

UNACCOMPANIED CHILDREN IN LEGAL LIMBO

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1. Introduction

- a) Background to the project
- b) What is 'legal limbo'

2. National Contexts

- a) South Africa
- b) United Kingdom & United States

3. Health Consequences

4. The Right to Health

5. Ways Forward

Background

Doctoral research on smuggling of unaccompanied children

Research in Austria

- Long waiting times in asylum procedures
- Lack of procedures, legal provisions for transition to adulthood
- Common provision of short term status requiring renewal

Similar issues in other jurisdictions

- Complex, even attritional, administrative processes
- Little support when turning 18 ('ageing out'), incl. availability of secure legal status
- Proliferation of discretionary and short-term status options

Consequences  uncertainty, instability, negative impacts on well-being

'Legal limbo'?

Used to describe various circumstances in the context of migrant children

- Outcomes of period of waiting are unknown, as is the period of time itself.
- '[A] tactic of state control, imposed through chronological age markers, time-limited legal statuses and bureaucratic process rhythms' (Allsop, Chase & Mitchell 2014)
- Goes hand in hand with the stigma of being 'illegal', 'irregular' etc.
- While precarity (being in 'limbo') is not an immediate harm, it is a time of ambiguity and heightened danger (e.g. to removal, lack of social assistance, exploitation)

Immigration System

- No viable status options for unaccompanied children
- Criminalisation, detention, and removal of 'illegal foreigners'

Care and Protection System

- Identifies unaccompanied children
- Court-ordered protection
- Care and protection centres



Asylum System

- Lack of clarity + understanding
- Largely inaccessible to unaccompanied children

- Most unaccompanied children end up on the streets
- Vulnerable to arrest and detention on turning 18

UK

- Example of discretionary/tolerated forms of stay
- Use of UASC Leave, which terminates at 17 years, 6 months.
- Presence without legal status, pending removal



US

- Complex, lengthy processes
- Removal of 'unaccompanied' status and transition to detention
- Changes to policy and procedure
- Lack of access to secure legal status



Among other things, increased risks of 'going missing', detention, lack of access to basic services (incl. education and healthcare), and removal

Also...

Adverse effects on health, particularly **mental and emotional well-being** and **proper development**

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|--|---|--|
| ▪ Daily stressors | ➔ | Long-term mental health effects |
| ▪ Uncertainty over legal status/future | ➔ | Deterioration in well-being |
| ▪ 'Ontological insecurity' | ➔ | Depression, anxiety, sleeping problems |

➤ Adversities in childhood are the most important predictor of mental illness and health conditions

➤ Importance of identity formation

Article 6: survival and development of the child

Article 24: enjoyment of the highest attainable standard of health

UNCRC:

- Need to take a holistic perspective – an ‘inclusive right’
- A right to ‘grow and develop to their full potential’ in conditions that allow this

The best interest principle should influence any actions that affect ‘underlying determinants’ of health

➔ Link made to the need for certainty and secure legal status

UNCRC and CMW : ‘negative impacts on children’s well-being of having an insecure and precarious migration status’

Need for clear and accessible procedures, avenues to attain legal status, and secure legal status where children are present for significant periods of time

Observations

- Make sure processes are clear, accessible, and quick
- Reduce use of discretionary and temporary status/leave

Especially where it terminates on turning 18

- Provide accessible avenues to secure legal status

- Access to legal representation and assistance
- Reception and care structures: developmental needs and mental health