

## **SEPARATED CHILDREN IN EUROPE PROGRAMME**

### Questionnaire for Country Assessment

#### **COUNTRY:**

Germany

#### **ASSESSMENT PERIOD:**

June 2003

#### **RESPONDENT(S):**

Some of the material used in this study was collected for the UNICEF study "Minor Refugees in Germany: Issues and Approaches aimed at a Solution" which was presented to the public in August 1999; some of the material used for this overview is the result of additional research. The assessment is based on the literature officially published in Germany on the topic as well as on so-called *grey literature*, plus approximately 330 interviews and consultations with representatives of federal and regional (at the level of the *Länder*) authorities, welfare institutions, organisations providing support to refugees, care agencies and minor refugees. New material has been added to the assessment in May/June 2003

### **Definition of the term "separated children" (SGP: A 2.1)**

- a. **Please give details of the definition used in your country. Different agencies may apply different definitions. Please give details of this.**

The term "separated children and young persons" is not used in the political and legal debate in Germany. In discussions among professionals the term "unaccompanied minor refugees" is most widely used; in colloquial German these persons are referred to as "refugee children" or "child refugees", and none of these terms is being precisely defined. That is to say that in all the terms used the children's being refugees is explicitly indicated.

The technical term "minor separated refugees" comprises the following aspects:

1. **"minor"**

Pursuant to the Civil Code (*Bürgerliches Gesetzbuch, BGB*) all persons under the age of 18 are defined as minors. The law valid until this point of time is called *Rights and Obligations of Parents and/or Guardians (Elternrecht and/or Vormundschaftsrecht)*, that is the person(s) entitled to bring up a child safeguard(s) the minors interests. However, the date of reaching majority is not an absolute date, but according to the *BGB* becoming an adult is a process which formally starts with a person's birth and ends upon completion of the 18<sup>th</sup> year.

- legal capacity

Until completion of the 7<sup>th</sup> year a child is legally incapable. After attaining the age of 7 until having reached the age of 18 years juveniles have limited legal capacity. The juvenile can conclude a contract if she/he full-fills the contract with her/his own means. However, the young person is only legally capable if she/he receives a benefit/advantage (e. g. gift and/or inheritance).

- responsibility for torts

Persons who are responsible for torts can be held responsible for civil wrongs (tortuous acts). A child under the age of seven is not responsible for torts. A condition defining the responsibility for torts of young persons aged 7 to 18 is their having the level of understanding that is required in order to be aware of one's responsibility regarding the action causing the damage.

- limited criminal responsibility, that is the possible responsibility under criminal law

Until completion of the 14<sup>th</sup> year, a young person lacks criminal capacity (criminal responsibility). A condition defining the criminal responsibility of a juvenile aged 14 to 18 is the fact that the young person at the time of committing the offence/crime – according to her/his moral and intellectual state of development - was mature enough in order to understand the wrongfulness of her/his deed and to act according to this understanding. For the purpose of education of the juvenile who does not have the required maturity and who therefore is not responsible under criminal law, the criminal judge has the possibility to decree measures of public education.

Overview of legally defined developmental stages:

completion of birth	commencement of legal capacity (capacity to be a subject of legal rights and duties)
	commencement of capacity to be a party to legal proceedings
	right to contact the <i>Youth Welfare Office</i> regarding issues of education and development
completion of the 6 <sup>th</sup> year	commencement of compulsory education as of the following school year
completion of the 7 <sup>th</sup> year	limited legal capacity (capacity to enter into legal transactions)
	commencement of limited liability for damage resulting from tortuous acts (limited responsibility for torts)
completion of the 10 <sup>th</sup> year	right to be heard when it comes to a change of religion
completion of the 12 <sup>th</sup> year	limited capacity to decide on one's religious affiliation
completion of the 14 <sup>th</sup> year	capacity to decide on one's religious affiliation

	limited criminal responsibility
	right to seek redress of grievances in jurisdiction over non-contentious matters.
	differentiation between children and juveniles regarding the protection of young workers
	right to vote and to stand for election regarding the representation of young employees in works councils
	right to be heard by the <u>family court and the guardianship court</u> in proceedings concerning the care for the person of the child
completion of the 16 <sup>th</sup> year	limited testamentary capacity
	commencement of eligibility for taking an oath before the court
	possibility of declaring capacity to marry (as regards age)
	compulsory possession of a personal identity card
	limited capacity to conduct proceedings in one's own name before social courts
	entitlement to independently receive post restante items
completion of the 18 <sup>th</sup> year	reaching majority; attaining of unlimited legal capacity
	right to vote and to stand for election
	unlimited criminal responsibility
	unlimited testamentary capacity
	unlimited capacity to conduct proceedings in one's own name before courts
	capacity to marry
	right to vote and to stand for election regarding the representation of employees in works councils <u>duty to serve in the military service for males</u>
completion of the 21 year	end of the prohibition of gambling in gambling casinos

### 1. "separated"

In colloquial speech minor refugees are called "separated" once they live in Germany without their parents or any other persons entitled to bring up the child. In German law, however, the term "separated" is not used. According to German law, a minor is considered to be separated

once there is no person in charge of caring for the person of the child (*Personensorgeberechtigter*). A *person entitled to care for the person of the child* is the person who "alone or jointly with another person is entitled to care for the person of the child pursuant to the regulations of the Civil Code", that is the child's parents or any other person who was assigned the personal custody by the guardianship court. *Personal custody (Personensorge)* is the caring for the person and it comprises the rights and obligations regarding care, education, supervision and determination of place of abode (§1631 *BGB*).

*Care for someone's property (Vermögenssorge)* is the care for the property of a person. A *person entitled to bring up a child (Erziehungsberechtigter)* is "the person entitled to care for the person of the child and any other person over 18 years of age who – based on an agreement with the person having the care and custody of the child – exercises tasks related to the caring for the child and in doing so does not only act on a temporary and restricted basis." (§ 7 of the *Code of Social Law – Sozialgesetzbuch; SGB VIII, Child and Youth Welfare*).

A minor who does not enjoy parental custody – following a decree by the guardianship court in charge – is assigned a guardian (§ 1773 (1) *BGB*). This is also true for cases in which the civil status of the minor cannot be identified. Pursuant to § 1774, the guardianship court must of its own motion make an order appointing a guardian. This guardianship can be an individual guardianship, a guardianship assumed by an association or a guardianship by the *Youth Welfare Office (Jugendamt)*.

## 2. "refugee"

In this respect one has to differentiate between the use of the term in legal contexts and in colloquial speech.

In German law there is a differentiation between two groups of refugees depending on whether they are referred to as refugees as per the Geneva Convention relating to the Status of Refugees or as per any other legal instrument. Those persons who have been able to prove at the *Federal Office for the Recognition of Foreign Refugees (Bundesamt für die Anerkennung ausländischer Flüchtlinge)* or at the courts that they are persons persecuted on political grounds pursuant to article 16 a para. 1 of the *Constitution (Grundgesetz)* are part of the first category. These asylum seekers are called *persons recognized as entitled to asylum (Asylberechtigte)*.

The so-called *convention refugees (Konventionsflüchtlinge)* are also included in this category. They are granted the so-called *small asylum (kleines Asyl)* under § 51 of the *Aliens Act* which is based on the principle of *Non-Refoulement*, that is the principle of non-refusal of entry as per the Geneva Convention relating to the Status of Refugees according to which a refugee must not be deported to a country in which her/his life and/or freedom is endangered due to her/his race,

religion, nationality, her/his belonging to a specific social group or due to her/his political conviction/opinion.

Refugees falling into the second category provided for by the German *Asylum Law* are the so-called *quota refugees (Kontingentflüchtlinge)*. These refugees can be admitted into a country on humanitarian grounds in the framework of international relief measures, if there is no other possibility of protecting their life and health. They do not have to pass through any asylum procedure. In the past there were quotas for "boat people" and Jewish immigrants from the former Soviet Union.

The amendment of the article governing the fundamental right to the granting of asylum – dated 1993 - which led to the formulation of § 32 a of the *Aliens Act* has established a protection limited in time for refugees seeking protection from war and civil war which consists in the granting of a temporary *residence permit (Aufenthaltsbefugnis)* in combination with a *work permit*.

But no sooner than in April 1999 – in view of the refugee disaster in Kosovo have the Ministers of the Interior decided to admit – in a first phase - 10,000 refugees into Germany. They received a *residence permit* with a time limit of three months under the condition of their renouncing to file an application for asylum. Due to their being granted the status of refugees seeking protection from civil war, they were granted the right to be gainfully employed. The allotment of these refugees to the *Länder* took place on the basis of a distribution code (*Königstein key to distribution*) that had been used on earlier occasions and which takes into account the economic strength and demographic situation of the *Länder*.

We have to differentiate between these definitions according to international and German law and the term "refugee" the way it is commonly used in our political debates. Whether someone is called a "refugee" usually depends on the reasons for which a person claims to have fled. In addition, what plays a role is the political approach of the person using the term and the context and the line of reasoning in which it is being used. In order to quote an example: There is a widely held consensus that people who suffered individual or collective persecution should be called refugees. It is, however, a controversial issue whether this is also true for persons who left their home country for economic reasons (misery) and who as a result frequently are called "migrants" by the international community of nations.

The differentiation between refugees and migrants under international law is based on the consideration that migrants leave their home countries, since they have chosen this option, in comparison; refugees leave their home country, since they were forced to. Nevertheless, on many occasions it is very difficult to make such a clear-cut differentiation. There are an increasing

number of situations in which it is very difficult or impossible to apply this rule. Frequently, individual political persecution goes hand in hand with a destruction of the economic basis of the lives of the persons affected, and in situations of war and civil war, the reasons making someone flee from her/his country frequently are a mix of political persecution, economic plight and a disintegration of the social fabric; and these factors might be made even worse by ecological disasters.

It is exactly this difficult differentiation between refugees and migrants that is reflected in the German debate on minor refugees. Charity organisations and groups supporting refugees frequently use the term refugee also for children and juveniles who have left their countries or were forced to leave their countries for economic reasons. This usage of the term can also be a political statement if it is to express a general rejection of the German *Asylum Law* and *Aliens Act* that is once these are considered to be too restrictive. Basically, the German *Asylum Law* and *Aliens Act* only recognise political persecution by government authorities as a ground justifying a flight from ones country.

However, German authorities exclusively apply the narrow legal definition as per German *Asylum Law*. Accordingly, only those persons who have been able to obtain a *right to remain (Bleiberecht)* are called refugees, i.e. *asylum seekers recognised as entitled to asylum, quota refugees* and *convention refugees*. Otherwise, authorities refer to *refugees seeking protection from civil war, asylum seekers* (as long as the asylum procedure has not been completed), and *asylum seekers who have not been granted asylum* (in those cases in which the asylum procedure had a negative outcome).

**a. Are children with older siblings over 18 years of age considered to be separated children? Please refer to Annex II of UNHCR Guidelines 1997.**

To begin with, under German law minor refugees are considered to be separated even if accompanied by siblings over 18 years of age. What is decisive in the end is whether these siblings are assigned parental custody by court. Consequently, we can differentiate between two groups of cases: (1) cases in which the child custody was assigned to a major brother or sister by court and (2) cases in which the child custody was not assigned to the major brother or sister.

Ad (1):

In Germany a new *Law of Parent(s) and Child (Kindschaftsrecht)* entered into force on July 1, 1998. In the framework of said law (governing matters of care and provision for children), the

possibility of assigning part of the parental custody to significant adults was created. Family courts have the

possibility to assign part of the parental custody to step father or step mother, to grandparents or major siblings of the child, if the child has lived outside the joint household for a prolonged period of time.

Since the assignment of parental custody is a decision taken by the family court, one can presume that the question whether the major siblings have the required maturity, commitment and capacity to assume/carry out the responsibility for the minor child has been assessed. However, due to the fact that these assessments are not always conducted with the necessary care, concerns of the kind formulated by the UNHCR regarding adult care-takers of separated children (above all in point 7 and 8 of Annex II) cannot be excluded in principle terms.

For the purpose of the refugee determination process of the minor refugee this means the following: It is in line with point 5 of the UNHCR Guidelines if a child – pursuant to the principle of family unity - is subjected to the regular procedure for determining refugee status jointly with the major care giver. In addition, the minor refugee has the possibility to demand the determination of her/his refugee status from the *Federal Office* and the courts, if the major brother or sister was not granted refugee status. Accordingly, point 10 of the UNHCR Guidelines described in Annex II under which the principle of family unity always has to be interpreted to the benefit of the (minor) family members, and never to their disadvantage, is being complied with.

#### Ad (2)

If the major siblings have not been assigned the child custody (or not yet) by the courts, and if in Germany there are no other persons entitled to child custody, the young refugee is considered to be separated under German *Asylum Law*. If she/he files a request for asylum, this application is dealt with like an individual request for asylum as per the general principles of the asylum procedure. As a rule, one can presume that in the asylum procedure of the minor a possible request for asylum by the major brother/sister will be taken into account. Accordingly, point 1.a of the UNHCR Guidelines is being complied with. Since the minor respectively her/his legal representative (as a rule the guardian) presents the application for asylum, and not the major brother or sister, point 1.b of the UNHCR Guidelines is irrelevant. Consequently, point 2 of the Guidelines is negligible as well.

Whether point 3 of the UNHCR Guidelines is complied with by German practice cannot be assessed, since this point is formulated in an imprecise manner.

## **b. To what extent does this conform to the Statement?**

For the purpose of answering this question the different elements of the definition have to be taken into account individually:

1. Regarding the aspect of *minority* there is only partial conformity: Above all in *Asylum Law* young people aged 16 are considered to have unlimited legal capacity. This is a major difference between German practice and the SGP, since it provides for a general age limit of 18 years of age.
2. The term "separated" is applied to those persons who live in Germany without being accompanied by a person having child custody. Nevertheless, only those persons who have been assigned child custody by the family court do have child custody.

## **c. Are any changes needed? In relation to any first principles?**

### **1. ad point A 2.1 (minority)**

There is an urgent need for action regarding the question, who is to be considered as "minor". Contrary to the UN Convention on the Rights of the Child, pursuant to which all persons under 18 years of age are to be considered as minors, the German *Law on Asylum Procedures (Asylverfahrensgesetz)* prescribes that all refugees over 16 years of age have unlimited legal capacity in terms of *Asylum Law*. Frequently, no guardians are appointed for them. On many occasions, in practice this means that these young persons have to conduct their asylum seeking procedures without any legal representative and without any personal support. This can have extremely negative consequences for the young persons, since in asylum procedures deadlines for filing of appeals are very tight.

Authorities of internal affairs claim that in other areas of law there is also a partial legal capacity of persons under 18 years of age, e. g. regarding the capacity to decide on ones religious affiliation, the right to vote and to stand for election or the criminal responsibility for tort, and that this is never considered to be a violation of the Convention on the Rights of the Child.

It has been reported that some *Youth Welfare Offices* delay the appointment of a guardian until the age limit of 16 has been reached. Still some Youth Welfare offices claim that the appointment of a guardian is no longer obligatory by law for children older than 16. This view is definitely violating the Civil Code. In doing so, minor refugees are deprived of the legal protection they are entitled to by law, a fact that might result in the consequences described above.

Therefore, the regulations of the *Law on Asylum Procedures* which lay down legal capacity of refugees aged 16 – 18 should be repealed. It should be the basic principle that for minor refugees legal guardians or advisors are appointed.

Regarding care placements and provision for minor refugees, the same standards that are valid for German children should be applied to minor refugees as well, that is standards pursuant to the *Child and Youth Welfare Act (Kinder- und Jugendhilfegesetz)*. They must not be placed in collective accommodation, but have to be placed in Youth Welfare Accommodation Facilities.

## **2. ad point B 1: Best interests of children shall be a primary consideration**

By means of this point one can summarize the overall criticism regarding the situation of separated children in Germany. In the following only two aspects are to be highlighted:

### **a. Lack of a clearing procedure**

One problem regarding the insufficient consideration of the best interests of children consists in the fact that there is no uniform clearing procedure for all of Germany in the framework of which it would be decided - in a binding manner and under consideration of the child's best interests - which of the following options serve the interests of the child best: the opening of an asylum procedure, the granting of a *residence permit* limited in time on humanitarian grounds or a return into the home country in a child-appropriate manner. Another problematic aspect is the fact that the young refugees frequently are placed in collective accommodation centres together with adults and that on some occasions they are deported without prior clarification of the issue of the children's and young persons' reception and care in their home country, that is without consideration of the children's and juveniles' interests.

This results in the need for a uniform design for the clearing procedure for separated minor refugees throughout Germany. The objective of the procedure should be the following: the procedure should enable those responsible to decide the placement of the minor under the principle of the best interest of the child. The guardian of the child has to decide on whether an asylum procedure should be opened, family reunification in a third state should be organised or whether the child is to be returned. In the latter case it has to be clear - without any doubts – that the child will get the appropriate care and provision in the receiving country. If it is not possible to guarantee this, the child or young person – for the duration of her/his stay in Germany – has to be provided with age-appropriate accommodation, care and provision and a *residence permit (Aufenthaltsbefugnis)* has to be granted.

For the duration of the clearing procedure – which is to take no longer than six months – the separated minor is to be granted a secure residence status. The practice carried out in some

*Länder* - according to which legally worthless documents such as border-crossing certificates and other substitute certificates that are not even recognised by all German authorities are issued - does not meet the requirement of providing the minors with at least a minimum legal security.

If an age assessment is thought to be necessary, since there are justified doubts regarding the age claimed by the minor, it should be carried out under the supervision of the guardianship court. An appointed care person should support the minor in the procedure. The assessment should be carried out by an independent body consisting of a paediatrician or a children's psychologist, persons working in the pedagogic field with the minor, members of the national community and professional interpreters. During that process the benefit of the doubt should apply to the minor.

The procedure that is very common at the moment according to which a representative of an authority does the determination by means of a so-called *viewing of the child* is to be rejected. The age determination must never be forced and must guarantee the child's freedom from injury and bodily harm, taking account of the physical and psychic maturity of the minor. In principle, children must be given the benefit of the doubt.

If deemed necessary, all minor refugees have to have the possibility of filing an application for asylum. As a rule, this will be the case if in a carefully conducted clearing procedure it has been found that there are justified grounds for an asylum procedure or if the minor insists on filing an application. However, the requirement is that the minor is granted access to a clearing procedure. Nevertheless, this is not the case once the so-called *airport regulation (Flughafenregelung)* and *third-country regulation (Drittstaatenregelung)* are applied to separated minors. The validity of said regulations for separated minors should therefore be abrogated.

#### **b. Reservation regarding the Convention on the Rights of the Child**

The deplorable state of affairs in legal terms is partly due to the fact that the principle of serving the best interests of the children so far has not been included in the German *Aliens Act* and *Asylum Law*.

It is true that in 1992 the Federal Republic of Germany has ratified the UN Convention on the Rights of the Child and in doing so has bound itself to primarily consider children's interests in all governmental/state acts, but in the ratification of the Convention it made a written *reservation*: According to this *reservation* the Convention will not be applied directly on a national level and the Convention does not limit Germany's right to pass laws and regulations on the entry and residence of foreigners. Based on that *reservation* German laws and regulations do not violate the Convention in legal and formal terms. Nevertheless, the national validity of this *declaration of reservation* and its permissibility in terms of international law is a controversial

issue, and this is also true for the question whether the legally valid regulations and the administrative practice in Germany meet the objective and the purpose of the Convention on the Rights of the Child. It is, however, evident that the *reservation* contradicts the principle of non-discrimination the way it is formulated in point B 2 of the SGP: According to the opinion of the German government, the rights laid down in the Convention on the Rights of the Child are not supposed to be valid for foreign children.

The key demand resulting from that (in line with a demand made by the UN Committee on the Rights of the Child) is that the *declaration of reservation* made by the federal government is to be withdrawn, since there are considerable doubts regarding its conformity in terms of international law with the Convention. Beyond that, the regulations of the Geneva Convention relating to the Status of Refugees are to be met in a consistent manner and it should be interpreted in a way that makes sure that the conception of the UNHCR is taken into account. Regarding the European Convention on Human Rights the rulings of the European Court of Justice should be complied with, above all its interpretation of Article 3 pursuant to which no one must be subject to torture, inhuman or humiliating/degrading punishment or treatment.

### **3) ad point B2: Non-discrimination**

The treatment of separated minors in German Labour Law, Social Law and Education/School Law is also a violation of the SGP's principle of non-discrimination. One result of that fact is the continuous deterioration of the social situation of minor refugees in recent years. By means of various law amendments, refugees' entitlement to social benefits has been reduced significantly. Minor refugees have also been affected by these reductions.

A decisive factor contributing to the poor living conditions of minor refugees is that many of them do not even have a *residence permit* limited in time, but they are only being tolerated; however, this *toleration* can be revoked. These refugees do not have a legal *status* which means that they do not even have a short-term perspective of life. This in turn makes it very difficult to motivate these children to go to school (if they are enrolled at all), and generally speaking they cannot start any vocational training either, since potential training shops/training companies are not willing to take the risk of the young persons insecure residence status.

The tolerated children and young persons live with the permanent fear of deportation, and this almost unavoidably leads to a lack of orientation of the juveniles; some of them even suffer from psychic disorders and show deviance; this way a later return to their home country and a re-

integration – which would be much easier if they had undergone some practical/hands-on vocational training – is rendered very difficult.

This systematic discrimination against the separated minors necessarily results in the demand that a further deterioration of the care and provision for minor refugees must be avoided. What needs to be done away with above all is the practice according to which refugees over 16 years of age are excluded from the reception of youth welfare benefits (they are excluded from coverage by the *Child and Youth Welfare Act*) without a prior careful examination of individual cases, which means that they are placed in collective accommodation centres and other residential settings without care. Another practice that needs to be abandoned is the geographic distribution/allotment of the children and young persons aged 16 up to 18 based on a quotation procedure that does not take into account their educational needs.

**4) ad SGP points B 5 (interpretation), 6 (confidentiality), 7 (information) and 11 (timeliness)**

These basic principles of the SGP are frequently violated in asylum processes in Germany. One reason for this is the fact that minor refugees have to pass through the same asylum process as major asylum seekers. They have to prove their individual political persecution either before the *Federal Office for the Recognition of Foreign Refugees* or before the courts. This, however, in many cases means that an excessive demand in intellectual and emotional terms is made upon the children and young persons, above all if they were actually exposed to persecution. Frequently, they are not aware of the implication and scope of the procedure; and the questions asked – the purpose of which consists in the revelation of contradictions and/or incorrect statements – are not properly understood by them.

Beyond that, the situation and context of the interrogations and the questioning environment might remind them of interrogations by the authorities in their home country. They are having a hard time describing contexts and connections that are relevant and decisive in the evaluation of their request for asylum.

In recent years, the *Federal Office* has responded to demands made by refugee aid organizations and welfare agencies regarding child-appropriate questionings, and individual decision-makers had to attend short further-training seminars in order to be prepared for the special requirements of procedures for minor asylum seekers. These efforts are to be welcomed and in practice some progress has been made in terms of a more careful treatment of young refugees.

Nevertheless, experts again and again have pointed out that in the framework of interviews with children one question that frequently is not examined with sufficient diligence is whether the

children might not be threatened with persecution due to the political activities of persons who are close to them. Another point of criticism frequently raised is that minor refugees all too frequently undergo these interviews without assistance on the part of a person whom they trust, and that not even official guardians accompany their wards during the interviews.

In those cases in which the *Federal Office* comes to the conclusion that the refugee is not entitled to asylum, it nevertheless has to examine whether there might be any obstacles to a deportation, such as serious threat to the child refugee due to armed conflicts in her/his country of origin. According to the Uncross opinion these examinations do not always sufficiently consider the fact that children are much more seriously endangered than adults by armed conflicts, a lack of medical services and insufficient supply of food.

This translates into the necessity of adjusting the German asylum procedures in a child-appropriate way. Asylum procedures for children and juveniles should be given priority in terms of time. However, this does not mean that one should resort to expedited procedures such as the *airport procedures* mentioned above. On the contrary, children and young persons should have access to regular (in terms of time) asylum procedures, the examination of their requests of asylum should be dealt with with the common diligence and they should also have access to common appeals/reviews.

During the interrogations before the *Federal Office for the Recognition of Foreign Refugees*, minors should always be accompanied by an adult whom they trust/advisor, if possible their guardian. In principle, these interviews should only be conducted by individual decision-makers who have undergone special training. Specifically trained translators or interpreters (speaking the refugee's mother tongue) should be present at all the interviews.

All information on the minor refugee or her/his relatives or other persons should be dealt with in a strictly confidential manner in order not to endanger them. Possible investigations conducted in connection with the asylum procedure must not endanger the minor's relatives remaining in her/his home country. The information obtained must not be diverted from its intended use.

The guardian or an appointed lawyer may collect information and send a written application to the Federal Asylum Office. The interviewers of the Office have the right to decide the case by taking into account written material laid down in the asylum claim file without conducting an interview.

## **Access to the territory (SGP: C1)**

### **1. A) Please describe relevant law, policy and practice in your country.**

Regarding the first phrase of point C 1.1 of the SGP, first of all it needs to be said that the term "seeking protection" the way it is used in the SGP does not exist in German *Asylum Law*. German *Asylum Law* only knows persons who seek political asylum.

If at the check-point (or - following an illegal entry - vis-à-vis a German authority) political asylum is requested, the authorities will verify whether the person has entered via a *safe third country* (to which she/he will be returned if applicable). If this is not the case, the person must be granted entry for the purpose of carrying out the asylum procedure. Due to the fact that in Germany there are no other special rights of protection for separated children, it happens on a regular basis that minors who have requested asylum, but who come from a *safe third country* and minors who have not made an asylum claim, but who nevertheless might require protection, are being refused entry.

Regarding the second phrase of point C.1.1 of the SGP according to which there should be no detailed interviews at the ports of entry it needs to be said that at German borders minors are always subjected to interviews since the border authorities have to decide whether the person in question wants to apply for asylum and whether she/he has come from a safe third country. Only in the *airport procedure* (see below) in the course of which minors are detained at the port of entry a detailed interview is conducted.

The legal situation regarding entry and refusal of entry and return is the following:

Pursuant to the *Aliens Act* all foreigners – apart from very few exceptions – who want to enter Germany need to have a *residence permit* in the form of a visa. This is true regardless of their age. A foreigner who does not have a visa is refused entry and returned either to the country from which she/he tried to enter, to the country where she/he started her/his journey, to the country where she/he has her/his habitual abode, to the country whose national she/he is or which issued her/his passport or to any country into which she/he is entitled to enter.

The exceptions to this rule are laid down in § 60 Para. 5 of the *Aliens Act*. A recognized refugee or an asylum seeker must not be returned to a country where her/his life and/or freedom is endangered due to her/his race, religion, nationality, belonging to a social group or due to her/his political conviction/opinion, unless she/he – for serious reasons - is considered to be a threat to the security of the Federal Republic of Germany or to the general public. In addition, a foreigner must not be refused entry or returned if in the country to which she/he is to be returned she/he runs the risk of being subject to torture, death penalty or inhuman, humiliating and degrading treatment respectively punishment.

In connection with these exceptions it is important to know that the obstacles to deportation that are specified in § 53 para. 6 of the *Aliens Act* are not stated as obstacles to return. Therefore, they

do not need to be verified by the border authorities when it comes to the decision-making regarding a return. Therefore, in principle it is possible to return a minor foreigner who is not a recognized refugee or an asylum seeker to a country where she/he is exposed to a significant concrete threat to health, life and freedom.

These regulations on return are detrimental to the situation of separated minors in a threefold way:

First of all, it is to be doubted that the *Federal Border Guard (Bundesgrenzschutz)* can always identify a minor refugee who wants to apply for protection from political persecution. This is definitely true for children and juveniles who come to Germany with the help of professional traffickers. Hints regarding the statements refugees are to make in interviews with border control officers or with other authorities where they go and present their application following their (illegal) entry is usually part of the "trafficking package". Refugees coming to Germany without this help might not know how important it is to request/seek protection or they might have linguistic problems formulating their intentions.

The *Federal Border Protection Authorities (Bundesgrenzschutz)* claim that their officers are in a position to recognize a request for protection even though a refugee does not explicitly use the term asylum. There are doubts that this is always true, above all when it comes to separated children. This is above all true for the so-called *advance checks (Vorfeldkontrolle)* conducted at large airports in the framework of which *Border Protection Officers view/inspect* the passengers on the plane or when disembarking from the plane and persons without a visa or a passport won't even get through to the regular immigration control, but Border Protection Officers will order their immediate return flight.

A second problem consists in the fact that certain refugees do not have the possibility to seek asylum. This is due to the so-called *third-country regulation*. They are supposed to file an application for asylum in the *safe third country*. This also applies to separated young refugees.

Minor refugees are affected by this regulation in a particularly disastrous way: As has been described above, refugees under the age of 16 do not possess the capacity to act in terms of the *Asylum Procedure Act* and therefore they are not entitled to submit an application for asylum without a legal representative, e. g. a guardian. However, under the *Aliens Act* it is possible to refuse entry to, to return and to deport persons under the age of 16 without requiring the consent on the part of a legal representative. According to the opinion of many critics this violates Article 22 of the UN Convention on the Rights of the Child.

A third obstacle that makes it very difficult for separated minor refugees to file an application for asylum is the *airport regulation* which means that all refugees that want to enter Germany via an

airport but without a valid passport or a substitute passport or who come from a safe country of origin or a safe third country, will be detained at the airport and will have to go through an expedited procedure of a maximum duration of 19 days. In a decree dated 1994, the Federal Minister of the Interior has again made it clear that this regulation is also to be applied to refugees under the age of 16; the maximum duration of the procedure for these children and young people is prolonged by the period required by the border authorities for the application for the appointment of a guardian (since frequently the *Youth Welfare Office* of the district to which the airport belongs is not informed immediately upon the arrival of the refugee child). This procedure features three problematic aspects: the fact that the child is detained, the duration of the procedure and the insufficient psychological and social care.

**1.b) To what extent does this conform to the Statement? Please outline in brief.**

As was described above, the relevant law, policy and practice in Germany do not conform to the principles stipulated in the SGP. Separated children seeking protection are refused entry into Germany and they are returned. There have also been cases of children being subjected to detailed interviews at the ports of entry.

**1. c) Are any changes needed? In relation to the first principles?**

All separated minor refugees have to be excluded from the *third-country regulation*. In addition, the *airport regulation* must not be applied to them.

**1. D) Please also indicate whether your country has "carrier liability legislation" whereby airlines, train and boat companies can be fined if they bring in someone without proper documentation. Is this applied to children and young people under the age of 18?**

§ 73 and 74 of the *Aliens Act* lay down the *carriers' return obligation* (*Rückbeförderungspflicht*). If a foreigner who wants to enter by aircraft, watercraft or land vehicle is being refused entry, the carrier immediately has to transport her/him out of the country.

In principle, a carrier is only entitled to transport a foreigner to Germany if she/he possesses the required passport or visa. The Federal Minister of the Interior or the *Federal Border Protection Authority* acting in agreement with the Federal Ministry of Transport has the possibility to fine a company if it violates the carrying prohibition. This fine amounts to between DEM 500 and 5,000; if they bring someone in by aircraft or watercraft the fine amounts to a minimum of DEM 2,000 for each foreigner transported despite the prohibition.

This legislation – without any exceptions - is also valid for separated minor refugees.

## **Trafficking (SGP. C1.2)**

**1. E) Are you aware of any children being trafficked for purposes of exploitation into your country? If so please give brief example(s) stating if possible the country of origin and nature of trafficking. Please also give examples where children have travelled along trafficking routes in order to apply for asylum?**

See below

**1. F) Have any measures been taken by the state to combat trafficking of any sort?**

**Appointment of guardian or advisor (SGP: C3)**

see below

## **Identification (SGP: C2)**

**2. A) Please describe the relevant law, policy and practice in your country.**

At the ports of entry there is no special procedure for identification of separated children. The general authorisation to determine someone's identity is based on the regulations as per the *Aliens Act*. With all persons willing to enter the country – in line with German respectively the Schengen regulations – it is being checked whether they have the required passport (§ 4 para. 1 *Aliens Act*) and the required visa (§ 3 para. 1 and 3 *Aliens Act*). The common practice carried out by the *Border Police* can be described as follows: The control comprises the identification of the minor and the person accompanying the minor. If the accompanying person is not a parent, she/he has to prove that she/he is entitled to travel with the minor. This can be done by means of the submission of a certificate issued by the parent(s) entitled to care for the child. If this kind of proof cannot be provided and doubts cannot be dispelled otherwise, the *Youth Welfare Office* in charge will be called in.

If suspicion is evoked, measures according to the regulations on criminal proceedings will be taken in order to clarify the situation. Among these measures is the interrogation of the person accompanying the child and the passing on of the minor to the *Youth Welfare Office* in charge.

The further course of the procedure will then depend on the result of the investigation and the decisions taken by the public prosecutor and the judge.

**2.B) To what extent does this conform to the Statement? Please outline in brief.**

Due to a lack of procedural provisions on the identification of separated children, the decision on the procedure to be followed in each individual case is to be taken by the Border authorities. Therefore, it is doubtful whether the nature of relationship between the child and the adult accompanying the child is always examined. It cannot be assessed whether the demands made in the SGP are met in this respect.

**2.C) Are any changes needed? In relation to any first principle?**

It would be desirable if the *Federal Border Protection Directorate (Bundesgrenzschutzdirektion)* passed regulations on identification. In the preparation and elaboration of this kind of guidelines the UNHCR's expertise should be taken into account.

**Appointment of guardian or advisor (SGP: C3)**

**3.A) Is a guardian or adviser appointed?**

If the minor – according to the opinion of the authority – is under 16 years of age, and if no family ties in Germany have been identified or a family reunification is not possible on a short-term basis, the minor is taken into the local *Youth Welfare Office's* care. The next step is the *Youth Welfare Office's* filing of an application for the appointment of a guardian with the guardianship court. The Civil Code provides for the appointment of a guardian by the guardianship court as soon as it has been determined that parental care was suspended.

The guardianship court has to give priority to the appointment of an individual guardian, and – if no individual guardian is available – the court can either appoint an association as guardian or an official guardian. In some *Länder* – like Hessen - it has become common practice to split the guardianship between a guardian and a lawyer, the latter being in charge of legal aspects of the protection of the ward, that is she/he is also in charge of the asylum procedure. The appointment of associations as guardians is also becoming more and more common. The *Youth Welfare Offices* of the *Länder* are in charge of recognizing and licensing associations as qualified for assuming guardianships.

Young adults who are over 16 years of age and for whom an urgent need for support has been determined by the *Youth Welfare Office* are placed in *youth welfare settings/environments* and

have a guardian assigned automatically. Young adults who are over 16 years of age and for whom no urgent need for support has been identified are placed in *interim care facilities* (*Erstaufnahmeeinrichtungen*) for adult refugees. The *Länder* are in charge of these facilities. Usually no guardian is appointed.

All countries have to provide the appointment of a guardian for young adults who are over 16 years of age. The problem is that in many cases neither the alien authorities nor the *Youth Welfare Office* do properly inform the young adults about these possibilities. That is why many minors aged over 16 do not get appointed a guardian until. In some cases social workers or other people become aware of the situation by coincidence.

It is sometimes possible to have a guardian appointed for young adults between 18 and 21 if they come from a country where majority is attained at 21 years.

### **3.B) If so, what is their role?**

The guardian has to take care of the person and the property of the ward and she/he is also in charge of the legal representation of the ward. She/he has to provide counselling to the ward and has to explain the possible types of relief and support available to the ward. The guardian exercises the right of supervision and is also in charge of the initiation of a procedure aimed at the determination of a child's residence status.

### **3.C) How soon after arrival are they normally appointed?**

The family court has to be informed within three days after the arrival. The appointment of the guardian which falls under the jurisdiction of the guardianship court can take up to three months; in Berlin delays for up to 7 months have been reported. The family court's standard explanation is that they cannot determine the suspension of parental care within three days.

For separated minors who are subject to the *airport procedure* two guardians are appointed on the day of their arrival. This applies to arrivals at Frankfurt International Airport.

There are reports on the fact that in the past there have been cases in which the *Youth Welfare Offices* have delayed the appointment of a guardian for 15-year-old persons until they reached the age limit of 16 and the capacity to be a party to legal proceedings was attained. Defacto, these minor refugees are deprived of the legal protection to which they are entitled under German law.

### **3. D) What kind of background and expertise do guardians/advisors have?**

Pursuant to § 1779 of the Civil Code the guardianship court – following the hearing of the *Youth Welfare Office* – is to select a person who in terms of her/his personal situation and financial condition as well as based on other circumstances is suited for taking over the guardianship of a child. When it comes to the selection from among several suitable persons what is to be taken into account – apart from the supposed will of the parents – is the ward's personal ties, relationship or affinity (relationship by marriage) with the ward as well as the religious denomination of the ward.

There are cases, in which relatives are not seen as suitable for the guardianship of their under age relatives. This is the case if relatives have an insecure residence status themselves or are still in the asylum proceeding. In principle, nobody can be appointed as a guardian who is incapacitated, under age, for whom a responsible person is ordered, who is bankrupt presently, or who is rejected by the parents of the minor. The guardian is obliged by law to fulfil his/her task faithfully conscientiously. Many guardians are not really suitable for their task, either because they do not have the legal knowledge or they do not have the necessary experience dealing wise authorities, in order to make relevant decisions for the ward. In these cases there is a high risk that the guardian misses deadlines, is easily influenced on important/decisive points all legal possibilities to reach a secure residence permit for his ward. To avoid these problems, guardians must be trained, which e.g. in Hamburg *Das Diakonische Werk des Kirchenkreises Blankenese* and the *Projekt Vormundschaften für Flüchtlingskinder* of the *Kinderschutzbund* do. In seminars the guardians learn about legislation, intercultural training etc. Official guardianships are faced with other problems (see next point).

According to § 1791 of the civil code a legally responsible association can be appointed for guardianship as well, if it has been recognized by the national *Youth Welfare Office*. The association may be appointed for guardianship, if no single person is at hand. Alternatively, the *Youth Welfare Office* can be selected for guardianship.

### **3. E) To what extent does this conform to the Statement? Please outline in brief.**

The major criticism that needs to be made concerns the fact that official guardianships can become a problem once official guardians are in charge of too many wards. The situation in Berlin where in recent years every official guardian was in charge of 200 to 300 wards is frequently quoted as an example; evidently this fact meant a substantial work overload. There has been an increasing number of complaints regarding the fact that some official guardians did not live up to their responsibilities (laid down by law) vis-à-vis their wards, that is they did not

properly exercise their function in asylum procedures (e. g. deadlines were not met, or children had to attend the interviews without being accompanied by their guardian). Another problem consists in the fact that *Youth Welfare Offices* in many cases do not file a complaint against a notice of an asylum decision, since they consider the action to be unlikely to succeed. There is many examples of *Youth Welfare Offices* who have only filed a complaint against a negative notice issued by the *Federal Office* after having been called on to do so by external bodies, e. g. lawyers or refugee support groups.

Another point justifying criticism is the fact that the *Youth Welfare Offices* of the districts where airports are located frequently are not informed by the *Federal Border Protection Police* on the arrival of separated minors which means that they cannot meet their care duties including their legal mandate to apply for guardianships.

### **3. F) Are any changes needed? In relation to any first principles?**

Also 16- to 18-year-old refugees must be assigned a guardian.

In many cases it would also make sense to appoint a lawyer as a special guardian in order to be able to meet the short deadlines that frequently are valid in asylum procedures. In cases that are manifestly unfounded it is one week, in other cases it is two weeks. An official guardian who is in charge of all aspects of protection of the ward, generally speaking, cannot look after all legal aspects with due diligence.

The demand formulated in point 3.2 of the SGP according to which the appointment of a guardian is to take place within one month is usually met. Nevertheless, repeatedly there have been cases in which the appointment of a guardian for a 15-year-old person was delayed until this person reached the age of 16 and thus had reached the capacity to be party to legal proceedings. These cases must be avoided, since they mean that the minors are deprived of their rights. The corresponding cases need to be prosecuted in terms of administrative law and possibly in terms of criminal law (taking recourse to the administrative and criminal courts).

The demand formulated in point 3.3 of the SGP according to which guardians must have relevant childcare expertise and an understanding of the special and cultural needs of separated children is complied with in general terms, but there have also been exceptions to the rule, mainly with guardians working for the child welfare office. Generally speaking the guardianship courts must carry out their task of selecting and appointing guardians with due diligence taking this aspect into special concern this.

## **Registration and Documentation (SGP: C4)**

### **4. A) Please describe relevant law, policy and practice in your country.**

The way how separated minors are being registered depends on the authorities they are confronted with in their first contacts with German authorities. If first contacts are with border authorities, the initial interviews described above (point 2) will take place at the port of entry, following these - if applicable - the minor will be granted the right of entry and she/he will be passed on to the institutions in charge depending on her/his age. Said institutions/agencies will then conduct more detailed interviews. Those minors who enter via an airport are in a special situation since they have to go through the so-called *airport procedure* and all interviews take place according to the guidelines valid for this type of procedure.

If first contacts are with other authorities than the border authorities, since the minors have entered illegally and either present themselves only at a later point of time or are being detained, following their registration - as a rule – they will immediately be passed on to the authorities in charge. If the minor according to the opinion of the authority is under 16 years and no family ties in Germany have been identified or if a family reunification is not possible on a short-term basis, the local *Youth Welfare Office* will take charge of her/him. Persons over 16 years of age - for whom there does not seem to exist any urgent need for help – are passed on to the *Länder`s initial reception facilities/interim care facilities* for adults. However, there is an increasing trend toward their being taken into *custody pending deportation (Abschiebehaft)* immediately after they have been picked up.

Part of the tasks resulting from the taking charge of a minor is counselling by the staff members of the agency where the child or young person is placed. So far, however, there are no regulations that are binding nationwide regarding the question how the minors are supposed to be informed about their situation in an age-appropriate manner, or regarding the question how the interrogation on their family situation, the motives for their flight, their educational level, and their physical and psychic situation is to be carried out. The type of interview is rather determined by common professional standards in *Youth Welfare* and varies according to reception facility and personnel working in these facilities.

Further interviews will take place in the framework of a potential asylum procedure (see point 11).

**4. B) To what extent does this conform to the Statement? Please outline in brief.**

The registration and documentation of separated minors carried out at the ports of entry – in general terms - conforms to the principles formulated in the SGP; one exception is the minors who are subjected to the *airport procedure*. The interviews focus on the registration of basic data. (Note on the SGP: Section 4 is not formulated precisely enough: What is meant by the terms "registration and documentation" in this context? Is it supposed to refer to the later interviews conducted by the *Youth Welfare Offices*? If so, which task should be carried out by the border authorities? Evidently, they have to perform a registration of the minor which must be documented. The demand that the registration and interview should be carried out once a guardian/advisor has been appointed is difficult to understand in this context.)

A detailed interview, the way it is being described in UNHCR Guidelines, para. 5.9, in many cases – at least with persons under 16 years of age – is carried out by the staff members of youth welfare authorities or of the other institutions involved in *initial reception/interim care*.

The SGP's demand regarding an appropriate training or expertise of those interviewing separated children is not always met. With the border authorities this is hardly ever the case, with the other authorities to whom separated children turn it is the case in rare exceptions.

**4. C) Are any changes needed? In relation to any first principles?**

A recommendation to be made is the following: For the purpose of initial interviews, the officers who do the registration of minors should call in an officer or staff member of the *Youth Welfare Office* in charge.

The *airport procedure* for separated minor refugees should be done away with (as described and explained in detail in point 1 a-c).

**Age assessment (SGP: C5)**

**5. A) Please describe relevant law, policy and practice in your country.**

The age of separated minor refugees is the decisive factor in terms of the *initial reception facility/interim care facility*. In those cases in which the authorities consider the age stated not to be credible they carry out an age assessment. There are reports from all *Länder* that the authorities make refugees "older". In North Rhine-Westphalia and Hamburg the authorities generally do not believe refugees, who indicate an age under 16. Three years ago there was a huge scandal in North Rhine-Westphalia, when all child refugees, who indicated an age under

16, were criminalized because of indirect false registration. Fortunately, all legal challenges against this practice were successful. In Hamburg the age of refugees is corrected upward on a regular basis. The alien authorities and the *Youth Care Office* in general do not accept any papers from African children claiming they are falsified. Even birth certificates or pupil documents of identification are not accepted. Being accused of giving false evidence right from the beginning of the procedure is a heavy burden on the whole application procedure. Until some years ago, medical examinations, such as dental examinations and X-rays of the bones of the wrist, were carried out even against the minors' will. However, many physicians and lawyers rejected these examinations for ethical, legal and factual reasons, above all since they represent an interference with the freedom from injury and bodily harm and since they are imprecise. Nevertheless from all *Länder* cases are reported, in which the hand root or the jaw bone was x-rayed for age determination. Use of X-ray is permitted in Germany for uncovering a criminal offence only. Since the persons under age entered illegally into the FRG, this is rated as the first criminal offence, the second one is the suspicion that they do not give their correct age. So authorities have the possibility to obtain a judicial permit to use x-ray. Therefore, nowadays - in cases of doubt - authorities resort to non-medical procedures of age assessment, above all the so-called *inspection/view*. This means that a staff member of the *Youth Welfare Office* or the Aliens Authority order the appearance of the minor and – exclusively based on her/his experience – the age of the minor is assessed. If a minor is not satisfied with the estimated age, he/she can appeal to a court in order to get a medical examination. In Hamburg they must bear the cost of the procedure: They must they pay 80€ to the *welfare office* if they were made older than 16, 140€, if they were made older than 18. This practice is illegal, because a child even if it is without means, must have the possibility of proving his/her innocence.

**5. B) To what extent does this conform to the Statement? Please outline in brief.**

If the SGP is to be understood in line with UNHCR Guidelines, age assessments by the authorities are admissible, but three requirements must be met: (1) In age assessments not only the physical appearance of the child, but also her/his psychic maturity is to be taken into account, (2) if scientific methods are applied, a certain margin of error should be permissible and the measures adopted have to be reliable and must not be inhuman or degrading, (3) children must be given the benefit of the doubt.

On this point the following observations need to be made: The basic position/approach of German authorities says that authorities are entitled to do age assessments. This is plausible, since there have been numerous cases in which refugees who evidently were of full age stated an

age under 18. If these statements of persons who in some cases were substantially over 20 years of age were accepted without scrutiny, this would entail a large number of problems in reception/accommodation facilities, since it might happen that adults would be placed with persons who are under 16 years of age which would negatively affect the refugee children's safety.

**5. c) Are any changes needed? In relation to any first principles?**

If an age assessment is factually required, since there are justified doubts regarding the age stated by the minor, this assessment must be done by professionals such as paediatricians or children's psychologists. In principle a legally justified procedure for age assessment must be developed, involving paediatricians, psychologists as well as adults the respective minor can trust.

**Detention (SGP: C66.a)**

**6. A) Please describe relevant law, policy and practice in your country.**

(This point of the SGP is not referring to detention of separated minors in general terms – for example due to criminal offences - but to detentions based on their status. The following statements are therefore limited to detentions/custody pending deportation.)

Detentions of separated minors by means of which a deportation is to be prepared or ensured is provided for and specified in § 57 of the *Aliens Act*. Pursuant to said article a so-called *preparatory custody (custody pending deportation)* is to be decreed by a judge if an immediate decision on the deportation is not possible or if the deportation were rendered difficult or if it were obstructed without said detention. A so-called *preventive detention (custody pending deportation)* is to be imposed if the foreigner has the enforceable duty to leave the country due to an illegal entry, if the period for leaving the country has expired and she/he has changed her/his place of residence without informing the aliens authority, if she/he cannot be located on the announced date of deportation, if she/he has otherwise evaded deportation or if there is a well-founded suspicion of her/his intending to evade deportation. *Preparatory custody* can last up to six weeks; *preventive detention* can take up to six months.

**Haft (SGP:C6)**

The ministries of the interior don't give any information about current numbers of imprisoned minors. Even inquiries of social workers, groups of supporters and politicians remained without

result. Only reports of pastors who have free access to prisons give an idea. There are cases in all *Länder*, where minors, even ones aged fewer than 16, are imprisoned. In North Rhine-Westphalia separated children are in *preventive detention* in youth jail. The Interior authorities seem to try to avoid under all circumstances that anybody gets to know about these minors. In Frankfurt, separated children, who arrive at the airport, are imprisoned on the grounds of the airport (which is extraterritorial), until their application for asylum is decided.

As soon as support groups get informed that a minor is in detention in order to be deported, there are possibilities to free him/her with the support of his/her guardian. Problems emerge because first of all persons like law enforcement officers, judges, social workers etc. do not announce minors to the *Youth Welfare Office*, secondly the young people are made frequently older than they are (an age assessment can be made also in prison by a magistrate. In these cases minors are never estimated to be under 16 - which means their arrest is justified), and thirdly often the correct age is not at all recognized. For this reason there are no reliable numbers about separated children in preventive detention.

**6. B) To what extent does this conform to the Statement? Please outline in brief.**

The legal situation and the law enforcement practice in Germany clearly conflicts with all principles formulated under point 6 of the SGP.

Nevertheless, it needs to be said that the SGP also in this respect is less unambiguous than UNHCR Guidelines: UNHCR Guidelines only require that children seeking asylum should not be kept in custody. In comparison with that, the SGP uses the phrase that separated children should never be detained for reasons related to their immigration status (this term also needs to be verified carefully). The UNHCR makes it clear that detentions are a – lamentable – reality and demands that in the case of detentions at least § 37 of the Convention on the Rights of the Child should be respected.

According to this Article the detention of a child must only be used as a means of last resort and for the shortest appropriate period of time.

**6. C) Are any changes needed? In relation to any first principle?**

When it comes to deportations the regulations stipulated in the UN Convention on the Rights of the Child must be complied with. Detentions should only take place as a means of last resort and for the shortest required period. Minors should never be subject to *preventive detention*. During the detention the minor must be given an age-appropriate care and provision, she/he has to receive psychological counselling, an interpreter has to be called in and she/he must not be

placed with adults. In principle, authorities should try to bring about a voluntary return instead of a deportation, however, prior to the return it must be verified whether in the country of origin there are child- and youth-appropriate reception facilities.

## **Right to participate (SGP: C7)**

### **7. A) Please describe relevant law, policy and practice in your country.**

The German *Aliens Act* and *Asylum Law* do not comprise any general regulations providing for separated children's and young adults' right to participate in decisions affecting them.

### **7. B) To what extent does this conform to the Statement? Please outline in brief.**

The German legal situation does not only not comply with the above-mentioned Art. 12.1 of the Convention on the Rights of the Child, but it does not meet Art. 4 either (Art. 4 says that for the purpose of realising the rights recognised in said Convention all appropriate measures in terms of legislation, administration and other measures must be taken). In addition, Article 3 of said Convention is not complied with either (regarding decisions based on discretion, Art. 3 calls for a primary consideration of the best interests, opinion and wishes of children and young people). There are some lawyers specialising in administrative law who claim that administrative decisions that affect children's affairs but do not take into account their interests in an understandable way are legally defective decisions.

A particularly striking discrepancy between the demands formulated by the SGP and the situation in Germany consists in the regulation of the German *Asylum Procedure Law* according to which all refugees over the age of 16 possess unlimited legal capacity in terms of *Asylum Law*. The fact that frequently no guardian is appointed for these young persons results in the young persons' having to go through the asylum procedure without a legal advisor and without personal counselling and support. This practice which can entail very negative consequences for the young persons, since periods for lodging an appeal are very short, clearly violates the SGP principle according to which the children's and young persons' participation (in an age- and maturity-appropriate manner) should be ensured.

### **7. C) Are any changes needed? In relation to any other first principle?**

An important step towards the elimination of the deficits identified would consist in the incorporation of explicit referrals to the CRC into administrative regulations on the *Aliens Act*

and the *Asylum Law*. One should also formulate principles prescribing compliance with the corresponding articles of the CRC, above all Art. 12.1.

## **Family Tracing & Contact (SGP: C8)**

### **8. A) Please describe relevant law, policy and practice in your country.**

For the purpose of tracing for family members and other relatives (members of the extended family) of an unaccompanied minor there are no legal rules. The authorities in charge – as a rule the *Youth Welfare Offices* – have to carry out that task. The decision on the type of search and the choice of the tools used is up to the officers.

In practice, the first step will be the attempt to collect the required information through consultation with the child, and the Aliens Authorities utilise their pool/network of information, among other sources the *Central Aliens Register (Ausländerzentralregister)* located in Cologne, in order to trace parents who already live in Germany. If this is not the case and there is a well-founded assumption according to which the parents reside in another country of the European Union relevant data is gathered with the authorities of the corresponding countries by means of *inter country official assistance*. In other cases German consulates and embassies are called in.

On many occasions the tracing services provided by the International Social Service (ISS) are resorted to and on some occasions the searching/tracing service of the International Red Cross is being used.

### **8. B) To what extent does this conform to the Statement? Please outline in brief.**

Since there are no harmonised procedures for the tracing for family members it is not possible to give a general answer to the question whether the German authorities practice complies with the SGP. It can only be said that in some cases the tracing for separated minors is not carried out with sufficient emphasis, that is the tracing in many cases is not initiated immediately after the registration of the child but weeks or months later and NGOs which could provide efficient services – above all the International Social Service and the International Committee of the Red Cross (ICRC) - are not always called in. Careful handling of data is crucial. An asylum claim can even prevent family unification or further migration

### **8. C) Are any changes needed? In relation to any first principle?**

It would be desirable if the authorities in charge of tracing had clear-cut rules and guidelines as to how this search is to be carried out and if they were provided with information on what kind of possibilities there are in the framework of *inter country official assistance* and as to what kind of contribution can be made by NGOs. But what would be necessary above all is an enhanced awareness on the part of authorities as to problems that can be generated by tracing activities for the family members and relatives who remain in the country of origin of the minor. In this respect, there frequently is a lack of knowledge and consideration which is reflected in the fact that separated children seeking asylum are sent to the consulates or embassies of their home countries in order to obtain certificates that German authorities require.

### **Family reunification in a European Country (SGP: C9)**

#### **9. A) Please describe relevant law, policy and practice in your country.**

As per the Dublin Convention separated children who have parent(s) who are recognized refugees living in another EU state will be entitled to have their asylum claim dealt with by that state. If the parents live in Germany, German authorities have to fulfil a corresponding request on the part of another EU country.

In addition, § 20 of the German *Aliens Act* provides for the fact that any minor child - born out of wedlock - of a person entitled to asylum living in Germany automatically has to be granted a *permanent residence permit (Aufenthaltserlaubnis)*.

A child of other foreigners (that is of persons not entitled to asylum) must be granted a *permanent residence permit* if the two parents living in Germany have a *permanent residence permit* or a *right to reside* and if the child is under 16 years of age. The other possible cases of granting a *residence permit* to children who have come to Germany are subject to the discretion of German authorities and are tied to restrictive conditions. (§ 20, 4 *Aliens Act*).

The case of a separated minor having been recognised as entitled to asylum in Germany and who wants to have his parents live in Germany as well is not explicitly provided for in the German *Aliens Act*. The prerequisite for this kind of family reunification is, however, that the family members can be found. As to this, as a matter of principle, the statements made in point 8 are valid.

**9. B) To what extent does this conform to the Statement? Please outline in brief.**

Regarding family tracing in other EU countries we can only refer to the statements made in point 8. As to the legal situation in Germany it is doubtful whether the restricted right mentioned above meets the demand formulated in the SGP (according to which EU countries should promote family reunification) or not. We use the term "restricted", since in practice it depends on the limited scope of discretion of German authorities whether the parents of separated minors recognized as entitled to asylum in Germany can join their children in Germany.

**9. c) Are any changes needed? In relation to any first principles?**

In the German *Aliens Act* improvements regarding family reunification for separated minors are required.

**Interim Care – Health – Education and Training (SGP. C10)**

**10. A) Please describe relevant law, policy and practice in your country.**

The age of separated minor refugees is the decisive factor when it comes to the initial placement in accommodation facilities. In cases in which the authorities think that the age-wise statements made by the children or young persons are not credible they carry out the age assessments described above (point 5). Refugees who are under 16 years of age or whose age is considered to be fewer than 16, in principle, are placed in special *initial reception or initial care and provision facilities (Erstaufnahmeeinrichtungen, Erstversorgungseinrichtungen)*. In practice, however, again and again there are delays of up to several weeks concerning the committal to these accommodation facilities. And in this transition period children and young persons are placed in the *initial reception centres* for adults.

Separated minor refugees over the age of 16 are covered by the nation-wide distribution process for asylum seekers and they are distributed among the *Länder* until their quotas have been fully exhausted. In exceptional cases, that is once the *Youth Welfare Office* has identified a need for pedagogical support, also the over 16-year olds can be placed in *special initial care and provision facilities*.

The decision as to whether there is a special educational need is taken by the *Youth Welfare Office* of the place where the minor has registered with German authorities for the first time. In the initial interviews with the refugee which in some *Länder* are called *clarification procedure* and in others *clearing procedure* the *initial care and provision facility* or the *clearing agency* first of all register the minor's personal data. In this process the question whether parents or other

persons entitled to rearing the child already live in Germany is of pivotal importance, since in this case the minor will be passed on. In the initial phase, in addition, the age of the refugee is being determined. If the minor - according to the opinion of the authorities - is under 16 years of age and if no family bonds in Germany are identified or if a reunification with relatives is not possible on a short-term basis, the local *Youth Welfare Office* will take charge of her/him. Those refugees who are over 16 years of age and for whom no urgent need for support is identified are passed on to the *Länder's initial reception centres* for major refugees.

*Interim care (initial reception)* ends with the refugee being passed on to one of the *subsequent accommodation and care facilities (Folgeunterbringungseinrichtungen)*.

#### **10. B) To what extent does this conform to the Statement? Please outline in brief.**

For years welfare agencies and professionals have been demanding the development of *initial reception procedures* for separated minor refugees, so-called *clearing procedures*. These procedures are to provide an age-appropriate reception and provision to children and young persons who newly entered Germany; in addition, the procedure is to take account of the fact that these persons have fled their home countries and they are to provide them with the possibility to psychically and physically stabilize.

Beyond that, said procedures are to enable authorities to clarify the personal living conditions of the refugee in appropriate time and to provide the opportunity to collect information on the whereabouts of parents and other persons entitled to rearing the child and about the family situation in general. In the course of the initial reception stage, the care for the child refugee should be guaranteed and, if necessary, the *Youth Welfare Office* in charge is to file an application for guardianship, if required. In addition, a decision is to be taken on the question whether it is necessary and helpful to lodge an application for asylum, whether *toleration* or a *residence permit* will be applied for and whether the minor is to be returned to her/his country of origin.

At the moment there is practically no clearing procedure and no clearing agency that is not exposed to criticism on the part of refugee support groups and in some clearing agencies the criticism is voiced by the staff members themselves; the focal point of their criticism is the fact that there is nobody in charge of the young persons over 16 years of age. However, it has to be said that not all of the criticism is equally harsh and that it is referring to different aspects. In some *Länder* the focal point of criticism is the structural state and the equipment of the reception centres or an insufficient number of employees (care workers). In other *Länder* the criticism raised is focusing on the fact that the way the procedures are organized (collective placement of

separated minors) mainly is to facilitate the work of the *Youth Welfare Offices* and the welfare of the children and young persons and therefore the protection of these children is playing a subordinate role.

In summary, it is to be stated that the German rules and practice regarding *initial reception/interim care* only in some aspects – and not in all *Länder* – meet the demands formulated in the SGP.

### **10. C) Are any changes needed? In relation to any first principles?**

These substantial problems regarding the existing clearing procedures – which have become manifest in all *Länder* in a similar way – lead to the conclusion that these procedures must be completely re-designed and need to be harmonized on a national level.

A clearing procedure re-designed nation-wide remedying the points of criticism mentioned above should cover all minor refugees, that is also the refugees between 16 and 18 years of age. The expertise of the care workers who would be involved in the re-designed clearing procedure could also be used for official age determinations in cases of doubt.

The clearing procedure for separated minor refugees must be re-designed and harmonized on a national scale. It must be the objective of the procedure is able to take a legally binding decision on the abode of the minor. The *Youth Welfare Office*, the guardian of the child and possibly a judge of a guardianship court must be involved in the decision-making; and they have to decide whether an application for asylum is to be lodged or whether the child is to be returned. In case of deportation it has to be ensured that the child will get appropriate care and reception in the receiving country. The possibility that a deported child could easily get victim of child trafficking after returning home without appropriate care is to be taken into account. If this cannot be guaranteed, the child or the young person has to receive age-appropriate care (accommodation) and provision during the time of her/his stay in Germany and she/he must be granted a *residence permit*.

The following aspects must be adjusted in line with the demands formulated by the SGP:

#### **1. Granting of a *residence permit* for the duration of the clearing procedure**

For the duration of the clearing procedure which is not supposed to take longer than six months but to be oriented at the individual case the separated minors have to be granted a secure residence status. The practice common in some *Länder* - according to which legally invalid border crossing certificates or similar documents that are not even recognised by all authorities are issued – does not fulfil the requirement of at least providing the minors with a minimum legal security.

2. Establishment of guardianships that comply with the interests of the child (see point 3)

Separated minor refugees have the right to a guardian or advisor. Also 16 – 18-year-old refugees need to be assigned an advisor or guardian. The exclusive appointment of official guardians is to be rejected, since associations and individual guardians are more independent and therefore frequently are in a better position to represent a child's interests in a more diligent way.

4. Carrying out of a child-appropriate age determination procedure (see point 5)

If an age determination/age assessment is factually required, since there are well-founded doubts about the age stated by the minor this age assessment must be done by professionals such as paediatricians or children's psychologist. The widely used practice of a so-called *inspection* by representatives of the authorities is to be rejected. The age determination must never be forced and must guarantee the child's freedom from injury and bodily harm, taking account of the physical and psychic maturity of the minor. In principle, children must be given the benefit of the doubt.

5. Ensuring access to the asylum procedure, if factually required (see point 11)

All minor refugees must have the possibility to file an application for asylum, if it seems to be factually required, and to lodge an appeal at legal redress if it is refused. This will regularly be the case once in a carefully conducted clearing procedure it has been found that there are grounds for an asylum procedure, or once the minor insists on the lodging of an application for asylum. However, the prerequisite for this is that the minor has access to a clearing procedure. This is not the case if the *airport regulation* and the *third-country regulation* are applied to separated minors. Consequently, the validity of these regulations for separated minors should be repealed.

6. Identification of separated minors and immediate careful family tracing (see point 8)

On the occasion of the entry of separated minor refugees, border authorities should try to clarify whether the adults accompanying the children and young persons actually are persons entitled to rearing the child, in order to prevent minors from being exploited by criminal traffickers. In principle, family tracing is to be initiated immediately after the separated minors' registering with German authorities. Suitable international non-governmental organizations should always be involved in the tracing and it must always be ensured that the security of separated minors after a potential return, and the security of their relatives remaining in the country of origin will not be endangered. The children and young persons have to be informed on the steps taken and if applicable must have the right to contact their relatives.

7. Returns should only take place if they fulfil the children's best interests (see point 12.s)

Separated minors must not be refused entry, be returned or be deported, if persons entitled to bring up the child(ren) stay in Germany. In general terms, returns should never be carried out without prior ensuring of the fact that reception and care for the children and young persons is guaranteed and that the residential settings and care placements meet the children's best interests. It is necessary to be aware of the danger of child trafficking and violence.

## **Health (SGP: C 10.2)**

### **10. D) Please describe relevant law, policy and practice in your country.**

Even the scope of healthcare provided to minor refugees is determined by their legal status. Separated minor refugees who are placed in *Youth Welfare Settings (Jugendhilfe)* receive the treatment and services generally provided for by the *Child and Youth Welfare Law (Kinder- und Jugendhilfegesetz)* and the *Federal Social Welfare Law (Bundessozialhilfegesetz)*. Their situation in terms of health care is to a large extent unproblematic. But lately have been cases reported, where social workers have to fight for the medical care of their wards. Operations or orthodontic care are no longer ordered by doctors, although the child has a right to it. In these cases the children are regarded not as children, but primarily as refugees. This development is disturbing, because it reflects a social attitude, according to which one refuses refugees support and ignores their rights. Alarming is the experience of a social worker from Berlin, who brought a refugee child with black skin colour into hospital because of acute appendicitis, and the first question of the doctor was, for how long this child was going to stay in Germany.

On the contrary, separated minors who are covered by the *Law on Social Services/Benefits for Asylum Seekers (Asylbewerberleistungsgesetz)* are only entitled to limited medical and dental assistance. Pursuant to § 4 of said Law they are only to receive assistance in cases of acute illness and pain. Services in terms of preventive medicine and treatment such as dental prophylactics are not provided for. The health insurance certificate that they receive upon request might bear a note saying that they are only entitled to certain services and that physicians and hospitals can only charge fixed fees. Generally, refugees do not have free choice of a doctor. In some municipalities *Social Welfare Offices* demand that refugees prior to seeing a doctor or a medical specialist ask for their approval; in other municipalities *Social Welfare Offices* even determine which doctor is to be consulted. In Berlin many minors aged fewer than 16 are treated according to the *Law on Social Services/Benefits for Asylum Seekers*. The reasons for that are different. Obviously the authorities excluded them from the (more expensive) *Youth Welfare*

*Law* as a punishment because they skipped school regularly or were obstinate in other ways, which is unacceptable.

What is an issue for refugee children is the fact that they are only entitled to restricted health care services and that they will only be treated if suffering from an acute disease or injury. However, particularly minor refugees frequently suffer from psychosomatic diseases resulting from their experiences in the course of their flight and which are aggravated by their uncertain living conditions in Germany and which only after some time develop into manifest clinical pictures. Regarding these children and young persons, an early preventive treatment and suitable psycho-social assistance would help to avoid a later, more serious disease that will be much more expensive for the community of insured persons.

In some *Länder*, welfare agencies and initiatives aimed at granting assistance to refugees have established supraregional counselling centres that have also formed a Federal Study Group. These centres offer counselling and assistance services in medical and psychological terms plus practical support in terms of handling every-day life in Germany. Concerning minor refugees, the services might also comprise support in learning the language, regarding problems at school or in finding a job (apprenticeship). Nevertheless, one needs to know that these psycho-social services are mainly available to refugees living in areas of urban agglomeration. In rural areas there are hardly any facilities of that kind.

In recent years, several *Länder* have established treatment centers for refugees suffering from serious traumatisation resulting from the experiences they made during their flight. These treatment centres have different organizational structures and are financed by different bodies and institutions. Since 1992 there is a *Treatment Centre for Victims of Torture* in Berlin which is being funded by the Commission of the European Union, the UN Human Rights Centre, the German Red Cross, various foundations and private donations. The *Centre* offers assistance to victims of organized governmental violence who suffer from extreme traumatisation; assistance covers physical ailments, mental and psychical complaints and psychosomatic impairments. The clients, amongst whom there are children as well, are treated and cared for by general practitioners, psychiatrists, psychotherapists and social workers who closely cooperate in a polyclinic.

**10. E) To what extent does this conform to the Statement? Please outline in brief.**

The legal situation of minors recognised as entitled to asylum and of minor refugees placed in *Youth Welfare Settings (Jugendhilfe)* is to a large extent unproblematic. However, the situation

of minors who are not placed in *Youth Welfare Settings* is different: Practically none of the essential principles formulated and the demands made in point 10.2 of the SGP are fulfilled.

These minors are not equal to German children, but – as was outlined above – are only entitled to a restricted scope of medical services. There is no special attention to their health-wise needs resulting from a prior malnutrition, illness, disablement and the special psychic stresses and strains resulting from their flight. As a rule, only those children who due to a most serious psychic disorder are placed in centres for victims of torture and similar (partly private) institutions receive this kind of special treatment.

#### **10. F) Are any changes needed? In relation to any first principles?**

The legal situation of separated minors who only have access to health care services under the *Law on Social Services/Benefits for Asylum Seekers (Asylbewerberleistungsgesetz)* urgently needs to be improved. They should be taken out of the scope of validity of this law and should receive health care services under the principles of the *Child and Youth Welfare Law (Kinder- und Jugendhilfegesetz)*. Also age of consent in the countries of origin of the persons under age should be considered. This would also be in line with UNHCR Guidelines. In addition a treatment after *asylum-seeker achievement law* instead of KJHG may not be abused as punishment for renitent persons under age.

### **Education, Language and Training (SGP: C10.3)**

#### **10. G) Please describe relevant law, policy and practice in your country.**

In Germany the *Länder* are in charge of the *Law on Education (Schulrecht)*. The *Länder's* laws provide for compulsory education for all persons under the age of 16 who have their habitual abode in one of the *Länder*. However, the *Länder* governments hold the opinion that only persons recognised as entitled to asylum do have their habitual abode in Germany, other groups of refugees are considered to only have their preliminary abode in Germany and therefore the principle of compulsory education is considered not to be valid.

There is no detailed statistical data on the educational success of separated minors, but it is manifest that in comparison with other foreign students only a very small percentage of them obtain a recognised school leaving certificate. The uncertain situation of many young people often leads to a decision against school attendance. Because it is uncertain, how long they can remain in Germany, learning of German language or school attendance during a short period of

time appear less meaningful to the minors, than e.g. to work. Thus, in case of a deportation, they at least have the economic means to migrate further or turn back to their country of origin.

Frequently, their knowledge of German is absolutely insufficient and due to their flight they have missed several years of classes. Some *Länder* offer preparatory classes and supporting classes in order to reduce the deficits that prevent attendance of regular classes.

Vocational training of young refugees is rendered difficult in a two-fold way: On the one hand, by rules and regulations that have been developed in order to protect the German labour market against foreign workers and, on the other hand, by the precarious legal status of young refugees.

In Germany vocational training is governed by the general rules and regulations of the *Vocational Training Act (Berufsbildungsgesetz)* and the *Employment Promotion Act (Arbeitsförderungsgesetz)*. According to these Acts, minors are only entitled to undergo training in officially recognised trainee occupations, and young foreigners must have a *work permit* if they want to undergo this kind of

## **Training**

Persons responsible for training – as well as employers who want to give a job to a foreigner from a non-EU country – have to prove that there is no other person available for said apprenticeship or job, that is no German citizen, no EU citizen and no privileged foreigner such as foreigners who have been residing in Germany for a prolonged period of time or foreigners recognised as entitled to asylum. The decisive requirement for the granting of a *work permit (Arbeitserlaubnis)* for the purpose of vocational training is the foreigner's having a *permanent residence permit (Aufenthaltserlaubnis)* or *residence permit (Aufenthaltsbefugnis)*, that is a consolidated residence status. However, minor refugees usually do not possess this kind of consolidated status. This means that the young refugees' situation in terms of vocational training is aggravated by the fact that they only possess a short-term residence title, that they are not being granted a *work permit* and that there is no vocational training outside the so-called *dual system (two-track training: practical training on the job plus theoretical training at a vocational training centre)*. Refugees who entered Germany after May 15, 1997 are in addition covered by the decree by the Federal Secretary of Labour (mentioned above) pursuant to which refugees in general will no longer be granted a *work permit*. This means that the affected minors do not have access to vocational training and resulting from that there is no opportunity to gain financial independence.

Until a few years ago all young refugees were entitled to participate in inter works training courses financed pursuant to the *Employment Promotion Act (Arbeitsförderungsgesetz)* – provided the availability of vacancies. However, since 1995 this option has been drastically restricted following instructions on the part of the *Federal Employment Agency (Bundesanstalt für Arbeit)* and some *Regional Employment Agencies (Landesarbeitsämter)*. Since then, only those refugees with a secure legal status, that is *persons recognised as entitled to asylum, quota refugees and convention refugees* are entitled to training promotion measures offered by employment agencies. They have the opportunity to participate in *occupational preparation measures (berufsvorbereitende Maßnahmen)* offered by the Federal Ministry of Labour which are mainly aimed at an elimination of educational and linguistic deficits and at a facilitation of applications for an apprenticeship. Due to this factual training prohibition, young refugees with an inferior legal status only have the possibility to take part in a so-called *occupational preparation year (Berufsvorbereitungsjahr)* or in promotion measures offered by the municipalities, however, the number of this kind of measures have been continuously reduced in recent years. Due to a lack of employment opportunities these training measures frequently only postpone the start of unemployment.

In few cases there are enterprises, which create special apprenticeship place for refugee children, so that no German person competes. In addition there are programs for labour market integration of refugees, as e.g. "equal", which is supported by the European Union. However, frequently it is only possible to join such a program under certain conditions. It is expected for example that the young persons make an effort to obtain a passport of their homeland, which facilitates their deportation, or that underage persons must assure to leave the country after the training. For the few young refugees with an inferior legal status who despite the restrictive policy pursued by most *Länder* and despite the critical situation in the training market manage to find an apprenticeship, this apprenticeship offers no protection from deportation. Repeatedly there have been cases of young refugees whose *toleration* was not prolonged and who were deported to their home countries. Word on these cases gets around quickly and this does not necessarily facilitate the task of social workers in care placements who are supposed to motivate children and young persons to attend school and to undergo training.

**10. H) To what extent does this conform to the Statement? Please outline in brief.**

None of the demands formulated in point 10.3 of the SGP is met in Germany. Neither do separated minors have equal access to compulsory education (equal to Germans) nor do they

receive classes in their mother tongue on a regular basis in order to be able to preserve their cultural identity. In addition, these minors frequently do not have access to vocational training.

#### **10. I) Are any changes needed? In relation to any first principles?**

An important step would consist in the introduction of statutory education for separated minors in those *Länder* that nowadays only provide for the right of education. This change would, however, have to go hand in hand with an educational supply that does justice to the specific weaknesses and needs of separated minors.

The aforementioned insufficient access to vocational training is on the one hand based on the *Vocational Training Act* and the *Employment Promotion Act*. In this respect basic changes are needed, above all in order to be able to offer vocational training at a level below the level of German apprenticeships, such as training courses in craft skills that would enable the young persons to earn their living after having returned home. On the other hand, even without legal amendments things could be improved if authorities (*Youth Welfare Offices*, *Aliens Agencies* and *Employment Agencies*) used their existing scope of discretion in order to provide the young persons with access to adequate training courses even if their residence status is not consolidated. In parallel, it would make sense to launch an information campaign focusing on potential employers and training workshops in order to inform them on the legal opportunities regarding the establishment of this kind of training courses.

### **Refugee Determination Process (SGP: C11)**

#### **Access to normal procedures (SGP: C11.1)**

#### **11. A) Please describe relevant law, policy and practice in your country.**

Under the German *Aliens Act* – as was outlined above – all foreigners, apart from few exceptions, who want to enter Germany need a *residence permit* (*Aufenthaltsgenehmigung*) in the form of a visa. This is valid regardless of their age. A foreigner who does not possess a visa is refused entry at the border and is returned to the country from which she/he tries to enter, to the country where she/he started the journey, to the country where she/he has her/his habitual abode, to the country the national of which she/he is, to the country that has issued her/his passport or to any other country she/he is entitled to enter.

Exceptions to this rule are laid down in § 60 para. 5 of the *Aliens Act*: An alien must not be returned to a country where her/his life or freedom is endangered due to her/his race, religion, nationality, her/his belonging to a certain social group or due to her/his political conviction,

unless she/he – on serious grounds - is considered to pose a threat to the security of the Federal Republic of Germany or the general public. She/he must not be returned either if she/he has lodged an application for asylum or if she/he is threatened with torture, the death penalty or any inhuman or degrading treatment and/or punishment in the country to which she/he is to be returned.

In connection with these exceptions it is important to know that the obstacles to deportation that are stated in § 53 para. 6 of the *Aliens Act* are not stated as obstacles to a return. Consequently, border authorities do not have to verify them prior to a return.

It is therefore possible to return young refugees to a country where they are exposed to a concrete threat to health, life and freedom.

These rules and regulations on return have negative consequences above all for separated minors.

First of all, it is doubtful whether *Border Protection Police Officers* will always recognise whether a young refugee wants to apply for protection from political persecution.

A second problem consists in the fact that certain refugees do not have the possibility to seek asylum which is due to the so-called *third-country regulation* which is one of the most important regulations of the amendment of the Constitution's Article on the Right of Asylum which took place in 1993.

Young refugees are affected by this regulation in a particularly disastrous way. Under the *Asylum Procedure Act* refugees under the age of 16 do not have legal capacity in terms of the asylum procedure and without a legal representative, e. g. a guardian, they are not entitled to file an application for asylum. However, pursuant to the *Aliens Act* also persons under the age of 16 can be refused entry, returned and deported without requiring the approval of a legal representative. According to the opinion of many critics this violates Article 22 of the UN Convention on the Rights of the Child.

A third obstacle that makes it difficult for separated young refugees to lodge an application for asylum is the *airport regulation*.

The three most problematic aspects of this procedure are: the factual detention of the minors, the duration of the procedure and the insufficient psychological and social care.

Accommodation during the *airport procedure* officially is not called detention, but some refugee support groups consider the circumstances to equal detention; and many children also have the impression that the circumstances of accommodation equal detention, which is due to the fact that the transit area - which they are not allowed to leave - is shut off or to the presence of uniformed officers. This is true even though quite a few *Border Protection Officers* (who frequently do that service voluntarily) have undergone training and are familiar with the special

problems refugee children are confronted with, and even though they usually try (based on their own initiative) to render the young refugees' stay at the airport easier.

Regarding the duration of the stay at the airport it must be stated that this forced accommodation of up to 19 days – even though the average duration is shorter – is a very long period. Children and young persons feel profoundly insecure, since they do not know what is going to happen next and for this very reason the procedure represents a major psychic burden. On the other hand, the expedited asylum procedure which is linked to the *airport procedure* is frequently too short in order to avail the minors of the possibility to lodge their asylum application / conduct their asylum seeking process with the necessary peace and calm and within prescribed periods.

Last but not least, the social services responsible for social care at airports are not granted immediate access to newly arrived separated children so that those children do not get any professional psycho-social care either. Care provided by *Federal Border Protection Officers* regardless of the officers' individual good will cannot be a replacement for that care. Apart from that, the *Youth Welfare Offices* of the districts where airports are located complain about the fact that frequently they are not being informed by the *Federal Border Guard* on the arrival of separated minors and that they therefore cannot fulfil their care function including the legal mandate of applying for a guardianship.

All in all, refugee support organisations consider the *airport procedure* to be a violation of the CRC's general obligation to grant protection and assistance to young refugees. What is above all criticised is the deprivation of freedom (forced placement on the airport premises). It is true that the CRC does not make any statement on detention in such situations, but also in this context the basic rules and regulations of the CRC are valid, according to which detention of children must only be the last resort and must only be applied for the shortest appropriate period. In addition, the age-defined needs of the child must be taken into account when it comes to detention. And children must not be placed with adults unless the child's interests require a different arrangement.

Another key issue of the German *Asylum Law* consists in the legal capacity of 16- to 18-year-old persons in asylum procedures.

Contrary to the CRC according to which all persons under the age of 18 must be considered to be minors, the German *Asylum Procedure Act* prescribes that all refugees over the age of 16 have unlimited legal capacity in terms of *Asylum Law*. A problem that is tied in with this situation is the fact that the *Youth Welfare Offices* frequently do not file a complaint against asylum notices, since they do not expect to be successful. The Berlin example has born out that the *Youth Welfare Office* repeatedly has only filed a complaint against a negative notice sent by the

*Federal Office* after having been called on to do so by external bodies, such as refugee support groups or lawyers. Apart from that many guardians and practically all young refugees do not have sufficient funds in order to file a complaint themselves.

Another practice that is extremely critical is the one mentioned earlier: With 15-year-old persons some *Youth Welfare Offices* delay the appointment of a guardian until the age of 16 has been reached and the guardianship is no longer legally prescribed. This way young refugees are deprived of the legal protection that they are legally entitled to, possibly with the consequences described above.

**11. B) To what extent does this conform to the Statement? Please outline in brief.**

The German legal situation and the administrative practice – in all aspects - violate all demands formulated in point 11.1 of the SGP. The principle that is violated first and foremost is the one according to which separated minors should never be refused access to the asylum procedure. Above all by means of the *third-country regulation* and the pertaining rules on *safe countries of origin* many children are deprived of access to the asylum procedure. Another demand that is not fulfilled is the one saying that the processing of asylum applications should not be discontinued once minors come from a *country with inner unrest/country in upheaval*. Said discontinuation is based on pertaining regulations, among others the *Asylum Procedure Act*.

A practical limitation of access to the asylum procedure is found in the legal capacity in terms of *Asylum Law* from 16 years onwards. This regulation clearly violates the CRC and all the principles derived from it in this respect.

**11. C) Are any changes needed? In relation to any first principles?**

The SGP's demand that all separated young refugees must have the possibility to file an application for asylum would only be met if the *third-country regulation*, the *regulations on safe countries of origin* and the *airport regulation* were no longer applied to children and young persons.

It is factually justified and correct to formulate this demand; nevertheless, it is very unlikely that this demand will meet with broad-based political approval and support, since these procedures introduced in 1993 are core elements of the aforementioned reform of the *Asylum Law*.

Be it as it may, the starting point of reasoning has to be the following: Clearing procedures must be designed in a way that allows for a careful and child-appropriate examination of the question whether there are grounds justifying an asylum application or whether other procedures might be more conducive to the realisation of the child's best interests.

In addition, the regulations of the *Asylum Procedure Act* according to which refugees aged 16 – 18 possess legal capacity in asylum procedures must be abrogated. Pursuant to the CRC, legal capacity must only be valid from 18 years onwards and minors should receive a legal representative in all affairs related to *Asylum Law*.

## **Legal Representation (SGP: C11.2)**

### **11.D) Please describe relevant law, policy and practice in your country.**

Separated minors are also legally entitled to be legally represented before the courts. Generally, guardians or advisors take charge of that. Nevertheless, again and again there has been information on cases in which legal representatives (e. g. due to a work overload resulting from too high a number of wards) have neglected this task and have missed deadlines and periods for entering an opposition.

What is particularly critical is the situation of persons over the age of 16 who pursuant to the *Asylum Procedure Act* possess unlimited legal capacity. They themselves are in charge of finding a legal representative and indeed they frequently do not have any financial means in order to hire a (commercial) legal representative. Sometimes lawyers with an idealistic approach who have specialised in asylum-related matters and who are committed to refugee support groups step in.

### **11.E) To what extent does this conform to the Statement? Please outline in brief.**

See above

### **11.F) Are any changes needed? In relation to any first principles?**

From a legal point of view the legal capacity of persons over the age of 16 should be revoked and these young people - in line with the CRC - should also be treated as minors. This would include suitable legal representation in asylum procedures.

On the other hand, the appointment of guardians and advisors should be handled in a way that enables these officials to comply with their legally prescribed tasks and functions serving the best interests of the child; a work overload must not be an obstacle to the realization of their tasks. Beyond that guardians and advisors should be aware of the fact that they will face consequences under criminal law if they neglect their tasks vis-à-vis their wards.

## **Minimum Procedural Guarantees (SGP: C11.3)**

### **11.G) Please describe relevant law, policy and practice in your country.**

In Germany asylum procedures for minors are also conducted under the *Asylum Procedure Act*. In principle, the rules and regulations correspond to the principles formulated by the UNHCR regarding the carrying out of this kind of procedures and they also conform to the EU Resolution on Minimum Guarantees in Asylum Procedures.

### **11.H) To what extent does this conform to the Statement? Please outline in brief.**

The practices applied in Germany to a large extent conform to the demands formulated in point 11.3 of the SGP. It is, however, doubtful whether applications filed by children will always be given priority in order to avoid long waiting periods.

### **11.I) Are any changes needed? In relation to any first principles?**

No legal changes are needed in this respect.

## **Summary response;**

### **Independent Assessment (SGP: C11.4)**

### **Interviews (SGP: C11.5)**

## **Criteria for Making a Decision on a Child's Asylum Application (SGP: C11.6)**

### **11.j) Please describe relevant law, policy and practice in your country.**

The German *Asylum Procedure Act* does not contain any special regulations on the treatment of separated young refugees. There is only two general rules on the treatment of young refugees: On the one hand, the aforementioned § 12 determining the legal capacity of young refugees over the age of 16; on the other hand, § 16 which contains regulations on the treatment of asylum seekers for the purpose of collecting data for police records (identification); this article states that regarding the establishment of someone's identity only persons over the age of 14 can be subject to the pertaining procedure carried out by police record departments.

This non-formulation of special regulations for separated minors means that during the asylum procedure they are being treated like accompanied refugees pertaining to their age group.

### **11.K) To what extent does this conform to the Statement?**

#### **Please outline in brief.**

The demands formulated in point 11.4 to 11.6 of the SGP are fulfilled in German practice in different ways.

The demand that an independent professional is to do the assessment of a child's capacity to express a justified fear of persecution is only fulfilled in exceptional cases, that is once these professionals are appointed by the *Youth Welfare Offices* or the parties involved in asylum procedures.

Regarding interviewing minors (SGP point 11.5) no general criticism can be raised, since the way the interviews are being conducted varies too much. Evidently, there are significant differences concerning the child-friendliness of the interviews depending on the authorities and persons who carry out the interviews. However, in general terms, the quality of the interviews has substantially improved over the past five years, that is since – following demands made by the UNHCR - selected individual decision-makers (some of them are being selected by the UNHCR) are being trained for the special requirements of interviews with minors.

This is also true for the aspects that pursuant to point 11.6 of the SGP are to be taken into account in asylum procedures: Once specially trained decision-makers conduct the interviews the aforementioned demands tend to be fulfilled and above all the age and maturity of a child and child-specific forms of persecution are taken into account.

Nevertheless, it is by no means sure that the SGP's demand of a liberal application of the benefit of the doubt is always reality. Quite the contrary seems to be the case, even though it is difficult to find empirical proof. It is to be presumed that the political pressure exerted on the individual decision-makers as well as the decision-making practice that has become common over the years, in cases of doubt, rather result in a restrictive decision that is not in favour of the asylum seeker. The low recognition rate of separated minors which is far below the recognition rate of other refugees seems to bear that out.

### **11.L) Are any changes needed? In relation to any first principles?**

Asylum procedures are too much oriented towards adults. For young refugees a child-appropriate procedure must be developed and carried out.

This includes the demand of the abrogation of expedited procedures for young refugees. Children and young persons must have access to the regular asylum procedure which ensures the common diligence in the verification of their asylum claim as well as access to normal appeals/reviews.

Children must always be accompanied at each interview at the *Federal Office for the Recognition of Foreign Refugees* by a significant adult (adult whom they trust), if possible the guardian. In principle, these interviews should only be conducted by individual decision-makers specially trained for that purpose. Specially trained translators or interpreters having knowledge of the child's mother tongue should be present at each interview. The sex of these persons should be considered.

All information on the young refugee or her/his relatives or other persons must be treated confidentially in order not to endanger them. The information obtained in the interview must only be used for purposes of the asylum procedure. Possible research in connection with the asylum procedure must not endanger the minor's relatives who have remained in the home country. It must be ensured that the information cannot be used for other purposes.

Last but not least the psycho-social care for the young refugees should be improved and the asylum procedures in general should only be handled by specially trained staff. The decision-makers should be offered further training measures on a regular basis; among other institutions the UNHCR should be involved in these training events.

### **Young People (Minors) who become Adults during the Asylum Process (SGP: C11.7)**

#### **11.S) Please describe relevant law, policy and practice in your country.**

This point of the SGP is not relevant in Germany. The reason for this is that maturity gained at the age of 18 (pursuant to § 12 of the *Asylum Procedure Act*) does not have any influence on the way the asylum procedure is carried out. The age-limit referred to in point 11.7 of the SGP is 16 in Germany. Regarding this issue we already demanded the abrogation of this age-limit and the treatment of all young persons up to the age of 18 as minors.

#### **11.T) To what extent does this conform to the Statement? Please outline in brief.**

See above.

#### **11.U) Are any changes needed? In relation to any first principles?**

See above.

## **12. Durable solutions (SGP: C12)**

### **Remaining in a Host Country or Country of Asylum (SGP: C12.1)**

#### **Grounds for a child remaining in a host country (SGP: C12.1.1)**

##### **12. A) Please describe relevant law, policy and practice in your country.**

In German law there is no mention of any special grounds for a child being entitled to remain in Germany. On the contrary, in Germany the general rules and regulations on entry and remaining as well as on the granting of political asylum are valid for all aliens, separated minors included. On the one hand, a refugee can be granted the right to remain in Germany if she/he – in the framework of a regular asylum procedure - has been recognized as entitled to asylum (see point 11).

On the other hand, she/he can remain in Germany if she/he receives the status of a de facto refugee or if residence is allowed on humanitarian grounds. Details of entry and stay are stipulated in the *Aliens Act*:

Pursuant to § 51 para. 1 of the *Aliens Act* people must not be deported to a country where their life or freedom is endangered due to their race, religion, nationality, belonging to a certain social group or their political conviction/opinion. The condition is met by persons recognized as entitled to asylum (as well as by aliens who have been recognized as entitled to asylum under the Geneva Convention by countries outside Germany). The *Federal Office for the Recognition of Foreign Refugees* is the authority of first instance in charge of deciding on the right of asylum, refugee status and other obstacles to deportation.

§ 53 defines obstacles to deportation for persons who have not been recognized as entitled to asylum. Pursuant to § 53 a deportation is not permissible if in the country to which the person is to be deported there is a concrete danger of torture (§ 53, para. 1) or the death penalty (§ 53 para. 2). In addition, pursuant to § 53, para. 4 a deportation is not permissible if there are grounds based on the European Convention for the Protection of Human Rights, particularly its article 3 which prohibits people's being subject to torture, inhuman or degrading punishment or treatment. Apart from that a deportation might be renounced if in the country to which the person is to be deported there is a significant and concrete danger to health, life or freedom of said person, as long as it is not a danger to which the alien's population or population group is exposed in general. It is important to note that this protection is referring to deportation and not to returns at the border. Returns can be carried out even though the provisions of § 53, Para. 6 exist. If a

deportation is not possible, be it on legal or factual grounds, or if it is suspended the alien is tolerated.

§ 54 of the *Aliens Act* provides for the possibility of a suspension of deportation. Pursuant to § 54 the supreme regional authority (authority of a *Land*) can order the suspension of deportations for a maximum period of 6 months be it on grounds based on international law or on humanitarian grounds or for the purpose of safeguarding the political interests of the Federal Republic. Such a suspension can cover aliens from certain countries or certain groups of aliens and can be valid in general terms or only be valid for certain countries. If the suspension of deportations is to be valid for a longer period of time, the *Aliens Act* prescribes approval on the part of the Federal Ministry of the Interior. This article which grants an ample scope of action (in terms of protection from deportation) to the regional authorities is no longer being applied at the moment. Obstacles to deportation are only taken into account in the framework of § 53 of the *Aliens Act*.

The degree of security that young refugees enjoy if they have not been returned at the border depends on the *residence status* that they are being granted following their entry. The *Aliens Act* and the *Asylum Procedure Act* provide for different categories of rights to reside. The *Aliens Act* provides for four different levels, the generic term for which is *residence permit (Aufenthaltsgenehmigung)*. In addition, there is the status of *toleration (Duldung)*.

The granting of a *permanent residence permit (Aufenthaltsurlaubnis)* requires a legal entry (e. g. visa) and therefore it is an unobtainable residence title for separated minors.

The granting of a *residence permit (Aufenthaltsbefugnis)* is possible on urgent humanitarian grounds if the granting of a different kind of *residence permit* is not possible and if leaving the territory of the Federal Republic would mean undue hardship for the alien. This is particularly true for aliens who have received the *small asylum* based on obstacles to deportation under § 51, para. 1 of the *Aliens Act*. This residence status can also be applied to persons who are received as refugees seeking protection from war or civil war. A *residence permit* is granted for a maximum period of two years, but it can be renewed if the grounds required continue to exist.

Asylum seekers who were not recognised as entitled to asylum and who have been living in Germany for at least two years under toleration might also be granted a *residence permit*. After eight years time – the duration of the asylum procedure is taken into account – the *residence permit* can be converted into a *permanent residence permit*.

*Toleration* – which is the most frequent form of residence of minor refugees – is not a *residence permit (Aufenthaltsgenehmigung)* but only a limited suspension of deportation.

It is based on the presumption of illegal residence and does not protect from deportation; it is a status of legal insecurity.

A *toleration* can be granted once a deportation is not possible on legal or factual grounds, if in the country to which the alien is to be deported there is a concrete physical danger or the danger of deprivation of freedom, or if a deportation has been suspended on grounds of international law, on humanitarian grounds or in order to safeguard the political interests of the Federal Republic. *Toleration* is granted for a maximum of one year but it can be renewed. It is limited to the territory of the *Land* in question and can be further restricted.

In principle, also tolerated persons can be granted a *work permit*. It can, however, be limited to certain professional activities or a certain profession and there might be waiting periods. The *work permit* can be denied in cases governed by § 1 a of the *Law on Benefits granted to Asylum Seekers (Asylbewerberleistungsgesetz)* - that is once aliens have come to Germany in order to receive services and benefits under the *Law on Benefits granted to Asylum Seekers* – or if measures terminating their residence cannot be enforced for reasons the aliens have provoked.

However, at the moment an internal decree by the former Secretary of Labour, Norbert Blüm, is still being applied. According to this decree all refugees seeking protection from civil war who have entered the Federal Republic after May 15, 1997 are subject to an unrestricted and unlimited work prohibition. In the meantime some courts have considered this decree to violate the law, but so far it has not been revoked by the new federal government.

The *Asylum Procedure Act* prescribes that asylum seekers be granted a *residence allowance (Aufenthaltsgestattung)* for the duration of the asylum procedure. This allowance is geographically limited to the district of the Aliens Authority in charge of the asylum seeker, respectively the district where the reception centre in charge of the asylum seeker is located. Exceptions require approval on the part of the Aliens Authority. If the asylum seeker is obliged to live in a reception centre she/he is not entitled to a wage-earning employment and - as long as the decree mentioned above continues to be valid – she/he is not entitled to a gainful employment at a later stage either. The *Federal Office for the Recognition of Foreign Refugees* will issue a *residence allowance (Aufenthaltsgestattung)* that has a maximum validity of six months, the validity of this allowance can be extended by the Aliens Authority for the duration of the asylum procedure and it is valid as identification document.

## **12.B) To what extent does this conform to the Statement? Please outline in brief.**

The first three reasons stated in point 12.1.1, that is reasons for which a separated minor should be entitled to remain in a country are complied with by German law: recognition as refugee, recognition as de facto refugee or *residence permit* on humanitarian grounds.

The last reason stated in the SGP (being entitled to remain since it is in the best interest of the child) is not provided for in German law. One reason for that is that the contents of the CRC – from which the term originates – have so far not been incorporated into the German *Asylum Law* and *Aliens Act*.

### **12.C) Are any changes needed? In relation to any first principles?**

The major problem most separated young refugees living in Germany are confronted with is their insecure residence status. This is above all true for *toleration*, which is no *residence permit*, but only a postponement of deportation and which can be revoked by the Aliens Authorities at any time and which considerably limits the refugees' freedom of movement. They are not allowed to leave the respective *Land* and as a rule not even the district, unless they file an application, and the territory of the Federal Republic must not be left at all, since *toleration* ceases to exist when leaving Germany. Refugees who entered Germany after May 15, 1997 will in addition not be granted a *work permit*.

This insecure residence status makes that young refugees do not even have a short-term life perspective and that it is very difficult to motivate them to attend school (that is if enrolment takes place at all), and, as a rule, no vocational training can be started or concluded, since potential training workshops are not willing to accept the risks involved in this insecure residence status.

The social workers in charge of separated minors complain about a general dilemma regarding their task and function: On the one hand, they are supposed to care for the children and young persons entrusted to them, and they are to do so in a way that is oriented towards the best interests of the minors (among other things they are to motivate them to attend school), on the other hand, they are to point out to the minors that their stay in Germany is limited in time and that one day they will have to leave Germany.

This results in the urgent necessity of granting a *residence permit* to children and young persons who for practical and humanitarian reasons cannot be returned to their home country by German authorities. This *residence permit* should make it possible for the minors to either attend or graduate from school, to do an apprenticeship or at least to be taught some professional skills, such as practical crafts skills.

### **Family Reunification in Host Country (12.1.2)**

(Note on this point: We fail to see the difference between this point and point 9 of the SGP.)

**12.D) Please describe relevant law, policy and practice in your country.**

See above.

**12.E) To what extent does this conform to the Statement? Please outline in brief.**

See above.

**12.F) Are any changes needed? In relation to any first principles?**

See above.

**Integration (SGP: C12.1.3)**

**12.G) Please describe relevant law, policy and practice in your country.**

(Note: The SGP's point stated above is, on the one hand, referring to *initial reception/interim care* which was treated above under the heading "clearing procedure"; on the other hand, it refers to the accommodation of minors following the conclusion of the initial reception. The following remarks therefore are limited to the latter point. The heading "integration" is misleading in this respect. In the following the answers to point 12.g and h are being summarised.)

The accommodation situation of separated minors varies greatly from *Land* to *Land* and municipality to municipality and therefore it is practically impossible to generalise. Minors are being placed in collective accommodation facilities, in accommodation settings with care-takers, in small group home environments, in hostels, in rooming houses or in foster families. There is a general difference between refugees who are placed in Youth Welfare Facilities, that is those who receive care and services under the *Child and Youth Welfare Act (Kinder- und Jugendhilfegesetz)* and those who are placed outside this kind of facilities, e. g. foster families or rooming houses and who receive care and services under the *Federal Social Benefits Act (Bundessozialhilfegesetz)* or under the *Act on Benefits for Asylum Seekers (Asylbewerberleistungsgesetz)*.

**12.H) To what extent does this conform to the Statement? Please outline in brief.**

See above.

**12.I) Are any changes needed? In relation to any first principles?**

The quality of provision and care for young refugees must not deteriorate. This means that the services provided under the *Act on Benefits for Asylum Seekers (Asylbewerberleistungsgesetz)* -

the level of which is below *Social Welfare (Sozialhilfe)* anyhow - must not be cut any further. In addition, standards of services rendered under the *Child and Youth Welfare Act (Kinder- und Jugendhilfegesetz)* which is of particular importance for separated minors must not be reduced any further. Without a careful verification of individual cases, persons over 16 years of age must not be excluded from coverage by the *Child and Youth Welfare Act (Kinder- und Jugendhilfegesetz)* that is they must not be placed in collective accommodation facilities or other forms of accommodation without care. Another practice that must be abandoned is the geographic distribution of children and young persons based on a quota procedure that does not take account of their educational needs.

### **Adoption (SGP: C12.1.4)**

#### **12.J) Please describe relevant law, policy and practice in your country.**

Adoption law is defined in the *Fourth Book of the Civil Code (Family Law)*. §§ 1741 ff. specifies the conditions under which an adoption is admissible and which procedures are to be applied. All in all - also in comparison with the situation in other European countries – rules and regulations are very detailed and the procedure is precisely defined.

Common practice - which is also valid for the adoption of separated minors - can be described as follows: The person in charge of the arrangement of adoptions who is employed with the *Youth Welfare Office* (located at the domicile of potential future adoptive parents) determines the general suitability of the persons willing to adopt a child and if they are considered to be suitable for the adoption of a child they receive a notification that they are now *applicants for an adoptive child*. For the persons willing to adopt a child the waiting period starts. During this period they can apply for adoption with non-local adoption placement agencies. Once one of the contacted adoption arrangement agencies has a child available, the applicants for an adoption are asked whether they want to adopt this specific child. They will then get information on the child, will get to know her/him and will decide on the adoption. Following a positive decision, the adoption arrangement agency will issue a care permit. The child is placed in the adoptive family and the adoptive care begins. From that point of time onward the adoptive parents are obliged to provide maintenance to the child. The adoptive parents do not yet have parental child custody; legal representation of the child is carried out by the *Youth Welfare Office* as its official guardian, unless there is already another guardian. The persons willing to adopt the child file an application for acceptance with a notary public who will send this application to the guardianship court. The guardianship court will request a statement on the part of the adoption

arrangement agency. Following a decision by the guardianship court the acceptance of the child by the adoptive parents will take place and adoptive care has terminated. Now, from a legal point of view, the child belongs to the adoptive family like a natural child.

There is no data available on the adoption of separated minors in Germany. But if one bears in mind that the number of adoptions in Germany is very low anyway which is mainly due to an over-regulation of the procedure and to the mostly very restrictive attitude on the part of adoption placement agencies (critics call the procedure "adoption prevention procedure") one can presume that separated minors are only adopted in very rare cases. The large majority of adoptions are adoptions of German children: In 1998, approx. 10,000 children were adopted, 64% of them were German nationals, and 18% came from other EU countries, 7 % from other European countries, and only 8 % from Africa, Asia and Latin America.

**12.K) To what extent does this conform to the Statement? Please outline in brief.**

Even though there is not enough experience so far in order to be able to precisely answer this question, in view of the procedure described above one can presume that the demands made in the SGP are fulfilled in Germany. One would rather have to consider whether the rules and regulations valid in Germany are too restrictive and whether they prevent adoptions of young refugees that would make sense. Statistics have at least shown that the number of persons willing to adopt a child has increased dramatically since the sixties (1965: 0.41 applicants per child – versus more than 3 applicants per child nowadays).

**12.L) Are any changes needed? In relation to any first principles?**

A tightening of the conditions of the German adoption procedure is not necessary. One should rather consider whether it would make sense to simplify and facilitate the adoption procedure in order to be able to place a larger number of separated minors in an adoptive family. At least in some cases an adoption complying with the legal requirements valid in Germany will rather respect the best interest of the child than many other solutions.

**Identity and Nationality (SGP: C12.1.5)**

**12.M) Please describe relevant law, policy and practice in your country.**

On Jan. 1, 2000 a new nationalisation law has entered into force. According to the amended law, conditions for the nationalisation of foreign children born in Germany will be less stringent. For children born abroad the legal regulations valid so far mainly remain in force. The only

improvement made concerns the so-called *nationalisation based on entitlement (Anspruchseinbürgerung)* under the *Aliens Act*. The prerequisites for this kind of naturalisation are that the minor has been legally living in Germany for eight years and that she/he possesses a *permanent residence permit (Aufenthaltserlaubnis)* or *right to reside (Aufenthaltsberechtigung)*.

**12.N) To what extent does this conform to the Statement? Please outline in brief.**

There is no statistical data on the number of stateless separated children, and there is no information on the practice carried out by German authorities. Therefore, it cannot be assessed whether German practice conforms to the SGP.

**12.O) Are any changes needed? In relation to any first principles?**

In principle, support for stateless separated minors would consist in the German authorities` informing the children and young people at an early stage on the German legal situation and on their opportunities. However, in the context of German naturalisation law this is only relevant for minors who are likely to stay in Germany for a longer period of time, that is for recognised asylum seekers.

**Family Reunification and Returns to a Country of Origin (SGP: C12.2)**

**Voluntary Return (SGP: C12.2.1)**

**12.P) Please describe relevant law, policy and practice in your country.**

As was outlined above under various points, the decision on the question whether a separated young refugee will be granted asylum or whether there are obstacles to deportation is decided in the framework of the asylum procedure before the *Federal Office for the Recognition of Foreign Refugees*. If the asylum claim is rejected, there still is the possibility that the minor will be tolerated by the Aliens Authorities for other reasons such as humanitarian grounds. If this is not the case either the minor will be deported. The term "best interests of the child" used in the CRC is not explicitly applied in the decision-making process and so far there are no binding rules defining a procedure concerning a voluntary return. The authorities in charge are responsible for the preparation and carrying-out of such a voluntary return.

**12. Q) To what extent does this conform to the Statement? Please outline in brief.**

Experiences made with the attitude and approach of aliens and youth agencies give rise to doubts as to whether the so-called "voluntary" returns are indeed voluntary in nature, or whether it is not

– in many cases - a forced return against the wish of the minor, based on the fact that the authorities have made it clear to the minor that she/he has no chances whatsoever to legally remain in Germany.

In these cases the voluntary nature of return is limited to the very fact that the minor does not resist the forced deportation she/he was threatened with.

On point 12.2.1 of the SGP it needs to be said that it is formulated in a very general way and that it does not contain any concrete proposals. This problem is not remedied by the fact that the complexity of the aspect is referred to. Based on this vague formulation German practice does certainly meet the SGP. German authorities are also of the opinion that the best form of family reunification is a voluntary return, and the demand that children and young people should be fully consulted at all stages of the process is certainly also fulfilled. However, since the SGP does not specify in a more detailed way what "consultation" means in this context (and maybe it can't be specified more precisely) it is doubtful whether point 12.2.1 of the SGP is a section that makes sense.

Accommodation and provision for refugee families with children and youngsters during the asylum procedure should be child-appropriate, and with separated young refugees who go through the asylum procedure themselves this has to be true for the asylum procedure as well. The same standards must be applied to the issue of how minors seeking protection should be treated once they are not recognised as being entitled to asylum. In cases in which it would be unreasonable to make them return to their home country, residence (limited or permanent) in Germany will probably be the best solution. In other cases it will clearly and unambiguously be in the best interest of the child to return to her/his home country, for instance, if minors were sent abroad by their parents without anybody accompanying them. Children and young persons have the general right to grow up with their parents and families. However, this right must not be used as a pretext in order to get rid of children (by sending them to countries where conditions are unsafe and no protection is given) whom one does not want to have in ones country for example for reasons of costs.

A possible return also has to be carried out in a child-appropriate manner. It is insufficient if German authorities hand children and young persons over to the border authorities of the country of origin or of a third country without knowing how the persons who were returned and deported will be accommodated and provided for. It must be guaranteed that there will be an age-appropriate care and provision.

## **12. R) Are any changes needed? In relation to any first principles?**

Concerning this extremely complicated point one can only place a general demand on German authorities: in those cases in which separated minors are not being granted permanent residence in Germany, children and young persons have to be informed in a child-appropriate manner why this is not the case and they are to receive the necessary psychological and practical support in the preparation of their return. However, one always has to bear in mind that there are minors whose families sent them abroad placing high hopes in them and under substantial material sacrifices, expecting them to contribute to the maintenance of the family members who remained at home. That means that there is an enormous burden on the children and young persons who do not want to disappoint the hopes of their family which will, however, be the case if they return. Authorities must and can provide support to the minors in the preparation for their return. It is self-evident that beyond these additional conditions regarding a voluntary return the statements and demands made in points 12.s-t must also be fulfilled.

## **Conditions that must be fulfilled prior to return (SGP: C12.2.2)**

### **12. S) Please describe relevant law, policy and practice in your country.**

As was outlined above in point 1.a-c, aliens who enter Germany illegally are being deported within six months regardless of their age. Article 61 of the *Aliens Act* prescribes that if there is a so-called *Agreement on Taking Persons Back (Rückübernahmeabkommen)* with another country, this country is obliged to take the foreigner back and a return is permissible as long as the agreement is valid. The expulsion as such is defined in § 45 of the *Aliens Act*. According to this article an alien can be expelled if her/his residence impairs the security and order or other substantial interests of the Federal Republic of Germany. Individual grounds for expulsion are specified in § 46.

An expulsion entails the revocation of the *residence permit* of the alien and obliges her/him to leave the country. If she/he does not meet this obligation she/he can be deported. The foreigner is threatened with the deportation in writing. The notification specifies a departure period and the country to which the person will be deported. This threat can also take place despite the existence of obstacles to deportation or grounds for *toleration*.

Obstacles to deportation pursuant to § 51, para. 1 and § 53 of the *Aliens Act* have been outlined above, as well as the fact that aliens are granted *toleration* if a deportation is not possible for legal or factual reasons. Apart from that, § 54 of the *Aliens Act* provides for the possibility of a suspension of deportation. Pursuant to § 54 the supreme regional authority (authority of a *Land*)

can order the suspension of deportations for a maximum period of 6 months be it on grounds based on international law or on humanitarian grounds or for the purpose of safeguarding the political interests of the Federal Republic. Such a suspension can cover aliens from certain countries or certain groups of aliens and can be valid in general terms or only be valid for certain countries. If the suspension of deportations is to be valid for a longer period of time, the *Aliens Act* prescribes approval on the part of the Federal Ministry of the Interior. This article which grants an ample scope of action (in terms of protection from deportation) to the regional authorities is no longer being applied at the moment. Obstacles to deportation are only taken into account in the framework of § 53 of the *Aliens Act*.

There has been information on cases of accompanied young refugees being deported from practically all *Länder* and in most *Länder* there have also been cases of deportations of unaccompanied minors. And again and again cases become known in which the German authorities do not sufficiently clarify – prior to a deportation - whether the separated minors will be able to find reception in their families or with relatives or whether care by public or charitable organisations is possible. Frequently the only point that is being clarified is whether the border authorities of the country of origin will permit the children and young persons to re-enter and German authorities rely on the local authorities` taking care of the minors.

In some *Länder* details of deportations are specified precisely by a decree, for instance in Hessen. In Hessen, prior to a deportation it must be clarified whether the refugee can be placed with her/his family, relatives, or a care organisation. If this is not so, the case has to be presented to the Ministry of the Interior which will then verify the further procedure. In North Rhine-Westphalia there are also clear-cut rules regarding deportations, among others the instruction that *preventive detention (Sicherungshaft)* is to be avoided whenever possible and that in general there should not be any detentions of persons under 16 years of age.

What needs to be stated is that the deportation of minor refugees frequently is so complicated in practice that the alien`s authorities simply wait until the refugee has reached majority and can be deported with relatively little efforts.

**12.T) To what extent does this conform to the Statement? Please outline in brief.**

German deportation practice regarding separated minors frequently violates all principles specified in point 12.2.2. (a) of the SCP.

It is not always guaranteed that the children upon their return will not be endangered and there are cases of children being deported against the will of their guardians. In addition - apart from the question considered during the asylum procedure as to whether the refugee will be entitled to

the *small asylum* pursuant to § 51 should she/he not be granted asylum - frequently there is no detailed assessment of the security of the minor and of the family situation in the home country. On many occasions parents and other care-takers are not being informed about the imminent return of their child and as a rule they are not obligated to take care of the child immediately after arrival and in the long run. Repeatedly have there been cases of children not being properly informed about the process of deportation and frequently they are neither accompanied appropriately during deportation, nor is the situation of the children following their return effectively supervised by an NGO or an international organisation.

What is particularly dissatisfactory at the moment is the co-operation of German authorities with international organisations that might be able to provide help regarding the clarification of conditions of reception in the country of origin and with authorities and institutions in the receiving country. If organisations such as the International Social Service, the International Red Cross, and the International Organisation for Migration (IOM) were called in on a regular basis, they could help to trace relatives that might be able to receive the minor or to identify public and private agencies that might be considered concerning care and provision for the child. Even the efforts on the part of German authorities regarding the establishment of direct contacts with reception centres in the country of origin or —as was attempted by Berlin authorities in Romania — the financial and organizational support of such institutions, is still insufficient, since usually German authorities do not have enough human resources available.

Another problematic aspect is the detention of separated minors for the purpose of preparing or ensuring their deportation. Pursuant to § 57 of the *Aliens Act*, type I *custody pending deportation* (*Abschiebehaft*), the so-called *preparatory custody* (*Vorbereitungshaft*), is to be decreed if it is not possible to immediately decide on the expulsion or if deportation were rendered considerably more difficult or if it were thwarted without said detention. Type II *custody pending deportation*, the so-called *preventive custody* (*Sicherungshaft*), is to be decreed if an alien has the enforceable obligation to leave the country due to an illegal entry, if a refugees period for leaving has expired, if it was not possible to locate her/him on an announced deportation date, if she/he has otherwise evaded deportation or if there is a well-founded suspicion that she/he intends to evade deportation. *Preparatory custody* can last up to six weeks; *preventive custody* can last up to six months. This kind of detentions is carried out by most *Länder*. In Berlin only, in spring 1998, 81 minors aged 14 to 18 were held in *custody pending deportation*, and in November 1998 an Indian refugee held in *custody pending deportation* in the penal institution of Halle hanged himself after six weeks of solitary confinement.

According to the opinion held by the UNHCR regular detentions of minors violate article 37 of the CRC which says that with a child deprivation of freedom must only be applied as a means of last resort and only for the shortest appropriate period of time and that in the case of a detention the age-determined needs of the child must be taken into account.

### **12.U) Are any changes needed? In relation to any first principles?**

In general terms, there should be no returns without a prior clarification whether reception of and care for the child will be guaranteed and whether the circumstances will fulfil the child's best interests. Practice of German authorities and above all of the aliens authorities has to be adjusted accordingly. The most reasonable way of doing so would be to pass corresponding administrative rules and regulations in the *Länder*; as was outlined above there are already some examples.

These rules and regulations should above all specify the following aspects:

- The child has to be informed on all steps and has to receive the required counselling and support – pursuant to Article 12 of the CRC under which the opinion of the child is to be taken into account in all her/his affairs.
- The child has to receive suitable counselling before the return, above all if there is resistance on the part of the child or pressure on the part of the family against such a return.
- The child has to be accompanied appropriately during the return.
- A suitable care-taker in the country of origin, that is a parent, another relative, another adult, a public agency or a child-care institution, has to be in a position to actually take charge of the child and to protect and care for the child in a way that fulfils her/his best interests.
- The child should have established contacts with her/his family before the return.

In general terms, it is to be demanded that in all deportations the regulations of the CRC must be complied with. Detentions should only be carried out as a means of last resort and for the shortest necessary period of time. With children under the age of 14 *preventive custody* should be renounced in general, with persons aged 14 – 18 it should only be decreed under extraordinary circumstances. Also during custody must minors be cared for in an age-appropriate manner, and receive psychological counselling, as well as an interpreter. Children, in addition, have to be placed separately from adults. Generally, authorities should try to bring about a voluntary return instead of a deportation; however, regarding this voluntary return it needs to be clarified whether an age-appropriate reception in the country of origin can be guaranteed.

## **Programmes and Aid to Facilitate Reintegration (SGP: C12.2.2)**

### **12. V) Please describe relevant law, policy and practice in your country.**

The problem of separated minors who during their stay in Germany gain maturity is an issue that so far has not been discussed in Germany in general terms.

Only in connection with demands for a *regulation governing long-standing cases (Altfallregelung)* has this been discussed, and the National Coalition for the Implementation of the CRC has pleaded in favour of granting a *residence permit (Aufenthaltsbefugnis)* to those minors who have been staying in Germany for more than two years and for whom an application for asylum was lodged.

In November 1999 the Ministers of the Interior of the federal and the *Länder* level have decided in favour of a regulation governing long-standing cases, but the content of it is not yet completely known, but it seems that it provides for a six-year stay in Germany. But this regulation does not have regard to the specific situation of separated minors, even though an insecure stay over several years represents a particularly serious psychic burden for these children and young persons.

In principle, the German *Child and Youth Welfare Act* also provides for the possibility of caring for persons over the age of 18 if certain conditions are met. But the affected person can only enjoy this support and care as long as she/he is not being deported by the alien's authority in charge.

### **12.W) To what extent does this conform to the Statement? Please outline in brief.**

The SGP's wording in this point is so reserved that an assessment is not possible.

### **12.X) Are any changes needed? In relation to any first principles?**

On the one hand, aliens authorities should renounce a deportation in all cases in which it has been found that the person affected can still and must still be cared for under the regulations of the *Youth Welfare Act (Jugendhilfe)*. On the other hand, there should be a regulation on long-standing cases which has regard to the specific problems that the group of refugees described under this point is faced with. (see point 12.v).

## **Settlement in a Third Country (SGP: C12.3)**

### **12.Y) Please describe relevant law, policy and practice in your country.**

See point 9.a

### **12.Z) To what extent does this conform to the Statement? Please outline in brief.**

In general, the statements made under point 9.b are also applicable here. Nevertheless, it needs to be stated that German authorities – regarding the majority of non-European third countries have serious technical, personnel-related and infrastructural problems concerning the fulfilment of the standards specified in point 12.2.2 (a) of the SGP.

### **12.ZZ) Are any changes needed? In relation to any first principles?**

Also in this context is it necessary to demand a much more intensive co-operation on the part of German authorities with governmental and non-governmental organisations in the countries of origin, and apart from that German authorities should in many more cases resort to assistance by international organisations.

## **13) Data Collection**

Good data on separated children is required to assist the implementation of good practice.

### **13.A) Who should be responsible for collecting data on separated children? Please consider both government departments and NGOs.**

(Points 13.a-c are summarised in the following.)

It is not known how many separated young refugees live in the Federal Republic. So far, there are no federal, regional and local statistics accessible to the public that give precise nation-wide information on the number of refugees and other significant aspects such as age structure, regions of origin, the duration of their stay and their social situation. According to the authorities in charge there are various reasons for that dissatisfactory situation: On the one hand, it is resulting from the fact that jurisdiction in asylum-related matters is divided between different federal ministries and federal agencies and from the conceptual and technical difficulty of pooling the information that is being collected in very different forms. On the other hand, it is resulting from the federal structure of Germany based on which many of the tasks and functions related to asylum policies are assigned to the *Länder* and the municipalities; and decisions on statistical documentation are taken by the different levels.

Nevertheless, the poor data situation is surprising, since data on refugees and migrants are collected on a large scale by numerous administrative bodies. The *Federal Office for the Recognition of Foreign Refugees*, for instance, does collect very detailed data on asylum seekers, but it does not prepare any statistics on the age structure of refugees. The *Central Register of Aliens (Ausländerzentralregister)* which is part of the *Federal Office of Administration (Bundesverwaltungsamt)* based in Cologne, an authority reporting to the Federal Ministry of the Interior, receives manifold information on aliens from the local aliens authorities. But, according to a statement made by the authority, the data collected does not suffice to draw a comprehensive picture of the situation of young refugees, comprising information on their status, the question whether they have been accompanied by someone or not, etc.. Similar statements are made by the authorities in charge of data collection at the level of the *Länder*.

It is evident that there is a lack of political will to overcome the problems that exist regarding the exchange and evaluation of individual data, problems such as technical issues and issues relating to the protection of data privacy. This is a serious issue, since a solid data basis covering a topic as controversial as the policy on separated young refugees would be an important prerequisite for the planning and execution of a realistic and problem-appropriate policy. One cannot help suspecting that those responsible in politics so far have not had any major interest in providing the general public with more precise information on the number and living conditions of these children and young persons – maybe since they expect undesirable effects on the political debate. Consequently, one can only make a rough estimate of the number of young refugees in Germany: Based on the assumption that the age structure of refugees roughly corresponds to that of the foreign population in general (for which statistical data is available), one can presume that at the end of 1998 about 220,000 refugees under the age of 18 were living in Germany, that is about one fifth of the overall number of 1.1 million refugees living in Germany at that time. Among these minors – again a rough estimate – there were 55,000 asylum seekers, 25,000 refugees seeking protection from civil war, mainly from former Yugoslavia, 60,000 persons entitled to asylum respectively children of persons entitled to asylum, 2,500 *quota refugees*, 6,000 *convention refugees*, 3,000 stateless aliens and 70,000 so-called *de facto* refugees, i.e. those refugees who have not filed an application for asylum or whose asylum application was rejected, but who have not been deported to their home countries on humanitarian or other grounds.

Concerning separated young refugees the situation in terms of data is equally poor. There is no comparability of data either: Some *Länder* do not collect the corresponding data, others do only

indicate entry figures or current numbers. Some only register young persons under the age of 16, others only document persons under the age of 18.

Based on statistical data provided by the *Länder* and complementary information supplied by the municipalities we estimate that a total of approximately 5,000 to 10,000 separated young refugees live in Germany. Despite their lack of precision, the statistics of the *Länder* and the municipalities indicate two trends in recent years. One concerns the number of entries: Since the early nineties the number of separated young refugees entering Germany has decreased. This decline is probably due to the more stringent rules and regulations of the *Aliens Act* and the *Asylum Law*, and above all due to the introduction of compulsory visas for minors from Morocco, Turkey, Tunisia and the States of former Yugoslavia, where in the past migrant workers were recruited, as well as due to harsher sanctions against airlines that carry minors without a valid visa.

The second trend is referring to the current numbers of refugees, that is the number of separated young refugees who currently live in Germany. This number has slightly increased over the past ten years. This makes us presume that at least part of the children and young persons stay in Germany for a longer period of time, even though the majority of them was rejected as asylum seekers and has only received a *toleration* that is being extended for a few months each time.

Separated young refugees – like refugees in general – are unequally distributed among the *Länder*. Within the *Länder* there are major differences between cities and rural areas: Refugees mainly live in large cities and areas of urban agglomeration. Berlin, Frankfurt, Hamburg, Cologne and Munich are the cities with the highest numbers of young refugees. This unbalanced geographical distribution has a considerable influence on their living conditions. Due to the relatively large scope of action that the *Länder* and municipalities have in the treatment of refugees, there is substantial differences regarding reception, accommodation, care and provision, education and vocational training as well as concerning their access to the employment market. Last but not least, there is an also considerable difference in terms of promotion of return and deportation of young refugees whose *residence permit* or *toleration* has expired. For instance, there are some *Länder* and municipalities who - in addition to the federal support programmes for the return of refugees seeking protection from the civil war in former Yugoslavia –

provide assistance in the form of counselling or in the form of granting financial, material or organisational aid aimed at furthering integration in their regions of origin; other *Länder* do not see any need for action in this respect. There is some *Länder* who in terms of deportations have strict rules and regulations regarding the reception in the home country; specifying, for instance,

that a deportation is only admissible if the reception by family members or representatives of reception centres is guaranteed; other *Länder* do not see any necessity of looking into the matter of reception in the home country once a certain age limit – mostly the age of 16, that is the obtaining of legal capacity in terms of asylum procedures – has been reached.

Due to the lack of proper data it is not possible to forecast whether these trends regarding the development of the number of young refugees will continue in the future. It can, however, be presumed that the number of new entries of children and young persons will continue to decline slowly, since immigration controls in Germany and in the overall territory covered by the Schengen Agreement will be even more efficient. Nevertheless, it will not be possible to completely avoid this kind of immigration, regardless of how stringent border controls will be, since there will always be new ways how to evade these controls. It cannot be forecast whether the number of young refugees living in Germany will continue to grow, since there might be less children and young persons returning or being deported than children entering legally or illegally.

**13. B) What sort of data is required? From government? From NGOs?**

See above.

**13.C) Please provide any current (1997-1999) data on separated children which is available (from both government and NGOs). We appreciate that at this time most of this data will relate to asylum applications by separated children.**

See above.

**14) International Instruments**

**Please indicate whether your country has signed or fully ratified the following international and regional conventions and covenants. As well please indicate whether rules and guidelines are being implemented.**

**14. 1) Refugees**

1951 UN Convention relating to the Status of Refugees

1967 Protocol relating to the Status of Refugees

UNHCR:

The Handbook on Procedures and Criteria for Determining Refugee Status, paras. 213 – 216  
Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum, 1997

## **14.2) International Human Rights Instruments**

UN Declaration on Human Rights, 1948

International Covenant on Civil and Political Rights, 1966 (and Optional Protocol)

International Covenant on Economic, Social and Cultural Rights, 1966

Convention for the Reduction of Statelessness, 1961

Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol 1)

Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol 11)

Convention against Torture, 1984, Art. 3

Convention for the Elimination of all Forms of Racial Discrimination (1966)

## **14.3) Children – International and Regional Instruments**

UN Convention on the Rights of the Child, 1989

UN Standard Minimum Rules for the Administration of Juvenile Justice (25 Nov., 1985)

UN Rules for the Protection of Juveniles Deprived of their Liberty ("Beijing Rules"), 1990

European Convention on the Repatriation of Minors, 1970

European Convention on the Exercise of Children's Rights, 1996

Hague Conference on Private International Law:

NB: Please also indicate whether your country is in the process of ratifying any of the Hague Conventions?

Convention for the Protection of Minors, 1961

Convention on the Civil Aspects of International Child Abduction, 1980

Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, 1993 and the associated "Recommendation on the Application of the Convention to Refugee Children"

Convention on Jurisdiction, Applicable Law, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children, 1996 (not in force yet)

## European Union

Has your country implemented the following EU policies?

Joint Action to Combat Human Trafficking and the Sexual Exploitation of Children, Feb. 1997

Council Resolution on Unaccompanied Minors, who are Nationals of Third Countries, June 1997

– NB: Please indicate briefly the extent to which your country has implemented this resolution.

## **14.4) Europe**

European Convention for the Protection of Human Rights and Fundamental Freedoms (and Protocols), 1950

The Convention Determining the State Responsible for Examining Applications for Asylum lodged in one of the Member States of the European Community (Dublin Convention), 1990.

Schengen Convention, 1990

## European Union

NB: Has your country implemented the following European Union Asylum policies?

Joint Position on the Harmonized Application of the Definition of the Term "Refugee" in Article 1 of the 1951 Geneva Convention relating to the Status of Refugees, Council of the EU, March 1996

Resolution on Minimum Guarantees for Asylum Procedures, June 1995

Resolution on Manifestly Unfounded Applications for Asylum, 1992

Resolution on a Harmonized Approach to questions concerning Host Third Countries, 1992

Conclusions on Countries in which there is generally no Serious Risk of Persecution, 1992

Resolution on the Harmonization of National Policies on Family Reunification, June 1993

## Council of Europe

European Social Charter, 1961

## **Trafficked children**

**a. Identify any domestic legislation which can be a) used against traffickers and b) applied to trafficked children**

Child trade is element of a criminal offence according to §236 of the penal code, where children are defined as persons under 14 years. The paragraph includes the unauthorised arrangement of adoption and abandonment of own children to a third party for money or the purpose of

enrichment, both within Germany and abroad (§236.1 and 2). Severe child trafficking is defined as professional and organised, and if "the child i.e. the trafficked person is in danger of being severely damaged in his or her mental or physical development" (§236 4.2). However, section §236 of the penal code is rarely used in the prosecution of child trafficking. Presumably, this is linked to the fact that the majority of trafficked children are older than 14 years and thus do not meet the age definition of §236. Therefore trafficking is mostly prosecuted under section §180b (Menschenhandel/ Human Trafficking) and §181 (schwerer Menschenhandel/ severe human trafficking) StGB. Since human trafficking is difficult to prove, the police often investigate crimes connected to human trafficking, under section §92a (Schleusen/ human smuggling) and §92b AuslG (Gewerbsmäßige Schleusung/ professional human smuggling) as well as §180a (Förderung der Prostitution/ promotion of prostitution) and §181a (procurator/ Zuhälterei) StGB, §234 (kidnapping) StGB, §235 (deprivation of personal freedom) StGB, §239 (divestment of minors) StGB, which can be prosecuted more easily. Likewise no laws refer explicitly to children, who are affected by child trade. Legally, these children are not considered at all, neither by the relevant legislation concerning residence, and asylum procedures nor in questions of care (see point 12 A and the following).

## **b. What international conventions on trafficking have been signed by your country?**

The UN-convention on the Rights of the Child (CRC) that was signed by Germany contains different articles, which refer to child trade. Above all, according to article 35 of the CRC the signatory states commit themselves to take suitable domestic measures to combat child trade as well as the kidnapping of children. However, the convention does not specify which concrete domestic measures have to be taken. In January 2002 an amendment of the CRC article 35 concerning child prostitution and child pornography and child trafficking came into effect precisely, in order to specify concrete measures in the article. The implementation of article 35 in Germany is found wanting. One of the reasons for the insufficient implementation is a *reservation*, by Germany regarding the application of the CRC to children living in Germany, who do not have German citizenship. (see 1d and 14.)

One more signed convention is the Council framework decision on combating trafficking in human beings of 19<sup>th</sup> of July 2002 (Council Framework Decision 2002/629/JHA)

This resolution which day of entry into force was 1<sup>st</sup> 2002 contains a maximum penalty for trafficking in human beings in the countries which signed, and, in order that the crime does not

go unpunished because of a conflict of jurisdiction, the decision introduces criteria on jurisdiction. The Deadline for implementation in the Member States is the 1<sup>st</sup> of august 2004.

*The United Nations Convention against Transnational Organised Crime* and the appending *Protocol against Trafficking in Persons* was signed by Germany in 2001 but is still not ratified

The members of the OSCE plan to establish an Action Plan to Combat Trafficking in Human Beings soon.

**c. What is known about children being trafficked into your country? E.g. Country of origin, routes of entry, estimated numbers, forms of exploitation.**

First of all it is necessary to define the term "child trafficking". Official definitions subsume child trafficking into the broader term of human trafficking. According to the definition of Europol human trafficking is the "actual and illegal subjugation of a person under the will of another person by means of force, threat or deception or by exploiting a relationship of dependence in particular with the following aim: Exploitation for reasons of prostitution, exploitation of underage persons, sexual violence against underage persons or trafficking in connection with abandonment. These forms of exploitation cover also the production, sale and distribution of child pornography." (Pollmann 2002: 4)

The validity and usefulness of such definitions for the practice of social workers and activists of refugee initiatives is open to question. Although the majority of separated children fulfil the criteria mentioned above, they are still not being regarded as trafficked. For instance, a 13year old who was sent by his family to Germany in order to work and send money home, is exploited – by his family as well as by his employer. Another example is the case of a 15year old, who had to work after his arrival in order to pay back his smuggler. He can be regarded as exploited as a result of his dependent relationship. In both cases, the predicament of the children is not due to child trade but the lack of prospects in their countries of origin and the rigid migration policy of Germany that does not provide any other gate of entry.

In Frankfurt for example, according to police data, underage girls were picked up by the police in brothels. The girls were – by their own account – not kidnapped, but agreed to be smuggled to Germany by traffickers for the purpose of prostitution, to help their families who live in often extremely precarious economic situations. In all of these cases, one can neither speak of voluntary decisions, nor of trafficking. The term "voluntaries" as opposed to "force" seems inadequate in the context of economic predicaments, migration policies and the subordinate social position of children (in almost all societies).

An employee of the *Youth Welfare Office* in Frankfurt points out that child trafficking must also be regarded as a form of migration in the context of increasingly rigid German migration policies. Most of the trafficked children come from countries which have visa obligation for Europe and which are among the poorest regions of the world. To pay for means of transport to Germany is beyond the reach of the great majority of the population. In this situation there is no "safe" way to Europe anyway and therefore parents trust (knowingly or unknowingly) traffickers, hoping that their children will have a better future in Europe.

It is very difficult to make statements about the development, extent and organisation of child Trafficking in Germany. There are only few investigations into this topic and therefore central statistics or generalizable insights do not exist. Even Europol – responsible for human trafficking as a result of an extension of its mandate for cases of transnational crime since 1998 – has only incomplete or sketchy information about this phenomenon.

In the criminal statistics child trafficking is not documented separately but subsumed under "human trafficking". However, "human trafficking" is understood mostly as trafficking of women for the purpose of prostitution. Thus, child trafficking becomes invisible in a double sense. One example is the report of the Federal Criminal Investigation Office "*Lagebild Menschenhandel*" (2002), which deals exclusively with trafficking for the purpose of prostitution. In this report even 14year old girls are defined as "women".<sup>1</sup>

Criminal offences like theft, prostitution and others are frequently committed by trafficked children, but are not investigated under the aspect of child trafficking. These minors enter criminal statistics as delinquents, not as victims. The example cited above of the treatment of underage girls who were picked up in brothels by the Frankfurt police shows the lack of sensibility when dealing with trafficked children: They were arrested, because 1. they lack a residence permit and 2. they work without work permit. Although they are usually not held in custody for more than one night, this example shows that foreign minors are barely regarded as victims of criminal machinations.

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<sup>1</sup> According to §236 of the German penal code, where trafficking of children is proscribed, children are defined as younger than 14 years. This contradicts to the definition of the CRC, which defines as child a person who is younger than 17.

## **Numbers**

Concerning the number of trafficked children, only vague estimates exist. Only a very small number of children can be proven to having been trafficked. There are several reasons for that. On the one hand the children concerned are afraid of their traffickers and are therefore not prepared to talk about their situation. On the other hand they distrust unknown authorities and/or social workers, when they meet them for the first time (see below). This is why it often takes a long period of time until it turns out that a foreign minor was actually trafficked. Furthermore, just a few children are aware of having been trafficked. The number of undocumented children, living in Germany can not even be roughly estimated.

In the year 2001 273 preliminary proceedings on human trafficking were reported. The number of preliminary proceedings sank in comparison to 2000 by 15 %. According to police statements the reason for the declining number of proceedings is predominantly due to the lack of staff, so that appropriate prosecution of human trafficking is impeded.

## **Age structure of the victims**

There are only speculations about the age structure of trafficked children, but there does not seem to be a minimum age. According to reports of the Federal Police Office the girls picked up in brothels by the police are not younger than 14 years. However, this is a very vague piece of information, since many girls either do not know their exact age, or are instructed not to tell their real age (Federal Criminal Investigation Office 2002: 24). Pollmann (2001: 27ff) reports that advice centres for sexually abused children have knowledge of 1year old infants being sold and abused for the production of child pornography. Apparently there are child prostitutes at the Czech and Slovak border, whose clients are mostly men from Germany. The men cross the border together with the children, in order to sexually abuse them in Germany. In addition, cases of adoption abuse are reported, where paedophile men look for women with children from foreign countries with the help of marriage agencies (above all Latin Americans). After the wedding the children are sexually exploited in Germany. The network of paedophiles in Europe has a huge demand for child pornography or sexually exploitable children. Victims are children who are highly vulnerable. The interests of paedophiles seem to have no minimum age limit, so that children of every age are being trafficked.

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## **Countries of origin**

It is hard to determinate the countries of origin and routes of migration of these children. The police and the *Youth Welfare Office* know of the following countries: Nigeria, Ghana, Sudan, Liberia, Sierra Leone, Romania, Turkey, Thailand, Russia, Latvia, Poland and the Czech Republic. This list is by no means complete but these are countries, which are known to be sources of organised child trafficking. Since child trafficking is not always connected to organised crime, one can presume that there are much more countries from which children are trafficked to Germany. Nothing is known about the routes of migration. Sometimes the minors cross the border with false passports as children of the traffickers or sometimes alone on foot. According to the experience of the Frankfurt police the children mostly do not know how they have entered Germany. This is due to the fear that the children suffer from during the journey, and also to the often insufficient geographical knowledge which would allow the minors to reconstruct the routes. In the majority of cases the children only remember the means of transportation.

## **Forms of Exploitation**

The minors are forced to do several kinds of services. Known are organised theft (breaking into houses and pick pocketing), prostitution, child pornography, diamond smuggling, drug smuggling, drug trafficking and in a few cases domestic work.

Prostitution: There are child prostitutes from all countries from which child trafficking is known. In principle girls and just in a few cases boys are forced to prostitute themselves. The reasons are that almost exclusively men demand sexual services and that most of them are heterosexuals. Furthermore, the heterosexual market for sexual services is much better organised and provides higher profits than the homosexual one. In most cases parents give their children over to the traffickers and receive a (usually small) sum of money. Some know what is expecting their children in Germany, some actually do hope for a better future for their children. Children from West-African refugee camps are easily recruited by the traffickers, because of the bad living conditions in the camps. There are cases known of homeless children from Romania, who were kidnapped or picked up from the streets. The minors are accommodated in apartments in Germany and then sold to brothels in bigger cities, where they have to work under high mental and physical pressure.

Diamond Smuggling: In Hamburg cases are known, where children from African countries were exploited for diamond smuggling. Often the minors do not know that they have smuggled goods in their luggage. The traffickers promise them a better future in Germany. They are brought to

Germany with the diamonds in their luggage. Frequently coercion takes place after the delivery of the diamonds. Either the minors are being put under pressure because of their illegal status in Germany or they are being offered for example expensive clothing or a large amount of money, if they agree to continue working for these criminals (see below).

Drug trafficking: The situation is similar in the field of drug trafficking. Children are abused for the distribution of drugs or as lookouts. Sometimes these children only attracted the attention of the police because they were picked up frequently close to arrested drug traffickers during police raids. Once involved in the structures of drug trafficking, a combination of fear and various incentives lead them to stay there. Such incentives are for example good income, promotion in the hierarchy and that their vulnerability, due to their illegal status, seems to be reduced within the criminal structures (see below).

Domestic work: In Berlin cases are known, where children were sold as domestic workers to families of the same origin as the minors such as Turkey and some African countries. In these cases the parents negotiated directly with the "employers" of their children. An organised and professional market for children as domestic labourers is not known. Frequently these children are sold at the age of 10 or 11 to their employers.

Theft: (the following data is taken from Pollmann 2001: 19ff) Since the middle of the nineties cases of Romanian minors, who were brought to German cities for the purpose of stealing has attracted attention. These children were mostly not of the age of criminal responsibility (younger than 14). They were trained by their traffickers as pickpockets and burglars. Frequently large groups of children are accommodated in flats, with individual girls who were locked in there permanently being made responsible for the domestic work in the flat. These girls report of rapes by several persons and some were forced to prostitute themselves. The children often come from the poor north-eastern part of Romania or from Bucharest, where they lived on the streets. The daily income is estimated as between 250-1000 €. The children are guarded tightly by their traffickers, who sometimes even accompany the minors on their raids to make sure, they do not run away. Punishment for those children who dare to run away is severe: Both girls and boys are threatened, beaten up, raped, tortured and locked up. According to the agreement on repatriation that the federal government of Germany has signed with Romania, all separated children from Romania can be deported to Romania within 36 hours. Since then the number of "theft children" has declined. As a result of to the agreement, the situation for the children who are still brought to Germany has become worse. After the deportation they return to their families, who had sold them or they return to a life in the streets, where they are again exposed to child traffickers. Often the children try to bring back presents for their families, when they are deported. Thus,

their parents think that their children stay in Germany has been successful and are willing to send them again. There is no control that the deported children are in good hands with their families or that another suitable form of care can be achieved. Therefore they are in danger of being trafficked again. The agreement on repatriation with the Romanian government supports thus the machinations of the child traffickers.

### **Exploitation of non-trafficked children**

Not only trafficked children are exploited but also other separated children are coerced. This happens in three different ways

1. Debts: Nearly every child must engage a smuggler to cross the border because of the lack of legal gates of entry and the militarised border controls. Just in a few cases minors manage to cross the border without the help of professionals. Because these services are very expensive, minors run into debt and have to work to pay them back. The minors are threatened that if they do not pay their debts, their families would be in danger. Frequently they work in kitchens of restaurants, on construction sites or in the above mentioned businesses such as drug trafficking or prostitution. These children are not trafficked in the sense of being traded, but their obligations vis-à-vis the traffickers make them vulnerable and easy to exploit.

2. Children being picked up by adults at arrival: Separated children aged over 16 years have to get in touch with the Alien Authorities before they can contact the *Youth Welfare Office*. As long as they have not been to the *Youth Welfare Office* they are not protected: They do not have a guardian and nobody is responsible for their well-being. After they report to the alien authorities they are often sent to asylum seeker-homes, that are sometimes far away or even in other *Länder*, where they have to go to on their own. The minors are treated as adults and left alone so that there is a high risk that criminals can abuse them.

Adults, who speak the same language as the minors or who can gain the trust of the minors in the difficult situation of the arrival, often abuse the helplessness of the minors through other means for criminal purposes. The influence of these adults on the minors is being reinforced by the fact that the officials at the Alien Authorities often mistreat, disrespect, insult, and talk to the minors without translator etc.

Criminals know about the difficult situation and try to exploit the minors. In Hamburg for instance a 15year old girl, who was declared to be 16years old by the alien authorities, was sent to the *Zentrale Aufnahmestelle für Asylbewerber* (central admission for asylum seekers) in Bremen. On her way a woman tried to force her into prostitution. The admission procedures of the Alien Authorities do not provide sufficient protection for these minors. The mistreatment by

the officials strengthens the distrust of the minors and makes them vulnerable to the offers of criminals.

3. mutual recruitment of children by other children: A third way of how separated children get into exploitation is recruitment through other separated children. Underage persons, who are already involved in criminal activities, try to recruit other minors through incentives like expensive sneakers and clothing or large sums of pocket money and drag them into criminal structures. This form of recruitment into exploitation is also reinforced by the insufficient accommodation and care as well as by the lack of prospects in terms of legal residence in Germany. In fear of not getting a secure legal resident status, many minors accept good but illegal opportunities to earn money, so that they can effort to move on, if they need to.

### **Relation between traffickers and children**

Child trafficking is not always part of organised crime. Often the children and their families are promised a better future under false pretences. The girls are promised a German husband, a job as domestic worker or a career as a model. Frequently, parents receive a small amount of money for giving away their children. In Germany the minors are accommodated in flats. In some cases the traffickers seem to try to accommodate the children in *Youth Welfare Accommodation Facilities*, so that they do not have to care about the everyday needs of the children. There are reports from some cities that adults pick up children at these facilities in the morning and return them in the evening (see below). In Frankfurt it turned out that traffickers who were arrested had addresses of *Youth Welfare Accommodation Facilities*. The minors are often put under severe pressure by the traffickers. Many cases are reported from Nigeria, where girls have been threatened by voodoo rituals. Before the girls leave their country they take part in a ceremony, where their soul is trapped in a small package. The package is left behind in a shrine. The soul, so they are told, can only be released if the girls work hard enough. Minors from other countries are threatened that their families will be financially ruined or even killed, if they do not obey. In other cases the minors are beaten up and abused. Many of them are molested by their traffickers during the journey. For example they have to perform certain services like prostitution, theft or have to scout routes across the borders.

**d. To what extent are relevant authorities identifying trafficked children? E.g. police, social services, immigration authorities.**

Relevant authorities are: The police, the *Youth Welfare Offices* and social workers of the *Youth Welfare Accommodation Facilities*. All three institutions have different interests to find out, whether a minor is a trafficked child or not.

The Youth Welfare Office: In some cities it is common practice to ask the minors, if they were trafficked during the first interview. But the officials rarely receive an answer to their question, because – as mentioned above – the children are afraid of talking about their situation, distrust the authorities or are not aware of being trafficked. In all *Länder*, the *Youth Welfare Offices* and the police co-operate closely.

Youth Welfare Accommodation Facilities and Initial Accommodation Facilities: These institutions do not ask the children, whether they were trafficked or not. They are afraid to put the children under pressure through these questions. These institutions are predominantly a shelter, where minors can relax and take a rest. The aim of the social workers is to gain the trust of the minors and to develop a personal relation. The social workers know that children often are in danger when they talk about their dependency on the traffickers. Often, social workers are aware of these dependencies because of the behaviour of the children, e.g. when they do not stay at the facility over night, because they work in restaurant kitchens or when young girls leave the facility in "full feather" in the evening to prostitute themselves or when children do not stay in the facility the whole day, because they have to pickpocket. It is impossible for social workers to forbid these activities, because the children put themselves and their families in danger, if they do not fulfil their duties. Social workers are in a dilemma, when they have to tolerate the activities of the minors through which they suffer. Partly the social workers try to establish better conditions for the minors. In Dortmund social workers negotiated with a shopkeeper that the minors who worked for him, would not have to work after 10 o'clock in the evening. In Hamburg social workers tried to teach Romanian "theft children" before opening hours, because the minors did not have time to go to school during daytime. (See F) Sometimes social workers put themselves in danger, when they intervene in the businesses of the traffickers. In most *Länder* there is no co-operation between social workers and the police. That is because the main interest of the police is the prosecution of crime, but not the well-being of the child.

The police: There is little interest in finding out, whether a child is trafficked or not. The police focus rather on combating organised crime. Besides, the task of the police is to prevent the illegal migration of minors to Germany. The children are not treated as victims, but as criminals. The example of the treatment given to underage girls who were picked up in brothels by the Frankfurt

police document the insensibility towards trafficked children: First they get arrested, because 1. they lack a residence permit and 2. they work without work permit. Although they are usually not held in custody for more than one night, it shows that foreign minors are barely regarded as victims of criminal machinations. After they have been arrested, they are interviewed with the help of a translator. The number of children who eventually give evidence is small, because of the fear of punishment by the traffickers. The police seem to have little interest to investigate child trafficking, since they lack relevant data on the issue. Given the fact that scientific research on this topic and its representation in the public debate (except in the yellow press) is negligible, one can assume that the lack of interest in the subject is related to the potential consequences of such a debate. If there would be a serious engagement with the subject of child trafficking and the dramatic situation of these children, no excuses could be made for leaving the children to their fate. The likely consequences of further research into this topic would be to demand that a general residence permit is being issued to trafficked children as the only reasonable solution. However, such a demand is unlikely to receive the necessary political support of the government.

#### **e. How are trafficked children being dealt with under immigration and asylum law and procedures?**

No distinction is made between separated children refugees and trafficked children. All minors, who are picked up are treated the same. Trafficked children pass through the same, above mentioned procedures and are not considered in any particular way in German asylum law. Victims of child-trafficking are not granted asylum. Thus, all applications for asylum of these children are refused automatically. There is one exception: in the case of Romanian children, all children who are picked up as separated children are deported to Romania within 36 hours, according to the agreement on repatriation signed by the Federal Government of Germany and Romania. These children can not even apply for asylum or obtain the toleration status.

However, as in the cases of separated children, it is also possible for trafficked children to obtain a *toleration status* on humanitarian grounds or based on international law. (See 12.a) To obtain such a toleration status is possible with the help of a guardian, who has sufficient legal knowledge to help the minors. However, because many minors aged over 16 do not have a guardian, press reports document that trafficked children are taken in ‘preventive detention’ and are later deported. Yet none of the interviewed officials had knowledge about such a case.

The asylum proceeding is not appropriate for trafficked children:

1. To submit a valid application, the asylum application must be filed immediately after a minor has become known to the authorities. At that time trafficked children are usually traumatised and

anxious. Furthermore, the children have no reason to talk to adults about their situation. The children are not granted enough time to develop confidence to give evidence.

2. During the asylum proceeding the children have the *duty to co-operate* (Mitwirkungspflicht), which is neither appropriate for separated children nor for trafficked children. It is very unlikely that the children are able to present their cases without inconsistencies before a court. The more complicated the circumstances of the children-trafficking are, the less reliable will appear the account of the ordeal to judges.

3. *Programs for Witness Protection* (Zeugenschutzprogramm) according to §72 GG civil code only provide codes of conduct appropriate for the situation of German witnesses. According to the code, potential witnesses have to make a decision whether they want to give evidence or not within a time limit of four weeks (§42.3.2, Alien Law (AuslG-VwV)). If they co-operate, they obtain accommodation at a secret location and a new identity for the duration of the investigations. However, a new identity can not be provided in the case of trafficked children, since the German state can not issue German passports for 'Foreigners' and is neither able to issue foreign documents. Another problem is the great anxiety of the children that may induce the children to revoke their testimonies. When they revoke their testimonies, the protection program stops and the children are again in danger, because traffickers know that they gave evidence. Another weakness of the procedure is the fact that during the investigations the children do not have the possibility to go to school, to attend a training course or a therapy. Furthermore, they are threatened by repatriation in case the court action is abandoned.

One reason for the spreading of child trafficking in Germany is the treatment of minors in asylum proceedings. It does not seem likely, that in the short time limits within which the proceedings have to be accomplished the circumstances under which the children came to Germany are not revealed, or that the perpetrators are brought to justice.

**f. Do trafficked children have access to welfare provisions available to other separated children or to child sex workers or to otherwise exploit German children? E.g. education, health care, psychological support.**

Trafficked children have the same access to welfare provisions as other separated children. They are treated according to *Child and Youth Welfare Law* or the *Law on Social Services/Benefits for Asylum Seekers*.

## **g. What additional or specific welfare provisions are needed for trafficked children that are currently not being met?**

In principle, conventional *initial accommodation facilities* do not seem suitable for the victims of child trafficking. Social workers and officials of the *Youth Welfare Offices*, who deal with separated children, state that there is a need for the following:

1. A perspective of secure legal status (residential permit): For the work with these children it is absolutely necessary to provide them with a secure legal status and residential permit. Only then it might be possible for the children to liberate themselves from the criminal structures they are dependent on. A secure legal status is also the necessary precondition for children to make use of welfare provisions. Only a secure legal status and residential permit might allow children to recover, to develop confidence and overcome the abuse.

2. Safe Accommodation: Trafficked children need a place, where they are safe from their traffickers. Children need – depending on their specific situation – different kinds of safety: Minors, who escaped from their traffickers must be accommodated in secrecy. In Hessen, girls who are picked up in brothels, are accommodated in such secret places, where they cannot be discovered by their ‘employers’. This is necessary, because the addresses of the *initial accommodation facilities* are well-known by traffickers. Yet such treatment is not practised in all *Länder*.

Such secret accommodation is not appropriate however; if the children must fulfil responsibilities in order to protect themselves or their families. In these cases accommodation with intensive, 24 h support and protective surveillance might provide them with the safety they need. In these cases, monitoring of the buildings by the police could be helpful to prevent traffickers from haunting the children in their shelters. Nevertheless, by no means should these children be detained!

3. Psychological Care: The minors often do not receive sufficient psychological help. Their distress is not recognised or there is a lack of specially trained psychologists.

4. Flexible Concepts of Care: Caring for trafficked children is often difficult. Their responsibilities are often not compatible with the time-structures of conventional day-care- and accommodation facilities. Therefore, often the children attend these facilities irregularly, depending also on whether they have to work at night or during the day. Hence, to meet the special interests of trafficked children and in the same time not to disregard other separated children more care workers are needed.

5. Perspectives of return:

One important aspect of social work with trafficked children is to prepare them to be able to manage their lives in their home countries, in case they have to return. It is very important to offer them training or an apprenticeship that enables the children to earn money without being dependant on criminal structures. Suitable could be training courses to become e.g. bicycle mechanics, carpenters, haircutters, careers which would not have to follow the highly formalised rules of German apprenticeship.

#### **h. What arrangements are there for family contact, family reunification and managed return for trafficked children?**

The underlying assumptions based on which strategies of family reunification and managed return of trafficked children are dealt with differ widely. Due to the fact that often trafficked children are not recognised as trafficked, a high number of deportations of trafficked children must be assumed. However, if children are known to have been trafficked, they seem not be deported since their families do not appear able to care for their children. Only in very few cases, trafficked children ask for family-reunification. An exception to this practice is reported from Frankfurt, where a trafficked girl wanted to return to her family. By her return, this girl was accompanied by two social workers, who made sure that the child was in good hands.

Exceptions to this practice are the Romanian children, who are generally being deported to Romania, even though they are known to have been trafficked. And nobody checks, if there is anyone in Romania, who can take care of them.

### **Child migrants**

#### **i. What is known about other child migrants, who are neither refugees nor trafficked children? E.g. country of origin, routes of entry, numbers, means of subsistence.**

No distinction is made between refugee children and child migrants. All minors, who are picked up are treated the same. All of them pass through the above mentioned procedures and are treated according to the *Child and Youth Welfare Law* or the *Law on Social Services/Benefits for Asylum Seekers*. Therefore no statements can be made about migrant children. Until today, no general law regulating 'normal' immigration exists in Germany. Therefore all child migrants have to apply for asylum, even if it is obvious that their case will be refused. This practice veils

the actual reasons why children migrate to Germany. Therefore one important suggestion is that minors should obtain a residence permit, even if they did not flee their country.

**j. Can you identify particular groups with international protection needs?**

In principal, all children are in need of international protection. Child soldiers, girls who flee circumcision, trafficked children, underage Roma etc. – all these children are in need of a protection, which is not provided by German asylum law. There are no children who do not need protection, regarding the weak position children have in society.

**k. How are these children treated under immigration and asylum law?**

They are – as well as trafficked children – not considered as particular cases. All separated children are treated as refugees and have to apply for asylum. In most cases their claims are refused and they must hope to get the legal residential status of *toleration (Duldung)*. (See 1.c)

**l. What welfare provision is available to such children, formally or informally?**

They are treated according to the *Child and Youth Welfare Law* or the *Law on Social Services/Benefits for Asylum Seekers*.

**Interviews with separated children in Hamburg**

Guided Interviews with the following questions were made

1. How were you treated, when you came to Germany?
2. Which good experiences did you make since your arrival in Germany?
3. Which problems do you have in Germany since your arrival?
4. What should be done to improve the situation of separated children in Germany?

**A, Vietnam, 20 years**

A. fled, when she was 12 years together with her 8 year old sister to Germany. After arrival in Hamburg, they were brought to a children's home. She says that she exclusively made positive experiences in Germany. In the first time she was always afraid of the Alien Authorities. At that time, her toleration had to be extended every three months, sometimes every two weeks. She was always afraid of being sent back to Vietnam. Due to the long waiting times she and her sister

missed many lessons in school. Today there are special consultation-hours for children with short waiting times. She describes her guardians and the social workers of the facilities as very engaged and helpful.

### **B, Burma, 18 years**

B came two years ago together with her 15 year old sister from Burma, where they were persecuted as Christians. They fled to relatives in Germany, who brought them to the *Youth Welfare Office*. B. also is very satisfied with her treatment. She especially emphasizes the fact that she immediately could participate in a language course, when she came to the children's' home. Although she was afraid of the Aliens Authorities at first, she describes the officials as friendly without exception. She has negative feelings regarding her residence status: The *Federal Office for the Recognition of Foreign Refugees (Bundesamt für die Anerkennung von Flüchtlingen)* does not decide on her asylum application since several years. She assumes, that the reason for this delay is the fact that she and her sister must be granted asylum.

### **C, Sierra Leone, 14 years**

C came two years ago to Hamburg with the family of a friend of her father, after two of her brothers were killed in her presence. Her father was killed, too. Her first contact in Hamburg was to a man from an African organisation, who brought her to the *Youth Welfare Office*. Furthermore this man contacted a social worker from *Bundesfachverband Unbegleitete Minderjährige Flüchtlinge e.V.* (association for separated children). Starting from this moment she began to develop confidence. The kindness that she received in the treatment by the adults helped her very much to do so. Like the other children she says that it was most important to have someone, who she could trust.

### **D, Sierra Leone, 18 years**

D came as a 14 year old to Hamburg. After his arrival in Germany, he approached an African boy, who fortunately also came as a separated child to Germany and already lived in a *Youth Welfare Accommodation Facility*. This boy sent him to the *Alien Authorities*. His first impression there was frightening. D talks about the unsureness that he felt during his first months in Germany. Nobody helped him with this problem: At the Alien Authorities everybody spoke German with him, what he could not understand. He was told, he had to apply for asylum without any explanations – he didn't even know, what "asylum" was. At the Alien Authorities he was afraid of saying something to his disadvantage. There was nobody, who he could trust. The

Alien Authorities disbelieved his age declaration. That is why it was accommodated at "Bibi Altona", an Initial Accommodation Facility for adults. He had to wait one week, before a physician examined him and approved his age declaration. He was also discontent with the social workers of the Youth Accommodation Facilities: He felt controlled and blackmailed. They noted everything he did in his file, even the times he entered or left the building. He did not receive any support from them. In contrary, one of the social workers revealed her disinterest, when she told him, she would not care, if he went to school or if didn't. Another social worker called the police, when D had visitors in his room after 22:00.

The situation changed, when he got to know a very engaged social worker from Bundesfachverband Unbegleitete Minderjährige Flüchtlinge e.V., who took care of him. She managed to provide him a flat and accompanied him during the asylum proceeding, which he also experienced as humiliating. The authorities did not believe him that he lived in Freetown; because when he draws a map of the city he forgot two small streets. In his everyday live he feels hassled: Because he is black and wears Hip-Hop clothes, the police controls him frequently and suspects him to be a drug trafficker. His neighbours once called the police because they felt disturbed by loud music at 19:00. When the police came, one of the police-officers threatened him to smash his door, if they were called again.

D suffers racism and the lack of respect he receives as a black refugee. He made very positive experiences with some engaged social workers. They treated him with respect and listened to what he had to say and gave him the feeling not to be alone.

Concluding it can be asserted that separated children are treated very different depending on their skin colour and sex. Black boys tend to be perceived as a threat, whereas Asian girls are often helped. It is very important to the minors to be treated with respect and to have someone to rely on.