

# Input by Save the Children to the EASO Annual Report 2017

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## 1) Access to territory and access to asylum procedure

The situation concerning access to the territory and asylum procedure observed by Save the Children varies greatly:

- Italy: children are generally granted access to the territory. The new law 47/2017 (Legge Zampa) forbids refusal of minors at the border. One main point of concern remains the recognition of migrants as minors, due to shortcomings in the identification upon disembarkment, age assessment procedures, issuance of residence permits to unaccompanied minors and quick appointment of a guardian, particularly in Sicily where the bulk of unaccompanied migrant children arrive. Age assessment procedures often do not consider the benefit of the doubt and a multidisciplinary approach, with the assistance of a cultural mediator, is not applied. An overview of cases that are not yet fully aligned with the new law on unaccompanied minors can be found in the Save the Children Italy's Dossiers *Children come first* for the periods [April-June 2017](#) and [July-September 2017](#).
- Sweden: access to the territory has been severely restricted due to the reintroduction of border controls. Very few children gain access to the Swedish territory. Recently, 100 children trying to enter Sweden were sent back to Denmark. The introduction of a temporary asylum law to respond to the emergency situation is hampering access to international protection and related rights, in particular access to residence permits and family reunification. Moreover, fear to be returned to the Member State of first entry under the Dublin rules pushes children to go under the radar, exposing them to several risks, including trafficking.
- Spain: overall, access to asylum procedure is very limited – over the last 5 years, only 101 unaccompanied minors have had access to the asylum procedure, a very low number if compared with the almost 5000 unaccompanied children arriving in Spain just in 2017. This is also due to very strict age assessment exams, which have resulted in some children being considered adults despite the existence of documentation stating their minority. The main obstacles regarding access to territory and to the asylum procedure occur in cases of applications at the borders, and mostly at the Ceuta and Melilla border control checkpoints. Asylum seekers who are hosted in Ceuta and Melilla cannot benefit from freedom of movement and are stuck there also when their application is admitted. This reality has been declared as illegal by several courts in Spain but nothing has changed yet and some asylum applicants wait up to one year before they can go to the peninsula. In March 2015, the Spanish government adopted an amendment to the Aliens Law, introducing the possibility to “reject at borders” third-country nationals that are found crossing the border illegally. The amendment, introduced through the adoption of the Law “on the protection of citizen security”, includes a specific regulation within the Aliens Law concerning the “Special regime of Ceuta and Melilla” and has introduced the practice of “collective expulsion”. This amendment was subject to a recent ruling on the joined cases of N.D. and N.T. v. Spain. On October 3rd, 2017, the European Court of Human Rights held, unanimously, that there had been: a violation of Article 4 of Protocol No. 4 (prohibition of collective expulsions of aliens) to the European Convention on Human Rights, and a violation of Article 13 (right to an effective remedy) taken together with Article 4 of Protocol No. 4.

## **2) and 3) Access to information and legal assistance and provision of interpretation services**

The situation concerning access to information and legal assistance observed by Save the Children is different among and within Member States:

- Spain: the small number of unaccompanied minors who have had access to the asylum procedure over the last five years (101) shows that they face obstacles in accessing information and assistance. The lack of appointed guardians from the moment unaccompanied minors reach Spain contributes to this shortcoming. Moreover, the national Protocol on UAMs does not foresee legal assistance for minors from the moment they come into contact with the authorities. This implies that minors – who are required to sign the authorisation to undergo age assessment exams – can only count on interpreters to explain to them the procedure and their rights. In this regard, the provisions of the Protocol are inconsistent with the recent Spanish Supreme Court ruling on the interpretation of article 35 of the Aliens Act relating to age assessment procedures. The main shortcomings are observed when it comes to access to information and assistance at the border. Lack of access to adequate information means that unaccompanied minors in Ceuta and Melilla prefer to declare themselves as adults to speed up their transfer to the Spanish peninsula; it is only once there that these children realise it is almost impossible to prove they are minors as they have already been registered and documented as adults. Finally, when lawyers are appointed, the interviews they entertain with their clients are often conducted without any privacy and in presence of the police.
- Italy: overall, early access to information and assistance is not a major problem, even though some shortcomings persist
- Germany: legal assistance is provided in first reception centres. However, it is not provided systematically to every asylum seeker because of lack of capacity in reception centres and difficulties with language.

## **4) Dublin procedure**

There remain several concerns regarding the application of Dublin provisions:

- Family reunification takes time, which makes it difficult to convince children not to move on irregularly to their country of destination.
- Overall, there is still a lack of best interests assessments relating to Dublin procedures, especially for children within families, who are not regarded as individuals in their own right.
- The first country of entry criterion implies unnecessary transfers of children, especially those travelling with their families, and delays in access to the asylum procedure.

Save the Children has collected the story of an Iraqi mother travelling with her husband and son first into Croatia and from there to Sweden. They were all transferred back to Croatia after having spent six months in Sweden and having started a new life – they had got a house and a job – without consideration for the minor's best interests.

## **5) Specific Procedures (border, accelerated, admissibility)**

We will mainly assess this point in light of the hotspot approach, which in many ways has been a pilot case for admissibility and border procedures.

Save the Children has operated in Greece and is still present at hotspots in Italy. We have observed that the hotspot approach has led to disproportionate pressure on frontline states at the expense of the rights of asylum-seekers. Moreover, they have **no clear legal framework** which generates a lot of uncertainty about safeguards for children and vulnerable groups: some centres are de-facto detention centres, others are open. The relocation mechanism, which was supposed to represent the other side of the coin, has been slow and rife with obstacles created by EU member states. **Furthermore, the activities of EU agencies vis-a-vis national authorities in terms of border- and judicial procedures risk interfering with national democratic processes.** We believe that either the approach should be abandoned, or it should be changed drastically. In its current form, the hotspots are bound to turn into detention centres, with an enormous financial, psychosocial and human rights cost. Save the Children [has witnessed the detrimental effects](#) of such an approach in other contexts like Nauru in Australia, where we noticed the same consequences in terms of self-harm, depression, PTSD but also the heavy and unnecessary financial burden<sup>1</sup>. We [have also documented the severe psychosocial effects](#) on children on the Greek Islands, with children as young as nine attempting to commit suicide, and many instances of depression, self-harm and substance abuse due to the desperate conditions there.

#### Key areas of concern

- **Detention:** Save the Children's Greece Response has repeatedly voiced concern on the developments on the ground after the EU-Turkey deal, which turned Registration and Identification Centres (hotspots) on the Greek islands into de-facto detention centres. The result is that refugees and migrants are placed in immigration detention, contrary to International and European Human Rights Law. Hundreds of unaccompanied and separated children in Greece are or have been held in detention and/or in police (protective) custody, in deplorable conditions, while registration and administrative procedures are taking place.
- **Living conditions in the hotspots:** The hotspots are overcrowded, lack basic services and are becoming increasingly dangerous. Tension, violence, riots, and fires are causing life-threatening dangers, including sexual violence, severe injury and death.
- **Identification and registration:** Different kinds of shortcomings and malpractices have been noticed in the hotspots such as: people being registered by the authorities and then administratively processed according to their declaration as Unaccompanied or Separated Children (UASC); children who self-declare as UASC but who are registered by the authorities as adults; children declaring that they are adults; cases in the hotspots where the age of child is doubted by the Police authorities and after the X-rays examination which has a high margin of error children are registered as adults; and children who are registered as accompanied, despite the absence of a formal family links assessment. Vulnerability assessments are conducted on a random basis while often no interpreters are available and thus it is impossible to clearly understand if a person is vulnerable or not. The same issues apply with the age assessment where there is no harmonized procedure in the hotspots of each island.
- **Lack of accommodation for vulnerable groups, on the mainland and the islands** In Greece, shelter space to host unaccompanied girls and boys in the medium to long term was lacking, and of varying quality and standard. **As long as there is insufficient accommodation for**

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<sup>1</sup> [http://www.savethechildren.org.au/\\_\\_data/assets/pdf\\_file/0009/159345/At-What-Cost-Report-Final.pdf](http://www.savethechildren.org.au/__data/assets/pdf_file/0009/159345/At-What-Cost-Report-Final.pdf)

**children on the mainland children cannot be transferred from the islands and do not receive the care they need.**

## **6) Reception of applicants for international protection**

Through our programmes in Sweden, Germany, Spain and Italy we've noticed many children suffer from substandard reception conditions:

- Reception is not always child-friendly. Children are often transferred between regions and municipalities to different types of accommodation without making an assessment of their best interest, or whether they have started school somewhere. There is a housing shortage in Sweden, which leads to children and families being placed in hotels, motels or camping sites which can often be 20km or more from the city centre where schools are located. In some municipalities nearly 60% of the population is accommodated in these alternative types of housing.
- Ageing out: In Sweden, after children turn 18 they are transferred from the municipality to the migration agency which affects their living situation and education. In the last couple of years more than 10.000 children turned out to be adults after age assessment (the accuracy of which can be debated). As a consequence, many young people survive under difficult conditions.
- In Spain the asylum system has reached full capacity and there is no adequate accommodation for children and vulnerable groups. Children, especially those that are unaccompanied, often have to wait for months for decent accommodation, in very vulnerable conditions, often on the streets. There are specific reception centres for unaccompanied children, but even they do not fulfil elementary standards for children. The Committee of the Rights of the Child has also [voiced repeated concerns](#) about the situation of unaccompanied children in Ceuta and Melilla.
- In Italy, children often have to stay too long in first reception centres, which are not fit for long-term stay and lack basic facilities for children, for instance there are not enough interpreters, and child-friendly information or legal services are lacking. This is often due to delays in the procedure and a lack of spaces in second reception centres. The longer children stay in first reception centres, the longer it will take to integrate them.
- Germany faces similar obstacles with a system of 'initial reception centres' before transfers to specific facilities. Families often stay for two-three months in initial reception centres with limited access to the outside world, such as schools or social activities. They can only access emergency health care and food is provided by catering instead of families purchasing and cooking their own meals. Given that their whole life is organised within the centre, this slows down their integration. However, given the decrease in arrivals, unaccompanied children are usually transferred to specialised centres within 24 hours.
- The immediate appointment of a guardian is key to ensure children are protected, but guardianship systems vary widely between member states. While Italy and Greece have changed their legislation and are now in the process of setting up systems with voluntary guardians, the current situation is far from adequate and sufficient resources and capacity need to be provided to ensure guardians are trained and equipped to look after children's wellbeing.

## **7) Detention of applicants for international protection**

Member States' practice varies greatly when it comes to immigration detention, including of children:

- In Spain, asylum seekers cannot be not placed in detention officially. However, asylum seekers who are hosted in the Temporary Centres for Immigrants and Asylum Seekers (CETI) in Ceuta and Melilla cannot benefit from freedom of movement and are stuck there for up to one year before they are able to move on to the Spanish peninsula. Migrant crossing the border irregularly and that don't apply for asylum are held in pre-removal detention centres (CIEs) for a maximum of 72 hours and then repatriated. When migrants arrive at sea, throughout the identification procedure they are held in cells and other police facilities. In 2017, Human Rights Watch visited and denounced conditions in police facilities in Motril, Almería, and Málaga as substandard. Also the Spanish Ombudsman has expressed concern regarding the inadequate conditions in which migrants are held in police facilities and CIEs and asked to prioritize procedures regarding pregnant women or women with children. In 2017, there were cases of detention of early arrived migrants in penitentiary centres pending their expulsion, such as in the Archidona's new prison (near Malaga). In the autumn of 2017, 500 Algerian migrants who had travelled by boat to the south-eastern coast of Spain were held in this penitentiary, including 7 minors that had not been identified.
- In Italy, the recently adopted law 47/2017 (Legge Zampa) forbids child immigration detention. The main concern rests with the fact that hotspots are often closed reception facilities or de facto detention centres and are not suitable or safe for children. In Greece, Save the Children has reported a growing number of incidents of self-harm in children as young as nine, while children as young as 9 have attempted suicide and there has been an increase in drug and alcohol abuse among teenagers.
- In Sweden and Germany, detention is allowed by law but limited in time to no more than 72 hours (2 days in Sweden for children)

## **11) Vulnerable applicants**

Save the Children has observed problems with the identification of vulnerable persons and access to special procedural and reception conditions for victims of trafficking:

- Sweden: identification of victims of trafficking has improved, however no special kind of support (eg. special guardian or accommodation) is provided to children victims of trafficking.
- Germany: there are no nation-wide minimum standards for identification of vulnerable persons. Save the Children, Unicef and the Minister of Labour and Families have written guidelines on minimum standards for reception, which have been partially implemented.
- Spain: no screening is realized for most vulnerable profiles, and when vulnerable persons are identified they cannot access special procedural or reception conditions. In practice, this has penalised several unaccompanied children, who were excluded from access to international protection.
- Italy: in recent times the phenomenon of trafficking in human beings has gotten worse. Several procedures have been put in place to identify victims and people at risk, but shortcomings have been observed when it comes to minors. This is linked to the practice on age assessment, which is not always conducted with a multidisciplinary approach and the

benefit of doubt is not always applied. Moreover, the lack of centres specifically dedicated to child victims of trafficking makes it even more difficult to protect these children.

## **12) Content of protection – situation of beneficiaries of protection**

Save the Children has observed that in Sweden the introduction of temporary asylum law hampers access to international protection and the rights of beneficiaries of such protection, in particular access to residence permits and their right to family reunification.

## **15) Relocation**

In Greece, children started being relocated to other EU Member States already in 2015, while in Italy the first relocation of a child occurred only in January 2017. Save the Children has observed some positive developments in Italy: the appointment of guardians for unaccompanied children involved in the relocation procedure was made quicker; and children could ask, in the presence of EASO, to first look into the possibility to be transferred under the family reunification provisions of the Dublin procedure, before making use of the relocation mechanism. Main obstacles observed by Save the Children were: the low number of relocation spaces pledged by other EU Member States, the long waiting periods (sometimes up to 6 months) before relocation takes place and the lack of vulnerability criteria to prioritise the relocation of the most vulnerable applicants (eg unaccompanied children).

The relocation mechanism, introduced with the aim of alleviating pressure on Greece and Italy has gone some way to meeting refugees' needs. However, there is no specific procedure for unaccompanied children and to be eligible for relocation asylum-seekers needed have a 75% chance, across the EU, of gaining a favourable response to a request for international protection. This means that, by the end of the relocation period (September 2017), only Syrians and Eritreans could make use of the relocation mechanism, while Afghani and Iraqi asylum seekers were excluded. With many unaccompanied children coming from the latter two countries (about four out of ten unaccompanied children seeking asylum in Europe in 2016 were from Afghanistan), this creates severe protection risks.

## **13) Return of former applicants for international protection**

In the last year, European countries have introduced more restrictive measures in the field of returns that could have tragic consequences. New legislation allows the forced return of migrants and asylum seekers to unsafe countries such as Afghanistan, Iraq and Somalia. Families with children are being returned, without adequate regard for the best interests principle. Children calling into our helpline have told Save the Children about their fear of deportation and how they find the continuing insecurity unbearable. In Sweden, seven asylum-seeking unaccompanied children from Afghanistan have tried to commit suicide and three have succeeded. As one young asylum seeker put it, *"Killing ourselves is better than being beheaded by the Taliban or ISIS in Afghanistan."*

Harmful consequences for children:

- Most EU member states **do not have concrete procedures in place to assess the best interest of the child prior to finding a durable solution for them**. EASO could play an important role in developing tools and models for member states to assess the best interest of the child.

- Detention, including detention of children, prior to return is becoming more and more common and is [even encouraged by the European Commission](#). Immigration detention of children is never in their best interests. Pilot programmes with alternatives to detention, such as a case management approach are often cheaper [and show good results](#) (in terms of compliance). Member states should be encouraged to look at alternative forms of care for children prior to finding a durable solution for them.
- In many member states children are picked up by authorities in the middle of the school year, sometimes during class, before removal. This is highly traumatic and contravenes their best interest.
- The situation to which children are returned is often unclear and **there are no monitoring systems in place to assess what happens to them upon their return**. Especially in countries such as Afghanistan, children are at risk of being recruited by armed forces or rejected by their families. Save the Children conducted a household survey among 1,000 Afghan citizens of which more than half of the respondents were below the age of 15. 91% of the children reported experiencing some level of violence, mainly kicking, beating with objects, choking or burning. Nearly 40% saw a household member being killed in the last year. One in three have been exposed to gun fire, bombing and fights. About one in five children reported being subject to rape and the most egregious forms of violence.
- Bilateral agreements with countries such as Afghanistan or Morocco do not contain a child perspective. Countries of origin should be able to provide reception conditions, as part of an established child protection system, that are equipped to accommodate children. Separate European-funded centres that are not integrated in a national child protection strategy will prevent integration and inclusion of children and could potentially lead to repeated absconding.