



# **Voice of Unaccompanied Minor Asylum Seekers on Guardianship**

**A study on Guardians of Unaccompanied Minor Asylum Seekers in Cyprus**

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## PREFACE

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Every child deserves the securing of fundamental rights and protection. Unaccompanied immigrant children are especially vulnerable to become victims of trafficking, abuse, rape, neglect and abandonment.

It is a pleasure to provide the preface to the first research conducted in Cyprus regarding Guardianship of unaccompanied children named “Voice of Unaccompanied Minor Asylum Seekers on Guardianship”. As someone who has been appointed to safeguard and promote children’s rights and welfare, I view this research as a necessary part of what needs to be done with regards to guardianship. One of the values of this research is that unaccompanied children in Cyprus had the opportunity to express their views and to be heard.

I would like to invite the government representatives, European and International Institutions and NGOs to join forces, as well as their skills and resources, in making a positive difference on the lives of unaccompanied children in Cyprus.

Joseph Varughese  
Director –General  
“Hope for Children” UNCRC Policy Center

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It is founded on the principle of promoting and protecting children’s rights in Cyprus. We aim to do this through implementation of a variety of projects covering communal initiatives, environmental initiatives, integration of legally residing non-Cypriot children nationals into their host society, working with separated and unaccompanied children present in Cyprus

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## ABSTRACT

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A guardian should be appointed for unaccompanied minor asylum seekers to safeguard their rights and best interest. Guardians, whether the staff of an authorized institution or individuals, should be carefully trained and sufficiently qualified to take account of the child's ethnic, cultural, religious and linguistic background and ensure that the child's needs (physical, psycho/social, cultural, legal, medical, educational) are met, while refugee status is being processed and until a durable solution for the minor is identified and implemented. This research analyzes the situation of unaccompanied minor asylum seekers in Cyprus with regard to guardianship as the fundamental element of their protection and ascertains what unaccompanied minor asylum seekers find important factors for their guardians. The findings of the study support the observations on the situation and general assumption that the guardianship system in Cyprus has failed to fully support unaccompanied minor asylum seekers and the guardians role as defined by international guidelines and standards has not been undertaken efficiently by the official guardians appointed by the Cypriot designated authorities. Furthermore findings of the research show that unaccompanied minor asylum seekers have been subjected to violation of their rights and humanitarian concerns such as child labor, psychological abuse and risk of detention due to their residency status. The official guardians failed to determine the best interest of the children, their protection and welfare. The research also found that NGOs which act as unofficial guardians of unaccompanied minor asylum seekers demonstrated proficient and competent performance of guardianship duties in spite of inadequate cooperation by the official authorities with the NGOs. Although their functions were limited to tackling the problems encountered by unaccompanied minor asylum seekers due to the unresponsiveness of the legal authorities, unaccompanied minor asylum seekers interviewed recognized their efforts with satisfaction and acknowledged their expertise.

## INTRODUCTION

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Unaccompanied minor asylum seekers (UMAS) have the right to a guardian for the protection of their rights and best interest. Not only UMAS have to live in an environment that they do not know but, in some countries, they are also exposed to the risk of exploitation by traffickers or being detained because of their residence status. Depending upon the country unaccompanied minors enter, the type of protection and care they receive varies widely. Yet as all European countries have signed and ratified the Convention on the Rights of the Child (CRC) and have the obligation to take into account the special needs of unaccompanied minors in conformity with the core standards of the relevant international treaties and EU directives, the significant differences in the level of protection cannot be accepted. Accordingly the guardians should be cautiously selected, professionally and adequately trained to obtain child welfare expertise, knowledge of refugee law and an understanding of the situation in the child's country of origin and should be supported in their work to accomplish their duties as efficiently as possible. The evaluation of the ultimate eligible proficiency of the guardians' functions would not be credible without any involvement of children under guardianship and providing a channel for their feedbacks and views. I decided to examine extensively the role of guardians of UMAS based on my experiences I had encountered during my work at HFC "Hope for Children", an NGO based in Nicosia. Children had no clue to what was awaiting them the next day, had no idea about the rights they were legally entitled to and felt in a maze. Hence it was important for me to know from UMAS their perceptions about the role of guardians as such in order to pinpoint deficiencies in the current guardianship system in Cyprus. By providing the inputs given by UMAS, as the most reliable source, to the experts dealing with these children, the enhancement of the role of guardians in Cyprus could be feasible which has been the ultimate aspiration of HFC.

After elaborating on the main migration concepts and theories and providing comprehensive definitions of protagonists of the study, this paper further overviews the guardianship system, legislation and practices for UMAS in Cyprus, focusing on the area under control of the Republic of Cyprus rather than the whole Cyprus. It has been initiated and undertaken by the HFC "Hope for Children" UNCRC-Policy Center and in recognition of the lack of information concerning guardianship in Cyprus, absence of infrastructure, the knowledge on the subject and interest by authorities and

the crucial role that guardians are expected to perform in ensuring proper and adequate protection and care of UMAS to which they are legally entitled to. The aim of the study is to draw attention to the particularly vulnerable situation of UMAS and based on relevant international and regional standards of protection and care for UMAS, to specify the areas of guardianship provision that need further regularization and standardization.

It reviews the international and national legal frameworks and their implementation practices to ensure the proper care and treatment of UMAS as well as the national procedures for the selection and appointment of the guardians and their required proficiencies. Further it explores other issues regarding the guardians' duties and competencies by systematically analyzing and qualifying the performance of the guardianship system in Cyprus in response to the needs of UMAS.

The first mapping of guardianship in Cyprus was done through interviews with social workers from NGOs who were specialized in this field. The qualitative assessment included also the interviews with UMAS to obtain feedback and collect the views of UMAS and ex-UMAS and assess the quality of guardianship in the system. Nevertheless the small sample of UMAS, NGOs and social workers may not be sufficient to draw general conclusions for all the UMAS in Cyprus rather to make a provisional assessment and would provide only a partial picture of the situation. Moreover the results are limited and do not provide any assessment of how the different systems and standards influence the well-being, protection and care of the UMAS. However the significant variation in guardianship systems existing in parallel in terms of professionalized or benevolent and understandings of the functions of guardians among the NGOs who voluntarily act as the unofficial guardians and the Director of the Social Welfare Services as guardian by law has been confirmed by this research. It has been uncommon for the latter to ensure the appropriate schooling for the child, psychological and physical well-being of the child or arrange accommodations and assist the child legally in the asylum procedure; a far cry from performing a role as 'the main adult in the child's life'.

This research will in fact provide an instrument to improve the guardianship system in Cyprus and to harmonize the protection children receive from their guardians. While a lack of monitoring, reporting and supervision of guardianship system was a major constraint and obstacle for ensuring proper standards of protection for UMAS, this research could render assistance in paving a channel to receive children's feedback and input on the issue, as the most reliable data which has rarely been the central



subject of analysis and research. Accordingly the research will focus on the needs of UMAS and represents a comprehensive effort in improving the qualities and competencies of the guardians finalized by recommendations for improvement and further research.

## CHAPTER 1

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### THEORETICAL FRAMEWORK

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This chapter provides a general perspective on international migration in order to place children within its trends. It discusses forced migration and its causes and investigates the nature of immigration for children. By providing a definition for unaccompanied or separated minors, it explores the different approaches existing today not only in terms of definition. It describes briefly the asylum process and provides functional and statistical information about UMAS in Europe. It then determines the concept of vulnerability of minors, in order not only to understand their need for protection, but also the factors that establish this vulnerability, which are not confined only to the dangers and risks in the country of origin, but expand to the environment within the countries where asylum is sought.

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### PERSPECTIVES ON INTERNATIONAL MIGRATION

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International migration is a very complicating issue and the dynamics of displacement are complex and often inter-connected. Why some people leave, why others stay, what are the repercussions of migration for the sending and the receiving economies, for the migrant themselves, for their families, are themes that invite inter-disciplined enquiry. Reasons such as political unrest, human rights abuses and armed conflict may be associated with, or exacerbated by poverty, development initiatives and natural disasters of one kind or the other. The ability of forced migrants to find safety and rebuild their lives elsewhere is shaped not only by their own capacity to survive, financial resources and social connections but by the willingness of states to allow access to their territories and the necessary resources and opportunities.

The number of long-term international migrants, that is, those residing in foreign countries for more than one year, has grown steadily in the past four decades. According to the UN Population Division, in 1965, only 75 million persons fit the definition, rising to 84 million by 1975 and 105 million by 1985. There were an estimated 120 million international migrants in 1990, the last year for which detailed international statistics are available. As of the year 2000, according to estimates, there

were 150 million migrants (IOM, World Migration Report 2000) while the current estimated number of international migrants reaches 214 million. Combined all the migrants in the world constitutes the world's fifth most populous nation..In other words, one out of every 33 persons in the world today is a migrant (United Nations' Trends in Total Migrant stock, 2008). According to UNHCR the number of refugees has remained roughly stable: 15.2 million in 2009 compared to 15.9 in 2000 (UNHCR, 2009).

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## FORCED MIGRATION

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Before analyzing the global trends of migration further, it is necessary to distinguish between voluntary migration and forced migration. Voluntary migration is when people choose to move and forced migration is when they feel they have no choice but to move because their life is threatened or in danger. Forced migration is often assumed to have a political basis, being based on flight from persecution or conflict, whereas voluntary migration is generally assumed to be underpinned by economic motives (Betts, 2009:4). However, in practice, this distinction is problematic as it is not possible to separate volition and coercion, they exist on a spectrum. So most migration has elements of both and is likely to be motivated by a mixture of economic and political factors. The concept of forced migration sees people as refugees. Refugees are defined as people who *"owing to a well-founded fear of persecution, on the grounds of race, religion, nationality or membership of a social group, find themselves outside their country of origin, and are unable or unwilling to avail themselves of the protection of the country"* (Article 1a of the 1951 Convention on the Status of Refugees). An individual who has applied to be considered for refugee status is an asylum seeker. Asylum is *"protection granted by state on its territory against the exercise of jurisdiction by the state of origin, based on the principle of non-refoulement and characterized by the enjoyment of internationally recognized refugee rights, and generally accorded without limit of time"* (Aitchison, 1989:9).

The way in which the concept of forced migration has been developed is also very interesting. According to Turton (2003:7), the language we use to describe migration is not the language of migrants themselves, but of their hosts, or potential hosts. In other words, the language of migration is spoken from a sedentary or state-centric perspective and requires us to think of it as some kind of natural even, an inexorable

process with its own logic. What is more, the language of migration and terms such as 'forced migration' requires us to think of migrants as an undifferentiated mass: it de-personalizes, even de-humanizes the people we are talking about (Turton, 2003:8). Betts (2009) would agree and add to the problematic separation of forced and voluntary migration mentioned above that this separation emerges largely from policy categories designed to distinguish between and prioritize the rights of different groups of people. He places forced migration "at the heart of global politics" (2009:11), suggesting that the concepts of international relations have a contribution to make to understanding forced migration and forced migration has a contribution to understanding world politics.

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### CAUSES OF FORCED MIGRATION

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The underlining causes of forced migration are highly political. It necessary to be able to recognize the causes of forced migration, considering the mere fact that the number of forced migrants in the world today has been estimated between 100 and 200 million (Castles et al. 2003:15). This phenomenon is a product of wider processes of social and economic change, processes that are normally referred to as 'globalization' and which appear to be creating an ever increasing North-South divide in living standards, human security and access to justice and human rights.

Most asylum seekers in Europe come from states affected by high levels of violence, oppression and conflict. On arrival, politicians, the press and the public often treat them with contempt. So far, the European Union and its member states have focused on strengthening the borders of Europe, whereas research (Castles et al. 2003) suggests that they would do better to address the root causes of forced migration, that is, underdevelopment, conflict and impoverishment in countries of origin.

The research also identifies common factors that "forced" migration such as: ethnic or religious discrimination, human rights abuses, civil war and a large proportion of internally displaced people relative to the total population (Castles et al. 2003).

Under a more general framework, human displacement is closely connected with trends in the international system, geopolitics and the global economy. There are some common themes that are responsible for displacement, including wars, local conflict, strong states, weak civil society, the intervention of global actors (such as the

US vis-à-vis oil supplies, for example, or 'the war on terror' and "Political Islam'), and large-scale development projects which are implemented by international development institutions to promote the economies of developing countries.

It is not random that the Global Forum on Migration and Development (2009), apart from the political reasons, identified the root causes of migration as economic. High unemployment rates are a main reason to leave developing countries and opt for a country with high development rates in order to earn a living, increasing the number of labor migrants. In addition, according to Betts (2009), colonialism also has a relationship with displacement. He explains that postcolonial regimes installed in countries like Rwanda and Zimbabwe have contributed to social conflicts that underlie forced migration. Also, environmental trends at the global level may mean people are compelled to leave their homes. For example, greenhouse emissions may ultimately underlie migration by radically changing livelihood opportunities in areas such as Sub-Saharan Africa. So it might not be sufficient to only look at forced migration within the country it occurs. Instead, there is a need to also look at global political, economic and environmental trends.

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## CHILDREN AS REFUGEES

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Nearly half of the thirty four million people in the United Nations Refugee Agency is concerned with are children (UN Refugee Agency). These numbers comprise only the refugees who fall under the mandate of the UN convention on the Status of Refugees; but one could assume that there is actually an even greater number of refugees and therefore a respectively greater number of children refugees (von Barrata, 2000). As mentioned in the previous part, the reasons why children flee their home country, alone or with their parents, can be varied and results of, among other factors, political persecution, imprisonment, torture, war, civil war, compulsory recruitment into armed services, female genital mutilation, poverty, child labor, slavery, sexual and other forms of abuse and violence (Racketseder, 2002). The term 'children' (or minors) here refers to human beings in their own rights of less than 18 years of age, whose dignity is equal to that of any human being (Terre des Hommes, 2009). According to the same definition, minors, at this transitional period in their life, have a limited capacity, depending on their age and maturity to discern, express and defend themselves. At

the same time, they have the non-transferable right to develop in a stable environment and deserve protection, education, health and affection.

The UNHCR along with the Separated Children Europe Programme (SCEP) have produced “The Statement of Good Practice” (2009), which is informed by the UN Convention on the Rights of the Child and other organizations in order to protect children’s rights of non-discrimination, education, health care, detention, and family unity. However, children are often the most neglected refugees (Huyck & Fields, 1981).

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### UNACCOMPANIED OR SEPARATED MINORS: DIFFERENCES IN DEFINITION AND APPROACH

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Child and minor refugees are separated into accompanied and unaccompanied. Accompanied are those who flee with their parents and siblings, part of the family of other caretakers from the extended family. Unaccompanied children and adolescents are children and adolescents, who have not yet reached 18 years-old, who live outside their native country and who are separated from both their parents, and are not looked after by an adult, who is obliged by law or by custom, to look after them (SCEP, 2009). Another term used to refer to children under the age of 18, outside their country of origin and without parents or guardians to care for and protect them, is the term ‘separated’ since “*they suffer socially and psychologically from this separation*” (Ruxton, 2000).

The Committee on the Rights of the Child, in its General Comment No.6, distinguishes between unaccompanied minors and separated minors. According to this text, unaccompanied children (also called unaccompanied minors) are “*children, as defined in article 1 of the Convention, who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom is responsible for doing so*”. The text then adds “*by separated children are meant children, as defined to article 1 of the Convention, who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These, may, therefore, include children accompanied by other adult family members*” (UNCRC, 2005). This clause is added in order to protect from and include situations where the adults who accompany separated children may not be suitable to assume responsibility for their care, because the term ‘unaccompanied’,

excludes children who arrive with adults who are not parents or legal or customary primary caregivers as the result of being trafficked to or smuggled into Europe, or children placed in abusive fostering placements. So the difference is particularly important when discussing the circumstances of children trafficked for commercial sexual exploitation or other exploitative purposes.

Within the EU legal framework, the term unaccompanied is used to define “*third-country nationals below the age of 18, who arrive on the territory of the Member-States unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively in the care of such person*”. This term may apply to “*third-country children nationals who have been abandoned after entry into the territory of the Member-States*” (EU Council Resolution, 1997).

In addition to this terminology, there could also be supplementary guidelines in the national law of every Member-State. The variation in terms allows for the States of the EU to apply varied approaches, either by adopting broader (e.g. Norway) definitions or more restrictive ones. For example in Finland and Ireland this definition is not set out in asylum or child law, whereas in Belgium, the Netherlands and Portugal a ‘separated child’ is not regarded as including a child who travels with a relative. In Greece, definitions vary between agencies, with potentially damaging consequences for children (Ruxton, 2000). In Holland, UNHCR statistics collected include those youth above the age of 18 who continue to receive government assistance (Kohli, 2007).

While the need to develop a common and unified definition is obvious, this essay will refer to cases of unaccompanied or separated minors, as defined above, with the term ‘unaccompanied minors’, including the concept of ‘separation’ within the term ‘unaccompanied’ in order to ensure that the needs and rights of such children are recognized and applied, as well as include all the different national definitions, since “national definitions of unaccompanied and separated children vary significantly and are often not in line with international recommendations” (UNHCR, 2004). At the same time, a point is made regarding the absence of harmonized national definitions and the problematic between different countries. Also, the term ‘unaccompanied minor asylum seekers’ (UMAS), in this paper, refers to children under the age of 18 who are separated from either parents or other legal or customary caregivers, and who apply for asylum in a foreign country.

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## THE ASYLUM PROCESS

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Information concerning asylum, refugees, asylum seekers and the asylum process can give rise to confusion and fear. While this is partially due to media misinterpretation, the asylum system is complex and new legislation means that the rules can change often. UMAS on the one hand are struggling to cope with the circumstances that have led them to flee their country of origin as well as experiencing loss and grief for their families and homeland, and on the other, being confused and frightened by the experience of having to claim asylum.

Nugent has included an account in order to illustrate what it likes to be an UMAS. He describes the tragic reality of an orphan from Guinea seeking asylum in the United States:

*“Imagine that you are suddenly orphaned by political violence. You are twelve years old and have mild retardation. A friend ultimately secures a ticket and immigration documents to fly you to an industrialized country for refugee. Upon arrival, you are arrested for bearing a fake passport. You are interrogated alone in a language you do not speak or understand. You find yourself locked up in an adult prison with criminal convicts, waiting 8 months for administrative immigration hearing on your claim to asylum. The immigration court denies you asylum, and you remain in prison, while you appeal your case. You spend your first three years in the new country shuffled from prison to prison. You are finally released to a refugee shelter, and a new asylum hearing is ordered. This extraordinary step is the result of international media coverage, numerous public interest organizations and thousands of citizens appealing to immigration authorities on your behalf” (Nugent, 2003).*

In Europe, the laws and regulations concerning asylum and immigration are currently being harmonized. In the Treaty of Amsterdam, it was agreed to create an “*area of freedom, security and justice*” (Gittrich, 2002:76). More specifically, the issues that needed harmonizing concerned, firstly, “*the criteria and methods for a member-state to determine and deal with the question of asylum*”; secondly, “*the minimum standards for the admission of an asylum-seeker in the member-states and the minimum norms for the procedure of recognition or judging the recognition as a refugee*”; also “*the minimum standards for allowing temporary protection for asylum-seekers from another country, who cannot return to their native country or who seek international protection for another reason*” (Gittrich, 2002:76).



The UNHCR “Guidelines on International Protection: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or under the 1967 Protocol relating to the Status of Refugees” provide clear legal guidance<sup>1</sup>. The United Nations Convention on the Rights of the Child - Article 22 states that:

*“State Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties”.*

However, there are a number of factors that aggravate the situation, such as the conditions in immigration screening centers, which are not child-friendly while an age disputed child is treated as an adult during the screening interviews for the purpose of the asylum determination process; the lack of knowledge about the system they are being subjected to and their rights; the culture of disbelief which exists among the officials in charge along with the lack of child-sensitive literature and child-appropriate questioning techniques adopted by interviewers and applied in the forms; and the fact that children do not have independent support to assist them with making their claim and find it particularly difficult to access legal advice (Crawley, 2007).

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## UNACCOMPANIED MINOR ASYLUM SEEKERS (UMAS) IN EUROPE

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It has been assumed that about 100,000 unaccompanied minors exist as refugees in Europe (Ayotte, 2000). Organizations such as “Save the Children”, assume a working hypothesis figure of 200,000 (Gittrich, 2002). According to recent statistics (SCEP, 2009), in 2005, more than 10,000 separated children sought asylum in Europe, but one has to bear in mind that these figures do not necessarily reflect the actual number of children in need of international protection in Europe. One can assume that a larger number of them live in Europe, since in some countries separated children do not claim asylum (Save the Children, 2003).

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<sup>1</sup> See Chapter 2

In most cases, *“it is family members and/or friends who, fearing for the child’s safety and wellbeing, take on huge debts to buy an airline ticket or to arrange travel with smugglers or traffickers. Such journeys often prove traumatic”* (Save the Children, 2003).

According to UNHCR statistics, from 2000-2003, approximately 13,000 UMAS applied for asylum in Europe (without including data from Italy and France, due to lack of comparability). At that time, the number of new asylum seekers and the proportion of UMAS among them were already in decline. UMAS were approximately 4% of the total number of asylum application in Europe in 2003. There were significant differences between European countries. The Netherlands and the UK each registered approximately 25% of all asylum claims from UMAS in this period. In Bulgaria, UMAS formed nearly 10% of the total number of asylum seekers; while in Cyprus and Spain no claims from UMAS were registered at all (UNHCR, 2004).

Afghanistan was the country of origin of 13% of the UMAS registered in 19 European countries during this period, Angola for 10% of the UMAS, Iraq for 8% and Somalia, Sierra Leone, Serbia and Montenegro, as well as Guinea for 5% each of all UMAS. This was the European average. On a country level, there were a wide variety of countries of origin of the registered UMAS. While Finland registered Somalia as the country of origin for 29% and Afghanistan as the country of origin for 2% of all UMAS, in Hungary the picture was very different: 66% of all UMAS there were registered as originating in Afghanistan and only 4% from Somalia (UNHCR, 2004).

In terms of gender, of all UMAS seeking asylum in 2003, 73% were male. Yet when it comes to gender, too, there are differences between the asylum countries. For example, in Ireland more than half of the UMAS registered in 2003 were female, while in Hungary, just over 3% were female. The data on UMAS’ age are less comparable, but the tendency is that about one-third of the UMAS in 2003 were younger than 15 years of age (UNHCR, 2004).

It is obvious that the issue of UMAS in Europe is a very complex one and many governments are inadequately prepared to deal with it. There is widespread lack of accurate identification and registration systems, as data are not systematically generated, leading to less reliable statistics. What is more, the number of registered asylum claims from UMAS each year does not necessarily reflect the total, accumulated number of separated children as such, not even of UMAS living in each country.

While one could point out some common ground among UMAS in the EU, the experience of each child is always unique and shaped by a combination of individual personality, objective circumstances and particular biosocial factors (Montgomery, 2001). While recognizing the reality of individual differences within the UMAS population, it is also necessary to identify some significant trends and common characteristics of the group as a whole in order to demonstrate that this population needs to be addressed as a unique group.

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### THE VULNERABILITY AND ITS COMPLEX FACTORS

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It is generally acceptable that minors are in a vulnerable position while being unaccompanied or separated from their parents. Families or other caregivers play an important role in protecting physical and emotional well-being of children. UMAS often go through dangerous and traumatizing circumstances, which, combined with the lack of a caring and protecting person, could result in devastating consequences in their lives. They may also face the risk of detention, sexual exploitation or abuse, violence, forced labor, human trafficking or lack of access to school, health services and basic assistance (Ruxton, 2003; UNHCR, 2005). These needs and risks faced by UMAS make them vulnerable. Accordingly vulnerability refers to the presence of such factors that increase the chance of exposure to risks such as physical and mental abuse (UNHCR, 2004). Risks can be broadly defined as “*conditions that increase the likelihood of negative developmental outcomes*” (Brooks-Gunn, 1990:104).

So, asylum seekers escape from their country of origin in order to avoid life-threatening risks, uncertainty and danger, as mentioned in the paragraphs describing the causes of forced migration, in order to find sanctuary and protection. It is assumed that for refugees seeking asylum, especially in Europe, the initial factors causing suffering do not persist after arrival to a country of asylum. This assumption continues to support that the legislation in European states presents itself only as a potential source of protection, but there is a more complex relationship between the country of origin and the country of asylum.

Recent evidence reveals that in countries of the EU, UMAS face an exceptionally harsh reality due to ineffective protection policies (Smith, 2003). Still, it has been revealed that this situation is not simply the result of neglectful policies, but also due to

a general climate of “victimization and criminalization” that exists towards UMAS throughout the countries of the EU (Ayotte, 2000). According to Kalmthout et al. (2005), a child is first seen as a foreigner and often as a foreigner with doubtful flight motives. It is not seen as a minor with rights to protection.

As mentioned earlier, in terms of children’s vulnerability, there is first a focus on factors that take place before the arrival of UMAS in a country seeking asylum. The insecurity they face, the traumatic experiences, the separation from parents: “*the multitude of psychological barriers these children and youth have to overcome as a result of their past experiences, in addition to the effects of leaving which include memories of war and anxieties about family members left behind*” (Kohli, 2007). There is also the risk of abuse or exploitation during travel (Montgomery, 1998). So this discourse focuses primarily on such factors, while the dangers UMAS face upon arrival in a European country remain unchallenged.

The asylum process and the complexity of policies along with the broader political climate add up to the vulnerability and how a child is received at a country when seeking asylum. One study on separated children and voluntary return emphasized the impact of new environments in the country of asylum, citing the difficulty and frustration most children experience (Wright & Bellander, 1998). It states that these environments are especially frustrating for UMAS when they are surrounded by police officers, suspicious immigration officials and a long and arduous legal process often beyond their comprehension and control (Wright & Bellander, 1998). So vulnerability does not come only from separation from the family and leaving home, but can also be a result of the insecurity UMAS have to face when entering a foreign country, when dealing with the uncertainty of their future, their economic and social insecurity (Ayotte, 2000).

The political climate is also important as it outlines the way the legislation is implemented. In the European Union, each state is responsible for the protection and care of UMAS, according to the state’s legislation about childcare (Kidane, 2001). While on the one hand, governments are obliged to provide protection to UMAS, under the international and national legislation, and always ensure that children’s rights do not come in second place to asylum and immigration policies, often, UMAS, as asylum seekers, are subject to the punitive and exclusionary policies directed towards immigrants. The preoccupation with immigration and crime control generates skepticism and hostility towards separated children (Bhabha, 2001). So one could point out that the relationship between the UMAS and the State is a controversial one

and does not necessarily lead to improving the security, safety and vulnerability of the UMAS.

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## THE FEAR FACTOR

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It has to be understood that UMAS are a special group with special needs and separate from that of the general immigrant population. Being an unaccompanied minor and seeking asylum is even more demanding in support and protection. The UNHCR Guidelines on Policies and Procedures in dealing with UMAS describe these protections:

*“[...] owning protection to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it”.*

The key word in the above extract is “fear”. Indeed this fear is what makes UMAS vulnerable; not only of the circumstances that create this fear, but also due to the way of how this ‘fear’ can be subjectively defined in order to satisfy the asylum requirements. Carr (2006) focuses on the problems associated with eliciting an expression of subjective fear from children and the different methods of expressing fear, which may lead to incorrect conclusions. Carr describes a nine-year old hearing-impaired child being denied asylum, because the child did not satisfy the subjective apprehension requirement (Carr, 2006). The definition of this ‘fear’ can become a barrier to effective protection and application of the international and national legal framework.

Fear, of course, infiltrates all aspects of the forced migration process. From the country of origin, the reasons of migration are mainly based on fear. Having lost members of the family or gone through traumatic life events might become the reasons for migration, but these reasons are mainly based on uncertainty and concern. When trafficked or smuggled, danger is constant. When in a boat, trying to cross a sea illegally, the migrants are in continuous fear of dying or being caught, or both. The dangers of this process are unquestionable. And they carry on. Especially

when it comes to children, who may arrive to the European countries seeking asylum, they fear and dangers are continuing. They are afraid of suffering, of deportation, of being forced to return to their country, that they will have to live in camps, under inhumane conditions, that they will be victims of racism and stereotyping by the host community, only to prolong the feelings of fear within them (Tribe, 2002).

Children refugees, having suffered losses, create a different view of the world and they cease seeing it as a safe and benevolent place, which will accommodate their future. Their sense of familiarity and identity is under severe threat while they learn that talking for their beliefs and experiences may lead to their capture and perhaps organized violence and torture, meaning that all processes of working with children refugees, asking for their co-operation for their integration to the host society, or their reunification with their family, is likely to be frightening (Tribe, 1999).

## CHAPTER 2

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### LEGAL FRAMEWORK FOR THE PROTECTION OF UNACCOMPANIED MINOR MIGRANTS

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This Chapter focuses on the conventions and agreements made to protect UMAS at international and regional levels. On the one hand, the European Union has bound its members by several conventions and agreements relating to the protection of UMAS, while most countries have signed and ratified international conventions deriving from the UN on the same issue. Here, we discuss the “*European Convention for the Protection of Human Rights*” (ECHR) designed within the EU framework, the “*Convention on the Rights of the Child*”, monitored by the UN Committee on the Rights of the Child, a Committee which has also provided “*General Comment No.6*” for the treatment of unaccompanied and separated children, 1951 UN Convention relating to the Status of Refugees and its Amending Protocol, the European Union Law, along with UNHCR’s “*Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum*”. It will also draw points from the “*Statement of Good Practice of the Separated Children in Europe Programme*” (SCEP), which is a joint initiative of some members of the International Save the Children Alliance and UNHCR. Also it will draw further attention on the principles of “non-refoulement”.

### UNIVERSAL AND INTERNATIONAL LEGAL INSTRUMENTS

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The EU Charter of Fundamental Rights is legally binding for all EU Member States since December 2009 and has the same legal value as the Treaties. Article 24(1) of the 2000 EU Charter of Fundamental Rights provides: “1. *Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concerns them in accordance with their age and maturity. 2. In all actions relating to children, whether taken by public authorities or private institutions, the child’s best interest must be a primary consideration*” (EU Charter of Fundamental Rights, 2000). Furthermore Article 169 of the Constitution of the Republic of Cyprus provides “international legal instruments upon ratification are directly enforceable and applicable before Cypriot Courts with superior force over any other domestic

legislation. No need to transpose them into domestic legislation to have legal effect unless implementing measures are necessary for effective enforcement” (Koursoumba, 2010). Therefore all these international conventions are binding and Cyprus is also required to comply with all the fundamental rights guaranteed by the Charter.

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## EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS (ECHR)

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The European Convention on Human Rights (ECHR) is an international treaty to protect human rights and fundamental freedoms in Europe, ratified with Law 39 in 1962 by Cyprus (Koursoumba, 2010). It contains several protocols and articles designed to incorporate a traditional civil liberties approach to securing effective political democracy. It was first opened for signature in 1950, ratified and entered into force in 1953 and overseen by the European Court of Human Rights, the Council of Europe and a European Commission on Human Rights. It prohibits torture, inhuman or degrading treatment or punishment (Article 3) and forced labor (Article 4). Article 5 gives the right to liberty and security to everyone, thus prohibiting unlawful detention, while paragraph 2 states “*everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and the charge against him*” (ECHR, 2010). Article 6 assures the right to a fair trial and Article 13 prohibits discrimination: “*The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status*” (ECHR, 2010) The prohibition of discrimination is also reinforced by Protocol No. 12, signed in 2000.

Protocol No.4 was signed in 1963 in order to “*secure certain rights and freedoms other than those already included in the Convention*” (ECHR, 2010). According to this Protocol, “*everyone shall be free to leave any country, including his own*” (Article 2) while Article 4 prohibits collective expulsion of aliens. However, in Article 2 a paragraph states “*no restrictions shall be placed on exercise of these right (rights of movement) other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of public order, for the prevention of crime, for the protection of health or morals, or the protection of the rights and freedom of others*” (ECHR, 2010). Protocol



No. 7 signed in 1984 includes procedural safeguards relating to expulsion of aliens (Article 1), but paragraph 2 of the same article allows for the expulsion of an alien “before the exercise of his rights... when such expulsion is necessary in the interests of public order or is grounded on reasons of national security” (EHCR, 2010).

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### THE CONVENTION ON THE RIGHTS OF THE CHILD (CRC)

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The Convention on the Rights of the Child was the first instrument to incorporate the complete range of international human rights- including civil, cultural, economic, political and social rights as well as aspects of humanitarian law. It defines and is designed to protect survival and development rights, protection rights and participation rights. It was adopted and opened for signature in 1989 and came to force in 1990, after the required number of nations ratified it. As of November 2009, 194 countries have ratified it, including every member of the UN and except Somalia and the United States of America (UN Treaty Collection). Cyprus signed the CRC in October 1990 and ratified with Law 243 in February 1991, followed by the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography ratified with Law 6(III) in 2006 and the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict ratified by Law 9(III) in 2010 (Koursoumba, 2010).

The Convention applies to all children, whatever their race, religion or abilities. Article 2 guarantees non-discrimination so that no child is treated unfairly on any basis: “*State Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members*” (CRC, 1990). Accordingly, Article 3 safeguards the best interests of the child, which must be the primary concern in making decisions that may affect them. In other words, all adults should do what is best for children and when they make decisions, they should think about how their decisions will affect children. This particularly applies to policy makers. Within this framework, Article 12 ensures respect for the views of the child, that is, when making decisions, children’s opinions must be taken into account. It recognizes that the level of a child’s participation in decisions must be appropriate to the child’s level of maturity, as children’s ability to form and express their opinion develops with age: “*State Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all*

*matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child” (CRC, 1990).*

According to Article 4 governments have a responsibility to take all available measures to make sure children’s rights are respected, protected and fulfilled: *“State Parties shall undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, State Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation” (CRC, 1990).* This means that governments not only are obliged to assess social services, legal, health and educational systems, but also fund these services in order to protect children’s rights and create an environment where they can grow and reach their potential. Suitably, children have the right to be protected from being hurt and mistreated, physically or mentally, abused, neglected or punished (Article 19) while children deprived of family environment, have a right to special care, *“shall be entitled to special protection and assistance provided by the State” (CRC, 1990).*

Article 22 focuses on refugee children, as having the right to special protection as well: *“State Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties” (CRC, 1990).* What is more, Article 37 asserts that no one is allowed to punish children in a cruel or harmful way and children who break the law should not be put in prison with adults. In Article 40, it is mentioned that children who are accused of breaking the law have the right to legal help and fair treatment in a justice system that respects rights.

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## GENERAL COMMENT NO.6

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General Comment No. 6 is made by the Committee for the UN Convention on the Rights of the Child in order to draw attention to the particularly vulnerable situation of

unaccompanied and separated children: “*to outline the multifaceted challenges faced by the States and other actors in ensuring that such children are able to access and enjoy their rights; and, to provide guidance on the protection, care and proper treatment of unaccompanied and separated children based on the entire legal framework provided by the Convention on the Rights of the Child, with particular reference to the principles of non-discrimination, the best interests of the child and the right of the child to express his or her views freely*” (CRC, 2005).

More specifically, Article 2 defines the States’ obligations and responsibilities for the protection of children and ensures that all children enjoy equal rights, whether they are nationals of this State or asylum-seeking, refugee and migrant children, irrespective of their nationality, immigration status or statelessness. In other words, it applies the principle of non-discrimination in all its facets and to all dealing with separated and unaccompanied children.

Article 3 aids in determining the “best interests” of the child and brings this concept forth, prioritizing it over other considerations. The principle of the best interests of the child must also be respected at all times while in determining what is best for the child, the Article describes the assessment process for these best interests “*should be carried out in a friendly and safe atmosphere by qualified professionals who are trained in age and gender-sensitive interviewing techniques*” (CRC, 2005). What is more, the appointment of a competent guardian is fundamental for the protection of the child, along with a legal representative, in cases of asylum or other administrative procedures.

Article 6 elaborates further on the measures the State to protect children: “*priority procedures for child victims of trafficking, the prompt appointment of guardians, the provision of information to children about the risks they may encounter and establishment of measures to provide follow-up to children particularly at risk*” (CRC, 2005). Apart from the right to have a guardian and legal representative, children also have the right to an adequate standard of living and should also receive appropriate nutrition, clothing and accommodation (Article 27). They also have the right to enjoy the highest attainable standard of health and facilities for the treatment of illness and rehabilitation of health (Article 23, 24 and 39).

According to Article 10, applications to leave or enter a country for the purpose of family unification should be dealt with in “*a positive, humane and expeditious manner*” (CRC, 2005). Article 12 urges to protect “*the right of the child to express his or her views freely*” by providing children with all the relevant information concerning their

entitlements, services available, asylum process, family tracing, or when under the protection of a guardian, so that the child's views are also being taken into account. Again, the maturity and the level of understanding of each child determines the extent of this right, whereas, reliable communication must be taking place at all times, with available interpreters at all times.

Another important principle of General Comment No. 6 is non-refoulement that concerns the protection of refugees from being returned to places where their lives of freedoms could be threatened. Non-refoulement generally in international law forbids the expulsion of a refugee into an area where the person might be again in risk. According to General Comment No. 6, States must fully respect non-refoulement, on grounds that there is risk of irreparable harm to the child. *"The assessment of the risk of such serious violations should be conducted in an age and gender sensitive manner and should, for example, take into account the particularly serious consequences for children of the insufficient provision of food or health services"* (CRC, 2005). The principle of non-refoulement also protects unaccompanied children from returning to the country of origin and being recruited in military or sexual services.

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### **1951 UN CONVENTION RELATING TO THE STATUS OF REFUGEES AND ITS AMENDING PROTOCOL (1967) AND THE PRINCIPLE OF NON-REFOULEMENT**

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1951 UN Convention relating to the Status of Refugees ratified by 147 states (UNHCR, 2007) is a universal instrument to provide basic and legal standards to protect refugees and is the major tool for the international regime in respect to refugees with only one amendment in 1967 (Goodwin-Gill, 2001).

The convention does not specify gender or sex as a basis for the persecution. According to Bhabha and Crock (2007), the 1951 UN Refugee Convention and 1967 Protocol Relating to the Status of Refugees is age-neutral and applies to all individuals regardless of their age (Bhabha & Crock, 2007). Accordingly a child, like any adult asylum seeker could fit into the definition of a refugee contained in Article 1A(2) of the Convention (Hunter, 2001). However according to UNHCR Guidelines on International Protection No. 8 (2009) *"it has traditionally been interpreted in light of adult experiences. This has meant that many refugee claims made by children have*

*been assessed incorrectly or overlooked altogether*". Nevertheless adopting a child-sensitive interpretation of the 1951 Convention does not necessarily indicate that child asylum seekers should be automatically entitled to refugee status rather like adults, child asylum seekers must prove that he/she has a well-established fear of persecution linked to one or more of the five grounds mentioned in Article 1A(2) of the 1951 Convention: Race and nationality or ethnicity, religion, political opinion and membership to a particular social group (UNHCR, 2009).

Although the term "persecution" is not explicitly defined in the 1951 Convention, the principle of the best interest of the child necessitates that the harm should be assessed from the child's perspective by analyzing how the child's interests or rights are, or will be, affected by the harm. Therefore a case of ill-treatment which may not emerge to the level of persecution for an adult may do so in the case of a child (UNHCR, 2009). Yet children may not be competent in expressing their claims to refugee status as clearly as adults, special assistance may be required to do so (UNHCR, 2009). Moreover as noted by the UN Committee on the Rights of the Child, the refugee definition:

*"... must be interpreted in an age and gender-sensitive manner, taking into account the particular motives for, and forms and manifestations of, persecution experienced by children. Persecution of kin; under-age recruitment; trafficking of children for prostitution; and sexual exploitation or subjection to female genital mutilation, are some of the child-specific forms and manifestations of persecution which may justify the granting of refugee status if such acts are related to one of the 1951 Refugee Convention grounds. States should, therefore, give utmost attention to such child-specific forms and manifestations of persecution as well as gender-based violence in national refugee status-determination procedures"*.

As long as there is no authoritative body to interpret the Convention, the recognition of an individual as refugee depends on the host states and their procedural interpretation. The main principle in the Convention, according to Hunter (2001) to establish protection stated in Article 33 (1) is the principle of 'non-refoulement' which provides a minimum standard that States should abide when making a decision in regard to the expelling of the individuals to a country where they might be at risk of persecution.

This principle is strongly supported in General Comment No. 6 drawn from International Human Rights, Humanitarian and Refugee Law and as embodied not

only in Article 33 of the 1951 Refugee Convention, also in Article 3 of Convention against Torture and Article 3 of the European Convention of Human Rights” (Koursoumba, 2010). The incorporation of the principle in treaties has given it the character of a rule of international customary law which is supported by the reaffirmation of the principle in the United Nations Declaration on Territorial Asylum, in Conclusions by the Executive Committee of the High Commissioner’s Program, and in resolutions of the United Nations General Assembly and is therefore binding on all states (UNHCR, 1994). The principle of non-refoulement constitutes a crucial unit of asylum and international refugee protection. The signification of the principle is that a State may not force a person to return to a territory where he/she may be exposed to persecution. According to the Article 33 paragraph 1 of the 1951 United Nations Refugee Convention: *“where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion”* (ibid). Since the purpose of the principle is to guarantee that refugees are protected against such compulsory return it executes both to persons within a State’s territory and to rejection at its borders. It is designed to protect refugees from expulsion to the country of origin or an area where they might be again in danger. Preventing asylum seekers from entering a territory to ask for refuge is a violation of this principle. However, as mentioned before while UMAS are given the right to access the territory in the first place, they may be returned to the country of origin, if not found qualified for asylum. The procedure for return is directed under certain guidelines in order to ensure the child’s best interests, in order to be with his/her family and not alone and unaccompanied in a foreign country (ibid).

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## THE EUROPEAN UNION LAW

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The European Commission requires its member states to appoint a legal guardian to guarantee the care and well-being of asylum seeking children according to two asylum related European Union directives which addresses the reception of asylum seekers and the processing of asylum claims (UNHCR, 2010).

Article 19 of the EU directive legislates that: *“Member States shall as soon as possible take measures to ensure the necessary representation of unaccompanied minor by legal guardianship, where necessary, representation by an organization which is responsible for the care and well-being of minors, or by any other appropriate*

*representation. Regular assessments shall be made by the appropriate authorities”* (Council of the EU, 2003).

And in conformity with Article 17(a) of the EU Procedures Directives, member states shall: *“as soon as possible take measures to ensure that representative represents and/or assists the unaccompanied minor with respect to the examination of the application. This representative can also be the representative referred to in Article 19 of Directive 200/9/CE of 27 January 200 laying down minimum standards for the reception of asylum seekers”* (Council of the EU, 2005).

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### **UNHCR GUIDELINES ON POLICIES AND PROCEDURES IN DEALING WITH UNACCOMPANIED CHILDREN SEEKING ASYLUM**

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These Guidelines are based on the basic principle in any childcare and protection action, that is, *“the principle of the best interests of the child”* (UNHCR, 1997). According to these Guidelines, *“effective protection and assistance should be delivered to unaccompanied children in a systematic, comprehensive and integrated manner”* (UNHCR, 1997). The main points in these Guidelines are: access to the territory, identification and initial action, access to asylum procedures, interim care and protection of children seeking asylum, refugee status determination, identification and implementation of durable solutions, co-operation and co-ordination between agencies and individuals. The recommendations are to be applied along with UNHCR Guidelines on Refugee Children in order to address in the best possible way the special needs of UMAS and their rights.

More specifically, UMAS should not be refused access to the territory and should be provided with a legal representative, and their claims *“should be examined in a manner that is both fair and age appropriate”* (UNHCR, 1997). Registration, documentation and identification is also an important procedure, and as soon as a child is identified as seeking asylum *“every effort should be made to process the examination of his/her claim as expeditiously and as child-appropriate as possible”* (UNHCR, 1997).

The appointment of a guardian or adviser should follow, so as *“to ensure that the interests of the child are safeguarded, and that the child’s legal, social, medical and psychological needs are appropriately covered during the refugee status*

*determination procedures and until a durable solution*” is found. The guardian shall act as a link between UMAS and agencies that provide care. The assessments that go after as a procedure are also under certain guidelines, always according to the best interests of the child. So are procedures involving asylum claims, special protection, care and accommodation. Detention is not suitable for UMAS and should only be used *“as a measure of last resort and for the shortest appropriate period of time”* (UNHCR, 1997). If children are detained, they should not be kept under prison-like conditions, because the main focus is not detention but providing care and children should also exercise their right to education during detention. Health care is also another right to be guaranteed for UMAS, along with education.

There are also recommendations provided for determining the refugee status, considering their vulnerability and special needs while suggesting durable solutions for children qualified or not for asylum, always according to the best interests of the child. However, if not qualified for asylum, again, the best interests of UMAS require that the child not returned unless *“a suitable care-giver agency such as a parent, other relative, other adult care taker, a government agency, a childcare agency in the country of origin has agreed, and is able to take responsibility for the child and provide him/her with appropriate protection and care”* (UNHCR, 1997).

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### **SCEP STATEMENT OF GOOD PRACTICE OF THE SEPARATED CHILDREN**

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The Separated Children in Europe Programme (SCEP) in 2003 published a report analyzing policies and practices within 14 EU member states. Its Statement of Good Practice reflects the guidelines suggested for the protection of the rights of UMAS in Europe. It is designed around fundamental principles such as the ones already discussed by the previous conventions, such as the principle of non-discrimination, the right of the child to express his or her views freely and to be taken into account on decisions made concerning him or her, the best interests of the child, the right to life, survival, development and the right to protection.

The main focuses of SCEP Statement are firstly, the age assessment methods and procedures, secondly the right to guardianship, that is, a guardian for every separated child to ensure the best interests of the child, thirdly the return and reintegration, where separated children are only returned if an independent assessment decides it is



in the child's best interests, fourthly trafficking, that is a guarantee to every child to be protected from trafficking and fifthly, issues concerning detention (SCEP, 2009). The Statement of Good Practice emphasizes all actions should be based on the principles set out in the Convention of the Rights of the Child and aims at providing a straightforward account of the policies and practices required for the protection and implementation of the rights of UMAS and framework for action and advocacy.

More specifically, SCEP Statement first principle, "best interests" takes into account the individual circumstances of each child, the family situation, the particular vulnerabilities, the safety and risks, the level of integration, the mental and physical health and socio-economic conditions in order to determine "the best interests" for a child, always within the context of the child's gender, nationality as well as ethnic, cultural and linguistic background. According to SCEP (2009), "*a best interests assessment should be conducted systematically in many circumstances that occur between the moment a child is identified as separated or otherwise at risk, until a durable solution is implemented*". The right to survival and development includes protection and assistance provided in order to ensure that "*they are adequately clothed, fed and accommodated and that their physical, mental, spiritual and emotional health needs are met*" (SCEP, 2009).

Non-discrimination and participation are also important principles in the Statement, stressing the fact that "*separated children should always be enabled and encouraged to voice their views*" while being provided with accessible information about their rights, responsibilities and expectations by trained staff. Other important factors for separated children are the provision of interpreters, confidentiality, respect for cultural identity, inter-organizational co-operation, that is co-operation of organizations, governments and relevant professionals, proper staff training of those involved and working with UMAS, such as immigration or border police staff, and durability of such measures and solutions (SCEP, 2009).

The guidelines of Good Practice include access to the territory and protection until determination of the best interests of the child, identification, appointment of a guardian to advise and protect them and their rights within a month, registration and documentation. Age assessment, as part of these processes, should never be forced or culturally inappropriate and should be carried out by professionals. UMAS should also be exempt from detention for reasons related to their immigration status or illegal entry. Other guidelines include family tracking and contact, only on a confidential basis and with informed consent, care placements (foster care, residential settings) after

carefully assessing the needs and the best interests of the child, while particular attention must be paid to their mental and physical health and act according to their needs, protection of the right to education and training, social assistance, employment, legal representation, and return to the country of origin for family reunification, if this is deemed as being in the best interests of the child, or to remain and integrate in the host country (SCEP, 2009).

## CHAPTER 3

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### THE SITUATION IN EUROPE AND CYPRUS

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#### THE SITUATION IN EUROPE

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At present, UMAS are not “comprehensively protected in the EU” (FRA, 2010). In the European Union, the responsibility for the care and protection of UMAS rests within the boundaries of childcare legislation stated in the children’s acts of the country in which they claim asylum (Kidane, 2001). According to a research carried out for the European Union Agency for Fundamental Rights (FRA, 2010), many of the rights of UMAS, often not clearly reflected in the EU legal provisions, are not always fulfilled. Although under the care of State, these children may live in accommodation that is not suitable for them- sometimes in detention or under strict curfew rules, even if they have not committed a crime; they are not always provided with quality medical care and do not always enjoy access to education and training appropriate for them; their religious needs are not always respected; they can be victims of discrimination or even mistreated with little opportunity for redress. Often they are insufficiently informed about legal procedures and opportunities available to them, which are crucial for their future. Their views are frequently not taken into account, while their future depends on decisions, which are too often taken after very long and strenuous processes that make the children feel unsecured and unprotected (FRA, 2010).

It seems that the system in Europe is not prepared to deal with the complexity of the issue that UMAS bring along. As mentioned in a previous chapter, the registration and identification systems for refugees do not function properly, therefore leaving a lot of data out of reach and systematic research. So, statistics may not reflect the real picture. According to UNHCR (2004) there are some countries, among them Cyprus, where there are no claims registered from UMAS, something that of course is not real, since the other sources reveal the opposite. According to the available data from UNHCR, the number of asylum claims lodged by Unaccompanied and separated asylum seekers in the 42 European countries between 2001 and 2003 was 12,800. Accordingly the total number of asylum applications by Unaccompanied and Separated Asylum Seekers (UASC) had dropped to a total of 9,800 between 2002 and 2005. Despite this seemingly large number, the proportion of asylum applications lodged by UASC is only averaging about 3-4 percent of all asylum applications. There

are considerable country differences, for example Sweden and the UK receive a majority of the child applicants.

The most common countries of origin for child applicants are Afghanistan, Angola, Iraq, Sierra Leone and Somalia, followed by China, Democratic Republic of the Congo, Guinea, Nigeria, Serbia and Montenegro. Although there has been a shift in Arrivals from other European as well as Asian and Middle Eastern countries with an increase in those arriving from Sub-Saharan Africa in 2005 with mostly male applicants aged 16-17 years (UNHCR, 2005).

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### THE SITUATION IN CYPRUS

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As indicated by many studies, there is an unfriendly and hostile ambiance towards migrants and asylum seekers in Cyprus (Daphne II, 2007). According to the Third ECRI Report published in May 2006 in confirmation with the second ECRI Report, the most vulnerable group continue to be the third country nationals including the domestic migrant workers and asylum seekers whose right to access the labor market is limited to the most low-status and paid jobs in farming and agriculture (ibid).

It is not feasible to assess the huge amount of the number of unaccompanied children who arrive in Cyprus. Many times they enter the country illegally without the knowledge of the authorities unless they come forward to complain a specific incident of just request or seek asylum. According to the European Commission Daphne II Program Country Report on Cyprus, there have been 65 cases of unaccompanied minors asylum seekers including those with alleged guardians such as relatives or friends applied to Social Welfare Services since 2004 which is apparently an underestimation of the exact number while not all the cases of UMAS referred to the Social Welfare Service. According to Cyprus Asylum Services, 71 unaccompanied children requested asylum in 2008, whereas the number decreased to 22 in 2009. According to the Daphne II report the information is yet to be validated as the figures from the official websites of the Asylum Unit have been statistically manipulated to give a better picture. It is believed by this report that: *“there is a sensational approach by the media to ‘play the numbers game’ and politicians often display a tendency to over-play the numbers of crossings from the Turkish controlled north to seek asylum or the number of undocumented migrants on political expediency and ideology”*. The report also indicates that the UNHCR Cyprus does not have any reports or information

on the general conditions of stay of the UMAS or any figures on unaccompanied minors as only the Police rather than the Social Welfare Service keep an archive and retain such records although 65 cases referred to the Social Welfare Services (Daphne II, 2007).

The majority of the unaccompanied children were between the ages of 15 and 17. The main countries of origin for the year of 2009 were Nigeria and Cameroon, whereas many children are coming from Iraq, Iran and Palestine (Asylum Service, 2009).

Unaccompanied children issue has only recently hit the priority categories of children identified by the government. Nevertheless minority children are known in Cyprus, since 89% of the population is Greek Cypriot and the remainder is composed of Maronites, Armenians, Latinos and temporary immigrant workers and their families. To counter this phenomenon the government has recently passed a Law on the Trafficking of Children and their protection by the State (Law No 3(I)/2000), but it has also taken measures to alleviate the psychological and other traumas of unaccompanied minors through specialized services (Ministerial Decision 52.375 of 6 October 2000). Whatever effects this may have had for avoiding trafficking, it is clear that the government generally brushes under the carpet all things that have to do with the registration and welfare of unaccompanied children. As for some time there was concern that Cypriot court practice and legislation was not in compliance with the best interests of the child. In relation to these concerns the government adopted into Law the Hague Convention on Protection of Children and Co-Operation in respect of Inter-country Adoptions through Law 19(I)/1995. An Ombudsman's Office under the designation Commissioner for Children's Rights was established in 2007 on the basis of Law No 74(I)/2007. It is an independent institution and although it takes on the same functions as most of its other European counterparts its jurisdiction is significantly broader (HFC-CRCPC Interviews, 2010).

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## WHY CYPRUS

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The reasons why UMAS come to Cyprus are manifold. A combination of political, social and economic circumstances many cause the minors to leave their countries of origin. Some come just so that they can seek political asylum, some others just need desperately a chance for a better tomorrow, whereas some may have been victims of trafficking for sexual or other means of exploitation and this in order to find a better

environment, they tend to run away. Many leave within the knowledge of their parents. However, many also try secretly to run away from them (Asylum Service, 2009).

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## THE LEGAL STRUCTURE AND PROCESS IN CYPRUS

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Cyprus has ratified and incorporated the Convention on the Rights of Children. However, one has to look closely to the situation of UMAS and the national law, in order to have a fuller picture. The legal structure of Cyprus for unaccompanied children in Cyprus is governed by the Laws on Refugees from 2000 to 2004 (Law No. 6(I) of 2000. It was last amended by law 241(I) of 2004), the UN Convention on the Rights of a Child, ratified on 7th of February 1991 and incorporated as Law N. 243(II) 1990 (It was later amended by N. 5(III) of 2000) and the European Convention on the Exercise of Children's Rights Ratified by the Republic of Cyprus on 25th of October 2005 and was incorporated as Law N. 23(III) of 2005. These are international instruments in which Cyprus has ratified and incorporated as law. The Laws on Refugees from 2000-2004 provide for the protection of children who leave their home of residence and come either with their parents or alone illegally in Cyprus. When this occurs, the Director of the Social Welfare Services acts as guardian to the child and is responsible to provide the child with all the necessary and protective measures (Section 2 of the Refugee Law 2000). Due to the best interest policy, the Social Welfare Services should always make an individual assessment on any decision taken regarding an unaccompanied minor, and such decisions should always be taken on a personal, objective and impartial basis, and be duly justified. General Comment 6 of the Committee of the Rights of the Child states (par. 33) that States should appoint a guardian or advisor as soon as the unaccompanied or separated child is identified and maintain such guardianship arrangements until the child has either reached the age of majority or has permanently left the territory and/or jurisdiction of the State, in compliance with the Convention and other international obligations (CRC, 2005).

The Council Directive 2003/9/EC of January 2003 (EU & CEU) setting the minimum standards on the reception conditions regarding refugees and UMAS, affirms that UMAS must be represented by legal guardianship, or, where necessary, be represented by an organization that is responsible for the care and well-being of minors, or any other appropriate representation (EU & CEU Directive, 2003). In Cyprus, the Commissioner of the Rights of the Child acts as a legal representative in

the asylum process for all UMAS. However, their legal guardian is the Social Welfare Office (Refugee Law, 2000). Furthermore, the General Comment 6, paragraph 33, provides that the legal guardian should act as a link between the child and the agencies that provide the continuum of care required by the Child (CRC, 2005). In addition to the above, some amendments have been introduced within the provisions of the Refugee Law (2000), which, in turns, provide new obligations for the Commissioner for the Protection of the Rights of the Child. The legal representative has the opportunity to inform the unaccompanied minor about the meaning and the possible consequences of the interview, and potentially assist in the preparation for the interview. Furthermore, it allows the representative to be present, to ask questions or to make comments during the interview. Additionally, it is important to state that the amended refugee law now required that the interview be conducted by a competent officer with the necessary knowledge of the specific needs of unaccompanied minors (Separated Children in Europe Newsletter, 2010).

The list of interviewees consists of officials from the Welfare services, a Chief Immigration Officer, a police officer from the Domestic Violence and Anti-trafficking Unit, a protection officer from UNHCR, an officer from the Office of the Commissioner for the Rights of the Child, representatives from the Ministry of Education, the Ministry of Health and the Ministry of Labor and Social Insurance and officers from the Asylum Service and the Civil Registry and Migration Department. This team also includes a social counselor and the ex-head of the Unit for Rehabilitation of Victims of Torture, advisors and counselors from two NGOs and two educators as well as a person who is currently a guardian for a separated child (ibid).

What is more, the referral of an unaccompanied minor to a reception center is prohibited. However, for those who are above sixteen, they can be referred exclusively by the Head of the Welfare Office and only in the case where the conditions of the reception center has been examined and approved that it provides satisfactory arrangements for the minor's accommodation, which include provisions that they should be separated from adult asylum seekers. The Regulations also oblige that the Head of the Welfare Office ensures that unaccompanied minors be placed with adult relatives of foster families of accommodation centers with special provisions for minors, or other such suitable accommodation and, where possible, siblings should not be separated, accommodation changes are kept to a minimum, and the best interest of the child is always taken into consideration. In addition, the District Welfare Office is required to take into account the special needs of such vulnerable children when granting public allowance (ibid).

Moreover, the Social Welfare Services under Regulations are obliged to ensure that minors who are victims of any kind of abuse, negligence, exploitation, torture or harsh, inhuman or degrading treatment or who have suffered by armed conflicts have access to rehabilitation services, and that the appropriate psychological care and specialized treatment, where required, is provided to them, alongside any other special medical or other assistance required (ibid).

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## REPORTS ON THE SITUATION OF UMAS IN CYPRUS

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Cyprus is a traditionally child-centered society. As Ms Koutsoumba suggests Cyprus shows intense interest in children with a strong family focus, as measured by societal rules (UN- CRC, 2003). The situation has indeed improved with several reports and recommendations to improve the understanding of the nature and scope of child neglect and abuse in Cyprus. What is more, a new law has been enacted under the title *“combating of trafficking in persons and sexual exploitation of children”*, while progress has also been made in the area of deinstitutionalization of mentally disturbed children and social integration was promoted, facing directly the problems regarding child exploitation and, in effect, UMAS (UN-CRC, 2003).

However, as the reports review the implementation of articles of the Convention on the Rights of Children, there is a specific focus, relating to the context of article 9, that is, not separating a child from his/her parents against his/her will when the authorities dictate that such action should be taken. The report suggests that there are children whose above right is violated (UN-CRC, 2003).

In addition, there was a report by the UN Economic and Social Council in their 42<sup>nd</sup> Session Report of May 2009, in which it questioned the administrative obstacles in place, which as a result prevented the unaccompanied children accessing their economic, social and cultural rights (Amnesty International, 2009). The same report also raised deep concerns over the number of the cases of asylum seekers, particularly with specific needs, who are denied access to necessary specialized medical care, which is available to nationals and EU citizens, despite the legal provisions in place to ensure such access. Within these cases, it also includes two cases of unaccompanied minors who were unable to access specialized medical care without the intervention of the UNHCR.



Another problematic point is data collection in Cyprus. As *“each ministry collected its own data for its own purposes”* (UN-CRC, 2003) there are separate databanks in which a research has to look into while the different ages of criminal responsibility, as there are different definitions of ages of legal adulthood, determined by the Attorney General, also pose a problem when it comes to implementing the legal code (UN-CRC, 2003).

Furthermore, the key findings from a research that was conducted by the NGO ‘Hope for Children’ mainly concerned the way the authorities treated separated children. The Social and Welfare Services, although appointed as the legal guardian of the children, did not assume effectively their responsibility, nor did they provide substantial accommodation and care. Apart from public assistance, the Welfare Services provided no other forms of care to separated children, and as a result children were forced to find their own accommodation, usually through acquaintances and co-nationals (Separated Children in Europe Newsletter, 2009). Article 20 of the Convention (CRC, 2005) emphasizes that the unaccompanied or separated children who are temporarily or permanently deprived of their family environment shall be entitled to special protection and assistance provided by the State. The living conditions in which children used to stay were similar to those of asylum seekers, which were described as ideal (CRC, 2005).

Although education was accessible in theory, nevertheless there were not enough measures to help the separated children integrate and benefit from the educational system. Another major obstacle within the education system was that there were delays in registration in school by Welfare Services. The intensive language courses were not adequate to ensure integration and vocational training seemed not to be available, even though it was generally accepted as the best alternative for children who, for any reason, could not attend school. The language was barrier to the communication and thus misunderstandings could be possible as well. In order for the children not to lose their public assistance, they were forced to work even though, there is a provision within the law that children under the age of 18 should not be permitted to work (Separated Children in Europe Newsletter, 2009).

Similarly, there are no provisions to ensure the protection of children from exploitation and other dangers. In general, there was no specialized policy for employment that concerned separated minors. Even though there was a legal framework for healthcare, access proved difficult in practice, there were no mechanisms to ensure it. Translators and psychological support were not accessible to separated children and

legal procedures also had their weaknesses; since there was no legal advice, there was no access to information either. The authorities were not assuming their responsibilities in providing legal assistance and separated children had to get information from random sources and were not informed about their rights. Integration was problematic, since there were no substantial measures and there seemed to be discrimination against separated children, whereas their contact with Cypriots was restricted (Separated Children in Europe Newsletter, 2009).

One could conclude that, although Cyprus has made an important step towards creating a thorough law in regards to unaccompanied children, various problems are still observable within the area of practice. The unaccompanied children come to an unknown country to find a better place to live in; however, they have difficulty adjusting to the new country. It can be said that the amendments within the context of Cyprus law have helped in safeguarding the rights of unaccompanied children, although in practice context there are many obstacles. The legal guardian does not take effectively their responsibility and nor do they provide substantial accommodation and care and as a result the unaccompanied children must look for accommodation themselves. The legal procedure has also its weaknesses. The authorities do not assume in their responsibilities in providing legal assistance and separated children have to get information from random sources and as a result, they are not informed about their rights. So it can be stated that although Cyprus bides by the rules and regulation, there is a slow process in regards of practice. From the above it is also understandable that guardians play a vital role in this process.

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## **THE BEST INTERESTS OF THE CHILD VS MIGRATION MANAGEMENT**

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Cyprus the third smallest of the 25 EU members (UNHCR, 2005) is not yet a full member of the Schengen area as it has to go through evaluation process before being able to join and does not yet satisfy the security criteria and has to implement the strict Schengen visa rules for authorized entry to Cyprus. Consequently the majority of refugees generally arrive through the non government controlled areas in the North and only unauthorized (KISA, 2009).

As mentioned earlier, the best interest of the child is of primary concern to all decisions and policies regarding UMAS. However, like other children who are asylum

seekers, different controversial arenas of political, social and legal nature surround UMAS. On the one hand, we have children's rights and on the other asylum policies and migration management. Indeed, some countries where the number of asylum seekers rose dramatically in the last years, adopt an approach that is better for migration management, without giving priority to the child's best interest. According to UNHCR initial mapping on Guardianship Provision Systems for Unaccompanied and Separated Children Seeking Asylum in Europe in many countries of Europe, the best interest of the child enclosed to the child welfare legislation but its implementation and practical procedures are not in place (Alikhan & Floor, 2010).

As there is tension in these fields, international and regional treaties can be interpreted in various ways. As previously pointed out, the interpretation and implementation of the principle of non-refoulment can vary drastically among the states. Since these guidelines are not intended as law, with enforcing mechanisms, the ideas behind them can be in doubt. This surely creates a problem in implementation of this principle. The Children's Convention itself recognizes that *"there would be times when certain rights of the child would come into conflict with the rights, prerogatives and responsibilities of parents or guardians and with those of the state"* (Gates, 1999:304). If not carefully considered, migration management can provide an alibi for decisions that are not in the child's best interest, and when this fundamental principle is applied selectively there is a danger that the best interest of the child will not be protected.

## CHAPTER 4

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### ROLE OF THE GUARDIAN

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As observed from above as well as stated in the legal framework for the protection of UMAS, guardians play a very important role in all processes. Usually the unaccompanied children have no adult to take responsibility for his/her daily needs or long term protection requirements. However it is necessary for the child to relate with an adult to obtain the support needed to survive. One of them is the legal guardian, who is often the only adult who plays a consistent role in UMAS life and in protecting their rights (Bhabha & Finch, 2006:90).

A guardian can play an important role in coordinating and monitoring the professionals to which an UMAS relates to such as legal representatives, social services departments, landlords, educational establishments or the asylum and immigration authorities (Bhabha & Finch, 2006:94).

The duties of the guardians who are expected to fulfill a key role in the overall well-being of the child can vary according to the duration of the guardianship but as generally defined in law are to assist the child for accommodation, care arrangement, education, integration, health services, access to legal counseling identification of durable solution, family tracing and reunification and to monitor and report the situation of the child, determination of the Best Interest of the child and Dublin II Regulation transfers. Nevertheless it is not possible to determine all the duties at the legislative level and maintain the sufficient flexibility to meet the needs of the child (Alikhan & Floor, 2010).

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### TYPES OF GUARDIANSHIP SYSTEMS

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Appointment procedure and types of guardianship varies widely from one country to another. It is both the government institutions and social services or specialized NGOs who serve as guardians for UMAS and the actual care mainly delegated to the specialized organizations of private persons while their activities are monitored by governmental or non-governmental agencies (Alikhan & Floor, 2010). In Cyprus it is a combination of both professional by the governmental institution and voluntary

guardianship by the NGOs with no legal delegation of the practical care of the child and no remuneration.

In general the guardianship systems are of three kinds:

1. Institutional guardianship: Most of the countries in Europe have systems of guardianship although the names of institutions may differ. The guardians are either individual persons or institutions. For example mainly in southeastern Europe guardians are appointed by local courts or tribunals under review of social or child welfare. In countries with no appropriate reception facilities, UMAS may be placed into private institutions or the practical care of the child is delegated to NGOs as in Spain (ibid).
2. Private guardianship: In countries such as Belgium, Finland, >Germany and Luxemburg private independent persons act as guardians of as in Finland private families can also accept UMAS at the commandment of local social authorities (ibid).
3. Non-governmental organizations: In some countries across Europe the individual guardians work for NGOs or an independent and competent guardianship exists or legal and social counselors from NGOs assume guardianship for UMAS for the duration of the asylum process (ibid).

It is assumed that guardians under the supervision of social or childcare welfare authorities are more liked with the overall well-being of the child whereas those affiliated with asylum authorities are more concerned with the legal support rather than the day-to-day care (ibid).

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## RESPONSIBILITIES OF THE GUARDIAN

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As soon as a separated child is identified, regardless of age assessments, a guardian should be immediately appointed and should be consulted and informed regarding all actions taken in relation to the child. The responsibilities of the guardian include ensuring that all decisions take the child's best interests a primary consideration, that the child's views are considered, that the child has access to care, accommodation, education and language support, that the child is legally represented and assisted in procedures for his/her protection. The guardian should also work with the child

towards the possibility of family tracing and reunification; help the child keep in touch with his/her family; provide a link and ensure transparency and cooperation between the child and the various organizations who may provide them with services (Smith, 2009 & Bhabha & Finch, 2006:95).

Also, guardians should be appointed until a durable solution has been found, extending beyond adult age of 18 years, and the procedures for appointment of a guardian must not be less favorable than the existing national administrative or judicial procedures used for appointed guardians for national children, ensuring thus that racism has no place in guardianship. In addition, the guardians appointed must have a specialist background to understand the context of child migration, the special and cultural needs of separated children and at the same time receive training and professional support (Smith, 2009).

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### **GUARDIANSHIP AS A RIGHT**

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The CRC (1990) stipulates that States shall assist legal guardians to carry out child-rearing responsibilities (Article 18-2), that children deprived of their families are entitled to special protection and assistance (Article 20-1), that care provide to children deprived of their families shall take account of their ethnic, religious, cultural and linguistic background (Article 20-3). General Comment No 6 (UNCRC, 2005) suggests that States should appoint a guardian (or advisor) as soon as the separated child is identified (paragraphs 33-38, 21 & 24, 95). There are also the UNHCR Guidelines (UNHCR, 1997) that also protect the right to a guardian for a UMAS (paragraph 5.7). EU & CEU Dir. Reception (2003) with Article 19-1 suggests that member states shall as soon as possible to take measures to ensure the necessary representation of unaccompanied minors by legal guardianship or representation by an organization, which is responsible for the care and well being of minors, or by any other appropriate representation. Also, EU Council Resolution Article 3 - par. 4 & 5 (1997) instruct that Member States should provide as soon as possible legal guardianship, or representation by an organization, which is responsible for the care and well being of the minor, or other appropriate representation. The guardian should ensure that the minor's needs (for example legal, social, medical or psychological) are duly met. Also the Hague Convention (1996) Article 3 instructs that States where separated children have habitual residence can take measures of protection including guardianship or

analogous institutions. Article 6 of the same Convention stipulates that the Convention applies to separated children who are refugees or internationally displaced due to disturbances occurring in their own country.

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## THE APPLICATION OF GUARDIANSHIP

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Since most studies and reports from Cyprus conclude that UMAS are being failed by social services and the legal framework that was initially set up to protect them (Daphne II, 2007), the need for assigning guardians becomes even more evident. It is necessary for those children to have a guardian that can both act as an agent with the organizations, knowing the legal and bureaucratic procedures and processes, while having special training or qualifications as well as personal attributes and understanding of UMAS situation in psychological terms.

In other words, the guardian should be someone between a lawyer and a social worker, who is an expert on the necessary care for traumatized children. The guardian should be someone who can guide them and understand them. Nevertheless the competency requirements of the guardians differ between professionalized and benevolent or voluntary guardianship systems and vary widely across Europe. For professionals the educational requirements are mainly well-defined whereas for benevolent and volunteer guardians the requirements are more in term of personal character and attributes. Flexibility in determining the most suitable guardian regardless of professional qualifications can avoid the exclusion of persons who are not professional but meet the standard ethics and can support the child adequately. However the key criterion is the absence of any conflict of interest between the guardians and the ward (Alikhan & Floor, 2010).

The European Council on Refugees and Exiles (ECRE, 1996) has stated in a very clear manner how the state should apply and fulfill the child's right to guardianship:

*“One of the most important ways to ensure that an unaccompanied child's best interests are defended is through the appointment of a guardian who nominates or assumes parental responsibility in the absence of the natural parents. The guardian's task is to ensure that decisions, both on status determination and the future, will be in the child's best interests. They must consult with the child so that the child's views are taken into account by the decision-making authorities.*”

*Guardians, whether individuals or the staff of an appropriate institution, should be carefully selected, trained and supported in their work. They should be matched to take account of the child's racial, cultural, religious or linguistic background. In addition to child welfare expertise, guardians should have some knowledge of refugee law and an understanding of the situation in the child's country of origin. ECRE therefore maintains that each unaccompanied child should: be provided rapidly with a guardian who will work closely with the legal representative; be provided at each point in the procedure with psycho-social support as appropriate.”(ECRE, 1996)*



## CHAPTER 5

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### METHODOLOGY

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#### AIM AND REALIZATION OF THE RESEARCH

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The objective of this qualitative research is to gather information about unaccompanied minor asylum seekers situation and experiences regarding their guardians and collect the views and of UMAS, NGOs and specialized social workers who deal with unaccompanied minor asylum seekers and act as their guardians on the existing guardianship system in Cyprus.

The methodology consists of a literature study including a study of legislations, international conventions and relevant research. Background research is important because the in-depth interviews might turn surprising depending on the responds of the interviewees. Therefore alternative lines of questioning should be in the interviewer's mind based on the knowledge acquired through the background study to prevent the findings to be jeopardized (Stacks, 2011). Semi-structured interviews have been conducted with 7 UMAS including ex-UMAS between 17 and 20 years of age. Furthermore three interviews were realized with social workers from NGO. As pointed by Stacks (2011) *"in-depth interviews are best used when answering questions of definition, value and policy"* and *"allows the interviewer to get an understanding of not only the problem being g reached but also the person being interviewed. Second it allows for introspection on the part of the interviewee and can still provide interviewer control over the type of questions asked"* (ibid). All the interviews took place in Nicosia, Cyprus, each interview lasted some 20 to 40 minutes and all were recorded and have been transcribed later for the convenient access of the researcher and precise data interpretation.

#### INTERVIEWS METHODOLOGY AND SAMPLING

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Data and information have been collected by conducting qualitative semi-structured interviews with questions lists as a guideline. Semi- structured interviews allow ”

*focused, conversational, two-way communication: can be used both to give and receive information*" (Stacks, 2011). Before starting interviews, two question lists for the interviews were worked out respectively for the interviews with UMAS and with guardians/ NGOs. The Questions in the lists were not asked in a strict order, in order not to limit the results to the subjects, to give the possibility to the interviewees to react with open answers and to obtain and collect new ideas, suggestions and recommendations from the interviewees. Clarifications on certain points or questions have been given to the interviewees upon necessity. Prepared questions or topical questions and funnel questions which *"move the interview from one particular question to the next based on the response to the funnel question"* (Stacks, 2011) have been asked during the course of interviews.

Participation in the interviews was entirely voluntary. All the interviews took place in the office of HFC-CRC Policy Center in Nicosia and were held at the participants, whenever they chose to hold them. They were all conducted in English except for one interview which was carried out in Farsi. No interpreter was involved for the interviews.

For what concerns sampling, the selection of the minors was limited to those who have been present in the files of the HFC and have been in contact with the NGOs social worker in regular basis. All of them have been contacted without any selection criteria and arrangement has been carried out for those who were willing to attend the interviews, among whom, some have never attended the appointments. In total minors who have been interviewed over the course of the study were 4 boys and 2 girls in addition to 3 social workers from the NGOs.

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## ETHICS

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The interviewees have signed an informed consent document for their participation to the research<sup>2</sup>. All the interviewees' accounts were dealt with the highest level of confidentiality and they have been informed about the confidentiality of the records. The results have been presented through the research without names and contact details of the minors and guardians. All the interviews were registered at the researcher's computer system with a specific code for all the interviewees with

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<sup>2</sup> See Appendix

restricted access for others and will not be made public. Also the researcher has been sensitive to the ethical issues rising from interviewing UMAS and the fact that dependency of the minors on their guardians might reduce their willingness to talk about specific issues.

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## DATA ANALYSIS AND DATA MANAGEMENT METHODOLOGY

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Data Analysis has several purposes: It should make transparent how the answers to the questions arrived at while it should answer the research question. Punch (1998) points out that *"there is no single right way to do qualitative data analysis - no single methodological framework"* (Punch, 1998, p. 199). There is common agreement that the data collection and analysis take place simultaneously (Atkinson & Delamont, 2005). All data collected were exposed to interrogation and reduced (Huberman & Miles 2002), irrelevant data has been excluded, and preliminary inductive coding categories have been used as collection point for similar data. These collection points were registered in the researcher's journal and later used in the working document. Consistent categories were clarified, ambiguities resolved, and became potential units of analysis. The analysis process intended *"to make sense of what is going on, to reach for understanding or explanation"* (Wolcott, 2001). Consequently codes has been organized like trees with roots and branches and used as spines for thinking about the data gathered and reach for understanding and interpretation.

The ultimate challenge for qualitative researcher is to create a report which demonstrates validity and reliability in a scholar way (Toma, 2006). The researcher has assured the credibility of the results by using theoretical lenses, within methods and across data analysis. Final decisions about construction of the findings were based on playing with the data and customizing them variously to reveal as precise results as possible.

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## PROBLEMS, LIMITATIONS AND CHALLENGES

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Although Semi-structured interviews have a flexible framework and have the advantage of being less intrusive and leaving the opportunity for new subjects to come out (Stacks, 2011) particular dilemmas occur when interviewing children.

The researcher experienced difficulties in gaining access to the interviewees after they have been identified which is a known disadvantage of conducting in-depth interviews (Stacks, 2011). Access to UMAS was limited to those who were in contact with the HFC-CRC Policy Center. Upon arrangement of the interviews all of the children accepted to attend in the arranged appointment but some of them never came to the office. This has left the researcher with fewer interviews as expected. Lack of the possibility for an at random selection of UMAS and sharing the same guardian for those who have been interviewed was another limitation to derive more credible and reliable results.

Other problems that the researcher encountered during the course of interviews were unfamiliarity of the interviewees with the term “guardian”. In spite of the fact that it has been clarified at the beginning of the interviews what the researcher meant by the term “guardian”, they tend to mistake the guardian for different people to whom they referred over the time of their stay in Cyprus. Accordingly irrelevant subject were rising during the course of interviews leading to time management problems. Recurring of interruption, distractions and noises was inevitable due to the interview location. The fact that some of the children interviewed had the presupposition that they were expected to repeat their entire story, probably due to the premise that any interview was related to their residency status, was another major problem during the interviews.

Another problem relevant to this research was the cultural factors. Children from collectivistic culture tend to give priority to the behavioral patterns which suits their group and refuse to give openly any negative feedback about any members to a stranger. Instead of giving priority to the truth and honesty above respect for their guardians, they may attempt to protect he/she from the ‘loss of face’. Furthermore all the interviews were held in the HFC office which offers guardianship to the UMAS and therefore not a “neutral” location for them, making it a challenge for the researcher to build a relationship of trust. According to Stacks (2011) *“Interviews should be conducted in neutral locations to make the interviewees feel less threatened”*.

## CHAPTER 6

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### RESULTS

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#### FISRT CONTACT WITH THE GUARDIAN

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The children interviewed did not know who their official guardian was; therefore, they referred to different persons when questioned about who their guardian was and when they have met their guardians for the first time. Only one has mentioned the name of the social worker from an NGO who acts as one of the unofficial guardians. Three referred to the immigration officers as the first person whom they referred to. While one said no one is his guardian another child mentioned the family who was taking care of him for six months as the guardian. It is obvious that they have never been informed that the social workers at the Social Welfare Office were appointed as their official guardians. As mentioned by one of the UMAS: *"I didn't go to the Welfare because I didn't know there is anything like that"* and after asking other asylum seeker for money they directed the child to the Welfare Services, some of them only referred to the Welfare Office as suggested by other asylum seekers, friends or people from their community. Three UMAS interviewed were directed to the Welfare by the Immigration Office. Meanwhile all of the UMAS mentioned the name of the social workers in the NGOs in response to the question who was helping them. They all consulted one of the NGOs or both whenever they encountered a problem. When asked for the reason for not contacting their official guardians one of the UMAS called the official guardians as the source of the problem.

As indicated by the guardians from the NGOs, UMAS referred to them through word of mouth. *"Basically children come to us because some of the people they know they refer them to us. But there have been one or two cases where we had some communication with the Welfare Office to bring us with contact with the UMAS, but most of the time it is word of mouth"* said one of the social workers from an NGO. At the first contact, according to one of the NGO's social workers, UMAS felt frightened: *"we invite them to the office and we make them feel home, because most of the time they are afraid. They think that it is also belong to the migration department. So we make them feel at home and then slowly we go to their houses and also last year we had 3 group sessions where they could come together. So this made them feel closer"*. One of the UMAS described the first contact with one of the NGOs as:

*"Friendly; do you need coffee? How was your day? Oh the first time they called me I was just scared. [...] I got very, very worried and I called the number again and he said don't worry M. (other NGO's guardian) gave your number. I said ok".*

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## ROLE OF THE GUARDIAN

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To give a clear picture of the guardianship system in Cyprus I refer to the interviews with the unofficial guardians who are basically the social workers from the NGOs: *"I believe that guardian ship is a foundation for the protection of unaccompanied minors and in Cyprus we don't have. We have but it's [...] not done by the government efficiently; if there is a guardian there will not be sexual abuse; if there is a proper guardian they will be able to go to school without any problem, or the guardian can also intervene and ask when the welfare is not paying; if there is a proper guardian he can take the child to the hospital; these are not being done now".*

The unofficial guardians from the NGOs played more effective role in helping UMAS than the official guardians though their functions were sometimes limited to dealing with specific problems UMAS had faced. One of the guardians from an NGO called himself 'just a problem-solver', further he pointed out: *"my role is not to act as a guardian towards the minors. But practically speaking because guardianship system is ineffective we need to have contact with them and deal with serious matters. We represent them legally and most of the times we practically play the role of the guardian. But this is not official. We do it because if we don't do it nobody will do it".* Although one of the NGOs in cooperation with the University of Nicosia has specific indicative plan in dealing with UMAS, all the social workers interviewed mentioned that the priorities in the support they were offering mainly depended on the specific situations and needs of the UMAS.

Since the Social Welfare Services refuses to give any records about UMAS to the NGOs, although one is the legal representative of the European Network of Guardianship Institution, the NGOs had access to the UMAS through an effective communication among themselves in directing UMAS to one another in order to provide the maximum help and support possible: *"and in a legal way we usually cooperate with Implement Partner of UNHCR in Cyprus and when we are not in a position to help these kids in a legal way, we recommend them to the Legal Advisor of the UNHCR Implement Partner which is an NGO called Future world Center".*

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## FREQUENCY OF CONTACT

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All the UMAS interviewed said that they refer to their guardians at the NGOs whenever they faced a problem and had to talk with them about it, except one who goes frequently to the NGO's office just on the way from school to home; *"sometimes I just call them to say hello. Sometimes they call to see how I am doing. Sometimes from school I pass M. (NGO's guardian) office. I go there. He says you have problem? I say no, I just wanted to say hi"*. Social workers from one NGO were in contact with the children every two weeks in order to update the social history of the child; *"they call me if everything is ok or when I have a problem. Yes they call me"*. The other NGO were in contact depending on how critical the situation of the child was but the longest period of time between contacts would be one or two month as pointed by one of the social workers; *"the whole concept is that we want to keep in touch with the children. We cannot force them to do that. We do not have the power to do that. [...] So the aim is to be in contact and to know what's happening and when is happening. So if they don't call, I call"*

Basically UMAS were not in contact with their guardians at the Welfare Office in a regular basis unless they had a delay in receiving their money and they had to go there to sort out the problem or the official guardian found it necessary to meet them for specific reasons; *"if she has anything to ask me then she will contact me that I should come to the office"*; *"She doesn't call me. She just gave me her number that if there is anything I should call her"*. Some experienced visits of the official guardians to their houses while one who was living with a family from his own country for the first 6 months of his stay said: *"they did not even come to visit the family. I was living there six months. They did not even see the family"*. On the other hand the social worker from an NGO visited them more frequently in their houses; *"I have visited the houses of all of them. And we don't have a means to go everyday [...] this unaccompanied children in Cyprus, the, project which was never funded by any other sources. It was always funded or been an initiative by the organizations. We never got any funding by anyone"*. The UMAS also acknowledged that the NGOs visited them at their houses; *"they used to come to the house to sit with us, ask us if there is any problem, about the house, friends or about whatever we want to let them know"*. Another child said that the social workers from one of the NGOs visited him once in a month.

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## REACHABILITY

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All of the guardians were reachable to UMAS only during the office hours. They had the mobile numbers of the two guardians from an NGO and they would call on their mobile phones if they could not reach them at their office. All UMAS said that if they could not reach the social workers from the NGOs they would definitely call them back. The official guardians at the Welfare though were not available sometimes; *“for instance today I wanted to go out from the school to go to the welfare, I need to take a paper form the school, so school asked for a number of a person before I will be permitted to leave school, I gave him the number of welfare guy because I’m going there to see him but he didn’t pick his call so I gave M.(the guardian at the NGO) number so they called M. and he approved that they should allow me, that was how they allowed me to go”*.

Two of the UMAS who lived in the children’s residence could reach the manager only till 12:15 and if they were not able to reach her during this time they had to wait till the next day and only sometimes the manager would decide to call the social worker to come to deal with specific problems.

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## FLEXIBILITY AND FORMALITY OF THE CONTACT

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All UMAS felt comfortable in their contacts with the NGOs. They could just go to their offices without any appointment. According to one of the NGOs’ *“they feel at home to come and meet me. It’s not very formal”*. They gave more positive remarks about the guardians from the NGOs than Welfare social workers with regard to their contacts. According to one of the UMAS: *“for instance they just hear what we say they don’t feel what we say for instance when you go to the social welfare they tell you to get out I don’t want to see you, you will feel bad within you”*. Another one of the children interviewed also experienced very tough and unfriendly behavior in the Welfare Office; *“the lady started yelling at me that why I didn’t tell her I want to go to school [...] so she says ok that for this reason she is not going to pay me”*. They asserted that the guardians of the NGOs proved to be more flexible and efficient to provide assistance than the guardians at the Welfare Office; *“with M. (from NGO) is faster but*



with F.(Social Welfare) oh, oh No! [...] M. listens good for you and he does everything very fast to help". UMAS in response to the question that if his official guardian was friendly said: "No, I don't have a good opinion about her. She doesn't do anything she just says but she doesn't care. If it's something necessary she doesn't do it fast"; "I think she is there because to do a job. Deep in her I don't think she really cares about me."

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## PRACTICAL SUPPORT

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### ACCOMMODATION

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None of the UMAS interviewed received any assistance in finding accommodation rather they found it through friends, other asylum seekers or their communities. Nevertheless two of them were sent later to a boarding residence for children while one had to change the city as he could not find any accommodation himself and there was no residence for children in that city and after refusing to accept to be transferred to a refugee camp and after living in different places he found out about of the NGOs and they arranged the moving:

*"I explain to my social officer that I don't want to go to Kafino (Refugee Camp). She told me that is the only option for me now. [...] I had nowhere to go. [...] I was so confused and she told me I should leave her office. I told her I should leave her office and go to where? She called for me police. I thought it was a joke and when they came in I was so confused because that was my first time ever that I confronted police coming to arrest me. They were with handcuff. [...] I try to run. But there were no way I could run to. I just climbed on the window. I was crazy I even wanted to jump down. It was fourth floor. But I couldn't jump down. [...] Some CID people they came. They told the police people to go and I calmed down and explained everything to them with the supervisor. [...] And they gave me 200 Euro cash. They told me in ten days time they will send me a check. I explained to my landlord what happened and the landlord accepted me I stay there. After ten days they did not send any check. So I moved out of the house so I was staying in friend's house, just from one house to another. Till somebody told me about M. [...] When I know M. I came to Nicosia and I explained to him. And I finally came to Larnaca in this boarding house."*

Both of the UMAS living in the residence found the place boring and uncomfortable; *“she (the social worker in the residence) asked me if I like it here, but I said no I don’t like it. It’s like prison, it’s like closed life. I cannot go out.”*

### SCHOOL

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None of the UMAS received any help from the guardians at the Welfare Services in relation to their registration at school rather they faced some difficulties in convincing them to assist them in this regard. Some of them had been directed to the Labor Office by their Welfare guardians and later were informed by Labor Office that they are not allowed to work and should get back to their social workers and ask to be registered at a school. Some of them, after waiting for some months and failing in getting registered to any school, were directed to one of the NGOs mainly suggested by other asylum seekers. The guardian at the NGO made the necessary correspondences to the Ministry of Education and finally they had their registrations. The mentioned NGO remained the official guardian in relation to any problem at school and had contact with their schools if needed and as UMAS mentioned the guardians from the NGO kept an eye on their performance at school and encouraged them for their studies; *“And then the person in welfare sent me to labor office to go and work and the person there sent me back to the welfare and she asked me why am I not at school, I said nobody took me to the school they asked me to come here he said I should go back and tell they should send me to school. When I went there the lady now started yelling at me that why I didn’t tell her I want to go to school. [...] she says ok that for this reason she is not going to pay me I won’t receive any money, that I will stay like this until they approve the school for me before she stop paying me, so I stayed like that after I had a lot of debt on my head and the landlady was kicking me out, [...] until I had to sometime sneak in through the window to the room, sleep, very early in the morning I would run away so that she would not see me, until I went to M.”*

Even one of the children was not sent to school for 2 years afterwards he had fled the country to France and when deported to Cyprus he was imprisoned for 32 days; *“32 days I stay in prison, in police station, it is not prison, very small room. I never see outside and when I released I come and apply for social welfare again and there they tell me your file is closed and now you go to work. [...] I say for me not allowed work. [...] Then I go to the NGO, they do for me school and social welfare.”*

### ASYLUM PROCEDURE

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None of the UMAS received any support for their Asylum procedure from their official guardians and all who had to appeal received assistance from the NGOs and their experts on the field such as lawyers. For many of them their residency status was the main concern and they expected more help and support from their guardians on this issue: *"To help us so that the government will grant us our permit to stay here [...] he (NGO) told me that no one will kick me out until I finish my school and I should not be worried and should concentrate"*.

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## SOCIAL INTEGRATION

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The official guardians of the UMAS interviewed, had never engaged in any activities to integrate them in their new environment while one of the NGOs had arranged some meetings for them to get to know each other. In addition to the gatherings the NGOs organized a Greek language course for the UMAS.

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## FUN CTIVITIES

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One of the NGOs had arranged some meetings and gathering for the UMAS which all of them found it pleasant. One of the UMAS mentioned the NGOs visits to their house as a fun activity because they would sit and just talk. During my presence at the NGO they organized a dinner where UMAS prepared the event themselves with the financial and transport support from the NGO. They had also organized events for their birthdays: *"they made me very happy. They asked me if I want something for my birthday. [...] when I come they called some people at same age, we eat, we talk, make photo and I was very happy"*.

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## EMOTIONAL SUPPORT

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UMAS interviewed did not contact their guardians if they needed any emotional support except for one who said she would call them for everything. On the other hand some did not even expect them to offer any help as such; *"when I feel bad I take everything alone, If there is something that I feel I have to speak I call M. but if I am depressed, I take it like that, because I am used to it, I have been alone for very long time so I don't see anyone as a parent I see myself as a single individual"*. And one of the UMAS said that she could call the guardians from the NGOs but considered it

impolite to bother them with her personal, emotional problems; *“yes I can call (the NGOs) but I think is not polite that I call every time. The best thing when you think, think, think is to go to bed, and then you sleep”*. As for the guardians, one pointed out that because of the immense workload and special situation of the UMAS in Cyprus he would give the priority to the issues such as education and material needs; *“I ask myself these questions: how this person survives? Who is he living with? How well he is doing?”* However the other NGO would consider their emotional problems and psychological health in their social history which was updated every 2 weeks.

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### INFORMATION ABOUT THE GUARDIANS AND THEIR DUTIES

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None of their official guardians had ever explained UMAS what they could expect from their guardians and what their duties included; Most of the UMAS did not receive any information about the ethnic, educational or family backgrounds of their guardians. One just knew the nationality of one of the guardians at the NGO and some guessed that they should be working for the United Nations. Apparently they had limited knowledge and understanding about the NGOs functions, roles and tasks; *“they said that they interfere, they stand as intermediary between me and the government to make sure I get what I am supposed to get from the government”*. Nevertheless, as indicated by one of the guardians from the NGO most of the UMAS knew what they could expect from the NGOs through the other asylum seekers’ experiences who had directed them to the NGO: *“Most of the time when they come to me they know what we can do for them. They have a claim. [...] So they come to address specific problems. Because they know from other people, friends or people they know that we deal with such things in our organization. I tell them what we do”*. Furthermore he pointed out that they were always honest about the possibilities they had and never gave them any wrong impression about what they could expect. As main concern of most of the UMAS was their residency status, the guardians, might not inform them about the low chances they had in reality with regard to their residency status just in sake of keeping them determined in their education and improving their situation. However when necessary they would inform them about the situation; *“it doesn’t make sense to bomb him or her with something which makes them feel more unsafe. But we don’t fool. [...] If thing are critical for a case then they are critical and I will be honest with them”*. The other NGO had the same approach in giving information to the UMAS: *“We introduce ourselves as an organization working for children. [...] So we don’t give*

*them any hope like you will be able to stay. We make sure, we make clear that we try to help while they are allowed to stay by the Republic of Cyprus and we do not give them fake ambitions that we will make it for them to stay in Cyprus.”*

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## GOOD GUARDIAN AND POINTS OF IMPROVEMENT

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All the UMAS interviewed made positive remarks about their unofficial guardians while they considered their official guardians inefficient in performing their jobs. When questioned about who they considered as a good guardian some just mentioned the name of the social workers from the NGOs. They asserted their satisfaction about the help and support they were receiving and pointed out that they listened to them carefully and showed their interest in helping them on the contrary to the official ones; *“He is good because when you go to him maybe he tells you go I will find out. He tells you go I will call you tomorrow. He is going to call you and he will give you the report you have to do this you have to go there [...] It is not that he ignore”.*

Most of them emphasized that a good guardian was a good listener who would take into account their opinion in their course of actions. One of them preferred to meet the guardians personally to talking on the phone: *“maybe you don't have the resources to call or the reaction on the phone you don't know but you are looking at his face, you will know if he will have the mind to solve your problem but on phone you don't know his mood”.*

Two of the UMAS specifically mentioned that they would like to receive more support when they should go to the interviews and one expected them to provide more assistance in regard to the accommodation and school: *“I would like them to help me before I go for the interview because when I think about the interview I am afraid”*

As stated by one of the UMAS interviewed, a good guardian should help them be prepared for the future and took a parental role in guiding them: *“a good guardian will always advice me and always asking what I want to become in future. To help me good, to reaching my dreams; [...] is someone who is open-minded with me whom I can speak freely with him to explain my problems, can listen to me and advice me.[...] If he is a man I expect him to treat me like my father if he is a man and if is a woman I expect him to treat me like her son”.*

It was also stressed by the UMAS that the contacts should be in a regular basis and that the guardians should be available at any time they required any practical or emotional support and their access should not be limited to the office hours. One of them suggested that they should hire more guardians to make this ideal happen; *“someone who on regular basis tries to know what is going on in the life of someone he is taking care of, on regular basis not when you have problem [...] imagine you are calling your social worker and he is not picking and you have a problem so what will you do and if M. by that time is not at his office, or if it is at night and you have just the office number [...] at any time there would be an emergency. [...] I think they should employ more guardians [...]”*; *“Maybe sometimes I am not happy I like to call them, then I say I am not happy today you tell what happened and they say don't worry; just to tell don't be worry everything will be alright.”*

Guardians interviewed, indicated that a good guardian should be able to build the relationship of trust and listen to the children carefully. As stressed by one of the guardians all the necessary rules and laws for providing an efficient guardianship already existed in the system but the priorities might be different for the specific situation of UMAS in Cyprus. Further he pointed out that providing safety was the most important issue in his opinion: *“safety and care I mean somehow you are trying to provide family environment which supposedly or ideally child should have. [...] There is no sense in Cyprus to deal with how many hobbies they have when they have to depend for everyday food on someone”*.

When asked the guardians about the expectations of the UMAS they stated that at the age of the UMAS they were dealing with covering their material needs was very important in addition to respect and trust in order to assure them that they could depend on them: *“Children expect everything from the guardians. Yes sort of take the parental role. They are dependent so they want somebody to help them for everything”*; *“it's not like a child of 8 or 10 years old. A young person of 16/17 years old knows exactly what he needs. He know what he wants to eat what kind of dress he needs to wear to be accepted in his environment; he knows that he needs things to go to school; so they expect that from their guardians. And there are many children who they come to Cyprus because of financial difficulties they had in their countries. So they expect that standard of living which make them feel that they can survive. [...] So the covering of the material is very important; they will get along with someone who will cover their material needs”*.

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## FUTURE PERSPECTIVES AND REACHING THE AGE OF 18

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There was a common expectation among all of the UMAS interviewed, to have access to the guardians' support after reaching the age of 18. While those who were already over 18 year of age pointed out that the official guardians informed them at the time they turned 18 that they should not contact them for any reason. Yet they stayed in contact with the unofficial guardians from the NGOs and found it very positive and practical: *"imagine if there is no M. (guardian from the NGO) in today, the school will no[t] allow me to go out; so, I still need them"*. They mentioned also that the official guardians were more concerned about the younger children and one suggested that they should extend the age limit; *"for example I will be 18 soon and they feel like ok she is just here for two months, but the others who are 17 they fix everything for them because they know they stay longer"*; *"we are now more than 18 and who will care for us, it seems they are only concerned only about those under 18, I think they should extend the age limit"*.

As mentioned before guardians from the NGOs supported the UMAS even after they turned to 18: *"if they are at school and even if they turn 18 nothing will change, they go on like that so the cooperation is the same. It's not the fact they are 18. It's not important for me. For me it is important to know they are doing well. If I know they are doing well I spend less time with them. And if they are 18 and they don't go to school or work then we have a different type of cooperation. Then we support them for the labor office or welfare office."*

None of the guardians either official or unofficial have specifically discussed any issues about the UMAS future perspectives in long term. Except for one of the children who stated that they frequently discussed about it with one of the guardians in the NGO, the rest did not experienced such consultations.

When asked the guardians if they talk about the UMAS future perspectives, they gave a positive response: *"Sometimes when we discuss about profession of somebody we discuss on the base that they might need that profession back home. This is an option. And we explain the process for the asylum we don't have to tell them that the chances are very, very low. You don't have to especially when you want to solve something"*.

## CONCLUSION AND RECOMMENDATIONS

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From the responses given by unaccompanied minor asylum seekers and their unofficial guardians who have been interviewed in this research it emerges without any doubt that guardians have an essential and irreplaceable role in promoting and respecting children's rights, understanding and identifying the children's needs and therefore in facilitating the communication between them and the authorities. Guardians also play a crucial role in supporting the adoption of a durable solution for their protection and integration in compliance with their best interests. Furthermore the findings of this research clearly shows that unaccompanied minor asylum seekers' right to have a professional guardian is not fully observed in Cyprus as their special needs and their best interests were not always taken into consideration by the official guardians. Also there is a vast difference in the level of care and protection they have received from the NGOs and from what their official guardians had to offer which could be obviously traced by examining their procedures, trainings, methodology, accessibility and flexibility. This existing inadequacy in providing sufficient care and support for UMAS not only may obstruct their integration and future possibilities, but it may also endanger their personal and emotional well-being and development. Therefore ambiguity and misunderstandings in the role of the guardians amongst the official guardians in Cyprus should be aptly defined and resolved and a standardized guardianship system should be constituted.

Accordingly in conformity with all the guardians and experts who have been interviewed, it is recommended that as soon as an unaccompanied minor is identified, an independent guardian is appointed in a timely fashion to ensure his/her protection during all delicate further procedures in reflection of the right to special protection and assistance (Art. 20 CRC).

In accordance with Article 4 of the CRC which obliges the State to undertake all appropriate legislative, administrative measures for the implementation of the rights, it is recommended that laws and procedures on guardianship are revised and standardized at national level. A general rethinking of guardianship system is promoted and further monitoring measures on guardianship are implemented.

As suggested from respondents, it is highly recommended that the social workers at the Welfare Social Services who act as guardians receive continuous and specific training on guardianship issues, children's rights, psychological and educational needs



of the UMAS, intercultural relationships, migration issues and cultural mediation. Also a standard methodology of work based on the CRC should be identified for the guardians including a detailed description of duties and responsibilities and behavioral patterns such as minimum frequency of meetings with UMAS, promotion of the integration process and building proper and effective personal relationship with children. The role of guardians should be explicitly clarified in their job descriptions so that he/she consider himself/ herself as proactive intermediate, a bridge between the child and other actors involved, and as a manager of all contacts of the child. This will ensure that the guardian would not hold positions which might cause a potential conflict of interest with the best interest of the child (Art. 3 CRC).

Unaccompanied minors should be clearly informed about the guardians' responsibilities and role upon the very first contact with the child. As clearly reflected in Article 13 of the CRC the right to information should be respected to ensure that the child has the appropriate expectations about his/her guardian, realizes that the guardian is an honest person committed to him/ her needs, and be able to build a relationship of trust with his/her guardian. The guardian should also inform the child about the legal procedures concerning their situation and the plan of action when he/ she turns eighteen.

It is also recommended that the guardians inform themselves in advance about the motivation for migrating of every single UMAS and consider these important factors in the individual integration process. He/she should respect and know the culture of the country of the origin of the child and assist him/her in understanding the culture of Cyprus. This reflects the right to enjoy his/ her culture (Art. 30 CRC).

In accordance with the data collected in this research it is crucial that the guardians at the Social Welfare Services advocate for a continuous education of UMAS and their access to Greek language courses and other services related to education such as professional training courses (Art. 28 CRC).

It is also highly recommended that the Social Welfare Services promote the professional cooperation with the existing NGOs which offer guardianship in order to fix the caseload for the guardians and improve the quality of their job and their competencies. Group meeting among guardians should be held and consistent supervision and monitoring procedures should be implemented to ensure the competencies and qualifications, and support of the guardians.

Views and wishes of UMAS should be sought and their opinions, desires and doubts should be taken into account (Art. 12 CRC). Similar researches should be conducted and supported by the relevant authorities in Cyprus with practical access to a larger number of UMAS to acquire the most favorable and effective choice of guardians, to identify the points of improvement and to reach the goal of establishing a standardized guardianship system in Cyprus.

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