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# Disappearing, departing, running away A surfeit of children in Europe?

Study carried out in Belgium, France, Spain and Switzerland on the disappearances of unaccompanied foreign minors placed in institutions.

Founded in 1960, Terre des hommes is a Swiss organization which helps to build a better future for disadvantaged children and their communities, with an innovative approach and practical, sustainable solutions. Active in more than 30 countries, Tdh develops and implements field projects to allow a better daily life for over one million children and their close relatives, particularly in the domains of health care and protection. This engagement is financed by individual and institutional support, of which 85% flows directly into the programs of Tdh.



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# Préface

States Parties to the Convention on the Rights of the Child (CRC) have obligations towards all children within their territories, be they nationals or foreigners, asylum seekers, refugees, migrants, accompanied or unaccompanied. These obligations cannot be arbitrarily curtailed by excluding specific groups of children. *Therefore, the enjoyment of rights stipulated in the Convention is not limited to children who are citizens of a State party and must therefore, if not explicitly stated otherwise in the Convention, also be available to all children – including asylum-seeking, migrant and refugee children – irrespective of their nationality, immigration status or statelessness<sup>1</sup>.*

The *Terre des hommes* study conducted in 2008 and 2009 deals with an issue which receives little attention: the *disappearance* of unaccompanied foreign minors (UFM) placed in institutions. In its General Comment N°6, although broadly open to all issues, the UN Committee on the Rights of the Child does not address this situation. The main value of this document is therefore that it makes visible children who had become invisible, that it compares the situation in four European countries receiving migrant children, and formulates a series of recommendations based on these observations. Without claiming to be exhaustive, and with neither moralistic nor stigmatizing intentions, this study will allow each European state to benefit from an analysis of its domestic situation and to draw inspiration from the recommendations which are universal in scope

Unaccompanied minors make up a specific category, as they are children, they are migrants and they are unaccompanied. This triple vulnerability calls for specific consideration and protection. Article 20(1) of the CRC acknowledges the following situation: *A child temporarily or permanently deprived of his or her family environment (...) shall be entitled to special protection and assistance provided by the State.*

As soon as children experience this substitute protection – and, in the cases studied in the present report, institutional placements – they are entitled to the same quality attention and benefits as all other children in placements, from the time of their admission to the preparation and carrying out of their release. Hence, if a child disappears from an institution, the usual procedure must be instigated, regardless of the child's status or the reason for the *disappearance*: it incurs the liability of the institution and that of the State.

The recommendations presented in this study, which are based on accurate observations and on the individual rights, safeguards and main principles of the CRC (non-discrimination, the best interests of the child, the right to life, survival and development and the right to be heard) constitute a serious approach which manages to avoid oft-criticized efforts based on mere *do-goodism*.

We hope this report will enable those in positions of responsibility to, firstly, understand their difficulties and, secondly, to draw inspiration from the recommendations focused on the appropriate treatment of an alarming situation which cannot be ignored or be allowed to become commonplace.

Jean ZERMATTEN

*Vice-President of the United Nations Committee on the Rights of the Child, december 2009.*



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# Introduction

Since the end of 1999, the *Terre des hommes* Foundation has been involved in the prevention, taking into care and assisted voluntary repatriation of children originating from Albania and found in Greece<sup>2</sup>. After an investigation which lasted several months, the *Terre des hommes* delegation and its partners developed specific transnational operations to combat child trafficking<sup>3</sup>.

During the preliminary phase of the investigation, vague, approximate, and unverifiable information made reference to hundreds of foreign children placed in institutions by the authorities of the receiving countries, who were, however, *disappearing* from these institutions: running away, departing voluntarily or departing under duress of one form or another. Similar fragmented information, gleaned occasionally, reached us from various other European countries leading up to the point when we realised that behind this allusive information probably lay a human reality of a much more significant scale than a phenomenon reported as simply being *marginal and secondary*. There is, however, no justification for the fact that children - who have a limited capacity of discernment, expression and even self-defence where necessary - become socially invisible and deprived of rights and that this situation gives rise, at best, to a feeling of fatality and helplessness and, at worst, to a sense of relief regarding costs and legal responsibilities... both of which disappear along with the children.

If our own children were placed in institutions, for whatever reason, by State authorities, the latter would, in the case of a *disappearance*, initiate immediate and sustained search proceedings in all possible directions. However, concerning unaccompanied foreign minors, the international Convention on the Rights of the Child, ratified by almost all the countries in the world, is very explicit. According to article 22(2), the unaccompanied foreign minor shall be granted *the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason*. Are children who disappear from institutions wherein they were placed for their protection by the authorities subject to the same search proceedings? If not, is it because, being *unaccompanied*, no one will ask for them?

It became essential for us to investigate the reality of this issue, the validity of the terms used to describe it and the legal responsibilities of the various actors concerned, whilst also trying to fathom the extreme complexity of the situation, to determine professional good practice, and to formulate recommendations at legal and institutional levels. At least it can be said that the utmost has been done - a duty-based obligation - even if the success of the proceedings cannot be absolutely guaranteed, given that there cannot be a uniform solution in the face of such a diversity of situations.

Literature around the world abounds with deeply moving tales of migrants, including children, struggling through *assault courses* during which they have sometimes, against all odds, managed to forge their own destiny. For hundreds of children in Europe who disappear from the institutions in which they were placed, the worst is not necessarily a foregone conclusion. But for a few of them the worst is a possibility - and no one will ever know. We are aware of the fact that some children migrate in search of a better future and that they deserve to be supported in their endeavours. Many arrive safe and sound, but this does not mean they do not need protection since *even one* exploited or trafficked child is already one too many. Hence the investigation we have undertaken.

In any case, everything must be implemented so that we may never have to read the following sentence again: *Almost 90% of asylum seekers (...) depart from the asylum territory unofficially. Were it not for this safety valve, the asylum policy would have to support a social and financial burden that it could not withstand. The disappearances - whether we like it or not - fulfil a key role in the management of migratory flows<sup>4</sup>.*

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# Methodology

The investigation was carried out in two phases, from April 2008 to August 2009. The first phase, up to August 2008, carried out from the offices of the Regional Child Protection Project in Budapest, consisted in gathering information about UFM's and more precisely the object of our study: UFM's disappearing from institutions in which they are placed. A desk review and telephone interviews with many professionals in the host countries enabled a first round of information to be collected. Given the desire not to rely too much on published figures and on sometimes conflicting secondary data, a decision was made to verify information through primary research. Thus began phase two: visiting the minors' host countries.

Four countries were selected: Belgium, France, Switzerland and Spain. The choice of these States was prompted by several reasons: all host UFM's and have specialized facilities; some are more or less successful in achieving their work with this group and the comparison seemed interesting; contacts with professionals in these States were good during the first phase and many were willing to cooperate. Researchers met with approximately 90 professionals working with UFM's, e.g.: directors of institutions, educators, guardians, juvenile court judges, prosecutors, police officers, NGOs, researchers, lawyers, child protection workers, ombudsmen, migration services, etc. All in all, access to professionals was easy and interviews with our respondents enabled us to make contact with other actors. Mention must also be made of visits to some Moroccan associations and authorities in the context of the research in Spain and Belgium. We also met some minors in person, respecting at all times the *Terre des hommes* Foundation's code of conduct towards children.

The choice of respondents was not based on a statistical representation of the institutions involved, but rather on the interviews and the questions and issues which needed to be examined in more detail. The interviews were not recorded, note-taking being preferred instead. A translator was present as necessary. The strict commitment made to the anonymity of our respondents, even those who did not request this, enabled them to feel more at ease in discussing their convictions and issues. Hence, no sources are given, the aim of this investigation being by no means to stigmatize a particular country or institution, but to shed light on the existing problems and on the initiatives which can enable those involved to work towards the best interests of these children.

# Acknowledgments

At the request of the Child Rights Sector of the *Terre des hommes* – child relief Foundation, this report has been written by Sofia Hedjam, legal practitioner, based on field investigations carried out between April 2008 and August 2009 in Belgium, France, Spain and Switzerland. Céline Danguin, intern in the Child Rights Sector, also participated in the research. Bernard Boëton, Head of the Child Rights Sector, and Vincent Tournecuillert, Head of the Regional Child Protection Program of Budapest in Hungary also assisted in the supervision of the investigation and writing of this report.

Véronique Dubois (legal practitioner), Marie Wernham (for the English version) and Mirela Shuteriqi, resource person of the Foundation Against Child Trafficking, as well as the team of the Regional Child Protection Program of Budapest also assisted in the writing of this report. We would like to highlight Nathalie Heppell's help through the study she undertook on the same issue in Canada, of which some elements appear in our analysis.

We would like to express our thanks to the 89 professionals and the 40 minors who agreed to meet us and without whom our investigation would not have been possible. Their contributions and accounts make up the heart of this report. Special thanks to V.G., educator in Spain, who permitted us to accompany him during his work and who opened many doors for us; thanks to the children and the educators of the S. center in Brussels for their welcome. Lastly, we would like to thank all our respondents for their trust, advice and availability; they took the opportunity of this investigation to improve the situation of unaccompanied foreign minors throughout Europe.

# Summary

Based on fragmented information gathered over the course of several years, the *Terre des hommes - child relief* Foundation carried out, in 2008 and 2009, an investigation in 4 countries on the *disappearance* of several unaccompanied foreign minors from the institutions in which the judicial or administrative authorities had placed them.

Further to this investigation, essentially carried out through interviews with approximately 90 professionals in charge, the following observations can be made:

- the *disappearance* of children from institutions is not a marginal or rare phenomenon: it is a variable but significant percentage of a given population which can reach 50% depending on the institutions or countries concerned;
- the phenomenon is known at local and regional levels, but the publication of consolidated national statistics is non-existent in the contexts which we investigated;
- the different criteria at local and regional levels for taking minors into care and supporting them, that fact that the services concerned operate in isolation, as well as the variety of terms used (*disappearances, running away, departure without forwarding address etc.*), do not make it easy to determine the scope and seriousness of the phenomenon;
- some of the people in charge of institutions consider the term *disappearance* to be inappropriate, as for some this would call for the initiation of a judicial investigation; a very small minority of these people consider the *disappearance* to be simply the minor's free choice;
- some other people in charge of institutions recognize their direct professional responsibility in the phenomenon which they consider to be even more serious as they realize their helplessness regarding its reduction;
- one of the decisive factors explaining the *disappearances* is how most minors (mainly boys between 14 and 17 years of age) perceive their future prospects once it is decided that they be placed in an institution. What does *being placed and protected* mean to minors who have often been through extreme hardships, who have been forced to reach a degree of adult maturity, and of whom it is required that they comply with the rules and regulations of an institution normally designed for younger minors? There is also their *certainty*, even if they are told otherwise, that this placement is the *anteroom of eviction* back to their country of origin, despite the fact that their projects are usually very clear and that they want to work in the host country;
- a UFM seldom arrives unaccompanied in a host country: if the institution merely executes a judicial or administrative placement decision, and if minors do not see the institution as being in their long term interests, their *disappearance* is almost inevitable. All professionals reckon that most of the *disappearances* occur very shortly after the minors are taken into care by the institution. Some know that they will return to their families, which is not necessarily in itself a guarantee of protection;
- the principle of actively searching for a minor who has disappeared from an institution is very rarely implemented, in contrast to the immediate search which is initiated when a *national* child disappears. This attitude could very easily be interpreted as discrimination.

As a result of this investigation and of the *good practices* observed, the *Terre des hommes - child relief* Foundation suggests the following recommendations:

- A UFM must first and foremost be treated according to child protection legal standards and not exclusively according to an illegal immigration perspective.
- A minor who has gone through many hardships to reach the host country, like all human beings, will alter their situation and ambitions only if they wish to do so, according to their personal perception of their own interests. Everything must be done to enable them to take their development into their own hands, through active and competent listening enabling their aims to be taken into account. Support for the child must be in accordance with General Comment N°6 of the Committee on the Rights of the Child: *the ultimate aim in addressing the fate of unaccompanied or separated children is to identify a durable solution that addresses all their protection needs, takes into account the child's view and, wherever possible, leads to overcoming the situation of a child being unaccompanied or separated*<sup>5</sup>.
- Determining the child's best interests and defining a durable individual solution are multidisciplinary processes which include the gathering and cross-checking of information in the country of origin and, if possible, the active involvement of child protection professionals in the minor's place of origin. Data exchange within as well as between European countries will facilitate support and protection for UFM. This calls for a European harmonization of terminology and procedures for gathering this information.
- There can be no forced return to the country of origin in the search for durable solutions: the rights of the child are enforceable both in the country of origin and the host country. Minors cannot return to their country of origin without the guarantee that their basic rights will be respected there.
- Public authorities must organize coordination between the private and public sectors, notably through networks of associations, in the search for minors who have disappeared, and they must open facilities for taking into care and assisting minors who are victims of trafficking.
- The judicial authorities must implement, where necessary, the right to an identity for all minors and ensure that they have legal representation which is independent from that of the people in charge of the institutions in which they are placed.
- The judicial authorities must consistently undertake search proceedings as soon as a minor is reported to have disappeared from an institution. They must also set in motion all proceedings enabling them to answer any inquiries from the authorities or families in the minor's country of origin by drawing, if necessary, on all available channels and networks of competent associations and institutions, be they public or private.
- What can be seen from institutions with a low *disappearance* rate is that the UFM population is by no means homogenous; contact and assistance must be on a case by case basis, by way of being attentive to their immediate needs and their future plans. Assistance may extend beyond their coming of age and this, along with other non-institutional options, needs to be taken into account. In all cases the child must be properly prepared for departure, including learning how to take care of themselves.
- Ongoing training of staff in institutions on topics such as listening, dialogue, and cultural accompaniment is one of the cornerstones of successful child support and, hence, of a decrease in *disappearances*. It is essential to capitalize on various public and private actors' past experiences and lessons learned, including in the field of preventing violence and maltreatment, of which sexual abuse in host institutions makes up a part.

Generally, *do-goodism* pertains to those who believe in the effectiveness of repression and eviction; realism pertains to those who work in an adaptable and diversified way according to each situation. The *disappearance* of foreign minors from institutions provides a *cowardly relief* sense of satisfaction for the strictly repressive Minors essentially *evict themselves*, which is the cheapest and most effective solution!

## Footnotes of introduction

- <sup>1</sup> *Committee on the Rights of the Child General Comment N°6: Treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6. Geneva, September 1st, 2005. Para. 12.*  
[www.unhchr.ch/tbs/doc.nsf/\(symbol\)/CRC.GC.2005.6.en?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/CRC.GC.2005.6.en?OpenDocument)
- <sup>2</sup> *This program was granted the Human Rights Prize of the French Republic in 2002.*
- <sup>3</sup> *For further details on the “ TACT ” action model, please visit the Terre des hommes Foundation’s Child protection Project in Europe website: <http://tdh-childprotection.org/content/view/337/>*
- <sup>4</sup> *Swiss Federal Office for Migration, L’Afrique en Suisse; Eléments d’analyse et de politique. Bern, October 2002.*
- <sup>5</sup> *Id. footnote 1.*



A person wearing a striped shirt and jeans is walking on a road, carrying a large suitcase. The image is overlaid with a blue tint.

# I

What is an unaccompanied foreign minor (UFM)?

## a) What is a minor?

Children are *human beings* in their own right of less than 18 years of age, whose *dignity* is equal to that of any human being. They have, at this transitional period in their life, a limited capacity, depending on their age and maturity, to *discern, express and defend* themselves. At the same time, they have the inalienable right to develop in a wholesome and durable environment, in a human, cultural and social community, which owes them undivided attention in terms of affection, protection, education and health, given that children constitute its sustainability and progress<sup>6</sup>.

## b) What is an unaccompanied foreign minor (UFM)?

### International standards

The United Nations High Commissioner for Refugees defines *separated children* as being *persons of less than eighteen years of age, who are outside of their home country or of their usual country of residence and who are separated from their parents or from their legal or customary primary caregiver. These children may be alone or accompanied by one or more members of their extended family or by other adults having no family ties with them.*

The Committee on the Rights of the Child in its General Comment N°6 distinguishes between *unaccompanied minors* and *separated minors*.

According to this text, *unaccompanied children (also called unaccompanied minors) are children, as defined in article 1 of the Convention, who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so. The text then adds by separated children are meant children, as defined in article 1 of the Convention, who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members*<sup>8</sup>.

Article 22 of the United Nations Convention on the Rights of the Child states:

*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 (...)*

*2. For this purpose, States Parties shall cooperate (...) 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 granted the same rights as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.*

### European standards

The program *Separated Children in Europe*<sup>9</sup>, uses the general term *separated children*. This expression applies to minors who are *out of their country of origin and are separated from both their parents or from their previous legal/customary primary caregiver*, as well as to those living with members of their extended family. The declaration of good practices considers that while some children are accompanied by adults, these are not necessarily *able or suitable* to assume responsibility for their care.

As for EU legislation, the main measures can be found in the Resolution of the European Union Council of June 26, 1997. This text uses the phrase *unaccompanied minors* as being *third-country nationals below the age of eighteen, who arrive on the territory of the Member States unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively in the care of such a person. The present resolution may also apply to third-country children nationals who have been abandoned after entry into the territory of the Member States*<sup>10</sup>. This text deals with the treatment which should be reserved for such children, notably in terms of reception, representation and asylum.

There also exist additional guidelines which include measures concerning unaccompanied minors<sup>11</sup>.

### National law

• *In Belgium, an unaccompanied foreign minor*' is defined as being *any person under the age of eighteen, unaccompanied by a parent or legal guardian according to the minor's national law, coming from a country outside the European Economic Area and who is in one of the following*



situations: either having applied for the recognition of the refugee status; or not fulfilling the conditions of access to the territory as stated by the laws concerning the access to the territory, the stay, the settling and the expulsion of foreigners<sup>12</sup>.

Young migrants native to States recently acceded into the EU, such as Romanian or Bulgarian children, are no longer included in the UFM legal category.

- In France, professionals use the term *isolated foreign minor (mineur étranger isolé)*, but there is no definition of this category<sup>13</sup>. The French State, however, considers that foreign minors on French territory unaccompanied by a legal representative are potentially in danger due to their isolation<sup>14</sup>. These minors come under child protection governed by the law of

5 March 2007. The phrase *isolated foreign minor* refers to minors arriving without a person holding parental authority but also includes those children accompanied by adults who are not the parents or the guardian, such as a member of the extended family.

- In Switzerland, an *unaccompanied minor* is defined by the right of asylum as being a child who has been separated from both parents and is not being cared for by an adult who, by law or custom, is responsible for doing so<sup>15</sup>.

- In Spain, the term *menores extranjeros no acompañados* is not defined. Here also, some legal measures on foreigners refer to this, by implicitly defining the subject as migratory<sup>16</sup>.

## Footnotes section I

<sup>6</sup> Definition used by the Terre des hommes Foundation in its field trainings.

<sup>7</sup> The term «Convention» applies here to the United Nations Convention on the Rights of the Child (1989), also called the CRC.

<sup>8</sup> *Id.* footnote 1.

<sup>9</sup> This program is a common initiative of the International Save the Children Alliance and of the HCR, whose aim is to «defend the rights and the best interest of separated children arrived or on the move in Europe, by developing a common policy and committing to good practices at national and European level». A Declaration of good practices was hence drawn up in 2004 and includes the definition of a separated minor, p. 2. Please visit the following website: Save the Children, [www.separated-children-europe-programme.org/index.html](http://www.separated-children-europe-programme.org/index.html)

<sup>10</sup> EU Council Resolution of 26 June 1997 «on unaccompanied minors who are nationals of third-countries», art. 1. Please visit the Europa website: [http://europa.eu/legislation\\_summaries/other/133041\\_fr.htm](http://europa.eu/legislation_summaries/other/133041_fr.htm)

<sup>11</sup> Notably Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection, Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities. See the EUR-Lex website: <http://eur-lex.europa.eu/en/index.htm>

<sup>12</sup> Belgian law of 24 December 2002, Title XIII, Chapter 6 «Guardianship of foreign unaccompanied minors». See the following website: Federal public service Justice: [www.moniteur.be](http://www.moniteur.be)

<sup>13</sup> Some references can, however, be found in the Code de l'entrée et du séjour des étrangers et du droit d'asile (CESEDA), art. L 521-4.

<sup>14</sup> Such is the position of Mrs Claire Brisset, former Ombudswoman, who considers, based notably on articles 375 of the Civil Code and L. 22 of the Code de l'action sociale et des familles (CASF), that "any arriving isolated minor must, by definition, be considered as being in danger". Report of the Ombudsman, October 2000. This is also the position of Mrs Dominique Versini, current Ombudswoman.

<sup>15</sup> Directive 01.01.2008 on the asylum procedure in Switzerland.

<sup>16</sup> Namely article 92.1 of the royal decree 2393/2004 of 30 December 2004 approving the administrative regulations of the fundamental law 4/200 on the rights and liberties on foreigners in Spain and their integration into society.





# 2

Taking unaccompanied  
minors into care

## a) Reasons for migration

Many reports concerning UFM's draw on the work of sociologist Angelina Etienne<sup>17</sup> who draws up a typology of the various profiles of unaccompanied minors in France. Therein can first of all be found: the *exiled* category, who flee a region at war or in which they are subject to political or religious persecution from the State; the *mandated*, sent by their family to work and send back money or to study; the *exploited*, victims of trafficking, sexual or economic exploitation. Therein can also be found the *runaways*, who have left the family home or the institution in which they were placed, and finally the *wanderers*, who were already in a street situation in their own country. This work also approaches the case of minors who migrate alone in order to rejoin members of their family. For some of these minors, the stay with the family, or with friends in some cases, is only temporary. It happens that the people who take them into their care no longer want to or can no longer do so, or that the situation is other than what the minor was expecting. These minors are then left to their own devices. Some will enter the legal protection system.

In Belgium, some institutions allowed us to meet young people. During informal individual or collective talks, many of them expressed their wish to stay in Belgium in order to continue their studies or to work.

But in the case of minors mandated to work and send back money to their family, many professionals are concerned about the psychological pressure put on these children. Some are in distress, owing to the fact that their parents place all their hopes in them. The obligations bearing upon these minors render it difficult to implement alternatives for their future, as their goal is to work and gather money quickly in order to send it back to their family.

In Spain, in the case of young Moroccans who make up the majority of the UFM's, it is considered that the migration is of an economic nature. For some associations it is more common to say that these children seek first of all protection and respect of their rights which they do not find in their countries of origin. One of our respondents exposes the situation of minors in street situations in Morocco who live like outcasts, suffer from mistreatment from the authorities and do not have access to the sanitary conditions and resources necessary for their development.<sup>18</sup>

## b) How many are there?

- **The lack of a reliable counting of UFM's** is much criticized<sup>19</sup>. The asylum procedure in some countries is the only way to obtain figures. But these data only offer a partial view of reality as there are UFM's who do not apply for asylum, who may even be in the majority in some countries. Among them, even if some children are present in centers, there exists a grey area impossible to evaluate concerning UFM's who do not apply for asylum and who never benefit from the protection system. These can sometimes be intercepted by chance by the police but *the numbers of cases reflect the work of the police and not the real number of UFM's*<sup>20</sup> present in the country.

It is important to state that some UFM's, after their release from the center, are admitted to another facility and register themselves under a different name. The lack of coordination in the gathering of data makes statistics uncertain. Nevertheless, the figures which were given to us during our investigation are as follows.

- **In Belgium**, according to the UFM Guardianship Service, 1280 out of 1393 reported minors between 1 January 2008 and 30 September 2008 were taken into care. According to this service, Indians arrive in significant numbers but do not apply for asylum.

According to the UFM circular letter, there were 489 cases in 2007 which were registered for the first time and 1322 for which it was a renewal of documents concerning 709 people, including minors who could have been counted more than once.

The Aliens Office lists registers 470 asylum applications filed by UFM's in 2008<sup>21</sup>. The two observation and orientation centers count 1019 arrivals from January to September 2008, and only a proportion of these minors apply for asylum.

- **In France**, according to the French Office for Refugees and Stateless Persons, for 2008<sup>22</sup>, 410 asylum applications concerning isolated foreign minors were filed. It is estimated that the total number of UFM's on French soil is approximately 5000<sup>23</sup>.

- **In Switzerland**, there were 631 unaccompanied minor asylum seekers in 2008<sup>24</sup>. According to some sources 40 UFM's arrived in the transit zone of Geneva airport in 2008.

- In Spain, few UFM present in the territory file an asylum application. They are considered to be economic migrants who do not fulfil the conditions necessary to obtain refugee status.

## c) Who are they?

### Nationalités

- In Belgium, for the circular concerning the stay of unaccompanied foreign minors<sup>25</sup>, the main countries of origin were Morocco, the Democratic Republic of Congo, Afghanistan and Albania.

In 2007, both observation and orientation centers took into care UFM from Serbia, Afghanistan, India, Romania, Iraq, Algeria and Morocco. According to the Aliens Office, in 2008, the main countries of children filing asylum applications were Afghanistan, Guinea, the Democratic Republic of Congo, Russia, Angola, and Cameroon. As for girls, the main countries are Guinea and the Democratic Republic of Congo<sup>26</sup>.

- En France, in 2008<sup>27</sup>, out of 410 asylum applications concerning foreign minors, the main countries are Congo, Angola, Russia, Guinea-Conakry and Sri Lanka.

Asylum applications filed at the border are mostly from young people from the Indian subcontinent and by *Palestinians or persons claiming to be Palestinians* according to the French Office for the Protection of Refugees and Stateless Persons. It is assessed that 60% of them come from Asia, 36.1% from Africa, 2.3% from Europe and 1.6% from Latin America. According to some sources, there is an increase in the numbers of young Chinese arriving at Roissy Charles de Gaulle airport.

There are very few young Roma who go into French centers. When this is the case, these minors depart from the shelter quickly. In the region of Paris, centers take into care minors from Afghanistan, India, Pakistan, and minors coming from the Horn of Africa or the Democratic Republic of Congo. Few young people native to Maghreb are found in this region. In northern France, the minors come from Maghreb, the Democratic Republic of Congo, Iraq, Afghanistan and Pakistan.

In the administrative district of the Bouches-du-Rhône (south-eastern France), mostly young people coming from Morocco and Algeria are present. There are also minors coming from sub-Saharan Africa, Turkey, and China. Professionals acknowledge working very little with the Roma, despite the fact that they do come

across some coming from Romania and Bulgaria during their rounds. According to them, these young people are part of organized networks.

- In Switzerland, for 2008, the main countries of origin of the UFM applying for asylum are Somalia, Nigeria, Guinea, Gambia and Iraq. Girls are mostly from Nigeria, Somalia, and Eritrea. The UFM arriving at the airport mostly come from Gambia, Guinea, India, Sri Lanka, China and Nigeria<sup>28</sup>.

- In Spain, the main countries of origin of the minors in the centers are Morocco and the states of sub-Saharan Africa.

### Age and gender

- In Belgium, in 2008, out of 470 asylum applications filed by minors, 319 concerned boys. There are 55 minors in the 0-13 years age group, 93 minors in the 14-15 years age group and 322 minors are aged between 16 and 18<sup>29</sup>. According to our respondents, the minors who arrive at the airport are younger than average: some are 4 years of age.

- In France in 2008<sup>30</sup>, out of 410 asylum applications concerning foreign minors, 37% were girls, mostly of Congolese origin.

- In Switzerland, for 2008, 82.4% of UFM applying for asylum were boys. The greater majority of these children are aged between 15 and 18<sup>31</sup>.

For information, a study led in parallel in Canada<sup>32</sup> highlights the surprising fact that the age groups of minors applying for asylum are 0-14 and 15-24 years of age. Adolescents from 15 to 17 years old are hence put into the young adult category. This absence of distinction, decisive for the application or non-application of international standards, also worsens the lack of data on these minors and complicates the improvement of their protection through adequate solutions.

### A decrease in age for certain nationalities

Many of our respondents in Morocco, France and Spain are concerned about the decrease in the age of the young Moroccans who try to come to Europe. Some try the crossing as young as 8 years of age.

In the region of Paris, the age of the young Afghans is lower than average, with some children arriving at 12 or 13. For professionals, the limited capacity of discernment of these minors puts them in risky situations: they are a danger to themselves.

Also in Switzerland and in France, a specialized day care center<sup>33</sup> as well as a juvenile court judge<sup>34</sup> note the presence of very young minors from Eastern European countries, some of them Roma. It would seem, notably in Switzerland<sup>35</sup> and in Belgium, that girls are used at a very early age, from the age of 9, to take part in burglaries.

### The «invisibility» of UFM girls in Spain

According to center directors, there are few girls among their residents. Are they present in Spain without benefiting from the protection system? Or do they simply not migrate to this state? According to the majority of professionals asked, girls are present in Spain but stay for the most part out of the protection system. There is no reliable information concerning their numbers. They migrate towards Spain by different means compared to boys. They apparently come with passports, some of which are fake, or illegally by hiding in automobiles, accompanied by a member of their extended family or an acquaintance. The rare cases of girls were reported to us during our visits by a lawyer working for an association<sup>36</sup> who is currently handling the cases of three underage girls: a Ukrainian, a Russian, and a Moroccan.

Different hypotheses are put forth concerning the reasons why girls remain *invisible*: some might be used as house workers, notably Moroccan girls, others for prostitution. Force or deceit might be used to pressurize these girls into migrating. Some are able to escape and then integrate into the legal protection system<sup>37</sup>.

### «Young unmarried mothers»

In Belgium and Switzerland, professionals have brought to our attention some cases of young unmarried mothers among the UFM, aged on average 16 and mainly from Africa. According to them, the assistance and support is not adapted to these girls who are *more vulnerable than others*<sup>38</sup>. On the contrary, in a Belgian facility, special apartments have been equipped in the center to receive the young mothers and their children<sup>39</sup>.

In two other reported cases of former unmarried young mothers, who are now over 18 and have moved into apartments in the center, according to the educational staff there was *at the time, and still is at present, strong suspicion of prostitution*<sup>40</sup>. It must also be said that a *disappearance* was also reported to us.

*«An African minor had just given birth. We contacted the Guardianship Service as we had no news from this young person and we were supposed to take her into care. She disappeared. According to the guardian, she could not have been in danger since she had left behind her personal belongings. According to him, she was going to come back. But this situation is more serious! The perceptions are different. This minor is outside with a new-born child. The guardian made this deduction on their own. However, her telephone was in the file. Each person can interpret the facts and have their own perception of the case.»*

Migrations Service, Belgium, interview dated 13 October 2008. 13 octobre 2008.

## d) How do they arrive?

### Unaccompanied foreign minors do not arrive on their own

Minors rarely arrive on their own, but the adults who accompany them are not legally in charge of them. Minors arriving by plane are often accompanied by traffickers and hold identity documents, sometimes fake<sup>41</sup>. Once the destination is reached, some young people are *forgotten* in public places or accompanied to an association which will take care of them. When a trafficker is involved, the minor will often have to work to repay the trip, risking exploitation. By land, the networks are mapped out by the adults. The journey of migrants coming from sub-Saharan Africa is often perilous. Young migrants also arrive by truck. This is the case of Moroccan minors going to Spain. They hide aboard vehicles which then board a ship to Europe. These children board trucks which are sometimes moving. Fatal accidents occur. The minors also come aboard *pateras*, small makeshift boats. This is the case of the minors coming from sub-Saharan Africa and of young people from Maghreb trying to go to Europe.

*«My name is S. I'm 17 years old. I am an Albanian from Serbia. I arrived a year ago in Belgium. I hid in a truck for 3 days. I paid 2000 euros. There was me and another boy. We had one meter to live in, go to the bathroom and eat.»*

Minor, center for UFM, Belgium, interview dated 15 November 2008

### Itineraries followed by minors

Our investigations show that Moroccans or Algerians transit through Italy and Spain before arriving in France or Belgium. It must also be said that from France and Belgium, some young Roma also go back and forth between Spain and Italy.

According to some directors of centers in Belgium, minors coming from Africa transited through Holland before arriving.

*«There are children who come from Holland and arrive in Belgium such as young African girls for example. They take the plane from Amsterdam and arrive in Anvers. They think they are in Brussels so they can't explain the way they took to arrive when it is necessary to piece the facts together.»*

Director, center for UFM victims of human trafficking, Belgium, interview dated 3 October 2008.

*«I don't know if there is an agency for disappearances in the Netherlands, but I'm sure that if I look at the picture on their website, I will recognize some children who disappeared from there and who are maybe here. I have, for example, two young people who are 9 and 14 years old. They are brother and sister. They came from the Netherlands. It is impossible that their disappearance from the center in the Netherlands was not reported! Nothing is coordinated.»*

Director, center for UFM, Belgium, interview dated 2 October 2008.

## e) Procedure for taking a UFM into care

### Identification and arrival at the center

The young migrants who integrate into centers are identified in various ways. They are intercepted by the police or during rounds made by associations. Some young people come by themselves to the migration offices or to NGOs, sometimes following the advice of traffickers, of citizens and even of other UFM.

- In Belgium, any authority knowing that a UFM is present in the country must inform the Guardianship Service<sup>42</sup> of the Federal Public Service of Justice, the equivalent of the Ministry of Justice. This organ gathers the information necessary for the identification of the

young person. In case of doubt regarding the age, a medical examination is carried out. Should the UFM status be acknowledged, the young person is taken to one of the two observation and orientation centers in which they are then placed.

- In France, the court receives the description of the UFM, often informed by the police. It can ask for a medical determination of age. In case of emergency, it can ask that the minor be placed immediately, either in a foster home, in a hospital or in the Youth Welfare Service. It must refer the matter to the juvenile court judge within 8 days<sup>43</sup>.

In accordance with article 375 of the Civil Code on youth in danger, the juvenile court judge intervenes on the grounds of educational assistance when the health, morality or the conditions of education of a minor are at stake. When the judge decides to grant protection to the minor, they deliver a temporary order for placement, which enables the minor to be entrusted to the Youth Welfare Service and specifies where the minor is to be placed.

Each administrative district provides and funds the protection of endangered youth<sup>44</sup>, be it by its Youth Welfare Service or through associations or authorized public institutions. The Youth Welfare Service supervise the educational monitoring of the minors entrusted to it.

It should be noted that since 2003 there has existed in the region of Paris a state facility for identifying, sheltering and accompanying wandering minors. Associations undertake evaluation and observation by supporting children in a personalized way in health, socio-educational and judicial matters, and also in the orientation towards common law facilities for taking them into care, i.e. those of the Youth Welfare Service. During this time at the shelter, the children are without title as they are not judicially placed; they do not exist according to the law.

- In France, the director of one French administrative district's Youth Welfare Service states that the court systematically entrusts him with minors less than 16 years of age. Above that age, some of them can be placed in a center for juvenile judicial protection in case of crime. The others return to the street<sup>45</sup>.

- In Switzerland, the only legal possibility of stay in the territory is asylum. The minors must first go to one of the four registration and proceedings centers where

their asylum application is registered. The minors are then assigned to a *district* (district), in relation to the size of the population.

According to one of our sources, about one and a half years ago, many Nigerian girls arrived in the waiting area of Geneva airport before having to go to the registration center in Vallorbe. But most of them did not get to Vallorbe. The federal police worked on this. These girls were working as prostitutes in Germany and Italy, the same fingerprints were found, yet the names were different. It is an organization existing in their country of origin. One network was dismantled but girls still disappear<sup>46</sup>.

To prevent this and ensure that the minors reach the center to which they have been assigned, several facilities, in Switzerland and elsewhere, collect the minors and lead them to the center.

Those of them who have not applied for asylum remain in a clandestine situation. A Swiss juvenile court judge told us of the case of young Algerians who return to the street after having been intercepted.

*«We cannot do anything. For the foreigners' police, Algerians who do not hold identification documents cannot be sent back, so they are left on the street. Even if associations for child rights and European authorities criticize us for this, these young people are opposed to educational measures; they do not seek this.»*

Juvenile court judge, Switzerland, interview dated 22 January 2009.

- In Spain, article 172 of the Civil Code<sup>47</sup> defines the *desamparo* or *distress* in which minors can be and the type of protection it entitles them to. The autonomous communities are responsible for child protection and taking UFM into care. In practice, this can vary from one region to another.

### Guardianship

In Belgium, although minors are taken into care by centers, the Guardianship Service does take them into care but does not assign them a guardian if they are from a country belonging to the European Economic Area<sup>48</sup>. As a fact, Belgian law states that minors originally coming from a country of the European Economic Area are not included in the judicial category of the UFM. In order to overcome this lack, the SMEV (Service Signalement des Mineurs européens non accompagnés

en situation de vulnérabilité, which is an information service of UFM in situation of vulnerability) was created in 2007. But for professionals the fact that there is no guardian is a source of difficulties<sup>49</sup>.

*«Minors had more rights prior to the entry of Romania in the European Union. Now, they have no guardian, and where will they stay? The boys commit crimes and the girls are in prostitution. I think this is not normal!»*

Roma cultural mediator, Belgium, interview dated 12 November 2008.

Others deplore the fact that, in some cases, a guardian is not appointed before several weeks. Some of them are not professionals and others manage 30 or 40 cases which makes it difficult to do quality work. One of the guardians we interviewed also confessed that his work was monitored very little<sup>50</sup>.

- In France, according to a center director, the implementation of guardianship is slow work for children who are close to being 17 years old. Additionally, the juvenile court judge has no obligation to refer the matter to the guardianship judge. There is no similar working procedure from one administrative district to the next. A magistrate we met recommends that guidelines be given by the Ministry of Justice. According to this person, the young people need a guarantor<sup>51</sup>.
- In Switzerland, according to article 17(3) of the law on asylum, the competent district authorities appoint a trustworthy person to represent the interest of the UFM in the first stages of the procedure<sup>52</sup>. Then, the district authorities or an association are appointed by the guardianship authorities to act as guardian or trustee of the UFM as defined by articles 360 ss of the Civil Code<sup>53</sup>.
- In Spain, the authority responsible for taking the UFM into care is also the guardian, which sometimes leads to conflicts of interest<sup>54</sup>. In Madrid for example, the *Madrid Institute for Minors and Family* is the appointed authority for taking the minor into care and also their guardian. According to several actors, in some regions, the rules for protection and monitoring are unequally followed.

According to the Ombudsman met in Madrid, striking off the child when he/she has not been heard from for 15 days is illegal. According to him, the only ways



of ending guardianship are: return to the country of origin; the fact that the young person has reached 18 years of age; or if the young person is registered in another autonomous community.

### Daily life in the center

In the centers, a certain number of rules must be followed by the minors. Some centers do not allow mobile phones or visits for a few days; some also do not let the child go out alone during the first 15 days. The rules are applied with more or less flexibility according to the facility or to the young people themselves. For certain professionals, *customized protection* changing according to the characteristics of each minor must be avoided as much as possible.

- In Belgium, after having been through the Guardianship Service, the young person is sent to one of the two observation and orientation centers. These are open facilities<sup>55</sup> for reception and accommodation which receive both minors who seek asylum and those who do not, regardless of where they were intercepted. It must be pointed out that a UFM intercepted at the airport will be taken to one of these centers and has the right to benefit from the same facilities as the other children. The child is granted access to the Belgian territory but holds a fictitious extraterritorial status until their situation is analyzed. The two centers have an internal database to register the children. A photograph of the minor is taken. The center will also work on three possible statuses for the young person: asylum, victim of human trafficking<sup>56</sup>, and those who have not filed an asylum application or whose application has been rejected (UFM Circular 2005).

During the young person's accompaniment procedure, a psychosocial evaluation is done in order to decide on the best way of taking the minor into care. This also facilitates referral to a second phase center best adapted to their needs. In theory the young person can stay one month in the center.

As for the Guardianship Service, it appoints a guardian, in principle a professional, be they employee (of an association) or independent. This person's work consists of finding a durable solution for the minor. They defend the interests of the minor and accompany them through the proceedings<sup>57</sup>.

- In France, depending on the room available and the age of the minor, the young migrants are accommodated in a youth shelter (State or association), a social hotel for the older ones, a foster family, or in a specialized

center. Some of the facilities have internal databases at their disposal to identify the minors.

The Guardianship judge can be referred to for the legal representation of the minor, but this is not an obligation<sup>58</sup>. When the minor is taken into care by the Youth Welfare Service, the guardianship judge can entrust the Président du Conseil général with the legal representation of the minor who will then be handed over to the Youth Welfare Service.

In France, according to the Youth Welfare Service, some of the minors who are admitted disappear, often in the first few days. This is notably the case for Romanian minors or those from Eastern European countries. Some data from 2007 illustrates this and concerns children aged between 11 and 14.

«A first Romanian minor arrived on 14 March and left on 15 March, a second one arrived on 2 May and left on 3 May, a third one arrived on 4 August and left on 6 August, a fourth arrived on 13 August and left on 14 August, a fifth one arrived on 31 May and left on 1st June and finally, a Croatian minor arrived on 6 March and left on 17 March.»

Director of administrative district X's Youth Welfare Service, France, interview dated 16 December 2008.

- In Switzerland, the youngest minors are placed in a foster family, in a UFM center for children up to 18 years of age if it exists, in an autonomous apartment, in a center for adults and even, in some cases, in a nuclear bunker.

- In Spain, each protection service in each autonomous community will be responsible for the reception and guardianship of the minor. In case of doubt of age, the minor will be given a medical / bone examination, decided by the prosecutor for foreigners<sup>59</sup>. The management of the centers in Spain is the responsibility of public entities or is delegated to associations.

In Spain, as in some other countries where management is decentralized, the autonomous communities have the power to take the UFM's into care. Each regional administration is allotted funds according to the number of UFM's taken into care.

According to the Ombudsman, this encourages the same minors to be counted two or three times since the more

minors a center takes into care, the more funds it will be allocated. This leads to incorrect figures.

### Prevention of violence in the institutions

Institutions taking care of children are not safe from risks of violence towards minors and this can be decisive in the wish for a minor to run away, be it that the risks come from the minors themselves, from the behavior of staff or from external contributors.

A case was reported in Spain where sexual services from minors were exchanged for preferential treatment by the center.

*«I cannot speak absolutely safely but there are some very serious things. A program director in a center has sufficient authority in order to persuade the minors to have sexual intercourse with him in exchange for more protection or more resources. I know that a program was withdrawn part of its subsidies further to strange goings-on. But this adult still holds his position.»*

Educator, day care center for UFM, Spain, interview dated 23 April 2009.

A link can be observed with the risks implied by certain practices. Three times during our investigations, professionals admitted to accommodating children in their own home. The first two cases concern social workers taking care of some young people who had no other choice than to accommodate them in their own home in order to not leave them out in the street. The third case is that of a guardian who takes some of his foster children along with his family on holidays. However, some squarely refuse this solution, as they consider that it can be dangerous both for the young person and the professional.

### Case management decisions regarding the UFM

After staying in a first facility, minors have different options: they stay on in the first center until coming of age or they are directed to a center better adapted to their needs. If the minor is close to reaching 18 years of age, they may have the opportunity of getting an autonomous apartment, but there are very few of these.

- **Orientation towards a closed center.** Some minors are oriented towards a closed center. In Switzerland, this is decided by the administrative authorities

for reasons of *migration* (in *ad hoc* institutes, often closed), or by the juvenile court judge when they have committed a crime. In Switzerland, the director of a center said that he sometimes resorts to placing young people under observation in a juvenile jail for 48 hours when they have put themselves in danger or have shown improper behavior. In order to do this, a justifiable request must be filed with the Youth Welfare Service to authorize the transfer<sup>61</sup>. These disciplinary arrests cannot exceed 7 days.

- **Orientation towards a therapeutic center.** In Spain, in the community of Madrid, children having difficulties adapting to a facility are directed towards a therapeutic center without any judicial decision being taken prior to this. In Switzerland, it can exceptionally happen that the minors are placed in psychiatric hospitals for adults. Some professionals ask for the creation of therapeutic centers for minors in which educational and therapeutic measures should be combined.

*«At present, we are taking care of a young person. He does not get along with the team of center X. The team wants to send him to the therapeutic center Y for his behavior to be treated. In this center Y, the young people are given medication and in some cases are tied up. It is a therapeutic center where young people are placed without a prior judicial decision. None of the young people that I know who have been there were released with a diagnosis. Placing the young people there is used as a means of punishment.»*

*We believe there should be a judicial decision prior to placing a young person in such a center. The director only told him: “you are going to be placed in center Y.” It is an administrative decision. The minor ran away and came to see us. We do not know where he will sleep this evening. There was a meeting with the director of the first center X, the director of the therapeutic center Y and the young person to inform him of his new placement. They asked the young person to sign a document, he refused. They wanted the young person’s signature in order to make believe it was voluntary.»*

Lawyer, association for the help to UFM, Spain, interview dated 23 April 2009.

### The abrupt end of assistance at the age of 18

Reaching the age of 18 changes the situation of the UFM to such an extent that this transition is controversial<sup>62</sup>. However, whichever technique is used to assess age, international standards usually recommend that the person be granted the benefit of the doubt.

Indeed, when a person comes of age, guardianship ends and the young person must usually leave the center in which they were previously placed. Many will live in hiding; others might return to a country that some of them have not seen since their childhood. The coming of age limit is a burden both on the minors and on the social actors who hesitate to launch proceedings to take young people into care and educational tasks which could come to an end just a few months later. Professionals deplore the lack of facilities for taking care of and assisting young people who turn 18.

This is notably the case in Belgium, Switzerland and Spain where there are no standard measures for assisting young people over 18 years of age. Some will nevertheless have the opportunity to benefit from accommodation and assistance through associations<sup>63</sup>.

The only way to legalize their situation is then by receiving residency or work permits for adults. Spain grants 3 months to an 18-year-old holding a residency permit to renew it after its expiry. The minor who does not hold such papers can, should he/she fulfil the conditions, be granted an authorization to stay under exceptional circumstances<sup>64</sup>.

In France there is a way to extend the protection of a young person benefitting from child protection services until 21 years of age. The *young adult contract* (contrat jeune majeur) is granted by the juvenile court judge or the Conseil général and suspends, in theory, the risk of eviction. The reform of July 2006 gives young people taken into care by the protection system before reaching 16 years of age the possibility of receiving a temporary *private life and family* residency permit subject to certain conditions (undergoing training, ties with the family in the country of origin, integration into French society) during the year following their coming of age. Minors entrusted to the protection services before reaching 15 can ask to be naturalized French.

## Footnotes section 2

<sup>17</sup> Revue Migrations études, synthesis of the work on immigration and presence of foreigners in France, *Les mineurs isolés étrangers en France (Isolated foreign minors in France)*, number 109, September-October 2002. [www.infomie.net/Pourquoi-partir.html](http://www.infomie.net/Pourquoi-partir.html)

<sup>18</sup> According to this person, these minors could claim the refugee status, «in order to expose the State's lack of action concerning their primary needs». Educator, day care center for UFM, Spain, interview dated 23 April 2009.

<sup>19</sup> «The figures are very different. However, we are not dealing with crates of bananas but with minors and yet the figures are different between the Foreigners' Office, the General Commissioner for Refugees and the Guardianship Service.» Migrations Service, Belgium, interview dated 13 October 2008.

<sup>20</sup> Migrations Service, Belgium, interview dated 10 October 2008.

<sup>21</sup> Belgian Aliens Office, Registrations of asylum applications filed by children (on the day of the asylum application), 2008, website: Service public fédéral intérieur (Domestic Federal Public Service), [http://www.dofi.fgov.be/fr/statistieken/minderjarigen\\_2008.pdf](http://www.dofi.fgov.be/fr/statistieken/minderjarigen_2008.pdf)

<sup>22</sup> Office français de protection des réfugiés et apatrides (French Office for the Protection of Refugees and Stateless Persons), Activity report 2008, p13.

<sup>23</sup> «Droits de l'enfant en France: au pied du mur - rapport alternatif au comité des droits de l'enfant des NU» (Alternative report to the Committee on the Rights of the Child), DEI, octobre 2008. Consulter les annexes 20 et 21, [www.anafe.org/download/mineurs/RA\\_DEI\\_CRC.pdf](http://www.anafe.org/download/mineurs/RA_DEI_CRC.pdf)

## Footnotes section 2 (suite)

- <sup>24</sup> Swiss Federal Office for Migrations, Unaccompanied Minor Asylum Seekers (RMNA) in Switzerland, Comparative chart for 2006, 2007 et 2008, website Federal office for migrations – Swiss Confederation : [www.bfm.admin.ch/etc/medialib/data/migration/statistik/asylstatistik/statistiken\\_uma.Par.0006.File.tmp.pdf](http://www.bfm.admin.ch/etc/medialib/data/migration/statistik/asylstatistik/statistiken_uma.Par.0006.File.tmp.pdf)
- <sup>25</sup> Circular concerning the stay of unaccompanied foreign minors, 15 September 2005. This circular aims, on the one hand, to manage the competences of two «minors» services of the Aliens Office and, on the other hand, to clarify the examination procedure concerning the stay of UFM.
- <sup>26</sup> Id. footnote 21.
- <sup>27</sup> Id. footnote 22.
- <sup>28</sup> Id. footnote 24.
- <sup>29</sup> Id. footnote 21.
- <sup>30</sup> Idem note 22.
- <sup>31</sup> Id. footnote 24.
- <sup>32</sup> Nathalie HEPPELL, Investigation report for the Terre des hommes Foundation, unaccompanied / separated foreign minors in Canada, March 2009.
- <sup>33</sup> Association for support to isolated foreign minors, France, interview dated 8 December 2008.
- <sup>34</sup> Juvenile court judge, France, interview dated 11 December 2008.
- <sup>35</sup> Juvenile court judge, Switzerland, interview dated 22 January 2009.
- <sup>36</sup> Association for the help to refugees, Spain, interview dated 24 April 2009.
- <sup>37</sup> Morante, L. & Trujillo, M. (2007): «Las niñas y adolescentes que emigran solas a España. Las influencias o determinaciones derivadas de su condición de mujeres», Actas del Coloquio «La migración de menores no acompañados en Europa. Los contextos de origen, las rutas migratorias, los sistemas de acogida», Poitiers France 10-11 October 2007, International Juvenile Justice Observatory.
- <sup>38</sup> Migrations Service, Belgium, interview dated 13 October 2008.
- <sup>39</sup> Director, center for UFM, Belgium, interview dated 2 October 2008.
- <sup>40</sup> According to the director of this center, the suspicion stemmed from «the times at which there were comings and goings, the type of clothes which were worn, the new telephones and the men who came into the women's apartments». Director, center for UFM, Switzerland, interview dated 21 January 2009.
- <sup>41</sup> One of our respondents makes the supposition that some airlines are accomplices in the minor's country of origin. Head of the educational service, center for UFM, France, interview dated 28 January 2009.
- <sup>42</sup> The guardianship of the UFM is governed by the above mentioned law of 24 December 2002, which came into force on 1 May 2004. Among its missions, the Guardianship Service contacts the authorities responsible for accommodation, goes about identifying the child, recruits and trains guardians and supervises their work.
- <sup>43</sup> According to a magistrate, some prosecutors wait for the 7th day because they know that the child will leave. Juvenile court judge, France, interview dated 11 December 2008.
- <sup>44</sup> In accordance with article L222-5 of the Code d'action sociale et des familles, young minors taken into care are under the protection and the responsibility of the President of the Conseil Général. The latter, by way of the Youth Welfare Service, is the guardian of all the endangered isolated foreign minors.
- <sup>45</sup> Director of administrative district X's Youth Welfare Services, France, interview dated 16 December 2008.
- <sup>46</sup> Association, Switzerland, interview dated 10 February 2009.
- <sup>47</sup> According to this article «the desamparo situation is brought about by the non implementation, insufficient or inappropriate implementation of the protection duties stated by the laws on guardianship of minors, when they are deprived of the necessary moral and material assistance.»
- <sup>48</sup> It is to be reminded that the European Economic Area comprises of all the States which are part of the European Union to which must be added Ireland, Norway and Liechtenstein.

- <sup>49</sup> «There is no means to orient them, there is no plotted course for asylum. The SMEV is like an empty shell. The nomination of a guardian would be necessary.» Director, center for UFM, Belgium, interview dated 8 October 2008.
- <sup>50</sup> UFM guardian, Belgium, interview dated 13 November 2008.
- <sup>51</sup> Prosecutor, France, interview dated 11 December 2008.
- <sup>52</sup> The notion of a trustworthy person must be understood in a broad sense. It can be a guardian or trustee as defined by articles 360 ss of the Civil Code or another trustworthy person as defined by jurisprudence (JICRA 2006/14).
- <sup>53</sup> As example, for the district of Geneva, the Guardianship Court appoints the Service de protection des mineurs (Child protection service) to be the trustee of the child. In Fribourg also, the Service de l'enfance et de la jeunesse (Service for childhood and youth) is appointed as trustee by the guardianship court. In the Jura, an association fulfills this role.
- <sup>54</sup> For more about conflict of interest, refer to page 40.
- <sup>55</sup> The open centers mission is reception, which can only be done in a climate of trust. They enable foreigners to have some time to allow for integration. Opposed to these centers are «closed» facilities, in which the foreigner has no freedom of movement and cannot come and go at will. For example, Belgian law (A-R 2 August 2002) defines the closed centers as being «places managed by the Aliens Office, equipped to receive people subject to an administrative measure of detention, of being made available to the authorities, or of retention.»
- <sup>56</sup> We will return to the subject of human trafficking later in our analysis.
- <sup>57</sup> They ensure that the law on foreigners is applied and ask for the help of a specialized lawyer. They decide on the child's placement in a foster family or call on the competent authorities to ensure accommodation. They ensure that the UFM receives education and psychological and medical assistance, adequate accommodation and that their beliefs are respected. For more detailed information, please refer to the Federal Public Service of Justice website: [http://www.just.fgov.be/fr\\_html/information/htm\\_justice\\_a\\_z/mena/qf.html#q14](http://www.just.fgov.be/fr_html/information/htm_justice_a_z/mena/qf.html#q14)
- <sup>58</sup> «It has to be proven that the parents are unable to exercise parental authority on the child. If the parents telephone each week, guardianship is not an option as parental authority is well exercised. Some guardianship judges are less attentive, other are overwhelmed by the quantity of work and have no time to really take care of it.» Juvenile court judge, France, interview dated 11 December 2008.
- <sup>59</sup> In 2008, 4771 bone examinations were ordered in Spain. 1325 persons were declared to be over 18 years of age, 1988 were declared to be under 18 and the others are pending. Prosecutor, Spain, interview dated 27 April 2009.
- <sup>60</sup> Ombudsman, Spain, interview dated 2 April 2009.
- <sup>61</sup> Director, center for UFM, Switzerland, interview dated 21 January 2009.
- <sup>62</sup> It must be observed that in some regions of the world, the administrative age does not match the biological age owing to late registration of the birth by the parents, this therefore makes the age approximate.
- <sup>63</sup> We will return to this issue in our recommendations.
- <sup>64</sup> This authorization to stay is stated in the last paragraph of article 92.5 of the aforementioned Royal Decree 2393/2004 dated 30 December 2004.



# 3

## «Disappearances»: the extent is largely unknown and the figures are unclear

No State is in a position to give accurate figures concerning the number of UFM's present on its territory. The same goes for figures concerning the amount of young people leaving the facilities that took them into care. The data hereafter was given to us by the staff of some of the facilities we visited.

### In Belgium

orientation centers, for 2007 the figures are as follows: out of 1334 arrivals, there were 619 *departures without a forwarding address*, almost half of the cases, only 5 of which were considered as worrying *disappearances*. According to a Belgian prosecutor, *there are more worrying disappearances. Nobody is exactly aware of who is in danger as the information is scattered*<sup>65</sup>. Other professionals insist on the need to analyze these figures in order not to be alarmist<sup>66</sup>. It must be said that the majority of departures take place within the first 48 hours.

According to another center visited, second phase in this case, between 2003 and 2006, out of 159 children taken into care, 40 *ran away or disappeared*, meaning a quarter of the cases. The director of this center did not appear to be very sure about the information given<sup>67</sup>. According to another second phase center, among the young people taken into care *some leave but the staff were not able to provide us with figures*<sup>68</sup>.

### In France

according to the first center we visited, in 2008, out of 29 young people taken into care, 7 left.

*«An Afghan stayed 3 months. We assume that he went to Great Britain. An Albanian stayed 3 months. He was to appear in front of the juvenile court judge. We assume that he was over 18 years of age. A girl left after 2 months; she admitted that she was over 18. A Kosovar left before appearing in front of the juvenile court judge, we also assume that he was over 18. A young wanderer from Western Sahara, who had gone through Germany, Belgium, and Spain, went back to wandering. He was in need of treatment. He had a drug problem. He was 16 years old and had excessive behavior; he was putting himself in danger.*

*He had once attempted to commit suicide. Another young person, whom we thought to be Armenian, stayed for 30 minutes before leaving. Lastly, a young Guinean who wanted to learn a trade ran away. He could not stand not being sent to school. The delay for referring him to the juvenile court judge was too long. This young person stayed 5 months, he learned French. He worked a lot, on his own and with the educators. He had ties with his father. One evening he went to fetch some papers. He wanted to go to Saint-Etienne where his father had told him there was a considerable Guinean community. He left in*

*the last week of October.»*

Director, center for minors and young adults, France, interview dated 1st December 2008.

For 2007, another facility which we visited reports 96 *voluntary departures* out of 193 minors taken into care.

*«8 young people went back to their family. For two young people it was the end of being taken into care. 52 Afghans left and 34 minors are wandering children who went back to the street, most of them being from Maghreb.»*

Director, center for UFM, Belgium, interview dated 9 December 2008.

According to another center, between 12 June 2006 and 31 July 2008, out of 83 young people taken into care, 38 ran away on the day following their arrival or during the first few days and 11 young people ran away after 5 days<sup>69</sup>, i.e. a *disappearance* rate of 60%.

According to another center, in 2007 out of more than 123 young people taken into care more than 60% ran away. The majority of them ran away within 7 days<sup>70</sup>.

The head of the educational service of a center in the suburbs of Paris declares that the rate of young people running away is over 50%<sup>71</sup>.

### In Switzerland

it is also difficult to get official figures. The director of the first center which we visited told us he had few *disappearances*. He has had 5 since 2006. According to him, the young people stay because *the supervision is good*<sup>72</sup>. It should, however, be added that a judge for minors, who practices in the same district, thinks that the figures given by the director are underestimated. According to the judge *it must be close to 50% running away*<sup>73</sup>. We were unable to verify this information.

For 2009, the director of another facility recorded 9 *disappearances* for 70 new admissions. According to the director these young people stayed from 14 to 30 days before leaving<sup>74</sup>. According to a social worker of the district's youth services, few of the UFM in Switzerland run away as they are asylum seekers: they await an answer to their application and so stay at the center<sup>75</sup>.



More information was gathered through the Swiss Federal Office for Migration.

«Many UFM's disappear. We talk of disappearances. Out of about 200 decisions made in asylum matters between 1 May 2008 and 31 January 2009, 55 cases of disappearances are still open. The UFM is then struck off the lists. This concerns the ones aged 16 to 18. But to these must be added those who disappear after the decision on asylum has been taken. I would say this amounts to a 40% disappearance ratio.»  
Federal Office for Migration, Switzerland, interview dated 19 February 2009.

It must be added that in Switzerland, some sources which we consider to be reliable informed us of the disappearance of minors from the transit zone of Geneva airport.

### In Spain

we were granted access to very few facilities, making it difficult to obtain figures. The gathered data comes from scattered sources.

According to an association in Andalusia, the rate of runaways from the centers is high<sup>76</sup>. According to a magistrate as well, many young people run away from the center<sup>77</sup>.

In Catalonia, according to an educator who we met outside the center where he works, there is a 50% rate of running away<sup>78</sup>.

According to a center director who was interviewed, out of 47 minors taken into care in 2008, 36 cases were closed, that is 75%.

«3 minors went back to their family, 14 came of age, 10 cases are voluntary absences, 7 minors were transferred, 1 underage girl went to a center for women, 1 minor went to a closed center after committing a crime.»  
Director, center for UFM's, Spain, interview dated 31 March 2009.

## Footnotes section 3

<sup>65</sup> Prosecutor, Belgium, interview dated 14 November 2008.

<sup>66</sup> «A young person cannot be asked to stay. If the aim of the Afghans is to reach Great Britain, they will go. If they don't leave from center X, they will leave from elsewhere. We put the figures into perspective.» Association, Belgium, interview dated 14 October 2008.

<sup>67</sup> Director, center for UFM's, Belgium, interview dated 13 November 2008.

<sup>68</sup> Educator, center for UFM's, Belgium, interview dated 17 November 2008.

<sup>69</sup> Director, center for UFM's, France, interview dated 12 December 2008.

<sup>70</sup> Director, center for UFM's, France, interview dated 12 December 2008.

<sup>71</sup> Head of the educational service, center for UFM's, France, interview dated 28 January 2009.

<sup>72</sup> Director, center for UFM's, Switzerland, interview dated 21 January 2009.

<sup>73</sup> Juvenile court judge, Switzerland, interview dated 22 January 2009.

<sup>74</sup> Director, center for UFM's, Switzerland, interview dated 11 March 2009.

<sup>75</sup> UFM Social worker and guardian, Switzerland, interview dated 13 February 2009.

<sup>76</sup> Association, Spain, interview dated Thursday 15 April 2009.

<sup>77</sup> Prosecutor, Spain, interview dated 27 April 2009.

<sup>78</sup> Educator in a UFM center, Spain, interview dated 9 April 2009.



# 4

What is known of the UFM's  
who disappear?

## a) Which unaccompanied minors disappear?

According to the actors, the minors who stay in the centers are the ones for whom the country where they are was originally the country of destination; the minors mandated to study or the ones fleeing their country because they were in danger there. These young people are described as being the most resilient.

The ones who, on the contrary, leave the center, do so for various reasons: some rejoin their family or their acquaintances, others leave for fear of eviction, other young people cannot stand life in the institution and the rules and regulations there, and lastly, a certain number of minors cannot integrate socially into a group.

### The young people involved in illegal activities

According to a Swiss juvenile court judge<sup>79</sup>, some minors involved in drug dealing or who steal, end up disappearing from the institutions. It seems that the interest shown in these minors is quite low. They are indeed often seen first as offenders before being considered as minors. Some center directors admitted to being relieved by the departure of these young people given the difficulties encountered in their work with them.

Apart from this exception of minors in trouble with the law, the nationality of the children who disappear can sometimes be telling. Our aim is, of course, not to stigmatize one nationality or another. But it is true that most professionals attach much importance to the nationality of origin.

### Romanian minors and in particular Romanian Roma minors

In Belgium, several professionals are alarmed at the fact that no one is concerned about the significant number of Roma minors who leave the centers. They are in fact considered to be accompanied in spite of uncertainty regarding their degree of vulnerability outside or of the identity of the adults who accompany them

According to a French association specializing in the day care of young Romanians (some of them Roma) in 50% of the cases, the parents of the minors taken care of are in France, and the other half is in Romania<sup>80</sup>.

Once they have been received in the centers, and this is mostly the case in Belgium, these minors usually leave during the first 48 hours.

*«No one can say whether they are accompanied or not. No authority wants to say that they are accompanied and no one wants to take this responsibility because these minors might be involved in networks. The authorities could do so but they do not as saying that the young people are safe is a responsibility.»*  
Director, center for UFM's, Belgium, interview dated 17 November 2008.

*«Being with their family does not imply security. No one would say such things about French children. Why then is it done concerning placements? What is the Youth Welfare Service for? Ethical or moral values must not be lost. If an educator says such a thing here, I issue them a warning! For us, all children are equal and this is something we must fight for.»*  
Head of the educational service, center for UFM's, France, interview dated 28 January 2009.

### Indian minors

In Belgium, various actors wonder about what is in store for Indian minors who leave the centers. According to some authorities, Indians do not settle down and yet they arrive in substantial numbers. Few children apply for asylum and they are seldom found after their *disappearance*. Some of them are said to try to reach England. According to a prosecutor, Indian boys are arriving in ever greater numbers and many are victims of trafficking.

*«There was a boy from India. He was 16 years old. There was a police raid in connection with passport trafficking by adults. The young person was to be heard as a witness. Prior to the hearing, he disappeared from the center in which he had been placed. An investigation was carried out and he was rescued. This child is in danger because he has to pay the trafficker upon arrival.»*  
Prosecutor, Belgium, interview dated 14 November 2008.

«The Indian minors work in France. They have French telephone numbers. A young person arrived; he wanted to go to the Sikh temple in X. He went there with an educator. The educator saw him talking with adults who left with the young person. The young people know the temple's address.

At present another young person also wants to go to the temple but I am against it. I explained to him what was going to happen. But some Indians stay. We don't know why. Maybe the settlement of the debt can be postponed and there is no immediate pressure.»

Head of the educational service, center for UFM's, France, interview dated 28 January 2009.

### Afghan minors

From Belgium and France, the minors leave the centers to go to the UK. These minors try to get through by hiding in trucks and sometimes run great risks<sup>81</sup>. For certain actors, these young people choose this destination because the migrants' network is well developed and the community of elders opens doors. Other professionals believe that, on the contrary, the English *eldorado* is a myth. To prevent the minors who succeeded in getting to England from influencing the young residents who stayed in the center, some facilities in Belgium do not allow mobile phones.

Further to our investigations, it seems that the young Afghans' route is becoming diversified: some minors are now said to try their luck in Germany, Sweden, and in Norway.

### Chinese minors

According to a few French stakeholders, some Chinese minors arriving at Roissy Charles de Gaulle airport disappear from the centers in which they were placed. Some children are said to be used in the clothing industry to pay back their journey. Several professionals draw attention to the fact that some of these minors are in a disastrous psychological state (depression, etc.).

«In 2004, a 16-year-old Chinese girl was forced into a car right at the door of the center. She managed to escape and came back. It is believed she was raped.»

Head of the educational service, center for UFM's, France, interview dated 28 January 2009.

«In 2007, a 17-year-old Chinese girl disappears. One day, we get a phone call: I recognize the voice of the young girl, she is panic-stricken. She is calling from a phone booth and I trace the number. I tell her to call a passer-by to translate. She says she was walking around in Paris and that she met a Chinese man who would help her find her father. He made her board a train. She got scared and ran away. We told her to stay on the phone until we came to pick her up.»

Head of the educational service, center for UFM's, France, interview dated 28 January 2009.

### Palestinian minors

From France, young Palestinians, or those claiming to be Palestinians<sup>82</sup>, go on to Germany. They claim to have family members there. However, professionals believe that they go to the Berlin area in order to work on construction sites.

### Somali minors

According to some professionals, the Somalis who disappear from the centers in which they were placed go to Holland from France and Switzerland. Some of them do so to be with their extended family. Most of these children are very young, the cases reported to us concern children aged from 3 to 12.

«Some Somali minors are placed in their family. But how can we be sure that it really is their family? A 12-year-old girl arrived last year. We do not know where she is anymore. We have very little control of the situation. There is no police search because this will lead to nothing. The Somalis keep to clan-secret; they don't give anything away. If a person says they are the father or mother of the child and that we let the child go, it is in order to make room.

The Federal Office for Migration contests the claims but does not wish to pay for the DNA test. Some colleagues make use of private funding to pay for it. But this is not automatic. We trust people; we go to the aunt's place if the child is placed there. The guardian goes to check, they decide themselves on the frequency of their visits.»

District authority responsible for UFM guardianship, Switzerland, interview dated 16 February 2009.

### Moroccan minors

From Belgium and Spain, some Moroccan minors leave the centers and go to Spain or Italy to work. Some journeys to England were also reported to us. In Spain, the minors run away and move from one autonomous community to another.

According to the director of a Belgian center who went to Morocco in order to better understand the reality of the minors placed in his center, his trip made him change his view on these young people.

*«I did not know why these Moroccan children were running away from the centers. Now, I see how things really are. They come to Europe to find work. In France and Belgium, they cannot work, so they go back to Spain. It is a catastrophe for the Moroccans, they have a hard time getting here, they leave their families, they walk, wait, take a boat, get beaten, come back... When they arrive in France, in Belgium, or in Spain, they have gone through a lot. We explain to them that there are rules but they have always been on the move. This is contrary to the way they have lived. They do not adapt. We have a hard time managing them and making them stay, so they leave or ask for premature autonomy.»*

Director, center for UFM's, Belgium, interview dated 13 November 2008.

### Nigerian girls

Professionals are concerned about the substantial number of *disappearances* among girls originally from Nigeria. Even though this topic has already been addressed several times and that people have been arrested in Europe in prostitution networks<sup>83</sup>, our investigations show that *disappearances* still occur. Several cases have been referred to us. Certain stakeholders insist on these girls' state of psychological distress, on their conditioning and on the necessity of protecting also their families which are threatened in their home country.

*«All Nigerian girls run away. They arrive in a pitiful psychological condition. Their family is threatened in their home country. We had a 16-and-a-half-year-old Nigerian girl. She was completely silent and under psychological influence. With the help of the interpreter, we told her we could help her. She neither speaks nor takes part in activities. One evening, she left. There are several similar cases. We take their*

*mobile phone from them. We suspect prostitution. They are psychologically broken. I believe one of the signs of prostitution is that they are unable to create emotional ties, they lower their eyes or look away, they wear provocative clothing, they are psychologically absent, they do not want to take their coats off.»*

Head of the educational service, center for UFM's, France, interview dated 28 January 2009.

*«Concerning Nigerian girls, I know that prior to their departure there are voodoo ceremonies. They are told to keep their mouths shut. It is necessary to go to the country of origin; the young person's history from the beginning must be understood.»*

Association, Switzerland, interview dated 10 February 2009

They are sometimes involved in networks, this point will be developed in further detail below<sup>84</sup>.

## b) Why do UFM's disappear?

The *disappearance* of young migrants from the centers in which they were placed can be explained by several reasons.

### «In search of more respect for their rights»

For some actors, the young people leave because they are disappointed by what they are offered. The answers offered by the protection system do not fit their needs. They hence go in search of better protection, in another area or another State.

### «The centers are not suited to their needs»

According to several respondents, the process for taking children into care is standard and does not take the minor's profile into account. The system for taking children into care is developed in a *European, western style*. The daily life in the institutions is, for example, not always adapted to young people who have lived on the street and travelled and who have to abide by the same rules as the younger ones. Furthermore, though resilient young people do enter the system, it is more difficult for the ones sent by their families, among whom some want to work. The burden put on these minors can be heavy to carry. They are caught between their own wishes and their parents' expectations. Some professionals refer to a *loyalty conflict* to describe this situation.

In some cases, the UFM's will be placed in centers which were not designed for them. These can be centers for national minors in difficulties or centers in which minors and young adults over 18 are together. Some of these centers for adults have prepared a separate part for UFM's, but promiscuity is still too great and surveillance must be increased<sup>85</sup>. In other cases, placing the UFM's in centers for adults is the only solution when centers for minors are overcrowded. Obviously, the risk of *disappearance* increases when minors are placed in inappropriate centers.

Indeed, a few centers still lack accommodation possibilities and qualified personnel; some centers also show a budget deficit. There are some centers where bilingual dictionaries are used in lieu of interpreters.

As far as protection is concerned, several of our respondents reckon that the UFM's entering Europe through an airport are more at risk than the others as, more often than not, they are accompanied by adults who can be traffickers. Some of these children risk being exploited to pay for their trip. Some professionals demand better protected centers for these children who are, according to them, younger than average.

For some stakeholders, there is no doubt about the fact that the high number of *disappearances* is a proof of the inefficiency of the system for taking these children into care<sup>86</sup>.

*«In these centers, the support process is not suited to these young people's needs, to their expectations, or to their habits. Some educators have never set foot in Morocco or in Algeria. As long as we do not understand these young people fully, we will not be able to adapt the process for taking them into care.»*

Association, Morocco, interview dated 13 April 2009.

*«Some minors want to be protected. It's working against the group, so there is a loyalty conflict. We have to be strong, they should not feel neglected. I had the case of a 16-year-old Romanian. I placed him in temporary custody as he was causing trouble. The educator offered him a way out: he went into an association but he was under pressure from his family. His family sent another young person to commit a crime so that he would be able to meet the first and make him change his mind. One day, the educator told him to think of his future, why not go*

*back to his country of origin. That evening, the young person hanged himself. Residency permits should be guaranteed for these young people. They must be guaranteed that they can stay.»*

Juvenile court judge, France, interview dated 11 December 2008.

### «They continue their journey»

Some minors leave the center through which they only transited, in order to reach their countries of destination. They are intercepted as they are on the move along the coasts, in trucks on the roads and in trains. Our investigations show that some young people are considered as being part of a mobile community: this is the case of the Afghans, the Roma, and the Moroccans. For certain actors, the fact that these children want to move on is a right and they therefore cannot be prevented from leaving.

### «They have been faced with a refusal in their administrative procedures»

Several of our respondents highlight the impact on minors of being faced with refusal in regularising their situation. This discourages them and some prefer to leave the center in order to seek protection and try to settle elsewhere. This shows the security that could be provided to migrant minors by granting a legal status in the country.

For information, this is confirmed by a study carried out in Canada<sup>87</sup>, where very few *disappearances* of unaccompanied minors occur. This study indeed shows that, upon arrival, the minors give their true identity and demand refugee status from the authorities. They are then directed towards the competent body where, after a psychosocial evaluation, they will usually benefit from the same social, educational and health services available to nationals. If they are able to do so and know about it, it is in their interest to regularise their situation.

### «These young people have a network outside»

The minors who leave the centers are believed to rejoin a network that they have outside. The question is what should be understood by the term 'network'. Professionals group different people under this term: it can be the young person's family, friends, acquaintances or an illegal work network. The main difficulty lies in estimating if the young person is safe with their network, whose members are often difficult to identify, and which can be both a source of support or a risk.

The danger lies in saying that as the disappeared young person is not alone, they are safe, despite the fact that this cannot be checked. This argument is often used to explain the departure of young Roma from the centers. There is no reason to worry about these young people as they are rejoining to their network.

Additionally, according to several police and judicial authorities, it is now known that some of these young people are exploited by their family, extended family or by other people close to them.

#### «There are no parents to support their plans for the future»

There is no parent with them who can support their future life plans and this could explain some minors' lack of motivation. Some actors put forward the fact that Moroccan young people are rejected by their family to explain why they run away from the institutions<sup>88</sup>.

#### «The minors are afraid of being forced to return to their country»

Over the last years, Spain has repatriated many minors in the absence of safeguards<sup>89</sup>. These repatriations currently do not happen any more thanks to appeals lodged by associations. According to several center directors, each time the police would enter a center in order to arrest a young person to send them back to Morocco, other residents would run away in order to avoid being repatriated as well.

#### «Minors left and came back: what did they do during their absence»

Few professionals in the centers are able to say with certainty where the UFM's who disappeared from centers are. Some of them venture some hypotheses without, however, being sure. It does, however, happen that some young people phone the personnel of the center in which they were prior to running away.

*«We had the case of a young Chechen, an adolescent, who left to live with his people. The guardian traced him and the young person came back. He had gone off to live near Liège.»*

*We left his file open. In order to do this, the guardians have to be tenacious in the search for children in their care.»*

Migrations service, Belgium, interview dated 13 October 2008.

*«At the end of 2005, there were two Romanians in the center. They tried nine times to make their way to England. Each time, they came back famished and filthy. These young people were dragging others into doing the same. Now these young people have work, they have an apartment and are settled in Belgium.»*

Director, center for UFM's, Belgium, interview dated 8 October 2008.

#### «Pressure exerted on the UFM's to leave the center»

In Switzerland and Spain, various means are used to pressure minors into leaving the center. These practices are sometimes called the *pushing out* policy. The *disappearance* of children can indeed sometimes be explained by the behavior of some actors who, by various means, get it across to the child that they should leave the center. This *pushing out* can sometimes also discourage the UFM's before even being taken into care.

- **Conflict of interest.** First of all, in Spain, the fact that the centers obtain public funding is considered to be a perversion for some actors. The more minors there are in a center, the more funding this center obtains; this pushes some centers to count a single minor several times. This also leads to a lack of independence of the center: in certain cases, according to the *Ombudsman*, several associations managing centers denounce some situations. They, do so anonymously, however, for fear of getting their subsidies cut.

In addition, the authority responsible for the minors' accommodation is also the guardianship authority; this gives rise to a conflict of interest. Here is a case which was referred to us and which illustrates this situation well. A Moroccan minor died in a center. It is not known whether he committed suicide. The question is to know whether the mother, who is in Morocco, can take the *Madrid Institute for minors and family* to court as it is the authority responsible for taking the UFM's into care. The mother is separated from her husband but needs the latter's authorization to go to court, but she does not know where he is and does not wish to see him again. He has an uncle in Spain who took care of repatriating the body to Morocco, with the help of an association. The uncle living in Spain wished to go to court but he did not have the authority to do so. Indeed, the only authority which can act on behalf of the child is the institution from Madrid representing the minor and his foster family, guardian



of the deceased minor. But in this instance, legal action would aim at examining the potential negligence of this institution in its activity, meaning that if there is a trial, this institution would be both defendant and plaintiff. There is hence a conflict of interest.

*«The guardian is the administration; it is hence difficult. The responsibility of sheltering and of guardianship should be given to two distinct persons. If we dealt only with the educator and the young person, it would be fine. But in this case, the educator is paid by the guardian; hence there is a conflict of interest.»*

Lawyer, association for the help to refugees, Spain, interview dated 24 April 2009.

*«The service of protection to minors is the State, and the State has its own way of looking at things. It is a question of fair treatment. It is strange that the State supports the minor against another organ of the State. Third parties are not available. There is a problem.»*

Educator, center for adults and UFM's, Switzerland, interview dated 2 March 2009

- **The filter implemented to incite the minor to leave.**  
1) **Incitement to disappear.** According to an educator met in Spain, when a UFM arrives in a center, several obstacles are put in their path in order to discourage them and incite them to leave the center. This professional uses the term *filter* to refer to this. This information was confirmed by several other actors met in Madrid and Catalonia. According to different accounts, encouraging minors to disappear is at its highest in the centers of some communities which offer minors one-way tickets in order to go to another community.

In Switzerland, this type of incitement notably occurs when the UFM's asylum application has been refused. We had access to letters from the Office for Migration to UFM's whose asylum application had been refused asking them to leave Switzerland on an exact date, and to present themselves to the Foreigners' police; should they not do so, the UFM risks measures of restraint. It is difficult to carry out such repatriations but, according to our respondents, these letters must keep on being sent in order to encourage the young person to leave the center.

*«When a minor arrives, there is a filter. In the two centers in Catalonia, it is hard. The young people tell us that there is no hot water, that they are given powder laundry detergent to wash themselves, that they are beaten. They cannot stand this so they leave: it is a filter. If you can stand this for six months, you might be able to stay in Catalonia. The personnel threaten them with repatriation, they get scared and they leave. But since today repatriation no longer occurs, they know that these are lies. It takes us hours to convince them. When the educators know that the young person has a lawyer, they punish him, they toughen the rules. Before, the young Moroccans would leave from Tangiers and go to Madrid and Barcelona; from there they would go to the Basque Country. In the Basque Country, the training is serious, they issue papers. Hence all the young people were going to the Basque Country. But the Basque Country has also started implementing a filter, so the young people go to Asturias, to Galicia, and to Cantabria.»*

*But the filter and the bad practices in Barcelona and Madrid are also showing up there. And yet the Moroccans have plans, in contrast to some Spanish young people, but we are too racist! The young people cannot stand the bad practices so they run away. Then they are denounced in the media which say they steal and inhale cleaning solvents. The government uses the media to alarm the population. They say it is an invasion but this is a lie, there are not that many of them.»*

Street educator, association, Spain, interview dated 9 April 2009.

*«The Geneva District office of the population is said to advise UFM's arriving via the transit zone of the airport in no uncertain terms that they should disappear. They say: "We are going to send you back, so your best option is to disappear". I have already heard this.»*

Association, Switzerland, interview dated 10 February 2009.

*«I have been fighting since last year on behalf of a 14-year-old Yemeni. He does not have any identification papers and repatriation could occur at any time. We are fighting to get him to stay. He arrived in 2006. The Federal Office for Migration wishes to repatriate this minor arguing that nothing goes against it. If the young person wants to go back and if there are adequate facilities in the country of origin,*

we are not opposed to it. The letters from the Office for Migration scare the young person. I accompanied him to Bern for a hearing at the Federal Office for Migration. When we arrived, there were eight Yemeni administration officials facing him. They come to deal with several cases. They are not impartial. Moreover, the young person can hardly speak his mother tongue anymore. They asked him what his father's rank was in the army. A man was showing him the military insignia he was wearing and asking the young person what his father's were like. Then, in front of the young person, they called his uncle in Yemen and handed him the phone to speak to him.

After that, when the educators got the young person back, he was a nervous wreck. And then people are surprised at the young person's inconsistent results in school. In the room, there were also a translator, two persons from the Office for Migration and myself. The Yemenis' behavior was arrogant, inquisitive, absolutely not protective. One of them spoke perfect French but wanted to test the minor's knowledge of Yemenite. To me, this team was the mafia, like in a bad movie! According to the Office for Migration, we have to trust them because they are officials, military men. I was shocked! I was expecting to see only one person, only one linguist. The minor was shivering from the cold throughout the hearing. I took off my jacket to give it to him. At the end he could not stop saying "It's over for me! It's over for me!" over and over again. He did not go to school that afternoon.

All this was done with the Office for Migration's blessing. I did not intervene so as not to make them turn even harder against the young person. They saw Yemenis all day, one after the other. It is a pity I did not have a camera!»

UFM Social worker and guardian, Switzerland, interview dated 13 February 2009.

«There are centers that choose the best minors to stay in the center, to be in the facilities which have good practices. As for the other minors, they pay them one-way tickets to Barcelona.»

Director, center for UFM's, Spain, interview dated 28 April 2009.

«In Catalonia, the minors are paid the ticket to go to the Basque Country» .

Association, Spain, interview dated 2 April 2009.

**2) Non-issuing of the residency permit in Spain.** The filter implemented to push the UFM's to leave is also applied by not issuing the official documents minors are entitled to by law. Discouraged, some of them go and try their luck elsewhere.

In Spain, the migration of minors is considered as being economic migration; very few minors obtain refugee status. In some autonomous regions, the interviewed professionals speak of *institutional mistreatment* by the community which does not issue residency permits after the 9 months of guardianship, as stated by the law. If the community does it, the process lasts until the minor reaches the age of 18. Even though this permit is not compulsory for the minor to live in Spain, in practice, for professional training, there are very few companies that will hire someone without legal status. Some professionals do, however, rely on their personal networks to secure these documents.

In all the States we went to, the importance of legal papers was underlined. Even if these children do not need papers and are legally staying in the country, these documents are a real motivation and enable to children to look ahead and make future plans.

«Without this document, it is difficult to be granted access to training and to have a future in Spain. The truth is that professionals work and invest themselves in these minors and that at 18, they are on the street, they are still here. When they disappear, they are actually still here, in squats. Not giving them residency permits discourages them, they leave the centers. They do not have the opportunity to work. The child tells me there is no point in him going to the woodworking class if he does not have papers.»

Director, center for UFM's, Spain, interview dated 31 March 2009.

**3) Fear of being repatriated/evicted from the centers.**

When Spain went about almost automatic repatriation without safeguards of Moroccan young people, many minors left the center for fear that it would happen to them. On multiple occasions, we were informed of cases when the police would come to the center to pick up children who were to be repatriated. Repatriation was used as a threat, as an intimidation measure. Some directors told us about cases when the minors fled by the roof. From now on, an end is put to repatriation thanks to the work of associations which took legal action.

- **Intimidation of professionals.** In France, Switzerland and Spain, many actors that we met hesitate to denounce situations in which the rights of UFM's are infringed for fear of losing their job or their subsidies.

«We could denounce some situations, but it is not easy for associations, the situation is tense. How will this be used?..»

Juvenile court judge, Switzerland, interview dated 11 December 2008.

«M., who you met yesterday, was a social worker in a center for UFM's. Social workers are put under a lot of pressure. She was given a warning because she accompanied a minor to go see his lawyer in her free time. She had a hard time finding another job after this. They say that it is not right to be with the young people in your free time. What a horrible thing to say! It shows that there is suspicion of trafficking or that we might have sexual intercourse with the young people. We are only denouncing what actually takes place, we have information, we do not say nonsense! We could file complaints, but we are afraid of the results. We need to be stronger than they are, legally, economically, with serious lawyers to assist us and with well documented files and serious cases. We have all the documents and information. To do this is to go one step forward. According to them, we are terrorists. If I file a complaint, I will not be able to find work after!..»

Street educator, association, Spain, interview dated 9 April 2009.

- **Lack of transparency.** In Spain, it was difficult to be able to visit the UFM centers managed directly by the public authorities. Some professionals preferred to meet us outside. This proves to be easier when this task is delegated to associations. The best interests of the children and respect of their privacy are arguments put forward in order to deny us access. According to professionals, it is, on the contrary, to hide the fact that their rights are violated that visits to the centers are limited.

«There is control because the subject is very sensitive. The rights are not respected.»

Director, center for UFM's, Spain, interview dated 1st April 2009.

«A month ago, we receive an internal notice from Headquarters prohibiting investigations on minors in the center. You need an authorization, and even if you ask for it, you will not get it. They cannot see you. The Ombudsman received complaints about this. That was 3 days ago. I guess it will not change. It is only pressure being exerted. The interest is that every time there is an investigation, the result is that the institutions get hit on the head, it is criticism. So now they want to lead us towards 2 centers where it is considered that good practices are applied. But these two centers are not examples according to me.

They choose the best minors to remain in the center for their good practices and the others are paid a one-way ticket to Barcelona.»

Director, center for UFM's, Spain, interview dated 28 April 2009.

## c) What risks are faced by the disappeared UFM's?

### Professionals are unanimous: UFM's who disappear are subject to risks

Even if these children have already covered long distances and have overcome many difficulties, this does not result in their emancipation. On the contrary, they remain not only minors but also foreigners; making them very vulnerable according to our respondents. According to them, everything is imaginable.

Nevertheless, other actors believe these risks are to be put into perspective according to certain factors such as age, maturity, resilience and also whether the young person is within a group or not.

«The risks are tremendous. It can be seen with the minors we follow: some of them are in drug dealing, others are involved in petty crime, others still do odd jobs for peanuts and are exploited. They get by on the street. Of course, they know the street, but they are in danger. They are easy victims. Street children are used by adults in all types of trafficking, such as drugs. A child on the street is in danger. They depend on traffickers to get food, to go to Great Britain.

*They're like birds to a cat. You have to start from there. They are all potentially in danger.»*

Migrations service, Belgium, interview dated 10 November 2008.

*«They are still young people after all. Why are we concerned only about Belgian young people? These young people do not get here alone. There are adults in the background, a trafficker. They can force the young person to go into drug dealing or prostitution to get their money back. We worry about a Belgian adolescent but for a UFM it is harder; they are even more vulnerable as they know nothing. They have been traumatized by their past.»*

Association, day care center for UFM's, Belgium, interview dated 14 November 2008.

*«From a protection and youth welfare point of view, there is a minor wandering without any assistance. So yes, there are risks. Concerning the young person's needs, most of them are skilful. Some children are in need of nothing. This is why I am in favor of vulnerability criteria. If it is worrying, the search is more active. When they leave at 17 years of age, are they in less danger? We don't know; it depends on the person's knowledge.»*

UFM guardianship service, Belgium, interview dated 9 October 2008.

### **Deterioration of physical and psychological health**

Inside the institution, the minors can first of all be faced with physical health problems. These range from minor problems to more serious illnesses requiring medical attention such as scabies or other infections which may have been contracted during the journey.

During the visits to centers, the psychological distress of some young people is striking. According to our respondents, the symptoms of abandonment are strong. Some minors develop disorders such as anorexia and psychosomatic diseases. Others suffer from decompensation. The girls can have gynaecological problems. Some young boys show signs of self-harm.

*«These minors are traumatized; it leads to problems when this is not addressed. Simply being a UFM is to be a victim. The Chinese and the Romanians are sent here to work, they are money boxes. There are*

*also many cases of child soldiers. Can you picture yourself arriving in Beijing at 14 without knowing the language? According to the personnel of a center, a minor can be called healthy when they do not create problems. These minors have undergone traumas in their country of origin, upon departure, during the journey, in France. What kind of family is it that gets rid of its children? What kind of family is it that uses its children as workers? Who can accept this? This is trauma denial, it is mistreatment.»*

Psychotherapist, health center for victims of torture, France, interview dated 28 January 2009.

### **Risks linked to drugs**

It happens that UFM's are faced with risks linked to drugs. Some young people are users. When this is the case, it sometimes happens that some centers orient them towards a specialized association which will take them into care. In France, several cases of inhalation of cleaning solvents among young Moroccans were reported to us. In Spain as well, several of the minors we met during our investigations inhaled solvent during our conversations.

Some UFM's are also involved in drug dealing. Some of the young people engage in this activity while living in a center. This issue came back on a regular basis in our interviews in Switzerland. Many minors originally from Africa, mostly from Guinea, sell cocaine. Often considered as being petty criminals, no specific approach exists to deal with these young people. To fight this trend, professionals use various means. In 2001, a juvenile court judge enabled the dismantling of a heroin trafficking network between Switzerland and Albania thanks to the collaboration of both countries' authorities<sup>90</sup>.

The director of a center for UFM's organized, with a warrant from the judge, a search of the bedrooms done by forty police officers and three sniffer-dogs<sup>91</sup>. Another director in a Swiss institution is aware of some of his residents' drug dealing activities, and that some are engaged in such activities to send money to their family. The director tolerates this situation as long as the drugs do not come into the institution. He believes that some people within the police work in collusion with people involved in the drug business, making the problem difficult to solve<sup>92</sup>.

«We had the case of a 15-year-old Guinean boy. He stayed a few months. He has a brother here. He had a guardian and was an asylum seeker. He travels between Germany, Holland, Belgium, and Spain. He deals drugs, it is obvious. He left for Guinea and then came back. In Charleroi, there are Moroccan minors who are recruited in drug dealing. They sell on street corners. There was police operation last year. This still exists but (only) concerns a small number of children.»

UFM guardianship service, Belgium, interview dated 9 October 2008.

«These young people arrive from Africa, go to UFM centers, they have papers and everything is ready for them to go to work. But there are nuances. They are caught up by their fellow countrymen. I had the case of a young African; he was aged between 16 and 18. He was judged for a transaction with cocaine. He told me "it was an accident, it only happened once. I promise I won't do it again".»

Everything is going well for him, he is cooperating, and he is doing some training. There are several possible scenarios. Some of them are probably led to believe in better future prospects. There are young people who were already engaged in drug dealing over there. Some of them get caught up in it here.»

Juvenile court judge, Switzerland, interview dated 22 January 2009.

### Risks linked to delinquency

UFMs can be involved in various types of petty crime. Some actors, when faced with the difficulties of working with these children, admit that they are relieved when these minors disappear from the center, and recommend as the main solution that these young people be repatriated to their country of origin.

It must be added that violence among the young people within the centers as well as outside has been reported to us. Some educators have had the police intervene to ease the tensions. One of the young people met during our investigations had bruises the second time we met him. His nose and a few teeth had been broken by other young people outside the center.

«It is suspected that some UFM's do not come in search of asylum but to commit offences. This is the case of young people coming from Georgia, Moldova, Russia and Latvia»

Juvenile court judge, Switzerland, interview dated 22 January 2009.

«These young people are "manufactured". They are pushed towards the margins of society and engage in illegal activities. They end up in prison and this costs ten times as much to the community. It is a waste and it is counter-productive. It is mind-blowing. It is not political, there is nothing behind this. It is meant to be dissuasive but it does not work.»

Director, center for UFM's, France, interview dated 10 December 2008.

«In 2006 or 2007 a young person got killed. He was a young Algerian close to 18 years of age. He had taken on his little brother's identity. He got caught up in a fight.»

Director of administrative district X's Youth welfare services, France, interview dated 16 December 2008.

### Exploitation under duress in illegal activities

• **Burglary and begging.** Several Swiss authorities reported the use of young Russian boys that were sent to steal luxury items.

Similarly, in France, Switzerland and Belgium, many professionals find that Roma minors from Romania and the former Yugoslavia are used by adults to commit burglary. This concerns young girls in particular. Occasionally, young Roma go to the centers, but do not stay long. Minors are also used for begging which they practice alone or accompanied by adults.

«Among the Roma of the Former Yugoslavia, minors are used by parents for burglary. Burglaries are primarily committed by girls aged 9, 10, 12. The youngest are 5, 6 and 7 years old. We know that there is impunity. Some have gone to court. Sometimes some minors are placed in a closed center, but are never visited by their parents. Parents leave children in closed centers to conceal their mafia activities.»

Mediator, association, Belgium, interview dated 12 November 2008.

«As regards Roma children arrested by the police on charges of crime, those under 13 are released and return to the street. Those over 13 go to the Prosecutor who refers them to the juvenile judge.»

Juvenile court judge, France, interview dated 11 December 2008.

- **Undeclared employment.** Outside the center, some minors are employed in undeclared jobs for which they are often underpaid: most of them, however, lack any other opportunities. They are unaware of their exploitation and the violation of their rights, which becomes clear when the young migrant has to pay back his or her travel fees to the trafficker.

«I received a 16-year-old Moroccan with his guardian. He wanted to work to send money to his family that was poor. He was persuaded to study until he was 18 and was told that he would then be able to help them. He agreed and went to school. He was motivated. Then a few months later he disappeared. The guardian got in touch with him again. He reappeared after a while. He had worked in a snack bar. He was put up in a cellar. He realized that this was not right. Things had come to a head at the center and on top of that he had learned that his father was hospitalized, so he went off to work. He found a job, but in inhumane conditions. He returned to school and now he has the support of everyone.»

Migrations Service, Belgium, interview dated 10 October 2008.

«A young man had been working for 7 years in a workshop for a boss who gave him nothing. He was paying back his airfare. I jokingly asked him if he'd flown by Concorde.»

Psychotherapist, health center for victims of torture, France, interview dated 28 January 2009.

### Sexual exploitation

Prostitution has been repeatedly identified by professionals as a risk children face after *disappearance*.

In Spain, certain absentee girls from the centers are recruited into networks of prostitution<sup>93</sup>.

Cases of male prostitution have also been reported among young Moroccans and Romanians, and a few isolated cases among Afghan boys. Some professionals

believe these children prostitute themselves, and there are no exploitation networks.

An association that specializes in assistance to young Romanians<sup>94</sup> notes an increase in prostitution in Paris. Some children are very young; the youngest boy that we met was 13. Clients of the boys are men of a certain age who offer the children, in exchange for sexual services, accommodation, food or holidays. An educator from the association found that some of the clients are the same for several months. According to a juvenile court judge<sup>95</sup>, there is no real political will to change this situation. One solution, implemented by this organization, is to keep children out of Paris in a secret provisional facility which requires their consent and confidence.

Let us be reminded of the case reported in Spain where sexual services were exchanged for benefits from the center for UFM's, between certain minors and a staff member<sup>96</sup>. Many directors of institutions face the problem of detecting the signs indicating that minors are involved in commercial sexual exploitation. Indications are often related to the minor's living standards, such as new clothes or new possessions such as a mobile telephone.

«There is no network behind it, it is among friends. Some are gay. There is a 17-year-old, who in every holiday period, came for this alone. Prostituting himself. He is beautiful, which creates competition.»

Association, France, interview dated 8 December 2008.

«The social services in charge of prostitution will contact me to say they have discovered UFM prostitution rings, Romanians or Former Yugoslavians who had been reported missing several years ago. This concerns especially girls, to a lesser extent boys.»

Police superintendent, Belgium, interview dated 7 October 2008.

«There was the case of a 16-year-old boy from Liberia. His teacher told him she'd seen him in the street with a white man in fine clothes. She asked him if he was prostituting himself. He became angry and that ruined our work. We are more open about this subject. It's quite new to us.»

Director, center for UFM's, Switzerland, interview dated 25 February 2009. October 2008.

«Detecting victims is difficult. Everyone should be on their guard, but they aren't. The centers, guardians and everybody involved must be careful.»  
Migrations Service, Belgium, interview dated 10 October 2008.

pays money to places of accommodation in exchange for information or services. Also, among minors, older children will abuse the younger ones.»  
Director, center for UFM's, France, interview dated 10 December 2008.

### Recovery of minors by adults for purposes of exploitation

It appears that certain adults – whether a relative or a person whose intentions are difficult to identify – will try to recover or gain access to minors. These adults intervene before the young person's arrival at the centers or during the young person's stay at the institution.

In France, an official of a center for UFM's strongly suspects that certain lawyers are paid by networks of traffickers in order to remove children from the waiting area of airports when arriving by air.

«Adults will phone the center before the young people arrive. It is the lawyer who tips off the traffickers. The lawyer is an accomplice. He's probably raking in 1500 euros per meeting. We try to challenge them.»  
Head of educational service, center for UFM's, France, interview dated 28 January 2009.

«There are single, well-intentioned pedophiles interested in young people. When I worked at the X center, adults would hang around the center, wanting to help young boys and girls. They were Swiss men. They said they could accommodate them in their homes. Some young people, attracted by the money, offered sexual services. This still exists, it has not changed. When I'm asked how they could help, I tell them that the best thing they can do is move away from the shelter and leave the young people alone. At our meetings, colleagues from other districts tell us similar stories.»  
UFM Social worker and guardian, Switzerland, interview dated 13 February 2009.

«French men of a certain age hang around the young people. We see them and ask them to leave. There are adults who are members of the police. Others are pedophiles on whom the police turns a blind eye. There is an interpreter who works for the police. He brings us UFM's, telling us to take charge of them. We have doubts about his sexuality. He is about 30. He

### Trafficking in human beings

Multitudes of children who migrate end up as victims of severe forms of exploitation. The lack of protection on their arrival in Europe – which gets worse when they leave the centers – the lack of money and the presence of adults interested in them, significantly increase the risks of a minor becoming a *victim of exploitation*.

At the same time, only some of the migrant children are *victims of trafficking*.

*Trafficking in persons* with respect to minors means *the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation*<sup>97</sup>. Unlike adults, the use of certain means (threat, use of force, etc.) is not a prerequisite in the case of minors; rather, the relative ability of discernment and the protection of minors is a means in itself, employed by traffickers. It suffices, therefore, to prove the action (recruitment, etc.), and purpose: exploitation.

Children may be trafficked for a variety of purposes, all defined as being of *exploitation*. *Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.*

- In Belgium, this issue has been addressed for some years now. Centers have been set up for the reception and care of victims. Specialists hold jobs in the migration services. A special legal status has also been created for victims of trafficking. It should be noted that very few children get this status, so stringent are the conditions for obtaining it. The child must, among other things, participate in the police investigation and provide information that will help the pursuit of exploiters.
- To those who claim that Switzerland is too small to be affected by the problem of trafficking, experts will argue that it is not a territorial issue, but a transnational problem. Quite possibly these children are recruited and abducted in Switzerland, to be sent to a place of exploitation abroad<sup>98</sup>. It should be added

that Switzerland still lacks specialized structures for the protection of child victims of trafficking.

- In France, an inter-departmental working group was set up on 2 December 2008 for *the protection and taking into care victims of human trafficking*. The legal tools are available, but the victim support must be improved as well as the possibility of obtaining a residence permit. No legal proceedings have been initiated.

- In Spain, the issue of trafficking receives very little attention. Only a few NGOs are beginning to raise awareness on the issue.

Consequently, it appears after the survey that among absentee UFM's from host institutions, some are picked up by trafficking networks. Several law enforcement, judicial, administrative and specialist centers have reported cases of trafficking to us.

*«Trafficking has its risks. There are several cases. There are young people who are trapped in a brothel with adults. There are also young people who leave the place of exploitation and go to the police. There are also children who pass through our center. The story that these kids are under police control is unclear. During their stay here, they will tell stories about trafficking. Or the young person may have certain telltale attitudes like hiding and not wanting to leave the center. So we go deeper into the matter with a center specialized in victims of trafficking.»*

Director, center for UFM's, Belgium, interview dated 8 October 2008.

One might cite, in particular, the case of young Nigerian girls who keep disappearing, and about whom some professionals have great concerns.

*«Last week, two Nigerian girls arrived. They said they were adults. They left. They are part of a network.»*

Director, center for UFM's, France, interview dated 9 December 2008.

*«About 6 months ago, three Nigerian girls were assigned to the District of X as UFM's, but they seemed to be adults. They were placed here. They disappeared within 2 days. To me there is a network behind it. They had the same bags even though they had not arrived in the same registration centers. They equip these girls.»*

*They left without their belongings.»*

Director, center for UFM's, Switzerland, interview dated 21 January 2009.

*«This is a photo of a Nigerian girl who disappeared last year. She was born in 1994. She stayed a month and disappeared. According to the Federal Office for Migration, she was caught up in a prostitution ring. There was an appeal from the federal police. There were suspicions about the existence of a network trafficking girls for prostitution, in which she may, or could have, become caught up. I authorized a meeting with the girl and the police on 13 July, and on 15 August she was reported missing. This girl is extremely distressed, she speaks little, has the attitude of a servant, not looking at me, bent down. She had been broken in.»*

Social worker and trustee, Switzerland, interview dated 13 February 2009.

One might also recall the questioning of young Guineans involved in drug dealing in Switzerland. There is a lack of knowledge in this area: were these children recruited from home? Were they lied to about the activities in which they would be engaged in Switzerland? Were they promised a better future? Are they permitted to leave the network? The answer to these questions would help confirm instances of trafficking in some cases.

As we have seen, the vast majority of professionals are in agreement with respect to the various risks faced by minors who disappear. The cases cited above have been noted by these same professionals.

What then - considering the relative ability of expression, discernment and self-defense of these children and considering the risks they face - does the concept of *voluntary* departure mean in the context of leaving an open center? How can young people - when often it is not up to them even when they go to bed - nevertheless *decide* to leave the institution? What *options* do minors actually have, when the choice is between taking the risk of working illegally, or returning to the country they have fled from?

While the *disappearance* of a young English girl shook up the whole of Europe, we are aware of dozens of minors disappearing without anyone being able to tell where they are. Given the difficulty of working with this public context, the phenomenon tends to be trivialized. Our job is to try to establish who is



responsible for these children and what actions can be taken to mitigate this phenomenon.

## d) The terminology used

We now know that in France, Spain, Belgium and Switzerland, hundreds of unaccompanied foreign minors placed in centers by public authorities, are no longer physically in these establishments, without having the slightest idea where they have gone. It is a social reality that has never been challenged during our investigations. However, there is no unanimity of opinion on the term used to describe this situation, due to the issues relating to the terminology employed.

### Terms vary according to different factors

- In Spain, a large majority considers that the departure of a child from a center is a voluntary act. Consequently, they use terms such as *voluntary relinquishment of being taken into care*, *voluntary absence* or *refusal of the protection system*. Other terms include *departure from the center* or the *mobility* of the young people. In Spain, the term *disappeared* is seldom used. Some will talk about *poor response of the center* to describe this reality, convinced that if the response was good, children would not leave. This term would appear to refer more to the cause of departures

- In Belgium, France and Switzerland, the terminology varies according to the circumstances of each case.

The directors of both Belgian observation and orientation centers use the term *departure without leaving an address*. The term *disappeared* will only be used if the departure is considered worrying. Others use different terms, depending on the profile of minors. Some believe the term *disappearance* cannot be used in the context of wandering minors<sup>99</sup>.

- In France, the terminology varies from one center to the other. According to the circumstances, we speak of *voluntary departure*, of *minors lost from sight*, *left without leaving an address* or *disappeared*. According to a juvenile court judge, it all depends on whether the child is in an emergency shelter or has been placed in a child relief facility. In the first case, the judge spoke of *evaporation*, saying he believed these children are without a title and legally do not exist. If the child leaves after he or she has been placed in a facility, the judge uses the term *runaway* in which case he can *in theory issue a search warrant, but no active search is carried out*

*in practice, except for rare cases*<sup>100</sup>. It should be added that whether or not a minor's departure is voluntary is merely a circumstance of the *disappearance*, and it has no bearing on whether or not the young person is in danger outside of the facility.

### For whom the term *disappearance* should not be used

The terminology often varies depending on the position of the interviewee. The higher the position of responsibility one holds in the support of the minor, the less frequently the term *disappearance* is used.

- *Because disappearance involves an investigation*: according to several actors, including the legal world, the term *disappearance* cannot be used in the case of UFM's, because the term has a legal meaning and its use would result in the initiation of an investigation and, in consequence, a state responsibility. However, according to these people, the fact that children move from one center or one State to another is not acceptable.

- *Because it is known where these children are but they are not recovered*: according to some educators, the term *disappearance* cannot be used because the authorities know where these children are, and they believe they could be easily found. Some are on the street but are nevertheless not searched for.

«These children leave to seek better protection. But this is not a disappearance because the centers throw them out, but the fact they are not searched for is abuse by omission! It would be hypocritical to talk about disappearance because it is easy to find them. They remain visible because they are on the street.»

Street educator, association, Spain, interview dated 10 April 2009.

### For whom the term *disappearance* is legitimate

As early as 2000 Ms. Claire Brisset, former *Protector of Children* for the French government, expressed her concerns and stressed the need for a guardianship system to mitigate the phenomenon of *disappearance into thin air of many children, that is, unfortunately, common practice at the moment*<sup>101</sup>.

Several of our respondents believe that in the absence of news about young people and certainty of their

whereabouts, we must consider them as disappeared. These people define *disappearance* as follows: the absence of the young person, the fact that one is unable to contact a person who is no longer at the place where they lived, the fact that the guardian of law no longer knows where the absent person is and the fact that the minor is no longer in contact with his or her parents or home.

*«I'm talking about disappearance. Any child who is not present is disappeared. That sets off a procedure, police work and that of the prosecution, in an effort not to lose sight of the disappeared child. I believe one needs to be precautionary. We do not know what is behind these disappearances.»*

Migrations Service, Belgium, interview dated 10 October 2008.

*«Once we interviewed a young girl. We realized that something was wrong. After one of our appointments, she was approached by a man who told her he had a room for her and she did not need to go to the center. We made her leave by the back door. She never left this man's apartment. She cooked. The man was Belgian. I was criticized for taking too many precautions, but sometimes we were right. The directors of the centers talk about departure without leaving an address, that they are not legally responsible, but they do in fact feel responsible. These departures are failures for them. The network is not strong within the centers. They need to be reconsidered.»*

Migrations Service, Belgium, interview dated 13 October 2008.

### The use of the term *disappearance* as a precautionary principle

On the basis of the findings of our investigations, we choose to speak of *disappearance* in cases where nobody has any information on the whereabouts of the absent child, and we do so as a precautionary measure. While current tendencies advise against being alarmist in the absence of information, given the evidence gathered about the situation of some minors, we take the opposite view. Every precaution must be taken to deal with the cases of disappeared minors, since even if the worst is still not certain, it is nevertheless a possibility.

When minors have already travelled hundreds or thousands of miles, it is only normal for them to continue their migration to the state of their preference. Except

that this time, these movements and the risks they involve occur within our territories. It is a social reality that governments can no longer continue to ignore. When a Belgian, French, Swiss or Spanish child aged 8, 10 or 15 has disappeared from home, has anyone heard the parents or the authorities say there was no need to worry? So why accept such absurdities in connection with a foreign minor? Whatever their nationality, we must consider absent minors to be potentially at risk, as long as we do not know where they are. Using the term *disappearance* for minors and taking every precaution to find them are legal and moral obligations.

*«We and all adults who work with UFM's must have the reflexes of parents, even if we remain civil servants. We cannot have the blinds down, we must go further. We must ask ourselves, if it was my son, how would I react? One must beware of clichés. But it depends on the ethics of where you work. Social workers are perhaps freer. These kids should not have too much freedom, there should be limits. It is a question of educating a child.»*

*There must be limits and one must behave like a parent who takes every precaution for his child. You are right to worry. And yet I think we are not anxious enough! The disappearances are becoming normal, and it should not be like that.»*

Migrations Service, Belgium, interview dated 10 October 2008.

## e) What is the procedure after the disappearance of a UFM?

### Reporting to police

- In Belgium, the majority of the centers surveyed report the runaway to the police. Some wait for a period of 24 hours or more before sounding the alarm. This is done immediately if the *disappearance* is considered worrying. The police then inform the prosecutor who decides whether it is or not a worrying *disappearance*. It should be noted that several authorities deplore the fact that the guardian does not report the *disappearance*<sup>102</sup>.

- In France, the centers visited also report *disappearances* to the police. According to some, such reporting is sometimes omitted..

- In Switzerland, according to several authorities, reporting to the police is not automatic. It depends on whether or not the educational team considers the absence to be worrying. The center enters the absentee in the asylum file of the Department of Population, where the absentee is registered as having *left without leaving an address*, which has the effect of suspending the benefits to which the young person would be entitled.

- In Spain, some centers also report minors to the police when they disappear.

### Entry in the European register of wanted persons

In some cases, a child can be entered in the European register of wanted persons, especially if the *disappearance* is considered worrying. Absentee young people are occasionally found during police controls.

### Cancellation

Cancellation, a purely administrative act, usually entails the termination of search, and amounts to a kind of denial of the existence of a minor.

- In Switzerland, according to the Federal Office for Migration, the disappeared minor is removed from the files after a certain period.

- Similarly in France, according to the director of a centre, in *disappearance* cases, the centre has to notify the Youth Welfare Service which delete the young person from the files.

- In Spain, in Madrid, after a minor has disappeared, the center warns the guardianship authority and the juvenile police. If the young person does not return after 15 days, he or she is removed from guardianship.

- In Belgium, if the Guardianship Service has no news of the young person after 4 months, the case is closed and guardianship terminated. According to the director of the service, *after 4 months, no one is interested except the police*<sup>103</sup>. However, the data collected show that disappeared young people are rarely searched for.

### Are minors actively searched for?

According to several interviewed professionals, cases were the police actively search for a disappeared

minor are few and far between. Professionals have given different reasons to explain the weakness of search procedures.

- **Minors nobody is interested in.** Some authorities put the lack of action down to a simple lack of interest in disappeared children. Add to this that in all of the studied countries, many actors are worried that precious little is done to find or obtain information about Roma children leaving the centers.

According to street educators met in Barcelona in Spain, it is very easy to find young people who have left the center, because they all go to the same area of the city. We tried to see these places, accompanied by the educators. We had the opportunity to meet many young Moroccans at night in a park, in the process of inhaling solvents. Some seemed to be very young. According to the educators, these minors are registered at X center in Barcelona<sup>104</sup>.

«To show interest in disappeared UFM's is to take up an issue that is no longer an issue. You have to be a young Swiss with a family for the authorities to actually be alarmed.»

Director, center for UFM's, Switzerland, interview dated 11 March 2009.

«I've never seen a notice posted in the street for a UFM gone missing. Do we really make the same efforts for a young Belgian as for a UFM?»

Association, Belgium, interview dated 14 October 2008.

«When it comes to children who are not yet placed by the judge but are in an emergency center, if they disappear, nobody looks for them, they do not count because they are without status. They have no legal protection. If they are placed and disappear, I can in theory issue a search warrant, but no active search is carried out in practice, except for rare cases.»

Juvenile court judge, France, interview dated 11 December 2008

- **Active search in cases of disappearances considered worrying.** In many cases, it is concern that justifies active search. Only Belgian law defines situations matching this description<sup>105</sup>. For action to be taken in such situations, at least one of the following criteria has to be met: the missing person will be under the age of thirteen; they will have a physical or mental disability

or lack the required degree of autonomy; they are undergoing crucial drug or medical treatment; it can be assumed, based on available information, that they are in a situation where their life is at risk or they are in the company of others who may threaten their well-being or they are victims of crime; and finally, their absence is in absolute contradiction to their usual behavior. Deciding whether a *disappearance* is worrying, on the basis of this description, is left to the discretion of the judge.

In the other studied States, this character is assessed on a case-by-case basis, depending on the facts of the case. Some police services believe that the likelihood that children will join their family or the information they hold is strong enough not to initiate a search for unclaimed minors. But this probability is just an educated guess.

- *Lack of information to investigate due to lack of cooperation between stakeholders.* Several Belgian stakeholders are proposing a revision of the criteria for assessing whether the *disappearance* of a UFM can be considered worrying. Several actors justify their inaction by the fact that they do not have sufficient information to act upon. In other words, when a person disappears, the information available (if any) will be assessed to determine if the *disappearance* is worrying or not. If it is, there will be an active search. However, if no information is available, as is often the case for UFM's, invariably the *disappearance* will not be considered worrying, and there will be no active search. When in doubt, we prefer to abstain. Yet we are talking about minors with whom caution should be the rule. Several professionals have thus suggested a *principle of precaution* to be applied in the context of UFM's.

Obviously, when it specifically comes to conducting a search, how and where does one look when there are no tracks to follow? Several respondents in our investigation claimed the problem lies in the fact that each actor involved in the process of taking charge of a minor has information about the young person, which, however, is very rarely shared. To overcome this, Belgium adopted in 2008 a memorandum of understanding with respect to the *disappearance* of a UFM of one of the two observation and orientation centers. The text defines the role of each actor in *disappearance* cases and promotes better dissemination of information between the signatories relating to the minor. This collaboration aims to locate the missing child as soon as possible<sup>106</sup>.

It should be added that examples of collaboration were found between a Belgian center providing care for UFM victims of trafficking and the local police. According to the director, in cases of *disappearance* the police will launch a search immediately<sup>107</sup>. In other cases, it is the determination of individual educators or guardians that will help locate the child.

- *Overwhelmed stakeholders resigned to the high number of disappearances.* Some professionals put the lack of research down to the fact that the police, sometimes contacted excessively, are overwhelmed by the high number of absentee UFM's reported.

In Spain, according to one prosecutor, no search is launched unless the young person, having committed an offense, disappears from a closed center<sup>108</sup>. Paradoxically, the minor would be somewhat better protected if he or she had committed a crime.

## Footnotes section 4

<sup>79</sup> Juvenile court judge, Switzerland, interview dated 22 January 2009.

<sup>80</sup> Association for support to isolated foreign minors, France, interview dated 8 December 2008.

<sup>81</sup> «During transit, some fall from the truck. They sustain leg injuries, break their forearms. Others lose their lives. Some of them film each other, the videos are morbid. Some get discouraged. We warn them but they don't listen. And anyway, what can we offer? Some young people are injured by barbed wire, other contract illnesses such as scabies, tuberculosis, or fungal infections» Director, center for UFM's, France, interview dated 10 December 2008.

<sup>82</sup> Some minors from the Middle East say they are Palestinian in order not to be turned back.

<sup>83</sup> L'international magazine, Démantèlement de réseaux nigériens de prostitution aux Pays-Bas (Dismantling of Nigerian prostitution networks in the Netherlands), 25 January 2008, L'international magazine website, <http://www.linternationalmagazine.com/article1830.html>

<sup>84</sup> See the section on the risks incurred by disappeared UFM's, p. 43.

<sup>85</sup> «Adults have been seen coming out of the minors' room but security measures have been increased since then.» Educator, center for adults and UFM's, Switzerland, interview dated 2 March 2009.

<sup>86</sup> «The UFM's are the rebels of globalization. They highlight the constitution of Europe. Moroccan minors are disturbing as, on the one hand, they must be protected, and, on the other hand, they have illegally accessed the European hyper-system for migration control.» Association, Morocco, interview dated 13 April 2009.

<sup>87</sup> Id. footnote 32.

<sup>87</sup> «Running away from the centers is normal. These young persons are rejected by their family, they are abandoned. There is a psychological and social breakdown. The young person is rejected by society and also feels rejected by their family who do not want to see them. This makes them incapable of living in a system, of being taken into care. They are utterly alone.» Association, Morocco, interview dated 13 April 2009.

<sup>89</sup> Human Rights Watch, Returns at any cost, Spain's push to repatriate unaccompanied children in the absence of safeguards, 2008, site HCW: <http://www.hrw.org/sites/default/files/reports/spain1008.pdf>

<sup>90</sup> Juvenile court judge, Switzerland, interview dated 22 January 2009.

<sup>91</sup> Director, center for UFM's, Switzerland, interview dated 21 January 2009.

<sup>92</sup> «The drug dealing networks have an influence on the police. All these little Africans hidden in the UFM centers are generating money.» Director, center for UFM's, Switzerland, interview dated 11 March 2009.

<sup>93</sup> For developments on the invisibility of UFM girls in Spain, see p. 22.

<sup>94</sup> Association for support to isolated foreign minors, France, interview dated 8 December 2008.

<sup>95</sup> Juvenile court judge, France, interview dated 11 December 2008.

<sup>96</sup> For developments in the prevention of violence in the institutions, see p. 26.

<sup>97</sup> Article 3c of the «Palermo» Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, 15 December 2000.

<sup>98</sup> As in the case of some Nigerian girls in Italy. Northern Italy and Germany are often described as hub countries.

<sup>99</sup> «The definitions are not the same. The term 'disappearance' is not applicable to some UFM's because they travel a lot and are not interested in the centers. We haven't addressed this issue, not wanting to be alarmist. There may be young people in exploitation networks, but such cases are detected.» Association, Belgium, interview dated 14 October 2008.

<sup>100</sup> Juvenile court judge, France, interview dated 11 December 2008.

<sup>101</sup> Note of the Protector of Children, by the League of Human Rights on the issue of unaccompanied minors, September 28, 2000, Council of Europe website (in French), [http://www.coe.int/t/dg3/migration/Source/MalagaRegConf/France\\_question\\_mineurs\\_%C3%A9trangers\\_isol%C3%A9s\\_fr.pdf](http://www.coe.int/t/dg3/migration/Source/MalagaRegConf/France_question_mineurs_%C3%A9trangers_isol%C3%A9s_fr.pdf)

## Footnotes section 4 (suite)

<sup>102</sup> «There is the problem of guardians who do not report disappearances. For example, here's the case of a guardian. The minor disappeared in February and the guardian comes to tell me about the 'disappearance' in October» Police superintendent, Belgium, interview dated 7 October 2008.

<sup>103</sup> Guardianship Service for UFM's, Belgium, interview dated 9 October 2008.

<sup>104</sup> Fieldwork in Barcelona, accompanied by two street educators of an association, Spain, 10 April 2009.

<sup>105</sup> Ministerial directive of 20 February 2002 on the search for disappeared persons.

<sup>106</sup> Prosecutor, office for foreigners, police, guardianship service, child focus association.

<sup>107</sup> Director, Center for UFM victims of human trafficking, Belgium, interview dated 3 October 2008.

<sup>108</sup> «No search will be conducted for a young runaway, unless the police locate the young person in the course of a check, for instance. It also depends on the age of the young person. We cannot stop them if they haven't committed a crime, unless they've ran away from a closed center.» Prosecutor, Spain, interview dated 27 April 2009.







# 5

Who is legally responsible with respect to the disappearance of UFM's?

## a) Different responses

As regards the question of who bears legal responsibility for minors placed in institutions, again, the answers are varied.

For some, the responsibility lies with the center that has custody of the child. However, most of the surveyed center directors considered that in cases of *disappearance* their responsibility ended when they reported the event to the police. Yet one French center director acknowledges its full responsibility in the *disappearance* of young migrants in his charge. According to him, the center is a *guardian service*. *Theoretically, one ought to take measures to search for runaways. Reporting a runaway does not exhaust our responsibility. The situation is paradoxical because we have a mission to protect, but we apply it to young people who do not necessarily want it on the terms offered. Can we tolerate these children boarding ships in Calais to return to England and risking their lives in full sight of everyone*<sup>109</sup>?

- *Guardians*, physical or legal persons, are often cited as the authority responsible for the minor, in that they become the legal representative of the child (the parents being temporarily unable to exercise their power of representation of the minor). In Belgium, one interviewed guardian was unable to say whether he could be held liable for failure to perform his mandated responsibilities<sup>110</sup>. In Belgium, in principle the Guardianship Service takes out insurance to cover the liability of the guardian for unintentional professional misconduct harming the child or a third party. A guardian therefore only assumes professional responsibility, shared if need be with the minor's educators in the center where the minor resides<sup>111</sup>.

- *Other actors believe* the States are legally responsible for the UFM's in their territory, since they provide legal and administrative guardianship to the private or public institutions where the authorities have placed the minors.

Clearly, however, the majority of our respondents were unable to give us a straightforward answer with respect to knowing which authority is responsible for UFM's. We can probably assume that each actor involved with UFM's has a share of responsibility if only a moral one. However, many professionals, including judges, believe there is a real legal *vacuum* with respect to this issue, especially since we have no knowledge of a legal precedent that would yield some answers.

## b) Yet several international legal instruments impose on the States obligations

- The Geneva Convention of 1951 relating to the Status of Refugees was ratified by France, Belgium, Spain and Switzerland. The Final Act of the Conference which adopted the text recommends that States adopt *necessary measures to protect refugee minors, including unaccompanied children*.

- The Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors, provides that minors are under the responsibility of the States in whose territory they are. The State must therefore protect children at risk (foreign or not) in its territory<sup>112</sup>.

- The United Nations Convention against Transnational Organized Crime of 2000 is also of great interest, as well as the Protocol relating thereto, which aims to prevent, suppress and punish trafficking in persons, especially women and children. These instruments require States to take appropriate measures for the rights and interests of child victims of these practices, and adjust procedures to take into account their special needs and their vulnerability.

- *Certain principles and decisions by UN bodies, in addition to these conventions*. Several specialized agencies and bodies have adopted the recommendations and guidelines to strengthen the protection of UFM's, including the United Nations Children's Fund and the UN High Commissioner for Refugees. These include the Guidelines on Policies and Procedures in Dealing with Unaccompanied Children seeking Asylum (1997), and the statement of good practice of the aforementioned *Program for Separated Children in Europe* (2004).

Similarly, the UN High Commissioner for Human Rights (OHCHR) publishes reports. However, even though they are often brought to the attention of the Human Rights Council, they are hardly used as a means of pressure on governments to demand respect for human rights. The OHCHR concerns itself only with certain serious violations of human rights worldwide. However, specific cases may be referred to it by, for example, NGOs, which will convey information such as the phenomenon of *disappearance* of UFM's. Ms Navi

Pillay, High Commissioner, will also make the issue of migrants' rights, *one of its priorities* in the years to come, including the situation in host countries.<sup>113</sup>

- The most important document is, of course, the United Nations Convention on the Rights of the Child (hereinafter CRC), adopted in New York on 20 November 1989, which includes several articles that refer to the States' responsibility for UFM's. Every child – under 18 years of age, including therefore migrant children – in the territory of a State Party to the CRC enjoys the rights granted by the CRC.

Article 2 sets out that States Parties must respect and ensure the enshrined rights *to each child within their jurisdiction without discrimination of any kind (...)*. The article therefore prohibits discrimination, including based on nationality. In this instance, it is clear that UFM's do not enjoy the same protection as nationals.

Article 3(1) of the Convention also maintains that the best interests of the child must be a primary consideration. However, it should be noted that the requirements of immigration policy may override the provisions set out in the Convention. According to article 3(3), the State also has the obligation to 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*. It seems therefore that it rests with the State to ensure that institutions and other facilities for UFM's are tailored for these children to offer them the most appropriate protection.

Article 6 sets out that States Parties must ensure to the maximum extent possible the survival and development of the child.

Article 18 adds that *parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. (...) States Parties shall render appropriate assistance to parents and legal guardians (...)*.

Article 19 stipulates that States Parties *shall take all appropriate legislative, administrative (...) 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*. In practice, some UFM's who have disappeared from centers get caught

up in networks of sexual or economic exploitation. These children are not protected enough at a higher level, and add to this the fact that when they disappear, active searches are rarely conducted.

Article 20 on children separated from their parents provides that they are *entitled to special protection and assistance provided by the State*.

Where the parents cannot be found, article 22 on child refugees provides that the unaccompanied 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*.

Let us be reminded that the CRC has established another important principle, the interdependence and indivisibility of the rights of the child.

This text is a Convention with binding force on all signatory States. Indeed, the European Court of Justice did not hesitate to rely on its provisions in condemning Belgium in a case involving a 5-year-old UFM<sup>114</sup>.

However, the implementation of the Convention in some European countries tends to be limited with respect to UFM's. Some States maintain reservations, others go about the problem by detaining such minors, and for yet others, the principles of the Convention are subject to different levels of interpretation (especially considering the forcible return of UFM's as the solution best serving their interests)<sup>115</sup>. These discrepancies are caused by the lack of legal precision in the wording of certain parts of the Convention.

The UN Committee on the Rights of the Child is the custodian of the Convention. It monitors the effectiveness and compliance with the Convention and its protocols by the signatory States. It examines State reports on the domestic implementation of child rights, on the basis of which it expresses its main concerns. It has recently recommended that States involved with UFM's develop national databases holding detailed information on these children, and they focus in particular on cases of *disappearance* and the risks the children face of being trafficked<sup>116</sup>.

However, unfortunately not being a judicial body, its recommendations are not legally binding on States Parties.

## c) What international legal actions are available?

### Regarding the implementation of the Convention on the Rights of the Child in the future

It should be noted that a group of NGOs including CRIN (*Child Rights Information Network*) is campaigning for the creation of a complaints mechanism for individual communication with respect to violations of the provision of the CRC<sup>117</sup>. Such a complaints mechanism would allow children and their representatives to appeal when domestic or regional remedies fail or simply do not exist. There is also a new means of pressure on States Parties to fulfil their obligations. Although other mechanisms established by international treaties can address the demands of children and their representatives, they do not cover all the rights specific to children that are included in the CRC.

On 17 June 2009, the Human Rights Council, taking note of these facts and the positive opinion expressed by the Committee with regard to the child's own rights<sup>118</sup>, adopted a resolution setting up a working group to explore the possibility of elaborating an optional protocol to the CRC "to provide a communications procedure complementary to the reporting procedure under the Convention". The working group held its first session in Geneva in December 2009. Progress will be reported to the Human Rights Council at its 13th session in March 2010, on the basis of which it will then decide whether to launch the project which is expected to take some time to implement.

The possible creation of a procedure for submitting communications under the CRC presents a real opportunity for parents/guardians of UFM's to make complaints with regard to the *disappearance* of a child, because the States have actual responsibilities under the CRC. However, the establishment of this procedure might run into resistance from many sides, and it is uncertain whether or not it will succeed.

### Responsibility of the States before the European Court of Human Rights

Adopted in 1950, the Convention for the Protection of Human Rights and Fundamental Freedoms assumes an important role in the application of the rights it protects. However, its strength lies in particular in the existence of a mechanism to protect these rights through the European Court of Human Rights, esta-

blished in 1959 and based in Strasbourg. A judicial body, it investigates violations of the Convention by the States in their territory, and sanctions them for failure to fulfil their obligations.

- **Who can file a complaint with the Court?** First, complaints can be filed by physical persons, regardless of their nationality, residence or marital status – that is, refugees and stateless persons, too. No requirement is specified with respect to age or legal capacity. Minors, legally incapable under the law, can take their case to the Court<sup>119</sup>. In practice, however, few children act alone – they are generally represented by their parents or guardians.

The Court also ruled that a mother deprived of parental authority will have, in her capacity as biological mother, the power to refer her case to the Court on behalf of her children to protect their interests, particularly in cases of conflict with their guardian, because «*there was a danger that some of those interests would never be brought to the Court's attention and that the minor would be deprived of effective protection of his rights under the Convention*<sup>120</sup>.

In the case of UFM's, a hypothetical conflict of interest could arise if the legal representative of the child, whether the parent or guardian, did not act in their favor. They might therefore be required to be represented in their petition by their parent (even if they no longer hold parental authority), or take their case to the Court on their own if that was the only way to take their interests to the attention of the Court.

It should be added that the Court can be approached by legal persons.

- **Conditions of admissibility of the petition.** The petition must meet several criteria<sup>121</sup>, 3 of which are of particular interest to us:

- **Domestic remedies<sup>122</sup> must be exhausted.** However, there are exceptions to this condition of admissibility: when the remedy is unnecessary, ineffective, inadequate or inaccessible. Those who have not had the means to approach national courts, for example, could therefore see their application accepted anyway.

The petition must be submitted by a victim. This implies that there is a *sufficiently direct link between the petitioner and the damage they claim to have suffered from the alleged violation*<sup>123</sup>. The Court also admits indirect victims when they are affected by violations due to

their relationship with the victim. The Court accepts the potential victims who are not yet affected but risk becoming victims.

- The petition must be well founded and invoke the violation of rights guaranteed by the Convention or a Protocol. In practice, the Court has developed methods for interpreting the Convention, which lead to extending the protection of the guaranteed rights.

This is the case with positive obligations that the Court orders and are the responsibility of the State. This implies that the State *implements* measures to give full effect to the right. France has already been condemned on this count in the case of a young Togolese girl who arrived at the age of 15 and was exploited as a domestic servant for 4 years<sup>124</sup>. Consequently, if protecting the UFM located on its territory is the State's responsibility, could not the Court order a positive obligation to reasonably investigate every *disappearance* of a UFM?

Similarly, the horizontal effect of the Convention provides for the liability of a State, not only for the acts of its agents, but also because of acts committed by its subjects. Liability in this case arises from the failure of the State, which led to the violation of the right by a private individual<sup>125</sup>. In this case, could not the Court maintain the responsibility of a State if, in the case of a *disappearance*, lack of searching for the child has, for example, led to the child's exploitation by an individual?

- The *Tabitha v. Belgium* case.

The European Court has rarely had to deal with cases concerning UFM's. The best known case was that of Mubilanzila Mayeka and Kaniki Mitunga versus Belgium, known as the *Tabitha Case*, in which judgment was passed on 12 October 2006. It concerns the deportation of a 5-year-old Congolese UFM seeking to rejoin her mother in Canada.

The Court found the violation of several articles. According to the judges, because of her very young age, her illegal status and the fact that she was unaccompanied, the child was in a situation of extreme vulnerability.

It is interesting to note that in her defense, the Belgian government said, *Possibilities of accommodating her in more suitable facilities were virtually non-existent and in particular did not allow for the care or protection of the child.*

- The case of disappearing UFM's before the Court some day? As we have seen, the petitioner alleges in its complaint the violation of an article of the Convention. Regarding the phenomenon of the *disappearance* of UFM's, article 2 (which protects the right to life) and article 8 (concerning the respect of the right to a private and family life, which includes the child's personal development) come to mind. Similarly, article 5 guarantees the right to security, around which the Court has developed important case law concerning enforced *disappearance*<sup>126</sup>. If that is unrelated to the case of UFM's, it is important to note that the Court requires the State to conduct a reasonable inquiry into the *disappearance* of adults deprived of liberty<sup>127</sup>.

We might ask if the Court should not have a fortiori recognized the same obligations as in the context of the *disappearance* of vulnerable children. Article 14 on non-discrimination might also be cited, if one recalls that the situation abroad prevails too often on the status of a minor. Finally, it would seem possible to cite the defense of the minor as set out in article 3 which prohibits torture and inhuman or degrading treatment or punishment.

According to the Court, the State must take *reasonable steps to prevent ill-treatment of which the authorities had or ought to have had knowledge*<sup>128</sup>. If these steps are not sufficient, it will be held responsible. The vulnerability of UFM's therefore leads to the State's duty to protect. Consequently, when a child has disappeared, the state has the duty to investigate reasonably and with care.

Take the case of a UFM who suffered ill-treatment due to the failure of the state to protect them. This negligence might consist of the lack of searching for the disappeared minor, in particular since it is often easy to find the young people because many frequent the same places<sup>129</sup>. The case goes before the national courts. Then, if the matter comes before the ECHR, it will look into the status of victim. The Court will seek evidence that the victim status of the minor is related to negligence and the failure of the state to protect them.

This event could actually occur, but unfortunately it is based on many uncertainties with respect to the procedure and the exceptions that the ECHR sometimes accepts and sometimes rejects – such as the status of the person applying to the Court, the condition of exhaustion of domestic remedies, the essential evidence of the violation of a right set out in the Convention, etc<sup>130</sup>.

The above does not claim to be fully exhaustive, but rather, to raise questions and engage in a debate regarding the existence of this instrument, the European Court of Human Rights. It is an effective tool that UFM's can use in case of the violation of a provision set out in the Convention. These children must be informed of these possibilities and given appropriate assistance for their rights and interests to be properly presented and considered.

NGOs and actors must denounce and publish the fact that some UFM rights protected by the CRC are violated by the States. Especially since the future individual complaint procedure, if successful, should be a big step towards complying with the provisions of the CRC. It nevertheless seems essential to use, at the same time, the existing legal instrument that is the ECHR, which can order a State to give more weight and effectiveness to the rights of young migrants.

### Legal action by the parents against the justice of the host country

A single case of a parent of a UFM considering taking the case to court was reported in the course of the survey.

*«A Moroccan minor died in a center a few months ago. I offered to be lawyer for the mother who lives in Morocco. We don't know if it's a suicide. The mother is separated from her husband in Morocco. She has to obtain his permission to take court action, but she does not want to see him again. The young person had an uncle in Spain who sought to repatriate the body. We helped him in the procedure. He wanted to go to court but he did not have the means.*

*This meant the only one who could do so was the "Madrid Institute", of the minor and the family, that runs the center, but it would be against them so there is a conflict of interest there!»*

Lawyer, association for aid to refugees, interview dated 24 April 2009.

Although the hypothesis of this legal action by parents is still very theoretical, it must nevertheless be considered. The absence of parents is in fact the principal cause of inaction on the part of the authorities and hence the impunity of offenders against such minors.

*«An Afghan minor, under 15, was stabbed, so we took him to hospital. He underwent surgery so authorization from the prosecutor was required. The police wants him reclaimed. They would pick up the child, the police warned the public prosecutor. The prosecution claims it was an accident, the young person was horsing around, he was not in danger and could return to the hotel he was staying in. The boy disappeared. Who is responsible if the young person has blood-poisoning in the Calais jungle? But who is going to sue? Parents are not there.»*

Director, center for UFM's, France, interview dated 10 December 2008.

However, parents going to French, Swiss, Belgian or Spanish courts would find it extremely difficult to prove their claim with respect to a simple *disappearance*: they would have to argue using signs and evidence that their child's rights has been seriously violated. The only way to invoke the responsibility of the State for the *disappearance* of a minor might be to prove the lack of supervision of the institution, or the State's negligence, and the causal link with the *disappearance* of the minor. To which one might add the proof that within the institution, the minor was the victim of some form of violence qualifying as criminal (sexual abuse, assault, humiliation, etc.).

The fact that parents consented to the departure of their child from the family and their country of origin is not a claim that can be brought up against them in court. Their consent is an assumption, impossible to prove, because they may have entrusted the child to a person who has abused their trust (and perhaps their poverty). Moreover, this consent does not alter their right to exercise their parental authority, which nobody can deny them, except a court ruling in their own country. According to an analysis of the *motivation* behind migration and the trafficking of children, it is clear that the concept and the degree of consent are extremely difficult to establish.

One might add that if parents had known their child was in a particular institution, they should have *moved heaven and earth* to recover them: but one must have the capacity to do so.

But ultimately, when *national* children disappear from an institution of their country, is judicial response the same as for an unaccompanied foreign minor whom nobody will claim?

## Footnotes section 5

<sup>109</sup> Director, centre for UFM's, France, interview dated 24 April 2008.

<sup>110</sup> Guardian for UFM's, Belgium, interview dated 13 November 2008.

<sup>111</sup> Pour plus de détails, consulter le site Service public fédéral Justice, [http://www.just.fgov.be/index\\_fr.htm](http://www.just.fgov.be/index_fr.htm)

<sup>112</sup> Article 9: «In all cases of urgency, the authorities of any Contracting State in whose territory the infant or his property is, may take any necessary measures of protection.»

<sup>113</sup> United Nations Radio, Navi Pillay dénonce les violations dans le monde [N.P. condemns human rights violations around the world] (in French), 4 June 2009, UN Radio website, <http://www.unmultimedia.org>

<sup>114</sup> European Court of Human Rights, Case Mubilanzila Mayeka and Kaniki Mitunga v. Belgium, called «Tabitha Case», 12 October 2006 (explaining the decision, see below).

<sup>115</sup> One might recall a case in Spain, where the return to the family was consistently regarded to be in the interest of the child, even without prior investigation of the situation.

<sup>116</sup> Consideration of reports submitted by States Parties. For example, CRC/C/NLD/CO/3 55th Session, 27 March 2009, concluding observations on the Netherlands, point 67.

<sup>117</sup> Campaign for a CRC Complaints Mechanism, CRIN website: [http://www.crin.org/law/CRC\\_complaints/](http://www.crin.org/law/CRC_complaints/)

<sup>118</sup> «Recalling the view of the Committee on the Rights of the Child, expressed by its Chairperson (...) that the development of a communications procedure for the Convention on the Rights of the Child would significantly contribute to the overall protection of children's rights (...)» Resolution A/HRC/11/L.3.

<sup>119</sup> One might cite as an example the decision of the ECHR Aydin v. Turkey of 25 September 1997, regarding the rape and torture of a 17-year-old girl while she was in custody.

<sup>120</sup> European Court of Human Rights, Scozzari and Giunta v. Italy, 13 July 2000.

<sup>121</sup> For further details about these criteria, see the Council of Europe website at <http://www.coe.int/>

<sup>122</sup> Meaning all remedies that could lead to a satisfactory result.

<sup>123</sup> European Court of Human Rights, Gorraiz Lizarraga and Others v. Spain, 27 April 2004.

<sup>124</sup> The European Court of Human Rights considered that it was not sufficient for a state to refrain from infringing the rights guaranteed by art.4 of the ECHR (prohibition of slavery and forced labor) to claim that it had conformed to its commitments; but that the state had positive obligations consisting in the effective adopting and applying of judicial measures punishing the behavior stated in Art. 4. European Court of Human Rights, Siliadin c/ ruling, France, 26 July 2005.

<sup>125</sup> The case A v. United Kingdom, 23 September 1988 was about a boy beaten by his stepfather. Article 3 was violated because English criminal law provided a justification for moderate correction imposed on a child. The state must prevent ill-treatment, even when the perpetrators are individuals.

<sup>126</sup> «For the purposes of this Convention, 'enforced disappearance' is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.» Article 2 of The International Convention for the Protection of All Persons from Enforced Disappearance

<sup>127</sup> «European Court of Human Rights Judgement of 25 May 1998 in the Case Kurt v. Turkey: "Article 5 requires that authorities take effective measures to safeguard against risk of disappearance and to conduct prompt effective investigation into arguable claim that an individual has not been seen since being taken into custody.»

## Footnotes section 5 (suite)

<sup>128</sup> *European Court of Human Rights, Judgement of 10 May 2001 in the Case Z and others vs. Great Britain.*

<sup>129</sup> *As was the case with certain minors we met in Spain.*

<sup>130</sup> *Furthermore, it should be noted that given how overburdened the Court currently is, it rigorously examines the petitions it is submitted, and will accept some exceptions regarding their admissibility. At the end of 2008 there was a total of 97 300 applications pending before the ECHR, according to the 2008 Annual Report of the European Court of Human Rights, Council of Europe.*







# 6

## Recommendations

As the investigation reveals, although it cannot claim to be exhaustive, the perception of these realities varies, depending on the respondents and their duties, from denial of reality, through the admission of being powerless, to real concerns. However, some good practices have been identified offering a glimmer of hope.

The ambition of *Terre des hommes* is not so much to pass judgments as to make practical recommendations to improve the situation from *good practices* identified during the investigation (and incorporated in the analysis below).

No policy will avoid the running away, voluntary departures and the multiple forms of circumvention of the law. But fatalism and complacency are reprehensible, even if the improvement of procedures and arrangements for the care of these minors cannot claim any guarantee of success. There is, nevertheless, a difference between 10% and 50% of *disappearances* of minors from institutions where they have been placed by the authorities.

No authority can be reproached for confronting a problem: it is the denial of the problem that is unacceptable. And while there can be no guarantee of absolute results, there is an obligation to make one's best endeavors: it is in this spirit that *Terre des hommes* makes the following recommendations:

## 6. General recommendations

They are addressed generally to all stakeholders involved in this matter, to whatever extent, from the point of view of how the phenomenon is perceived and represented.

### Principle of legality

International standards are straightforward: any minor who is abroad is automatically placed under a system of child protection. We therefore ask that in no case should the minor be removed under the pretext of being illegally present on foreign soil. Moreover, the expulsion of a minor to the country of first asylum motivated by the fact that this country has ratified the CRC is unacceptable, even if the Dublin agreements governing this expulsion do not distinguish between adults and minors.

In light of the growing migratory flux, all European countries must jointly initiate the development of a specific legal status for unaccompanied foreign minors, whether

the UFM has applied for asylum or not, allowing for the harmonization of data in the framework of international collaboration and facilitating searches in cases of *disappearance*. The existence of such a regular status would be a source of security for these young people and prevent a number of *disappearances*.

### Principle of reality

The usual two-way argument (which the media is especially fond of) that the punitive approach is realistic, as opposed to the rights-of-the-child approach that is naive, must be reviewed and reversed. Considering that most of the minors concerned disappear from the institutions in which the authorities have placed them, it is naive to believe that denying their existence and the problems posed to society will solve the issue of the risks to the minors' life and the risk of recidivism for society. Realism is on the side of bodies and individuals seeking to find solutions in order to ensure that these *disappearances* become the exception rather than the rule.

### Principle of non-discrimination

Unaccompanied foreign minors are most often spontaneously caught, identified and treated initially as foreigners before being considered as minors enjoying international protection standards and support. Even if they are in a special situation by merely being present in a foreign country, the assessment of their condition should correspond primarily to the standards relating to the care of minors. This means that most of them can also be considered, to different degrees depending on the case, as victims of people who have exploited their relative capacity of discernment, expression and defense.

### Principle of vulnerability

A significant number of institutional respondents demonstrate a paradox of assessing most of these minors as particularly strong when considering the stages and hardships encountered during their migration, but at the same time extremely vulnerable to the traumas sustained by being abandoned or because of the abuses suffered during the trials of migration.

Moreover, UFM's arriving alone at a border – or identified as truly isolated in hiding – are extremely rare, and when they are detected, their isolation is one more reason to consider that they probably had genuinely major reasons for choosing to break with their country, their communities of origin or their families. This ought to earn them an even more special attention, knowing that minors can be badly accompanied.

### Principle of differentiation

Migrant minors by no means constitute a homogeneous population. Each child is a unique human being and, like any human being, will change only if he or she so decides. Not unlike in the treatment of children in conflict with the law, violence in schools and other forms of social marginalization, the denial of reality, stigmatization in preconceived categories or exclusion does not constitute the basis for a realistic approach that might yield results. Again, naïve are those who believe that applying strict enforcement of laws and procedures of exclusion will reduce the number of migrant children.

## b) Recommendations to governments

### Fostering public awareness

The *beauty* of the political function is to provide means to address public opinion in terms of respect for human beings and international standards. Respect for rights equally concerns the rights of migrant children as national rights and assumes the same firmness, which is perfectly compatible with a democratic debate on the terms and conditions of care of the UFM concerned, even if they do not vote.

A political discourse of outright criminal prosecution, stigmatization and exclusion is unworthy of political power. The phenomenon of migration is universal and tends to increase for several reasons: all the world's governments must, in the medium term, establish a realistic immigration policy in harmony with the countries of the European Union.

### Harmonization of data on unaccompanied foreign minors

A dialogue between ministries and agencies involved should lead to the harmonization at national level of criteria of legal status and modalities of care.

The sharing of the data would avoid the same minor having separate files in each of the care administrations. When a minor disappears from an institution, search procedures are cumbersome if the information relating to the minor is scattered. It would therefore be wise to establish district or regional platforms within each State, to ensure the global care of UFM<sup>131</sup>. However, the transmission of data must comply with national legislation on data protection, as well as with international standards that stipulate, for example, that

*Information relating to a child's involvement in the justice process should be protected. This can be achieved through maintaining confidentiality and restricting disclosure of information that may lead to identification of a child who is a victim or witness in the justice process<sup>132</sup>.*

The centralization of national statistical information on children disappeared from institutions is equally essential.

### Collaboration between countries

Collaboration must firstly be established between countries of the European Union. It should begin by creating a special status for UFM.

On the other hand, several interviewed minors said they had crossed several European countries. Yet there is little communication between the various States as regards the specific issue of UFM. The creation of a European file for each child would facilitate the monitoring of UFM. The exchange of data and reports of *disappearances* of unaccompanied minors should be accomplished at the same speed and by the same means as with missing *Community* children. Note that an online database exists between three countries (Albania, Greece and Kosovo) that facilitates the management of children considered at high risk of exploitation or trafficking. This *pilot* database is managed by Tdh. A national version is being created (end of 2009) with the relevant authorities.

Likewise, collaboration is also required between host and home countries, and more precisely between the home town and the place where the child was found. The need for a cross-border approach is reflected in the model of action TACT introduced between EU Member States and neighboring countries<sup>133</sup>.

This collaboration between countries of origin and host countries can be accomplished either by means of an operational link initiated by NGOs (for immediate protective intervention). It can also be done through bilateral agreements, such as the agreement between Albania and Greece initiated by BKTF, the coalition of Albanian NGOs specialized in the fight against child trafficking, and supported since by *Terre des hommes*. In every instance, this kind of approach must involve strict supervision in the interest of the minors<sup>134</sup>.

### Coordination of public and private sector

The guarantees of applying national laws and international standards come from the sovereign authority of the State, which does not mean that all procedures come from public services. One cannot claim maximum flexibility in terms of care for minors and require the State to do everything. The role of the State is to ensure that in all decisions and procedures the objectives and human rights are respected both by the public services and the private sector. In fact, whether or not it has the mandate to do so and whether or not it provides financing, the State guarantees guardianship of private institutions, fulfilling a public utility service.

Professional practices may vary from one district to another and from one region to another. Support must be flexible, responsive, and as differentiated as required by the individual situations of the minors. However, certain procedures must be standardized through validation by the state. Consequently, the *disappearance* of foreign minors from public or private institutions, under guardianship or the mandate of the public authorities must, for example, be reported to a centralized search service with the same persistence as in the case of national children.

This coordination by the State must also extend to sharing the experiences of the different state-appointed actors. The exchange of experiences and lessons learned by various institutions in charge of a variety of modes of care can refine interventions and reduce the risk of *disappearance*.

This coordination by the State should extend to the training of public and private actors, instructed in all phases of care – training on international standards, the practices of other countries, data relating to specific contexts of the countries of origin of the migrant children. How can the hypothetical return of minors to their country of origin be addressed if their representative has no idea of the context in which it proposes to the minor to reintegrate?

*Many professionals have noted a significant change in their work with UFM's following visits in countries of origin of these children. This approach enabled them to better understand the original context of the minor, but also to follow the entire path traversed by the child.*

These two approaches to sharing experience and permanent training are anyway part of the obligation to make one's best endeavors.

Cooperation between public authorities and the private sector may also extend to collaboration with international organizations that have more flexible instruments at their disposal than the diplomatic channel in conducting searches in cases of *disappearances*. The national Red Cross, the International Social Service and many NGOs concerned with these problems have proved their effectiveness in international networking, following the example of the CRIN.

Many European countries have joint committees or coalitions of national NGOs as references. However, it is essential that in the search for children disappeared from agencies, these organizations work in full transparency and under the control of public authorities, in an effort to avoid – even in spite of the best of intentions – being associated with illegal practices.

### The promotion of durable solutions

It is incumbent upon public authorities to identify sustainable individual solutions for UFM's, so that immediate measures of placing into care are from the outset made part of long-term perspectives.

- **Prevention as part of the precautionary principle.** On the basis of our observations, it seems necessary to work with minors in their country of origin. Some Moroccan associations have developed this approach. They work together with the families of potential young migrants and work on educational assistance. These facilities try to kindle the interest of young people by involving them in various cultural and manual activities. These associations believe they lack the means to transfer skills and knowledge and seek regular contact with professionals who are ready to introduce young people to a trade or business in the country of origin.

More prevention and awareness should be raised with respect to the dangers of migration and what awaits minors in Europe. This is neither about preventing nor encouraging migration but to make minors' journey safer if they do decide to leave. The objective is to reduce the risks associated with migration by using objective information.

- **Durable solutions in the host country – or in a third country.** Given the diversity of real reasons for the migration of a minor, all solutions must be studied realistically in a procedure that involves listening and

meaningful dialogue with the minor. This dialogue must consider assumptions with regard to the future, and in particular ensure continuity when the minor reaches the age of majority.

This may involve intermediate steps, such as living in foster care with a family of the same national origin as the minor, the placement in a training institution, etc. with monitoring. In the case of siblings, minors should be able, if requested, to keep in touch, for example under the authority of the eldest, followed and advised by specialist staff.

At European level, the possibility of naturalization for UFM victims should be enshrined in law, regardless of the asylum application process – i.e. whether or not a UFM initiates it – which implicitly gives them the benefit of children's rights (to health, education, etc.) in compliance with the CRC.

Adoption may be considered, subject to confirmation with the original family and the adopting family, when all legal procedures have been completed in both countries: this procedure facilitates naturalization.

- **Family reunification in the country of origin.** International standards maintain the priority of reuniting with the minor's family, and accordingly, in general, in the minor's home country, unless the family is unfit to provide a home and the protection of the minor, or the minor rejects this possibility. This possibility cannot serve as a pretext for eviction by putting them on the first plane back: the certainty that this is the child's best interests can not be established without verification. A return unprepared and not verified in his family and his community of origin can be devastating to a child, and one cannot hide behind a right of the child to ignore a priori the violation of the child's rights that the child's return home would entail. Hence the need for cooperation with authorities and private associations of the countries or regions of origin of the minors (especially when, as is often the case, the regions of origin of the children from some countries are fully identified).

- **Assisted Voluntary Return to the country of origin (AVR).** This procedure is possible only on the basis of the express wish of the minor. Six criteria must be met: the procedure has to be *legal, safe, prepared* with the child, prepared with the family, *adopted* to the conditions and necessities of the child, and quickly arranged following the decision on a durable solution<sup>135</sup>.

These prospects can only be implemented in the framework of either a bilateral agreement between the two countries concerned or a procedure within an international organization, with psychological preparation and ensuring competent care in the country of origin.

The minor must remain in the territory of the host country until the conditions of safe return are guaranteed.

No doubt, if minors assume that institutionalization is merely the waiting room leading to a forced eviction to their country of origin, they will disappear as quickly as possible from the institution.

Moreover, if a minor is attending school, the return does not have to take place before the end of the school year (or the end of the course undertaken, according to the type of study). No return decision can lead to the minor losing a school year.

*Where a minor is not allowed to prolong his stay in a Member State, the Member State concerned may only return the minor to his country of origin or a third country prepared to accept him, if on arrival therein – depending on his needs in the light of age and degree of independence – adequate reception and care are available. This can be provided by parents or other adults who take care of the child, or by governmental or non-governmental bodies<sup>136</sup>.*

*The automatic return of children, without investigating the reasons why they fled, without alternatives and without protection, is a practice in conflict with the norms and principles of the Convention on the Rights of the Child<sup>137</sup>.*

### **A center for trafficked children in each country**

The UFM victims of trafficking constitute a specific group with special needs, different from those non-victim UFM victims.

*In Belgium, a secret facility welcomes minor victims of trafficking, with an average of two educators per child and trained personnel. Strict rules are enforced for the safety of the residents, and children do not go out alone. It seems that this facility, thanks to the human and material resources available, enables the management of each case on an individual basis.*

In several of the visited States, there are police or judicial bodies specializing in trafficking. In some classical centers for UFM, the teaching staff sometimes have doubts about the behavior of children that would suggest they were victims of trafficking. Given the difficulties some professionals have in detecting suspicious signs, the specialized agencies must share their expertise and help foster awareness.

In particular, minors involved in drug trafficking should not only be treated as minors in conflict with the law. Even if they truly have been involved in illegal activities, the degree of vulnerability of these minors should be assessed and a proportionate response maintained. It seems particularly important to know whether these minors are forced to work or are allowed to leave the network freely.

## c) Recommendations to the judicial authorities

### Identification of UFM

To establish a system of effective protection for these particularly vulnerable minors, we need to be able to establish their identity and find them. It happens that some children who have disappeared from a center turn up in another facility, under a different identity. To avoid a minor being counted multiple times in the same State, numerous actors are calling for the development of technical tools to help better coordinate among the States, with a strict legal framework, and for the sole purpose of protection.

In case of a total lack of identification documents and reliable information on the origins of a found UFM, a supplemental judgment process – in accordance with national legislation – must be launched, or any other procedure for the registration as a foreigner, in compliance with the provisions set out in articles 7 and 8(2) of the Convention on the Rights of the Child.

In no case should a minor turning up at the border of a State be deported or deprived of liberty for simple reasons of immigration. Minors turning up in groups of adults at a border should not automatically be considered together: the nature of the relationship between them must be established. The UFM must be placed in safety and given access to health care and enabled to apply for asylum, residence permit, according to national laws.

### Legal representation of minors must be clear and independent

The child is considered by national legislations as being legally incapable. Consequently, they require a legal representative to go to court. In some cases the guardian provides this function while guardianship is vested in a State body and the center is also managed by the State. If a child wants to take legal action against the center, they are acting against the State, represented by a guardian who also works for the State. The State is thus both plaintiff and defendant. There is therefore a conflict of interest there. The child should be counselled by an independent legal representative who is not related to the State. The court should be alert to conflicts of interest between minors and their legal representatives.

### Principle of precaution to take after a disappearance

Following the *disappearance* of a minor, in most cases, no authority is able to say with any certainty where the young person is. More care should be taken in dealing with cases of disappeared minors, for even if the worst may not be a certainty, it is nevertheless a possibility. Search procedures should be launched as they would be for any national minor.

The judicial authority should initiate procedures to be able to respond with respect to the means of search in the (theoretical) case where a foreign family who would be entitled to request the authorities of host countries to recover their child over whom they still have parental authority, after learning that the child has been placed in an institution by the judicial authority of the host country and has since gone missing.

### Prosecution of persons responsible for the exploitation of minors

Judicial authorities must, parallel with procedures for the protection of minors, prosecute the persons responsible for each step of the exploitation of the minors. Questioning them in the course of these investigations must avoid leading to the double victimization of the children and must convince them that the system guarantees their security vis-à-vis those who have exploited them. Moreover, rules of international judicial cooperation should be identified and simplified in the framework of bilateral agreements between countries.



### Recourse to legal remedies

The investigation has revealed that national, European and international legislation protecting minors needs to be made more responsive. Legal remedies should be sought when the rights of minors are not respected and treated in a timely manner.

In Spain the repatriation with no guarantee or preparation of Moroccan minors has been stopped this way. It requires the intervention of lawyers and financial resources.

The judicial authority must ensure that in every stage of a procedure involving a minor, the minor is informed of the reasons for the decisions made and that the minor has understood these reasons. Minors should also be allowed, depending on age and maturity, to know their rights when applying for asylum, and in case of refusal, the right of appeal they have recourse to, as well as their rights to submit an application for naturalization.

Cases involving children should be treated as a priority, as, for example, the European Court of Human Rights provides. In the interest of the minors, the Court should also encourage the presence of third parties, or even accept, in some cases, *collective actions which would enable associations or groups not directly affected by the alleged violation to speak, as it were, on behalf of those who have no voice*<sup>138</sup>.

### Training specific to the hearing of children

The police and judicial personnel, as well as the staff of institutions involved must be trained to practice hearings of juvenile victims and witnesses: hearing on request, hearing alone or with a lawyer or a person of his choice, with a certified interpreter with whom the children can speak their language.

*«Interviews with children who were victims require a very high degree of sensitivity. The management of the investigation and insensitivity have often caused the police to lose lawsuits because the process of the investigation would alienate the plaintiff, which resulted in a hostile and emotionally unstable witness*<sup>139</sup>.

## d) Recommendations to responsible institutions

### Some institutions have very low rates of disappearances

*This is due to several factors:*

- *standards at the center are in favor of autonomy;*
- *the degree of social integration in the structure is high;*
- *the rate of obtaining documents is high;*
- *young people know they will achieve their goal and are motivated;*
- *center staff are demanding on the youths and asks the youths to be demanding on them;*
- *a contract is signed in which the rights and duties of youth and educators are explained.*

In some institutions, the *disappearance* of UFM occurs in the first hours or days after arrival at the center. According to some professionals, the youths must be given the time to find their bearings and at the same time feel involved in the life of the center from the outset. Some facilities quickly buy them clothes and give them the key to their room to make them feel at home in the center.

### Suitable, open but protected centers

According to professionals, a center for UFM must combine the following characteristics: it must be a small facility with a capacity of 10 to 15 places; be far from the center to distance the minor from illegal activities; be a safe place with minimum security rules; it must have qualified personnel in sufficient numbers with a minimum of 2 adults per child, present even on weekends.

In several centers visited, it was very easy to enter the facility without an adult asking us for our identity. In addition, several facilities reported that some adults come to collect minors directly at the door of the center. This is particularly the case with facilities

that accommodate minors who arrive via the airport, because these children often travel with traffickers and risk being collected to pay back their trip. To prevent these risks, some facilities have guards and security cameras in place.

*It should be mentioned here that according to the investigation, some UFM's disappear on the road between the place of arrest and hearing and the centers to which they are directed. For the sake of prevention, many facilities collect the young people and individually accompany them to the centers.*

### The child in charge of his or her own development

*In some of the visited institutions, the protection system of the minor is thought out and designed to serve the special needs of the child, the child's history and culture. Minors are informed of the various options and are helped to make their choice, which is taken into account and respected in the final decision. In this way, the center helps to fulfil the young person's needs and is not a framework.*

### Effective cooperation between stakeholders

*In France, a memorandum of understanding was signed by various actors in 2005 on the reception and orientation of unaccompanied foreign minors in the northern region<sup>140</sup>. A mechanism has been established consisting of three phases: the reception and accommodation of young people, the assessment of their situation and their orientation. The responsibilities of each actor are clearly defined.*

*In Belgium, a memorandum of understanding was introduced in 2008 with respect to the disappearance of UFM's from the two observation and orientation centers in an effort to locate the missing child as soon as possible. This text aims to determine the role of each actor after a disappearance and to provide for a better flow of information on the minor between signatories<sup>141</sup>.*

### Multicultural education team and cultural mediators

*It appears from our investigations that many centers are working with educators from different backgrounds or with cultural mediators. According to professionals, this promotes knowledge about the country and its culture, eases the relationship with Europe, soothes the young people and develops a relationship of respect and trust. Some precautions are nevertheless needed to prevent any risk of manipulation or projection<sup>142</sup>.*

### Peer education

*In the course of the investigation we had the chance to meet former minors who had become educators. A Spanish center has also established a support network with former UFM's. It appears that their presence is beneficial on two levels: former UFM's are responsible for providing assistance and advice to younger, but this is also an opportunity for all, adults and minors alike, to work towards an awareness of the country of origin which many UFM's refuse to hear about.*

*Former UFM's thus become protagonists and helpers in UFM migration matters. Peer education allows the centers to better adjust to the specific needs of UFM's, since former UFM's have been through it all already.*

### Applying the principles of functional education

Functional education consists of learning to read, write and count directly and exclusively according to the needs of the person in their own environment, in an effort to enhance their active and individual skills in a community context. It allows minors to learn the basics of a language through reading and writing, but in direct and continuous relation to their needs and perceptions in their immediate environment. This practice is not inconsistent with the need for the minor to keep contact and communication with minors and/or adults of the same origin and language. It might not be a cure-all, but it could help, for example, to detect in some minors the capacity for learning and language, which could be decisive in a case of naturalization.

## Helping the minor achieve autonomy

*Depending on their age, some children may initially have a single room or a shared one, maybe even a small studio apartment in the center. When they approach majority and are considered ready, they go into self-contained apartments (individual or collective) while continuing to be accompanied by a coach.*

It is also essential that children know they will not be automatically left by the institution to fend for themselves on the day they reach majority. The abrupt withdrawal of support at 18 will prevent the young person from thinking ahead.

*In a center visited in Spain, reaching majority was not a criterion of leaving the center. Rather, leaving depends on the accomplishment of the goals, such as being in training or having a job, obtaining a residence permit, and the degree of maturity. The educational team assesses the personal development of the minor and this apparently reduces the risk of social exclusion when they leave the centre.*

Some minors need to have the individual support of a coach or an adult referent who sees them through the process of care. This adult – not necessarily the person in charge of legal guardianship – must be trained to work with foreign minors.

The (current) practice – that the institutions hosting minors close to majority let the procedures drag on in order to have the opportunity of evicting the migrant at majority – is unacceptable. All minors are entitled to a procedure carried out within a normal deadline, lest they be considered as victims of justice denial.

In every instance, the child must receive pre-departure training including training to protect himself.

## Adapting the model of care and work on representations

The investigation has revealed that it is difficult to know how a child from a different culture will be able to accept certain stages of care. The best intentions can become counter-productive due to lack of work on how they are perceived by the minor. How can young people, who have landed in a center via the police or are residing in one where the police can enter, tell the

difference between repression and the center that is supposed to ensure their protection? How can young people be persuaded to tell the truth about their identity in such conditions? According to several center directors, some young people compare the center to a prison, even though it is an open facility.

A study into how the minor pictures and understands his surroundings and situation would seem necessary with the help of cultural mediators, ethno-psychologists or professionals who have knowledge about the country of origin.

The Western hosting model – as it is known to national youths – does not appear to be relevant to UFM. Their specificity must be taken into account. It seems that the high number of *disappearances* from facilities reflects the inefficiency of the proposed care.

How can one expect a minor who has crossed 8 borders before arriving in a European country in unimaginable conditions, having to face situations of physical insecurity, hunger and thirst for several days, etc., to accept staying in an institution whose regulation was established for 12 to 14-year-olds? These migrant minors are maybe 14 or 15, but have the maturity of an adult, even though the law grants them the status of a minor. This is a conclusive psychological element in listening and establishing an appropriate individual plan for the future.

It is conceivable that minors under 16 are perfectly able to cope *in life*, without getting involved in illegal activities, but their maturity must be assessed, recognized and valued. Possibly institutionalization is not the solution: running away is not necessarily the worst for these *disappeared* minors. However, the duty of any institution, before the *disappearance* of juvenile residents, is to consider that although the worst may not be certain, it is possible, and sounding the alarm ought to launch a systematic search.

## Need to work on the risks of violence, mistreatment and sexual abuse in institutions

During our investigations, some professionals brought up cases of sexual and physical abuse coming from the educational staff. Prosecution under criminal law is exceptional, due to the fact that a youth's first reaction is more often than not to escape. UFM are more vulnerable than children without their parents who are supposed to be protecting them or encourage them to complain. No center director mentioned that their work was monitored by a public authority.

Each institution should have an institutional policy of prevention, including documents prepared in a participatory manner and disseminated to all new staff, as well as information on internal reporting procedures to be followed in cases of proven situations of violence, physical or sexual abuse either between minors or between minors and adults. It is not surprising that

an institution that tolerates violence or abuse creates runaways and *disappearances*. We cannot reproach an institution for tackling the problem of violence; however, it can be blamed for not being prepared for it.

## Footnotes section 6

- <sup>131</sup> This recommendation was issued at the symposium held in France in June 2008 by Ms Dominique Versini, Ombudsman for Children.
- <sup>132</sup> Economic and Social Council (ECOSOC), *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*, Article X(27), July 2005.
- <sup>133</sup> For details on the «TACT» model of action, see the Child Protection Project in Europe of the Terre des hommes Foundation, <http://tdh-childprotection.org/content/view/337/>
- <sup>134</sup> For example, the Franco-Romanian agreement on cooperation for the protection of Romanian minors in difficulty on the territory of the French Republic and to their return to their countries of origin and the fight against the exploitation networks, signed in 2002. After it expired, a second was signed in 2007, which has been the subject of much criticism, and some NGOs are now demanding its withdrawal. CFDA – Hors la rue – ANAFE – RESF – DEI: *Pour une application du droit commun dans la prise en charge des mineurs étrangers isolés étrangers en quête d'asile et de protection (For an application of law in support of unaccompanied foreign minors seeking asylum and protection)*, 15 September 2009, p. 18.
- <sup>135</sup> 2007 - «Tdh Policy Paper on Return of Foreign Unaccompanied Minors»: [http://tdh-childprotection.org/component/option,com\\_doclib/task,showdoc/docid,482/](http://tdh-childprotection.org/component/option,com_doclib/task,showdoc/docid,482/)  
2009 - «Wandering young people: the conditions for return»: [http://tdh-childprotection.org/component/option,com\\_doclib/task,showdoc/docid,755/](http://tdh-childprotection.org/component/option,com_doclib/task,showdoc/docid,755/)
- <sup>136</sup> The Council of the European Union, *Council Resolution of 26 June 1997 on unaccompanied minors who are nationals of third countries (97/C 221/03)*.
- <sup>137</sup> UNICEF, *Implementation Handbook for the Convention on the Rights of the Child*, 1998, p. 107.
- <sup>138</sup> Françoise Tulkins Judge at the European Court of Human Rights, *The European Convention on Human Rights and children's rights*, Conference: *International justice for children*, Council of Europe website: [http://www.coe.int/t/transversalprojects/children/justicespeeches/tulkins\\_EN.asp](http://www.coe.int/t/transversalprojects/children/justicespeeches/tulkins_EN.asp)
- <sup>139</sup> Michael Kearney, *Protocole pour les entretiens avec des enfants témoins ou victimes*, 1998. (Document available on request).
- <sup>140</sup> Prefect, President of the General Council, President of TGI, Prosecutor of the Republic, etc. For more information, go to the website of General Council 59 (in French): [http://www.cg59.fr/FrontOffice/UserFiles/File/enfance\\_et\\_famille/samie.pdf](http://www.cg59.fr/FrontOffice/UserFiles/File/enfance_et_famille/samie.pdf)
- <sup>141</sup> Prosecutor, Office for foreigners, Police, Guardianship service, Child focus association.
- <sup>142</sup> «You need to have a mixture of different backgrounds and let the young persons find their bearings. Some young people do not want to be involved with people from the same background, but want to start over and reject their culture and their origin.» Director, center for UFM, France, interview dated 10 December 2008.

# Conclusion

This publication seeks to contribute ways of improving the care of unaccompanied foreign minors arriving in European countries. Improvement is only possible if – in this area and many others – we begin, at every level of responsibility, including public opinion, to FACE UPTO REALITY.

We live in a world where people who are upset choose to disappear, and to encourage them we begin by making them disappear from the statistics and every form of media visibility. Or more precisely, where media visibility exists, it will denounce the crimes of foreign minors. One fine day we shall have to address the paradox that consists in developing mechanisms that encourage young people to disappear only to then complain about them for turning up in drug dealing, living in illegal squatter settlements, or getting involved in brawls between rival gangs.

In purely economic terms, experts unanimously agree that the cost of non-adaptive care is higher than the creation of services that can adapt individually to each case.

Similarly, in countries with falling demographics such as the subjects of the investigation, a realistic immigration policy would seek to permanently integrate young manpower and thus avoid all risk of marginalization.

One question remains inevitably unanswered at the end of this investigation: it would be absurd to think that an institution, as *perfect* as it may be, could respond in a systematically positive way to the extreme diversity of situations of unaccompanied foreign minors in its care. One can easily imagine that young people of 16 or 17 perceive and experience the obligation of being placed in care and staying in an institution, even if it is an adaptive one, as an obstacle to their free will, their freedom and what grown-ups call capacity of resilience.

Consequently, approaching the age of majority, not only legally but also in terms of maturity, minors might decide to *take their destiny into their own hands* without having society dictating a path which would not be the result of their personal evolution. And it cannot be repeated enough that there is no solution without completely involving minors in the construction of their future.

This investigation reveals that there are some mechanisms of preventing *disappearances* in place and that they are functioning well. They are adapted to the specific needs of unaccompanied foreign minors, and prevent risks in proportion to the degree of vulnerability of each child. Hundreds of professionals in direct contact with UFM's face the daily absurdity of inadequate systems and yet are able to find solutions. The first source of solutions often springs from the minors' ability to act, to become a actor in their own development, to decide their future. One should therefore put in place mechanisms that allow such individual evolution, even if minors distance themselves from the institution before their majority. But it has to be done transparently – and in no way secretly, implicitly, irresponsibly – and in the best interests of the child as protected by the Convention on the Rights of the Child.

An adaptive institution should incorporate the possibility of its own inadequacy to handle all cases and to negotiate a departure that is neither a *disappearance* nor running away, but the combination of exercising freedom for the minor and a responsibility on the part of the institution.

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## Questionnaire submitted to professionals working with UFM.

This questionnaire is a framework but varies and is tailored to the position and availability of the speaker.

1. Within your service, what is the proportion of UFM and national minors? How many UFM are in your care?
2. How long have you worked with UFM?
3. What are the countries of origin of children in your care?
4. Have these children traveled through another transit country? What is their background?
5. Have you noticed new trends since the accession of Bulgaria and Romania to the European Union?
6. What are the reasons for the migration of a minor?
7. What is the average age and sex of these children?
8. When a minor is found, what are the steps of taking into care? Who sends the young people to the center?
9. Do you know where the child was found?
10. Is your facility a day care center or is it a residential centre?
11. When a minor arrives at the center:
  - Does the center have an internal registration process?
  - Are these forms visible, is it possible to have a blank copy?
12. What chances do children have to remain in your establishment for as long as possible for finding a solution best adapted to their individual case?

13. How would you assess the departure of minors who leave?
  - Are they only passing by on your premises?
  - Do they leave because it does not suit them?
  - Is it because they are in fact accompanied outside?
  - Is their departure linked to an activity the child has chosen to pursue? (legal or illegal).
14. How many UFM's have you received this year?
15. How many are no longer physically in the facility without anyone knowing where they went?
16. What term would you use to describe this reality?
17. Comparing the categories of children who stay and those who leave, are the profiles of these two groups alike or are there any differences?
18. Compared to your responses with respect to those who stay, what are those who leave missing?
19. What else could be done for them?
20. As regards minors who leave, have you any trace of these children? Do you know if they are another city or another country?
21. Do you have a team from your facility to go after these children in the streets?
22. Do you keep in touch with minors who have left?
23. Have you been in contact with foreign NGOs to find these children? Is there any exchange of information regarding the identity of these children?
24. What is the reporting procedure when a child goes missing?
25. Is there an active search for a missing child? Do you know if the files of missing UFM's are still open?
26. In your opinion, who is legally responsible for the UFM's in the country?

27. Do you know if services doing the same job as you encounter similar problems?
28. Do you work together? Do you communicate with respect to the fact that a child can move from one center to another?
29. Is there a file that would centralize *disappearances*? If yes, what is its content?
30. Do the judiciary, police, NGOs, and social services work together in cases of *disappearance*?
31. Are you in contact with the authorities of the country of origin of the child? Is there a legal framework to work with these authorities?
32. Is your staff encouraged to visit the country of origin of these children?
33. Do you have social workers who come from these countries?
34. What is the level of knowledge of the country of origin?
35. In your opinion, what are the risks disappeared minors face outside the center?
36. What do you think happens to these children?
37. Our feeling is that the *disappearance* of a small British girl sounded the alarm across Europe, while hundreds of UFM's disappear from facilities without anyone being concerned. Do you believe there is a reason to worry or not?
38. Open Question: How would you improve things in order for fewer children to disappear?

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