

Welcome to

**Training of Lawyers on EU Law
relating to Unaccompanied Migrant
Minors (TRAUMA)**

**Thursday 12 September 2019
Law Society of Ireland**



The project is co-financed with the support of the European Union's Justice programme

UNACCOMPANIED MINORS AND THE ASYLUM SYSTEM IN FRANCE

Training of Lawyers on European Law relating to Unaccompanied Migrant Minors (TRAUMA)

Dublin, September 12th 2019

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LEXICON



- *Administrateur ad hoc* = *Ad hoc* administrator/guardian

An adult, named by the State prosecutor, in order to defend the child's interests during the asylum procedure or while they are being detained in a waiting zone at the border.

- Aide sociale à l'enfance (ASE) = Child Welfare Services
- Cour Nationale du Droit d'Asile (CNDA) = National Court of Asylum
- Office français de protection des réfugiés et des apatrides (OFPRA) = French office for the Protection of Refugees and Stateless Persons



UNACCOMPANIED MINORS IN FRANCE

DEFINITION



The term “isolated foreign minor” designates a person who is not 18 years-old yet, does not possess French nationality and does not have any legal representative or guardian on French soil. This person is considered incapacitated because of one’s age and isolated due to the absence of a legal representative.

The term “unaccompanied minor” has replaced “isolated foreign minor” since 2016 in order to comply with the Qualification Directive 2011/95/EU. The Keeper of the Seals wished to underline the need for protection of unaccompanied minor, notwithstanding their origins and/or nationality.

No legal status is associated with the term. Therefore, unaccompanied minors depend both on foreigner’s law and, because they are endangered minors, the French child services, which does not pose any nationality-related condition.

KEY DEMOGRAPHICS

In 2013, the Ministry of Justice created the « Mission for Unaccompanied Minors » (MUM) which has made it possible to get a precise understanding of the situation.

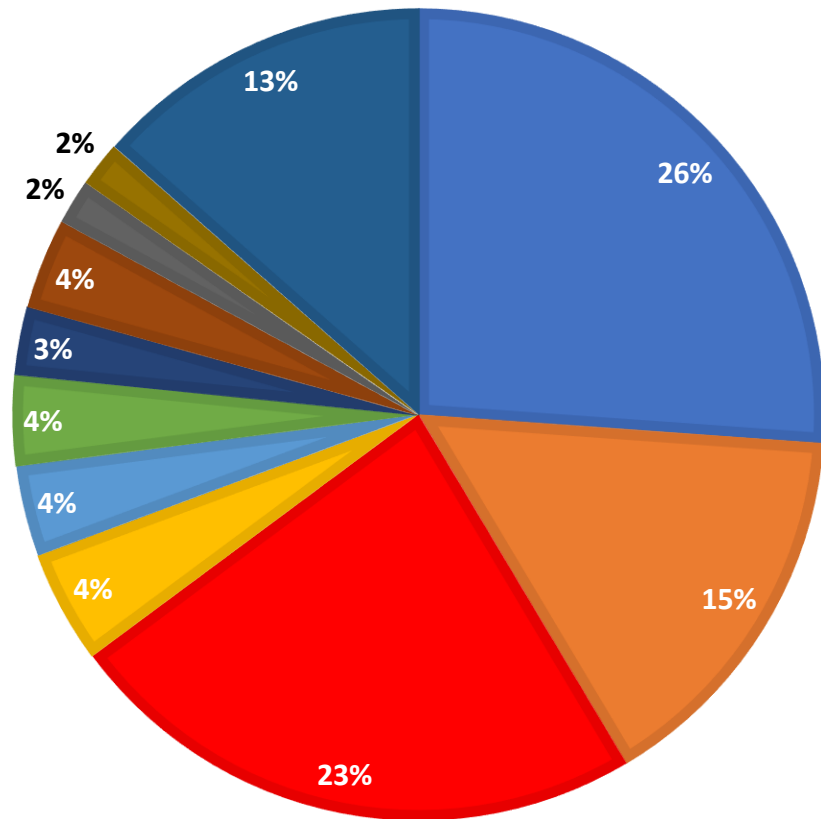
According to France Terre d'Asile, an NGO who tends to the needs of asylum seekers, 8054 youths were declared unaccompanied minors whereas they were in 2015. 14908 people were declared unaccompanied minors in 2017 by the MUM.

However, « in addition to these figures, therefore, is the number of people declaring themselves to be unaccompanied minors as recorded by Departmental services and whose evaluation is under way, as well as all minors in France who have not been integrated into the care system, either because they have evaded after being recorded or because it has not been possible to identify them »

(Approaches in France to unaccompanied minors following status determination by the French National Contact point of the European Migration Network, February 2018).

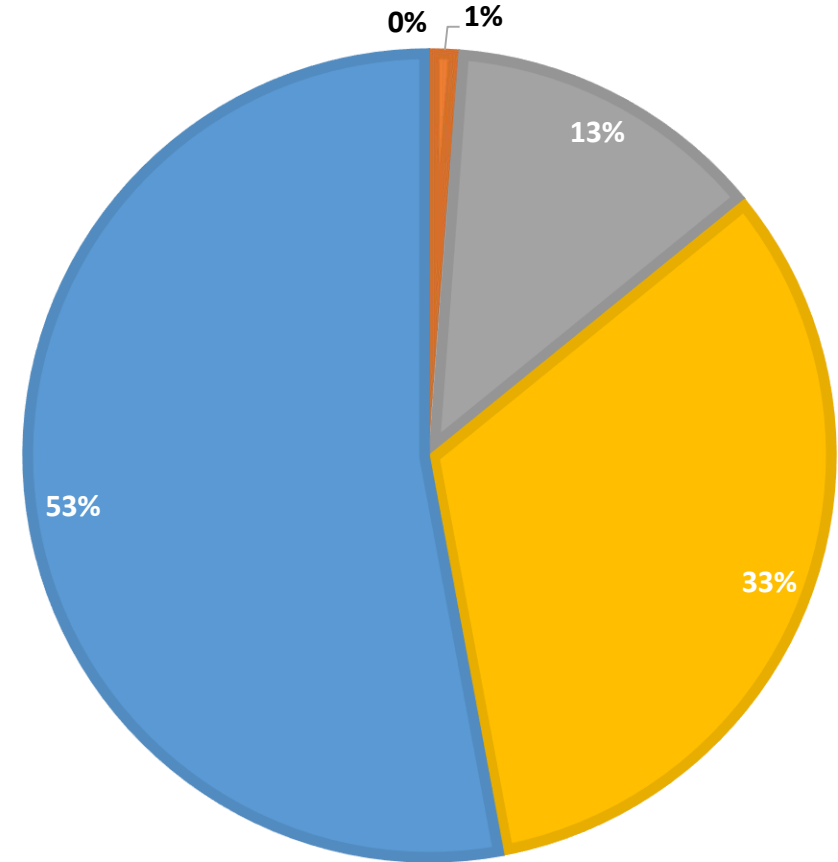
ORIGIN COUNTRY OF THE PEOPLE WHO WERE DECLARED UM IN 2017

- Guinea
- Côte d'Ivoire
- Mali
- Afghanistan
- Albania
- Bangladesh
- Algeria
- Cameroon
- Pakistan
- Marocco
- Others



AGE OF THE PEOPLE WHO WERE DECLARED UM IN 2017

- Under 10
- 10 to 12
- 13 to 14
- 15
- 16 and up



THE AGE ASSESSMENT



The age assessment is done through “bone test”. This evaluation is instructed by the Departmental council when a person who presents as an unaccompanied minor can provide any proof of identity nor age, according to articles 1 and 2 of the decree of June, 24th 2016.

While the test is being conducted, the Departmental Council is in charge of providing emergency accommodation (article L. 223-2 of the Code on Social Action and Families). During this period, Child Welfare Services conducts other investigations, aiming to confirm the person really is under the age of 18 and unaccompanied.

If the minority and the isolation from any family or representative is recognised, the judicial authority entrusts the young person to the Departmental council by decision of judicial placement (articles 375-3 and 375-5 of the Civil Code).

The age assessment is the source of many concerns: their legality was the object of a QPC (priority preliminary ruling on constitutionality) in 2018. On **21 March 2019**, the **Constitutional Council** confirmed the use of “bone tests” to determine the age of a person were in compliance with the French Constitution. (**Decision 2018-768 QPC**)



Constitutional Council, 21 March 2019

- Article 388 of the Civil Code (Law of 14 March 2016)
- Preamble of the Constitution (1946)
- Medical objective and agreement of the person
- Conclusion : protection of the superior interest of the child
- The judiciary body can only decide on the evaluation and can only order it if the identity documents are not valid, and if the age given is not plausible. It belongs to the judiciary body to ensure the respect of the subsidiary character of the examen
- This exam can not intervene before the enlightened consent of the person. The majority of the person can not be deduced from its refusal of being examine
- The legislator took into consideration the margin of error and excluded that this bone exam would constitute the only basis in determining the age of the person – the judiciary body has the mission to evaluate the other factors (social evaluation, interviews with Child Welfare Services)
- Finally if there is a contradiction between all the elements, the doubt benefit to the person.



RIGHTS AND STATUS OF UNACCOMPANIED MINORS

Unaccompanied minors are exempt from the obligation to submit an application for a residence permit until they reach adulthood.

Article L. 313-11, 2° bis and article 313-15 of the CESEDA (Code on Entry and Residence of Foreigners and the Right of Asylum) set out the conditions for former unaccompanied minors to apply for temporary “private and family life” residence permits once they reach the age of 18.

Unaccompanied minors are covered by common law on child welfare, which enables them to benefit from educational and legal support until they reach adulthood.

The Child Welfare Services (ASE) are responsible for unaccompanied minors (article 1 of the Law of March, 5th 2007).

Article L. 221-1 of the Code on Social Action and Families also states that one of the roles of the ASE is to « provide material, educational and psychological support » to minors in danger, as well as to adults under the age of 21 who are facing difficulties.



Conseil d'Etat (Administrative Supreme Court), 7 May 2014

- A medical act is not a usual act
- It can be decided only after the doctor tried to inform the parents and become their agreement
- It can only be decided differently in case of emergency when the health of the person impose the immediate health care



THE ASYLUM PROCEDURE FOR UNACCOMPANIED MINORS IN FRANCE



THE WAITING ZONES

When it comes to entering in France, unaccompanied minors are not favoured more than adults. If they are controlled while illegally entering French soil, they risk being detained in a « waiting zone ».

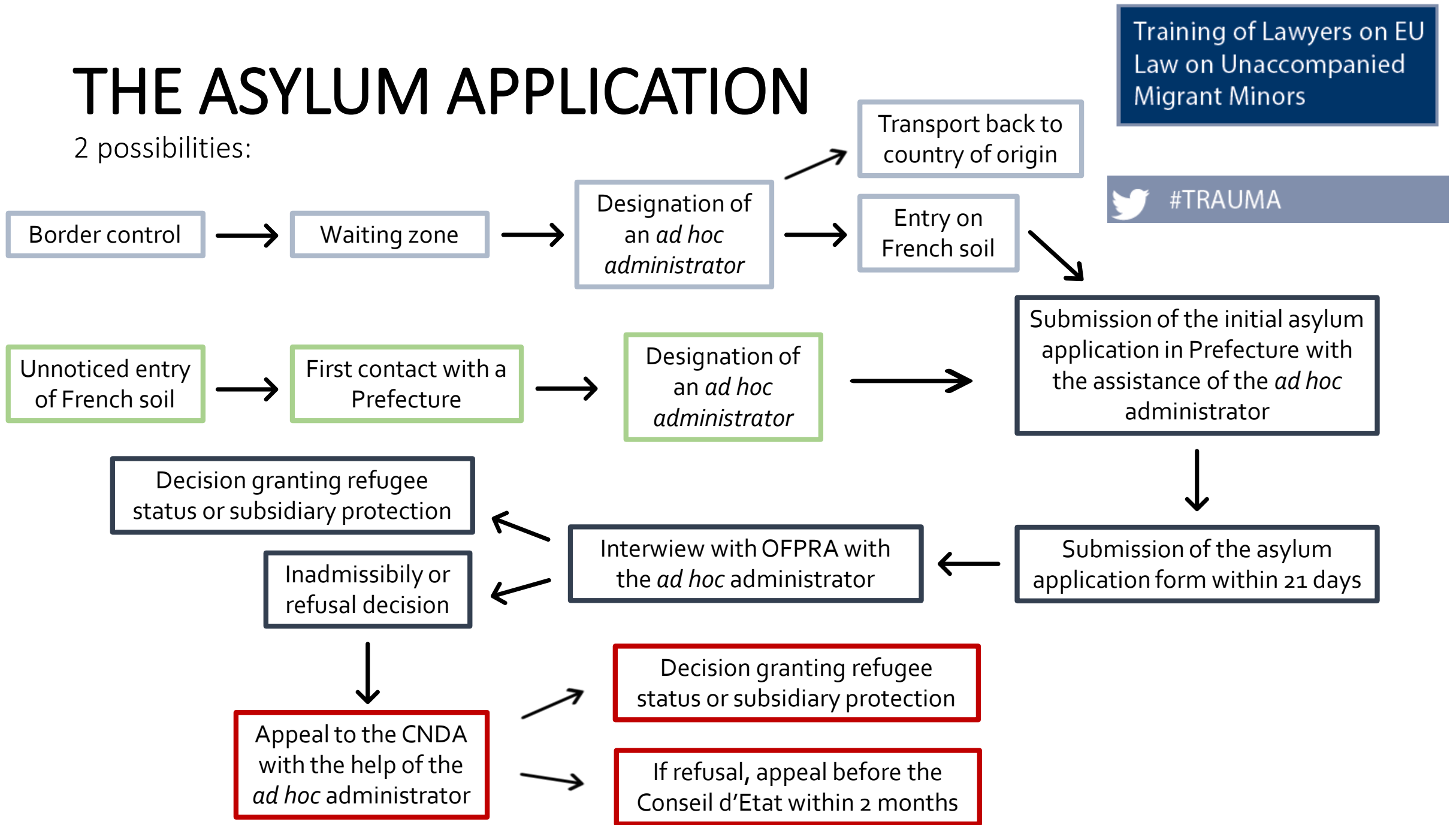
As for adults, unaccompanied minors can be detained up to 20 days in these waiting zones while waiting for a decision on the admissibility of their asylum application.

During this period, unaccompanied minors are being attributed an *ad hoc* administrator or guardian, who is responsible for representing them and help them in all legal procedures.

After this period, the unaccompanied minor can be freed and enter French soil or be transported back to their country.

THE ASYLUM APPLICATION

2 possibilities:



Although very few do, unaccompanied minors can apply for international protection.

KEY NUMBERS FOR 2016:

474 unaccompanied minors applied for an international protection for the 1st time

274 of them received a positive decision:

- 173 obtained the status of refugee
- 101 obtained a subsidiary protection

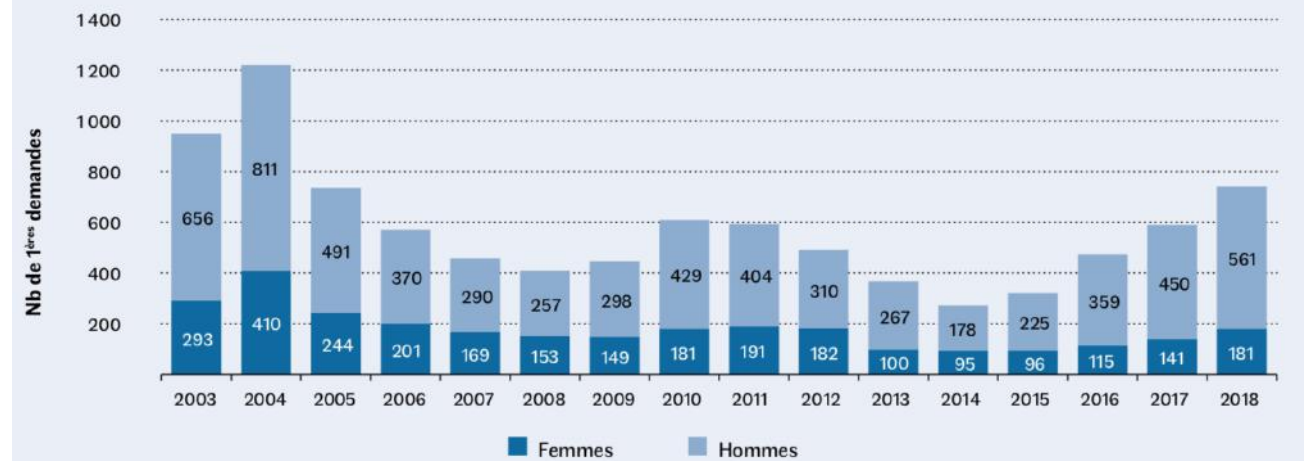
KEY NUMBERS FOR 2018:

742 unaccompanied minors applied for an international protection for the 1st time

444 of them received a positive decision from OFPRA:

- 226 obtained the status of refugee
- 218 obtained a subsidiary protection

Répartition par sexe des demandes d'asile émanant de mineurs non accompagnés depuis 2003



Source: *Rapport d'activité 2018*, OFPRA

THE *AD HOC* ADMINISTRATOR



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When an unaccompanied minor goes to the prefecture without a legal guardian or representative, the prefecture's civil servants have to inform the Public Prosecutor so that an *ad hoc* administrator is appointed.

Then, it falls on the *ad hoc* administrator to ask the prefecture for the application. This person must sign the asylum form after it has been filled.

Once the form has been registered, the *ad hoc* administrator receives the confirmation and then the convocation to the interview. The *ad hoc* administrator must accompany the applicant to their interview.

OFPRA's final decision is then sent to both the minor and their *ad hoc* administrator.

In case of a negative decision, the isolated minor asylum-seeker can appeal with the CNDA with the help of their legal representative.

THE DUBLIN PROCEDURE



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An unaccompanied minor cannot be placed under the “Dublin” procedure and transferred to the 1st country in which their fingerprints have been registered because of the particular vulnerability of such persons.

(European Union Court of Justice, C-648/11, June, 6th 2013)

However, an unaccompanied minor can ask to be reunited to a member of their family who has applied for asylum in another member-State of the European Union.

**Spanish legislation and case-law on the protection
of unaccompanied migrant minors
Thursday 12 September 2019
Law Society of Ireland**

María Esparcia Gómez

Lawyer , Spanish Commission for Refugees (CEAR Madrid)

Dublin, September 12th 2019



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- 1.- Relevant law of unaccompanied Migrants Minors**
- 2.- Approach to Unaccompanied Migrants Minors in Spain**
- 3.- The Age Assessment Procedure**
- 4.- Unaccompanied Minors with Internacional Protection needs.**

1. Relevant Law



- **Ley de Protección Jurídica del Menor.** L.O 1/1996, de 15 de enero, de Protección Jurídica del Menor
- **Immigration Law.-** Ley de Extranjería L.O 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social. Reglamento (Real Decreto 557/2011 de 20 de abril)
- **Asylum Act.-** Ley de Asilo y la Protección Subsidiaria Ley 12/2009, de 30 de octubre, reguladora del derecho de asilo y de la protección subsidiaria. (Decree 203/1995, de 10 de febrero, por el que se aprueba el Reglamento de Aplicación de la Ley 5/1984, de 26 de marzo)

2.- Approach to Unaccompanied Minors

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- They are between 14-17 years old they follow a dangerous journey and arrived to Spain mainly through the Spanish coast, Ceuta and Melilla Cities and international airports.
- They usually arrive without documentation from their home country are not usually identified as minors. Many of them do not declare their age and many of them are registered as elders.

3. Age Assessment



- The **Article 35.3 of the Immigration Law** and the **Article 48.2 of the Asylum Law** state that where the minority of a person cannot be established in a sure way, authorities must provide attention and they have to put the person "immediately to the disposal of Public Prosecutor's Office for the determination of age.
- However, **the Spanish legal system has not developed any law** or regulations to neither the procedure the rights that assist them in the age assessment procedure, which in itself causes a clear defenselessness.



3. Age Assessment



Protocolo Marco sobre determinadas acotaciones en relación a los Menores Extranjeros No acompañados 22 julio 2014

Protocol considers undocumented to minors even though they provide documentation, if previously they medical age tests that motivated their consideration as an adult.

- Fases of Age Assessment procedure
- Infringement of rights at the Age Assessment procedure
- The Age Assessed is evaluated on the basis of: Subjective assessment of physical appearance and maturity; Alleged Previous Declaration of Majority (ADEXTRA registration); no validity is given to documents of Embassys ; medical test conclude with the determination of the majority; refusal to be tested.
- Age Assessment Legal Age= Legal Limbo

3. Age Assessment



High Court Case Law regarding age assessment procedure

- It expressly disallows **medical testing** in the age assessment procedure of documented unaccompanied migrants minors. (STS 453/2013, 23 December (RC No. 1382/2013), STS 452/2014, 24 December (RC No. 280/2013), STS 11/2015 of 16 January and STS 320/2015 of 22 May):
- *“The immigrant whose **passport** or equivalent identity document his minority of age, he cannot be considered an undocumented foreigner to be subjected to additional proof of assessment of his age, as it cannot be questioned without a reasonable justification for why such tests are carried out where one of those documents is legally issued by the country of origin whose validity has not been challenged or invalidated by any competent body” (STS 320/2015, of 22 May).*

There is not appeal mechanism to the age assessment decree. Civil or administrative dispute of the effects arising from the application of the decree.

4. Unaccompanied Minors with International Protection needs

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- **Age Assessment and minors asylum seekers**

Necessary application of the presumption of the minority
in applications for international protection

- They travel with elderly passports but declare are under 18 years old, explain causes of the situation, authorities do not consider the declaration of age and apply International protection as elders.
- Necesidad de la evaluación a profundidad de solicitudes de menores y el puesto fronterizo no es el lugar adecuado para identificar si la persona es menor de edad e identificar sus necesidades.
- Treated as adults violating article 25 Directive of procedures 2013/32/UE Guarantees of Unaccompanied Minors
- Children who come with an adult without any prove of their families ties: separation. DNA Test (Ceuta and Melilla), Presume familiar Ties (Madrid). At other times the absence of consideration of the family link has caused minors to be separated from their relatives,
- **Minors not recognized as unaccompanied minors cannot apply for international protection because they do not have legal representatives.**



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4. Unaccompanied Minor with international Protection needs

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- **Children who come with an adult without any prove of their families ties:** separation. DNA Test (Ceuta and Melilla), Presume familiar Ties (Madrid). At other times the absence of consideration of the family link has caused minors to be separated from their relatives,
- **Minors not recognized as unaccompanied minors cannot apply for international protection because they do not have legal representatives.**

In order to formalize the application, the **Spanish authorities require that they appear with their legal representative** . This practice infringes Article 7 of Directive 2013/32/EU of 26 June (procedures), which provides that the child has the legal capacity to act in proceedings under domestic law.

Spanish asylum law does not provide for any restrictions and Article 3 of Law 39/2015 of 1 October on the Common Administrative Procedure : ***Minors can exercise and defend** those of their rights and interests whose performance is allowed by the legal system without the assistance of the person exercising parental authority or guardianship.*

4. Unaccompanied Minor with international Protection needs



- **Vulnerability and treatment of unaccompanied minors victim of violence**

Article 46 of the Asylum Act lays down a **general system of protection which specifically provides for unaccompanied minors and goes beyond the protection regime provided in Article 21 of the Directive of Reception**, In the Spanish domestic legislation it covers not only the reception but also the procedures for determining the requirements of international protection.

Specifically Article 47 of the Asylum Act states that "*Children who are applying for international protection who have been victims of any form of abuse, neglect, exploitation, torture, cruel, inhumane, or degrading treatment, or who have been victims of conflict will receive the adequate health and psychological assistance and qualified assistance they need.*"

However, **these measures are not put in place**, lack of a regulation implementing the current asylum law

4. Unaccompanied Minor with international Protection needs



However, these measures are not put in place due to the age determination system, which lacks legal development legislation; lack of access to protection in juvenile facilities and the lack of a regulation implementing the current asylum law result in children fleeing violence and abuse not receiving the psychosocial care they need or differential treatment or neither in access to the procedure or in recognition.

- **In 2016 63.000 minors apply for international protection in the European Union and only 30 in Spain.**
- Applications of International Protection of Minors Unaccompanied Migrants in Spain:
 - In 2017, 21 of a total of 31.740
 - In 2016, 30
 - In 2015, 25
 - In 2014, 15.

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[Ayuda al Refugiado](https://www.youtube.com/Ayuda%20al%20Refugiado)

¡Muchas Gracias!





Panel Discussion

**National legislation and case-law on the
protection of unaccompanied
Asylum-seeking children in Ireland**
Katie Mannion, Irish Refugee Council



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Background to IRC



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Independent and impartial non-governmental organisation

Works to promote and enhance the lives of people seeking protection in Ireland

Confidential Support Services:

Drop In Service: Monday, Tuesday, Thursday

Open from 10 – 1pm; 2pm – 4pm: no appointment necessary

Housing & Transition

Education & Employment

Legal support

Youth Services

Rights-based advocacy & policy input

European Context



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Unaccompanied minors seeking international protection in EU and Norway

■ 2015: 99,995

■ 2016: 63,515

■ 2017: 31,570 Italy: 10,005 (92% of children were unaccompanied)

■ Ireland: 30 applications for international protection by UAMs (1%)

Irish Context



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2017

175 unaccompanied minors – 52 girls and 123 boys – were referred to the care of Tusla, the Child and Family Agency.

- 30 UAMs applied for international protection
- 111 were placed in care; others reunited family members already in Ireland / family in the UK.
- Included Calais Special Project
- Family Reunification service provided to 70
- > 50%: 16 – 17 years.

Irish Context

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2018

15 UAMs applied for international protection

4 UAMs relocated from search and rescue missions

Feb 2019

64 separated children seeking asylum in care of Tusla

Commitment to relocate:

36 UAMs arriving from Greece on a phased basis during 2019

5 UAMs from Malta

Irish Context



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Top 5: Afghanistan, Eritrea, Iraq, Syria and Ethiopia

Also: Nigeria, Libya, Morocco, Georgia, Iran, Sudan, Democratic
Republic of Congo

Predominantly male

Relevant Law

- International Protection Act (2015)
- Reception Conditions Regulations (2018)



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International Protection Act (2015)

- Introduced Single Protection Procedure
 - Refugee Status
 - Subsidiary Protection
 - Permission to Remain



Relevant Bodies

- **International Protection Office (IPO)**
 - Responsible for processing initial application, carrying out initial interview and making initial (first instance) recommendation regarding grant of refugee status, subsidiary protection and permission to remain

- **International Protection Appeals Tribunal (IPAT)**
 - Considers appeals on grants of refugee status and subsidiary protection – these are both considered via one single hearing

- **Irish Naturalisation & Immigration Service (INIS)**
 - Repatriation Division – deals with final consideration of permission to remain grants
 - Ministerial Decision Unit – responsible for issuing Minister’s Letter
 - Family Reunification Unit – considers family reunification applications

- **Garda National Immigration Bureau (GNIB)**
 - Responsible for registration – issues Irish Residence Permits

- **Reception and Integration Agency**
 - Responsible for direct provision accommodation allocations, transfers and associated matters
 - Tusla – Child and Family Agency

International Protection Act (2015)

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Recognises children as ‘vulnerable group’

‘Best interests of child’ is not overarching requirement, but a ‘primary consideration’ in specific provisions:

- Age determination

- Permission to reside

- Travel Document

- Family Reunification

- Conduct of personal interviews

Considered for prioritisation of applications

Unaccompanied child seeking international protection



14. (1) Where it **appears to an immigration officer** that a person seeking to make an application for international protection, or who is the subject of a preliminary interview, **has not attained the age of 18 years** and is **not accompanied by an adult who is taking responsibility for the care and protection of the person**, the officer shall, as soon as practicable, notify the Child and Family Agency of that fact.

(2) After the notification referred to in subsection (1), it shall be **presumed that the person concerned is a child** and the Child Care Acts 1991 to 2013, the Child and Family Agency Act 2013 and other enactments relating to the care and welfare of persons who have not attained the age of 18 years shall apply accordingly.

Child Received into care

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Allocated a social worker who is responsible for the development and implementation of an individualised statutory care plan for the child.

Not allocated a Guardian



Application for international protection

Application for international protection

- 15. Where it **appears** to the Child and Family Agency, on the basis of **information**, including **legal advice**, available to it, that an application for international protection should be made on behalf of a person who has not attained the age of 18 years (in this subsection referred to as a “child”) in respect of whom the Agency is providing care and protection, it shall arrange for the appointment of an employee of the Agency or such other person as it may determine **to make such an application on behalf of the child and to represent and assist the child** with respect to the examination of the application.

International Protection Act 2015



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- No legislative or policy guidance setting out how Tusla (Child and Family Agency) should make a decision on whether or not an unaccompanied minor should make an international protection application.
- Decision at discretion of Child and Family Agency
- Child does not have right to seek international protection independently.
- Article 18 of the Charter of Fundamental Rights

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union (hereinafter referred to as 'the Treaties').

Children in Care

| Area | Total number of children in care | Number of children in foster care | % of children in care, who are in foster care |
|--|----------------------------------|-----------------------------------|---|
| | February 2019 | February 2019 | February 2019 |
| Dublin South Central | 359 | 328 | 91% |
| Dublin South East / Wicklow | 272 | 245 | 90% |
| Dublin South West / Kildare / West Wicklow | 403 | 360 | 89% |
| The Midlands | 384 | 363 | 95% |
| Dublin City North | 503 | 465 | 92% |
| Dublin North | 328 | 294 | 90% |
| Louth / Meath | 410 | 388 | 95% |
| Cavan / Monaghan | 158 | 157 | 99% |
| Cork | 773 | 729 | 94% |
| Kerry | 165 | 150 | 91% |
| Carlow / Kilkenny / South Tipperary | 337 | 317 | 94% |
| Waterford / Wexford | 434 | 390 | 90% |
| The Midwest | 581 | 533 | 92% |
| Galway / Roscommon | 393 | 381 | 97% |
| Mayo | 123 | 120 | 98% |
| Donegal | 211 | 201 | 95% |
| Sligo / Leitrim / West Cavan | 108 | 103 | 95% |
| Separated Children Seeking Asylum | 55 | 9 | 16% |
| National Total | 5,997 | 5,533 | 92% |

Transferred to Direct Provision on turning 18

Age Assessment

Section 24



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Carried out where there are reasons to have doubts in relation to the age of the applicant concerned

- Age assessment examinations shall be
 - (a) performed with full respect for the applicant's dignity,
 - (b) the least invasive examination possible,
- and (c) carried out by a registered medical practitioner / suitably qualified medical professional.

Requires consent of— (a) the applicant concerned, or (b) one of the following: (i) an adult who is taking responsibility for the care and protection of the applicant; or (ii) an employee or other person appointed by the Child and Family Agency

Age Assessment – examination



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- Applicant must be informed, in a language which the applicant may reasonably be supposed to understand, of—
 - (a) the possibility that the age of the applicant may be determined by examination
 - (b) the method or methods to be used in the examination,
 - (c) the possible consequences of the result of the examination under subsection (1) for the examination by the international protection officer of the application, and
 - (d) the consequences of refusal on the part of the applicant to undergo the examination.

- (5) The consequences referred to in subsection (4)(d) are that the Minister or international protection officer may proceed to determine, for the purposes of this Act and in the absence of an examination under subsection (1), whether the applicant has not attained the age of 18 years.

- (6) The best interests of the child shall be a primary consideration in the application of this section.

Age Assessment

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- No appeal mechanism

Personal Interview

35. Personal Interview



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- Where a child is accompanied by an adult other than his or her parent, the interviewer, where he or she considers it appropriate to do so, shall require the adult to satisfy him or her that the adult is taking responsibility for the care and protection of the applicant concerned.
- Where the interviewer is not satisfied either that the adult is taking responsibility for the applicant or that the adult is authorised to do so, he or she shall so inform the Child and Family Agency,
- and (i) it shall be presumed that the applicant is a child in need of care and protection,
- and (ii) the Child Care Acts 1991 to 2013, the Child and Family Agency Act 2013 and other enactments relating to the care and welfare of persons who have not attained the age of 18 years shall apply.

International Protection Act 2015

- 36. Personal Interview
- Social worker allowed to be present and to ask questions or make comments
- (b) the personal interview is conducted—
- by a person who has the necessary knowledge of, and competence to take into account, the special needs of persons who have not attained the age of 18 years,
- and (ii) in a manner that enables the applicant to ask questions and make comments.



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Family Reunification



Section 56.

- Sponsor: **Under 18 years** of age at date of the application for family reunification. (But applications have been accepted where child has turned 18)
- Parents and their children who, on the date of the application for family reunification, are under the age of 18 years and are not married.
- Must apply within 12 months of positive decision.
- Difficulties: Delays in issuing of Ministerial Decisions Unit letters.
- No right to State provided legal aid for family reunification
- Minister should take into account vulnerability of family members, but Minister argues that these provisions affect operational matters regarding the processing of applications only.
- Current High Court challenges: 12-month rule and the interpretation of section 58 vulnerability provisions
- No follow-up family support

Detention

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- Detention for unaccompanied children is prohibited but detention may occur under Section 20(7)(a) IPA if two officials – Gardaí/immigration officers – believe the applicant is over 18 years pending an age examination.
- Neither the IPO nor Tusla collect statistics on age assessments conducted in Ireland

Assessment of claim

■ Assessment of facts and circumstances



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In the assessment of an application, an international protection officer shall, in the case of an applicant who was a child at the time of a relevant occurrence or at any time during which a relevant circumstance existed, take account of the applicant's age at that time and the level of understanding that could reasonably be expected of a child of that age.

Reception Conditions Regulations



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- Reception Conditions Regulations (2018)
 - Statutory Instrument No. 218
 - Adopted by government in June 2018
 - Resulting from Supreme Court (NHV case) regarding right to work for asylum seekers
 - Irish Government's way of implementing the European Union Reception Conditions Directive
- Provides minimum standards for accommodation and rights while in the asylum process and covers a range of issues incl:
 - Labour Market Access/Right to Work for protection applicants
 - Changes to entitlements regarding education access and training for people holding a work permit
 - Appeals process regarding direct provision accommodation decisions

Reception Conditions

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- ‘Vulnerable person’ includes unaccompanied minor
 - (2) The Child and Family Agency shall be the representative of an unaccompanied minor in respect of whom it is providing care and protection, and shall represent and assist the unaccompanied minor so as to enable him or her to benefit from his or her entitlements, and to comply with his or her obligations, under these Regulations.
 - (3) The Child Care Act 1991 as amended, the Child and Family Agency Act 2013, the Children First Act 2015 and other enactments relating to the care and welfare of persons who have not attained the age of 18 years shall apply to unaccompanied minors.

Reception Conditions

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- (5) The Child and Family Agency shall, subject to paragraph (6), and with assistance from other relevant agencies, endeavour to trace the unaccompanied minor's family.
- (6) In cases where there may be a threat to life or the integrity of the unaccompanied minor or his or her close relatives, particularly if they have remained in the country of origin, the Agency, in complying with paragraph (5), shall take care to ensure the collection, processing and circulation of information concerning the minor or his or her close family is undertaken on a confidential basis so as not to jeopardise his or her, or their, safety.
- (7) Notwithstanding Regulation 4, the entitlement under these Regulations of an applicant to the material reception conditions shall, in the case of an unaccompanied minor in respect of whom the Child and Family Agency is providing care and protection, be deemed to have been met..

Reception Conditions



- ‘Vulnerable person’ includes unaccompanied minor
 - (2) The Child and Family Agency shall be the representative of an unaccompanied minor in respect of whom it is providing care and protection, and shall represent and assist the unaccompanied minor so as to enable him or her to benefit from his or her entitlements, and to comply with his or her obligations, under these Regulations.
 - (3) The Child Care Act 1991 as amended, the Child and Family Agency Act 2013, the Children First Act 2015 and other enactments relating to the care and welfare of persons who have not attained the age of 18 years shall apply to unaccompanied minors.

Special Reception Needs



- Within 30 days of making protection application, authorities must assess whether an applicant has ‘special reception needs’

- Can include special needs based on sexual orientation or gender identity

- Issues:
 - Special reception needs or ‘vulnerability’ assessment currently not being implemented
 - Many people need to be retrospectively assessed
 - RIA are not currently in a position to facilitate transfers due to full/lack of capacity

Contact Details

Training of Lawyers on EU
Law on Unaccompanied
Migrant Minors



#TRAUMA

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See: www.irishrefugeecouncil.ie to donate!

National legislation and case-law on the protection of rights of unaccompanied minors in immigration cases

Katie Mannion, Irish Refugee Council



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Overview



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- Child Migration Matters (2016)
- Children and Young People on the Margins, Immigrants as Outsiders in the Two Irelands (2019)
- Lack of data on the number of unaccompanied children making immigration related applications (non-protection cases) in Ireland
- Not just minors but includes 18-23 years old, due to aftercare entitlements of separated children

General Considerations



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- Administrative applications
- Civil legal aid?
- No published decisions
- No independent appeals or right to internal administrative review procedure
- Judicial review may be an option but a minor will require a 'next friend'
- Many immigration judgments but few specifically related to unaccompanied minors

Immigration & Residence

- Registration requirements from age 16
- Section 9, Immigration Act 2004
- Offence punishable on conviction by a maximum fine of €3,000 and/or up to twelve months in imprisonment



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Discretionary Residence Permission



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- Ministerial discretion to grant residence permission and to attach conditions:
 - length of stay
 - access to employment
 - family reunification

Key Issues - Residence

- Children generally derive their residence status from their parent/s or legal guardian/s
- What if unaccompanied?
- Accompanied or unaccompanied, no published guidance by INIS on residence permission to be granted
- Inconsistency & inappropriate residence conditions having regard to facts
- Restrictions on access to social protections, education and work
- Children discharged from care without residence status
- BUT, also some evidence of promising and positive practices



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Extension of Registration Requirements

- Section 35(b) Employment Permits (Amendment) Act 2014 extended registration requirements to all children regardless of age
- Provisions not yet operational
- Migrant Integration Strategy 2017 committed to the introduction of registration requirements for all non-EEA migrants aged under 16 years by 2018
- ICI submission to INIS Public Consultation on Immigration Registration of Foreign National Children

Family Reunification



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- International Protection Act 2015
- No statutory provisions or entitlements for unaccompanied children (or Irish children, who may also be unaccompanied having lived overseas with foreign national parents having been born in Ireland to parents who later returned to their home country, e.g. Syria/Libya)
- Discretionary IHAP visa applications
- INIS Policy Document on Non-EEA Family Reunification

Identity and Access to Irish Citizenship

- Discretionary Irish Travel Document – no legislation
- Irish Nationality and Citizenship Act 1956 (as amended)
 - Automatically at birth on fulfilment of criteria
 - By descent – foreign birth registration
 - By naturalisation



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Key Challenges

- Access to consular services
- No formal stateless determination procedure
- Difficulties obtaining, maintaining status and securing citizenship due to relevant procedures
- Fees
- Who may apply? Who is deemed a 'guardian'?
- Who is the 'applicant'?
- Inconsistent approach and lack of transparency



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UNCRC Recommendations 2016

- Adopt a comprehensive legal framework
- Clear and accessible procedures for conferring immigration status on children
- Not yet implemented



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Thank you!