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Vulnerabilities Beyond Age

Filling the gaps in asylum hearing procedures for unaccompanied minors

Trust is key: it takes time for children to trust an adult enough to give a full account of their experiences. Authorities should ensure that minors have trusting and supportive relationships with individuals related to their asylum hearing.

For minors to fulfil their right to participate in their asylum hearing, they need to be educated about hearing procedures in a child-friendly manner.

Though minors are inherently vulnerable due to their age, decision makers should utilise a holistic approach that also considers other vulnerabilities related to other personal characteristics, past or present experiences, cultural background and precarity of legal status.

While policymakers are aware of best practices in asylum hearings for unaccompanied minors, implementation remains a challenge.

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Introduction

Almost 14,000 unaccompanied minors – children under the age of 18 – registered as asylum seekers in the European Union (EU) in 2019, according to Eurostat. The chances that they will receive asylum depend significantly on the story they tell. Yet children still struggle to tell their story: they may not trust the adults asking them questions; they may not fully understand the procedures; and asylum decision makers may fail to consider what characteristics and experiences have left them vulnerable. Hearing procedures may even add to vulnerability when they are not appropriately tailored to the needs and abilities of youth. When children in need of protection go unheard, asylum policies and procedures have failed to adequately fulfil their purpose.

To address dilemmas in unaccompanied minors' asylum hearing procedures and how to resolve these issues, the VULNER project organised a High-Level Expert Meeting in October 2020. The meeting was chaired by project researchers Hilde Lidén (Institute for Social Research) and Sylvie Sarolea (Catholic University of Louvain). The participants included Isabela Atanasiu (Directorate General for Migration and Home Affairs, European Commission), Rósa Björk Brynjólfssdóttir (Council of Europe), Vanessa Buvens (Defence for Children International), Ilse Derluyn (Ghent University), Ellen Desmet (Ghent University), Marie-Claire Foblets (Max Planck Institute for Social Anthropology), Katja Fournier (Odisee Brussels), Iolanda Genovese (UNICEF Innocenti), Jennifer Herbst (Primo-Levi-Gymnasium), Ravi Kohli (University of Bedfordshire), Luc Leboeuf (Max Planck Institute for Social Anthropology), Rekha Menon (United Nations High Commissioner for Refugees (UNHCR)), Rebecca O'Donnell (CHILD CIRCLE), Daniel Senovilla Hernández (French National Centre for Scientific Research), Monika Smit (University of Groningen), Stacy Topouzova (University of Oxford) and Federica Toscano (Missing Children Europe). Below, main conclusions of this meeting are presented.

Assess Minors as Minors

Asylum case decision makers must weigh multiple considerations: on the one hand, they are tasked with evaluating asylum interviewees' credibility, while on the other hand, they must also evaluate them as who they are: children. These two interests often conflict.

Assessing the credibility of an asylum seeker's story is

inherently complicated. Evidence usually consists of oral statements impossible to corroborate through evidence; the applicant and the interviewer often come from different cultural and linguistic backgrounds; communication usually takes place through an interpreter; and many asylum seekers suffer from post-traumatic stress disorders, making it difficult for them to recall and convey their experiences (Kumin, 2015).

Participants in our meeting often referred to a 'culture of disbelief' in asylum interview processes for unaccompanied minors. Vague references in asylum decision makers' training modules to the 'general credibility' of asylum applicants, without a precise definition of the term 'credibility', can lead to broad, inconsistent and potentially biased decision-making, with officers viewing many behaviour patterns as signs of a lack of credibility (Kumin, 2015). When the asylum hearing is held soon after the child's arrival, new information unearthed later can be met with distrust. In practice, rather than primarily considering the interviewee as a child, the asylum judge may view the interviewee first as an 'object of speculation'. Such attention to credibility detracts from the fact that the interviewee is, first and foremost, a child.

Trust is Key

For children to tell their full account of often-traumatic experiences, they must trust the adult questioning them during their asylum hearing, but building this trust takes significant time and effort, as well as a consistently present adult and an environment where the child feels safe. Consequently, participants in our meeting emphasised the importance of the child's lawyer, guardian and others, as well as their shelter and the school. Rapid institutional support upon a child's arrival is essential so that the child bonds with reliable adults. As children spend the majority of their waking hours at school, the classroom may be another appropriate environment for this sense of safety.

Understanding the Procedures

The United Nations Convention on the Rights of the Child guarantees children the right to be heard, meaning that their views must be given due weight throughout the asylum decision making process. But for children to fulfil this right, they must also be able to understand the procedures themselves. Many unaccompanied minors lack in-

formation about their hearing procedures and do not fully comprehend their significance.

There are few cases of courts communicating legal decisions in child-friendly language. In Belgium, only one asylum judgment for an unaccompanied minor has been specifically issued in language a 13-year-old could understand (Raad voor Vreemdelingenbetwistingen, 2018). The Council of Europe has created a handbook containing examples of promising practices to communicate information to migrating children in a child-friendly manner (2018). They include appropriate language and question framing, information to provide to children to empower them in the process, cultural sensitivity and more. These practices can help children exercise their right to participate. The child's lawyer can also provide important support in this area.

Even when informed, children might need months to process information, develop an understanding of the hearing procedures, comprehend their significance and adequately prepare. Participants in our meeting suggested an adapted classroom programme that includes information about the asylum hearing.

Towards a Holistic Procedure

Many EU countries lack clear and established procedures for assessing children's best interests in a holistic manner (European Asylum Support Office, 2018; UNICEF Innocenti, 2018). Best practices across Europe can serve as models for this approach. In Iceland, unaccompanied minors have their asylum interviews in the Barnahus, a child-friendly, multidisciplinary centre where a wide variety of children's cases are addressed (UNICEF Innocenti, 2018). Employees are professionally trained in psychology and other related competencies.

A multidisciplinary model of care for unaccompanied minors helps ensure a holistic approach to decision makers' assessments of their best interests. Participants in the meeting agreed that each child's characteristics, experiences and needs are unique and should be assessed on a case-by-case basis. A diverse team including psychologists, cultural mediators and other professionals would bring the skills to capture the child's experiences in the country of origin, in transit and in the destination country, as well as family circumstances and obligations, education history, ethnic and cultural considerations and a child's level of understanding (Council of Europe, 2018; Council of Europe, 2019). Case workers should receive interdisciplinary training that incor-

porates these diverse perspectives.

The Three-Dimensional Nature of Vulnerability

A tridimensional conceptualisation of vulnerability, as proposed by Lidén and Sarolea, would help operationalise a holistic approach. Minors are typically seen as vulnerable migrants due to their age. But an exclusive focus on age does not adequately reflect the complexity and diversity of their experiences, which are shaped by numerous intersecting personal and social characteristics. The conceptualisation is composed of three categories of vulnerability: 1) ontological vulnerabilities due to minors' personal characteristics (such as age, race, gender, physical capabilities, belonging to a minority); 2) situational vulnerabilities due to past or present experiences (inhumane treatment, trafficking, or other struggles during travel; disadvantaged social position in host societies); 3) administrative vulnerabilities (precarity of legal status).

The tridimensional approach to minors' vulnerability echoes the Council of Europe's guidelines for promoting child-friendly approaches in the area of migration (Council of Europe, 2019). These categories are flexible concepts to address minors' vulnerabilities in more sophisticated ways, while moving beyond an exclusive focus on age and revealing the diversity of realities that shape lived experiences of vulnerabilities and their interaction and accumulation.

The Gap Between Best Practices and Implementation

Challenges in asylum procedures for unaccompanied minors have changed little over the past decades, participants observed. However, they agreed that many good practices have already been developed to address these problems; the key challenge lies in implementation. One of the suggestions that came out of the meeting was to organise pilot cases where child-friendly procedures can be implemented and evaluated. These cases could become examples of best practices to be followed by other courts.

One noteworthy positive development is that children have the right to be heard and participate in their hearings. Although exceptions arise (speaking again about traumatic experiences is not always judged to be in the child's best interest), minors are generally considered people with their

own rights, agency and the ability to express themselves. 'What we see here, this was not dreamt of 25 years ago,' observed Foblets. Continued progress in this direction may prove a promising path towards full guarantees of children's rights and agency in crucial decisions about their futures.

Policy Recommendations

- Trust is key: authorities managing unaccompanied minors' cases should focus on ensuring that minors have trusting and supportive relationships with guardians, teachers, translators and other adults related to their case.
- Holistic decision-making that considers unaccompanied minors' personal characteristics, past or present experiences, cultural background and administrative vulnerabilities should be ensured. Qualified and trained personnel are necessary to incorporate all these considerations.
- Decision makers should treat children first and foremost as children, remembering that trauma, fear, cultural differences and past experiences may affect their behaviour.
- Minors should be given extensive and consistent education on the asylum procedures and their significance. Information should be communicated to them in a child-friendly manner.
- EU governing bodies should look more closely at the concrete challenges of implementing more child-friendly asylum procedures and develop practical measures to address these implementation problems. ■

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