also incompatible with Article 20 of the Convention on the Rights of the Child, according to which, "a child temporarily or permanently deprived of his or her family environment shall be entitled to special protection and assistance provided by the State" (para. 1). In particular such children should be placed "in suitable institutions for the care of children" (para. 3).

⁶⁸ See, for example, the report of the Swiss NGOs: Comments on the Swiss Government report to the Committee on the Rights of the Child, p. 20.

⁶⁹ ROSSEL L., "Protection des enfants migrants: un statut d'exception", *Interdialogos*, no 2, 2004, p. 17. Christoph Braunschweig also notes that in some cantons support persons are appointed by the local authorities. Such persons are therefore frequently quite unaware of the interests and rights of the child (Interview, 5 August 2005).

⁷⁰ Swiss Refugee Aid Organisation, *Die Bedeutung der Kinderrechtskonvention im Asylbereich*, June 2000, p. 14. OMCT, *op. cit.*, p. 28.

⁷¹ Swiss Asylum Appeals Commission – legal information service, 1998/13.

⁷² Swiss Asylum Appeals Commission – legal information service, 1999/2.

⁷³ Federal Refugee Office, *op. cit.* pp 8 ff..

⁷⁴ In Basle Rural and Jura. Federal Refugee Office, *op. cit.*, pp. 9 and 18.

Swiss legislation should therefore stipulate that unaccompanied minors must be provided with specialist facilities. They should never be required to sleep in the same place as adults.

Unaccompanied minors placed in institutions or centres are looked after by persons with special professional training, mainly social workers⁷⁵. However, in some cases they work with asylum seekers in general, and are not required to have specific skills in working with children⁷⁶. Moreover, certain cantons do not have special regulations on the subject. A suitable form of care arrangements should therefore be adopted for the whole of Switzerland. A contact person should be appointed for each unaccompanied minor and this person's functions should be clearly defined and adapted to the young person's needs. Moreover, the ratio of professionals to young persons should be higher than that of professionals to adult asylum seekers⁷⁷.

In Switzerland, asylum seekers, persons admitted temporarily and formal refugees are entitled to social assistance if they are in need. They receive a minimum subsistence income and are insured against sickness⁷⁸. The Confederation pays the cantons 73 francs per day for the care of young persons. Some cantons may increase this amount⁷⁹.

Social assistance for applicants who are refused permission to stay in the country or are ordered to be deported is reduced to a minimum. Since 1 April 2004, under a financial austerity plan, they are only entitled to the aid and assistance to persons in distress that the Confederation has to provide to anyone in the country under Article 12 of the Constitution. Over the first nine months that followed the entry into force of these amendments, 168 unaccompanied minors, two of whom were under 16, were informed that they would not be admitted to the country in connection with their asylum applications⁸⁰.

⁷⁵ Initial report on Switzerland, *op. cit.*, p. 150.

⁷⁶ Notably in Basle Rural, Jura and Thurgau.

⁷⁷ See Federal Refugee Office, *op. cit.*, p. 10.

⁷⁸ See <http://www.asyl.admin.ch/index.php?id=93&L=1>.

⁷⁹ Philippe Tinguely, Interview, 7 July 2005.

⁸⁰ Federal Migration Office, *Non-Admission Monitoring Report*, 3rd quarter 2004, p. II; *Non-Admission Monitoring Report*, 4th quarter 2004, p. 13.

In February 2005, the Federal Justice Office ruled that this legislation was compatible with the Convention on the Rights of the Child⁸¹. It stated that it had to be decided in accordance with the particular circumstances whether the benefits stipulated in Article 12 of the Constitution offered children the care and protection necessary for their well-being, as required by the Convention, or whether additional support was needed⁸². However the question arises as to whether these benefits, which are limited to situations of distress, are not, by their nature, insufficient to meet the Convention's requirements. If so, rather than assessing each individual case the authorities should automatically pay additional benefits for the children concerned. The Confederation should issue clear directives on the subject, failing which unaccompanied minors are likely to receive widely varying forms of assistance, according to the relevant assessments of each cantonal authority.

In the same document, the Federal Justice Office ruled that the necessary care and protection should be provided as a matter of course, without the need for the young persons concerned to request it explicitly. It also stated that cantons were obliged to apply the relevant rules relating to supervision and guardianship, even when the young persons concerned had been refused permission to stay in the country.

These principles are based on the expert opinion of an administrative department, and as such are not legally binding. The relevant authorities, in particular the Federal Migration Office, should now give them force of law.

3.2.4 Education and training

Education and training of unaccompanied minors are cantonal responsibilities. As a rule, they enter primary or secondary school within three months of arrival in Switzerland. However, experience shows that it can be up to a year before some of them go to school⁸³. This is clearly far too long. Unaccompanied minors should be integrated into the school system as rapidly as possible. The Swiss NGO coalition for the rights of the child suggests a maximum delay of two weeks⁸⁴.

Every canton makes education compulsory for young persons, including asylum seekers, up to the age of 15. However, if an asylum application has been turned down at first instance and deportation is possible in the near future, the young person concerned may not be admitted to school⁸⁵.

⁸¹ Federal Justice Office, Rechtsgutachten über die Anforderungen des Kinderrechtskonvention an die Ausgestaltung der Hilfe in Notlagen (Art. 12 BV), 25 February 2005.

⁸² See Federal Migration Office, *Non-Admission Monitoring Report*, 4th quarter 2004, p. 13.

⁸³ Report of the Swiss NGOs: Comments on the Swiss Government report to the Committee on the Rights of the Child, p. 20.

⁸⁴ Report of the Swiss NGOs, *op. cit.*, p. 21.

⁸⁵ Initial report on Switzerland, *op. cit.*, pp. 150 ff.

Unaccompanied minors over compulsory school age are eligible for occupational and training programmes to prepare them for the labour market and improve their employment prospects⁸⁶. In practice, participation in these programmes varies greatly according to canton. In some it is very low whereas others ensure that all unaccompanied minors benefit from some measure of education or training⁸⁷.

Finally, unaccompanied minors may enter an occupational apprenticeship. However, those concerned need authorisation to take part in such training. Certain cantons are more reluctant than others to grant such authorisation, which results in discrimination⁸⁸. Even when these young persons do start an apprenticeship they are rarely able to complete it⁸⁹. Certain employers hesitate to recruit asylum seekers as apprentices out of fear that their training efforts will come to nothing. It has therefore been suggested that unaccompanied minors who spend more than a year in Switzerland and whose deportation is not envisaged in the short term should be entitled to vocational training, which they can complete without restriction⁹⁰.

3.2.5 Asylum hearings

When it is considered likely that a young applicant has the requisite capacity for understanding (Directive 23.2, para. 3.4.3), he or she will be interviewed by the immigration police on the reasons for the application. Swiss law does not provide for any particular grounds relating to minors. Like any adult, applicants must show that they are likely to suffer personal persecution in their country⁹¹. This means, for example, that the individuals concerned are active members of a political organisation and that their activities place them directly in danger. These conditions are rarely met in practice⁹².

⁸⁶ *Ibid.* P. 151.

⁸⁷ Federal Refugee Office, *op. cit.*, p. 11.

⁸⁸ World Organisation against Torture, *op. cit.*, p. 29.

⁸⁹ Federal Refugee Office, *op. cit.*, pp. 11 and 19.

⁹⁰ Report of the Swiss NGOs, *op. cit.*, p. 21.

⁹¹ See Section 3 of the Federal Asylum Act:

Definition of the term refugee

Refugees are persons who, in their state of origin or most recent country of residence, are exposed to serious harm or have good grounds for fearing to be so exposed because of their race, religion, nationality, membership of a particular social group or political opinions.

Serious harm is taken to include, in particular, threats to life, physical integrity or liberty and measures that entail unbearable psychological pressure. Account should be taken of reasons for flight pertaining specifically to women.

⁹² Rossel L., "Protection des enfants migrants: un statut d'exception", *Interdialogos*, no 2, 2004, p. 16.

Those conducting interviews must take account of the "various characteristics of children" (Article 7 para. 7 of Asylum Procedure Order 1). In particular, they must ask about young persons' family relations and their home circumstances in their country of origin (Directive 23.2, para. 3.4.3). Interviews must take place in the presence of applicants' legal representative, support person or other officially appointed representative (Article 29, para. 2 Federal Asylum Act), unless the young persons expressly waive their presence. The Asylum Appeals Commission has also stated that when those concerned are particularly young and have not explained the reasons for their application sufficiently and fully, as a matter of principle this may not be taken as a violation of their duty of collaboration⁹³.

The Swiss NGO coalition for the rights of the child argues that in practice account is not always taken of the particular characteristics of children. The organisations concerned insist that young asylum seekers be interviewed by persons with special psychological qualifications and training that enable them to relate to young persons⁹⁴. They add that the children's credibility, age and level of maturity must also be systematically assessed⁹⁵.

Applicants without the capacity for understanding are not questioned on their reasons for seeking asylum. Instead, information is sought from the young person's representative to confirm the request and clarify the facts. Any close relatives in Switzerland and the relevant diplomatic representations may also be contacted⁹⁶.

3.2.6 Deportation decisions

When unaccompanied minors' applications are rejected, either immediately or after more detailed examination, consideration is given to their deportation. Deportation is only carried out if it is lawful, reasonable and possible (Section 44 para. 2 of the Federal Asylum Act).

Under the Residence and Domicile of Foreigners Act, it is unlawful to enforce a deportation order if it is incompatible with Switzerland's obligations under international law (Section 14a para. 3 of the Federal Residence and Domicile of Foreigners Act). These obligations derive firstly from the Convention on the Rights of the Child. Applicants can only rely on Convention provisions that are considered to be directly applicable. The Swiss Asylum Appeals Commission has ruled that Article 22 simply requires states to collaborate to encourage family reunion. They are not required to carry out investigations to identify unaccompanied minors' parents' place of residence for the purposes of deportation⁹⁷.

⁹³ Swiss Asylum Appeals Commission – legal information service, 1999/2.

⁹⁴ *Report of the Swiss NGOs, op. cit.*, p. 21. See also the Swiss Foundation of the International Social Service, *op. cit.* para. 4.c. World Organisation against Torture, *op. cit.*, p. 28.

⁹⁵ Report of the Swiss NGOs, *op. cit.*, p. 21.

⁹⁶ Initial report on Switzerland, *op. cit.*, p. 151.

⁹⁷ Swiss Asylum Appeals Commission – legal information service, 1998/13.

Switzerland's other international commitments include the non-refoulement principle laid down in Articles 33 of the Convention relating to the Status of Refugees and 3 of the Convention against Torture, and confirmed by the European Court of Human Rights.

It is not considered reasonable to enforce deportation when this could place the person concerned in real danger⁹⁸. In the particular case of unaccompanied minors, the authorities must take account of the child's best interests (Article 3 of the Convention on the Rights of the Child) in deciding whether deportation is reasonable. Under the case-law of the Asylum Appeals Commission, this requires the authorities to take account of the following factors: age, level of maturity, level of dependence, nature and status of the child's family relationships (degree of kinship, closeness and solidity of relations) in the country of origin and host country, characteristics of contact persons (in particular their commitment to and capacity for support), level of current development/training and future potential in this area, level of integration in relation to the length of stay in Switzerland and potential for and possible obstacles to reintegration in the country of origin⁹⁹.

The Asylum Appeals Commission has ruled that it is reasonable to deport a minor if the child's parents living in the country of origin can change their place of residence within that country to a safe place where they can take care of the child¹⁰⁰. The Commission has also ruled that when a child has close relatives in both host country and country of origin, subject to certain conditions such as family unity deportation is not incompatible with the best interests of the child principle, even if living conditions are more difficult abroad than in Switzerland¹⁰¹. Similarly, it has also been decided that unaccompanied minors' financial situation and training opportunities are not the only key factors in determining what is in the children's interests¹⁰².

To throw light on these matters, specific investigations have been undertaken by Swiss diplomatic representatives in applicants' countries of origin. In practice, they appear to have been largely confined to the youngest unaccompanied minors and their reliability has in any case been called into question. In one particular case the Commission refused to take account of information collated by a diplomatic representation, on the grounds that the statements of the persons who supplied it to the Swiss authorities were inconsistent and unreliable¹⁰³. The Swiss Foundation of Social Service International has proposed that this type of investigation be undertaken for all unaccompanied minors who need them, including the older ones, that is right up to the age of 18. It has also proposed that embassy staff be specially trained for such work, at least in countries from which there are a large number of asylum applications¹⁰⁴.

⁹⁸ Initial report on Switzerland, *op. cit.*, p. 152.

⁹⁹ Initial report on Switzerland, *op. cit.*, p. 150. The Commission has also stated that minors can only be deported if they have already been informed at the investigation stage of the possibility of being looked after following their return by a family member or a specialist institution. The guardian's presence at the hearing may be essential, Swiss Asylum Appeals Commission – legal information service, 1999/2.

¹⁰⁰ Swiss Asylum Appeals Commission – legal information service, 1999/24.

¹⁰¹ Philippe Tinguely, Interview, 7 July 2005.

¹⁰² *Ibid.*

¹⁰³ Swiss Asylum Appeals Commission – legal information service, 27 March 2000.

¹⁰⁴ SSI-Switzerland, *op. cit.*, para. 8 b.

The Swiss authorities may also ask certain international organisations, such as the International Committee of the Red Cross or the office of the United Nations High Commissioner for Refugees, to help trace young persons' relatives¹⁰⁵.

Finally, under Section 14 para. 3 of the Federal Residence and Domicile of Foreigners Act, deportation orders cannot be enforced if applicants cannot leave Switzerland or be deported to their country of origin, the country from which they came or another country. This is the case, for example, if the countries of origin or from which an applicant came are unknown or they refuse to accept his or her return.

If deportations cannot be enforced, particularly in cases of serious personal distress, applicants are granted provisional admission to Switzerland (Section 14 para 1 of the Federal Residence and Domicile of Foreigners Act). Unaccompanied minors rarely obtain this type of decision. The authorities frequently notify deportation decisions and then wait till those concerned reach the age of majority before enforcing them. This enables them to avoid the application of special safeguards for young persons¹⁰⁶.

3.2.7 Enforcement of deportation orders

If a deportation order is enforceable, assistance may be offered, such as financial aid or help on arrival. Appeals against deportation may be lodged with the Asylum Appeals Commission within 30 days.

Under the Federal Residence and Domicile of Foreigners Act, foreigners without permission to reside or settle in the country may be placed in administrative detention until a decision is taken on their status. Such detention is for a maximum of three months and may be imposed when, for example, those concerned refuse to reveal their identity, make several asylum applications under different identities or repeatedly refuse to respond to summonses to attend hearings with no valid reasons¹⁰⁷.

When a deportation order is approved at first instance three months' administrative detention may also be ordered, particularly if there are reasons to think that the individual concerned does not intend to comply with the order or his or her application is considered to be abusive (unjustified refusal to present identity documents, refusal to collaborate and so on)¹⁰⁸. Where necessary, such detention may be extended to six months on the authority of the courts¹⁰⁹.

¹⁰⁵ Tinguely P., "Le statut de l'enfant migrant: L'avancée des pratiques. La problématique des requérants d'asile mineurs en Switzerland", *Etrangers, migrants, réfugiés, requérants, clandestins... et les droits de l'enfant?*, Sion, IUKB/IDE, 2001, p. 152.

¹⁰⁶ World Organisation against Torture, *op. cit.*, p. 30. Wata A., *op. cit.*, p. 38. Rossel L., *op. cit.*, p. 16.

¹⁰⁷ Section 13 of the Federal Residence and Domicile of Foreigners Act.

¹⁰⁸ Section 13a of the Federal Residence and Domicile of Foreigners Act

¹⁰⁹ Section 13b para. 2 of the Federal Residence and Domicile of Foreigners Act.

The Act also authorises the detention of minors from the age of 15¹¹⁰.

In practice it is difficult to know how far this legislation is applied to unaccompanied minors. The decision on whether to use administrative detention is a cantonal matter. Some have never applied it to young persons¹¹¹ whereas others do not hesitate use it to enforce deportation orders¹¹².

The legislation has been criticised by numerous organisations and specialists. Several have questioned its compatibility with the Convention on the Rights of the Child¹¹³, while Mr Alvaro Gil-Robles, the Council of Europe's Commissioner for Human Rights, has recently criticised a bill to extend pre-deportation administrative detention to up to 12 months. The Commissioner has stated that such periods would be clearly "incompatible with international child protection standards"¹¹⁴.

Switzerland should at least amend the relevant legislation to ensure that these measures are not applicable to asylum seekers aged under 18¹¹⁵.

3.2.8 Co-ordination and co-operation between cantons

One of the problems faced by Switzerland in dealing with unaccompanied minors is its federal structure. Because of their limited structural and financial capacity, many cantons are ill-equipped to offer them adequate facilities. Jura and Grisons, for example, have had to drop plans to provide special residential accommodation for lack of financial resources. The declining number of unaccompanied minors in Switzerland is an added disincentive for cantons to provide reasonably comprehensive facilities. Alternatives must be found to this strictly proportional cantonal responsibility.

¹¹⁰ Section 13c para. 3 of the Federal Residence and Domicile of Foreigners Act

¹¹¹ Daniel Burnat, Interview 3 August 2005.

¹¹² See, for example, Federal Migration Office, Non-Admission Monitoring Report, 4th quarter 2004, p. 13.

¹¹³ See, in particular, Lückner-Babel M-F., "Les enfants migrants vus au travers de la Convention relative aux droits de l'enfant", *Etrangers, migrants, réfugiés, requérants, clandestins ... et les droits de l'enfant?*, Sion, 2001, p. 85. Grant Ph., *Les mesures de contraintes en droit des étrangers, Mise à jour et rapport complémentaire de l'OSAR*, Berne, 2001, p. 25. World Organisation against Torture, *op. cit.*, p. 32.

¹¹⁴ *Report of Mr Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to Switzerland*, 29 November - 3 December 2004, for the attention of the Committee of Ministers and the Parliamentary Assembly, 8 June 2005, CommDH(2005)7, para. 49.

¹¹⁵ See Swiss Foundation of the International Social Service, *Switzerland, National Assessment*, Separated Children in Europe Programme, October 1999-April 2000, para. 6. World Organisation against Torture, *op. cit.*, p. 36.

The best solution would be for certain cantons to pool their resources to be able to offer satisfactory facilities for unaccompanied minors. Guardianship services and residential establishments could be regionalised and thus serve several cantons simultaneously. Alternatively, unaccompanied minors could be allocated only to cantons with the relevant facilities. This would have to be accompanied by a reapportionment of the financial burden. Finally, as has been proposed by Thurgau¹¹⁶, responsibility for the care of unaccompanied minors might be entrusted to the federal authorities, which would allow practice to be harmonised throughout the country. This would require the agreement of all the cantons.

4. The treatment of unaccompanied minors: issues arising

According to the head of Geneva's children's service, lack of prospects rather than migration as such is what underlies the problem of unaccompanied minors arriving in Switzerland¹¹⁷. The young people need to be offered medium or longer-term projects, either in Switzerland or in their countries of origin. This is particularly important for the youngest among them, as they have the greatest capacity for learning.

The first step is to grant unaccompanied minors in Switzerland a particular legal status. Subject to certain conditions, they could be granted a permit that reflected their situation. It would make them eligible for certain services and facilitate their contacts with family and friends in the countries of origin. Their current status often makes it difficult for unaccompanied minors to maintain their links with their families. They are frequently left to their own devices, with the risks that entails¹¹⁸. The young persons concerned would therefore benefit from a certain social stability, even if their stay in Switzerland was for a limited duration. It would then be possible to offer them a practical programme of activities that would subsequently be of use to them when they returned home.

Identifying the children concerned would also make it easier to rapidly assemble all the information necessary to decide on their return. Assessments of the prospects for deportation should be based on detailed social reports on young persons' living conditions in their own country. Such social reports should be balanced by another report presenting the situation in Switzerland. Comparison of the two should then make it possible to decide, based on precise information, which solution most closely reflected a child's best interests¹¹⁹.

Identifying these unaccompanied minors should also greatly facilitate preparations for their return, particularly by co-ordinating with their family and offering them a reintegration programme.

¹¹⁶ Federal Refugee Office, *op. cit.*, p. 13.

¹¹⁷ Mireille Chervaz Dramé, interview, 3 August 2005.

¹¹⁸ Mireille Chervaz Dramé and Corine Spiess, Interview, 3 August 2005.

¹¹⁹ Christoph Braunschweig, Interview 5 August 2005.

The Swiss Confederation has set up a programme to encourage asylum seekers to return home. The programme, which is operated in collaboration with the International Organisation for Migration, offers an advisory service, individual assistance for returning asylum seekers, training to assist returnees to reintegrate into their countries and structural support abroad. Switzerland has also established pilot reception arrangements in certain countries. Alongside assistance to persons returning to their countries of origin, steps are also being taken to help the local population. The aim is to ensure that those who remain at home are not placed at a disadvantage compared with those who choose to emigrate to Switzerland¹²⁰. Assistance to persons returning home must therefore form part of a wider development co-operation package.

In addition to these general benefits, unaccompanied minors may be entitled as particularly vulnerable persons to additional assistance, such as financial aid or assistance with finding accommodation or securing medical treatment¹²¹.

Nevertheless, many asylum seekers are not eligible for these services. They include ones who have missed their deadline for departure, whose applications are summarily dismissed or whose conduct during the asylum procedure has been "manifestly unreasonable"¹²².

Assistance to returnees also draws on the support of voluntary associations. The Swiss Foundation of the International Social Service, a non-profit making organisation with a network of partners in 140 countries, also tries to assist unaccompanied minors. It offers them advice and practical support to facilitate their occupational and social reintegration in their countries of origin. For example, it may meet the purchase price of tools or equipment that will enable those concerned to generate income. The International Social Service may also give young persons financial assistance to complete their studies in their country of origin¹²³. Where appropriate, this support is monitored by a partner organisation in the country in question.

Finally, Switzerland should co-operate with other host countries in developing ways of preventing risks associated with the migration of unaccompanied minors. In particular, families in the main countries of origin should be made fully aware of these risks. They should make sure that proper arrangements are made for young persons travelling to and settling in Switzerland and that they do so in safety. At the very least, they should not send their children into potentially dangerous situations.

¹²⁰ For more information, see the Federal Migration Office internet site (<http://www.asyl.admin.ch/index.php?L=1>).

¹²¹ See for example the assistance programme for persons returning to Angola: *phase III*, Federal Migration Office circular, Asile 62.13.2.

¹²² Federal Migration Office internet site (<http://www.asyl.admin.ch/index.php?L=1>).

¹²³ For further information see Widmer R., "Comment prévoir un projet de vie pour les enfants réfugiés", *Interdialogos*, no 2, 2004, pp. 25ff.

Conclusion: main proposals

General recommendations

1. What we know about unaccompanied minors in Switzerland is mainly based on those who have passed through the asylum procedure. There has never been a comprehensive national study of their counterparts without permission to reside. The Swiss authorities should therefore undertake a detailed examination of the circumstances of this second category of unaccompanied minors. This examination should be based on comprehensive statistics. Particular attention should be paid to girls who are in the country illegally.
2. This information should be used to draw up a properly thought out and co-ordinated national policy on the reception and treatment of unaccompanied minors without permission to reside. They should be granted a form of recognition to offer them protection and make it possible to meet their needs during their stay in the country and prepare for their return in satisfactory conditions. The policy should be developed in conjunction with relevant voluntary associations.
3. The Swiss authorities should take further steps to ensure that all these young persons of compulsory school age attend school as soon as possible after arriving in Switzerland. This particularly applies to ones who are illegally present.
4. It should also be made easier for unaccompanied minors over compulsory school age to continue studying or enter vocational training. Those who spend more than a year in Switzerland and whose deportation is not envisaged in the short term should be entitled to vocational training, which they can complete without restriction¹²⁴.
5. There should be a co-ordinated cantonal policy on the reception of unaccompanied minors. Certain cantons should pool their resources for that purpose. For example, guardianship services and residential establishments could be regionalised and thus serve several cantons simultaneously.
6. The authorities should establish a proper programme specifically designed to assist the return of unaccompanied minors. They should abandon the practice of waiting for those concerned to reach the age of 18 before enforcing their deportation. Reception conditions in countries of origin should be integrated into existing co-operation and development programmes and developed in conjunction with other host countries concerned.

¹²⁴ Report of the Swiss NGOs, *op. cit.*, p. 21.

Specific recommendations concerning asylum procedure

7. Unaccompanied minors should be assisted by a legal representative throughout asylum application proceedings. The authorities should not make excessive use of preliminary hearings in asylum registration centres with no legal representation.
8. Unaccompanied minors should automatically be the subject of guardianship/supervision measures. Support persons should only be appointed exceptionally and for a limited period. Moreover, their functions and responsibilities should be specified formally to ensure that their role is not confined to assisting young persons in asylum proceedings but also includes any other proceedings under civil law, and other aspects of their reception, care and support.
9. Unaccompanied minors must be provided with specialist reception facilities and accommodation. In particular, they must always be separated from adult asylum seekers. A contact person with special child-care training should be appointed for each young person.
10. The Confederation should lay down clear rules on social assistance for young asylum seekers who are refused entry or are subsequently ordered to be deported. It should require the provision of supplementary assistance in addition to the assistance to persons in distress under Article 12 of the Constitution.
11. It appears that account is not always taken of the particular characteristics of children in asylum hearings. Unaccompanied minors should therefore be questioned by persons specially trained to enable them to relate to young persons.
12. Administrative detention prior to a decision on or enforcement of deportation should be abolished for asylum seekers aged under 18¹²⁵.

¹²⁵ See Swiss Foundation of the International Social Service, Switzerland, *National Assessment, Separated Children in Europe Programme*, October 1999-April 2000, para. 6. World Organisation against Torture, *op. cit.*, p. 36.