Protecting the Rights of Unaccompanied Child Migrants in Europe and the United States

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Introduction

According to the United Nations High Commissioner for Refugees (UNHCR), the international community defines an unaccompanied migrant child (UMC) as a person who is under the age of eighteen and who is separated from both parents and is not being cared for by an adult who by law or custom has responsibility to do so. Circumstances in which children find themselves unaccompanied or alone are different. Some children may begin and end their migration journeys alone since their parents or caregivers have been victims of violence in their home countries, or they are seeking to escape violence in their families. Others may begin their migration journey alone but meet others along the way and arrive at receiving communities where family members live. Furthermore, minors may begin their journeys with parents or caregivers but find themselves alone when their caregivers are detained, deported, or die and the minors end up separated. Due to the differences in how each child becomes alone, some experts assert the term separated should be used instead of unaccompanied to more accurately reflect the situation of many migrant children.

Moreover, the term unaccompanied migrant children may convey images of tiny children traveling entirely on their own, making decisions along the way and raising their funds to cover their journey. However, it has been revealed that older children migrate to search jobs, just like adult migrants do, especially when they contribute economically to their families in their home countries or are already parents themselves.

Background

Even though definitions and techniques for counting unaccompanied minors differ between the United States and the European Union (EU), the number of unaccompanied migrant minors in both regions have increased on average, with the majority being teenage boys ages 14-17. The migration of unaccompanied children to the U.S. is composed primarily of Central American youth from El Salvador, Guatemala, and Honduras as well as Mexico. Most of these UMC immediately present themselves to U.S. border while others enter the U.S. unnoticed and undocumented. When identified by border security, the Central American minors who arrive in the U.S. can immediately report their cases and request asylum, and they are held in detention for
up to 72 hours. In contrast, Mexicans are returned after one to two days because of 2008 Trafficking Victims Protection and Reauthorization Act. The number of unaccompanied minors entering the EU also spiked, doubling from 13,800 in 2013 to 23,300 in 2014, and then quadrupling to 96,000 in 2015. Compared to the U.S., the range of countries from which unaccompanied children originate is wider. The majority of these migrants have come from Afghanistan, Syria, Somalia, Eritrea, Iraq, Albania, and Russia. Depending on the receiving country, its enforcement efforts, and border controls in neighboring transit countries, these minors can end up detained and expelled. Consequently, children seeking protection may be found inadmissible, denied various forms of assistance and access to legal protection, and facing the possibility of removal.

In some countries, governments respond with inclusionary policies, receptive communities, and the opportunity to apply for asylum. However, in other countries, the government’s response includes enforcement and detention, particularly when the public in those countries are already apprehensive about increases in migratory flows and associate migration with crime and negative consequences. Some states have established rights-based standards and procedures for assessing asylum seekers’ protection claims while at the same time creating barriers that prevent certain asylum seekers from setting foot on their territories. In January 2017, President Trump signed an executive order requiring the Department of Homeland Security (DHS) to no longer consider parole requests from individuals, denied refugee, in El Salvador, Guatemala, and Honduras.

Journeys from Central America or Mexico to the U.S. take weeks or months to complete by land while journeys to the EU require crossing several countries, and migrants’ final destinations are not always determined at the beginning of their trips but rather decided along the way. Those heading to the EU have to cross the Mediterranean Sea at night in tightly packed boats or walk through the forest and mountain areas. Similarly, those heading to the U.S. have to top on trains, ride in cargo trucks, and walk in the desert.

**Push and Pull Factors**

With the increases in UMC, scholarly attention has increased, focusing on the driving factors of the migration: push and pull factors. After reaching the highest level of UMC during the spring and summer of 2014 in the U.S., the flow of Central American minors (CAM) declined sharply in the winter of 2014. This rapid drop led some to believe the migration crisis had been resolved. The U.S. intensified its enforcement efforts, detained a more significant number of CAM women and children, prosecute migrant smugglers, and worked with the Northern Triangle countries, such as El Salvador, Guatemala, and Honduras, on a public information campaign to discourage outflows. As a result, the number of unaccompanied children
arriving at the U.S. fell almost by half. However, the numbers began to climb once again. It can be known that the underlying drivers of the migration remain in place and arguably have intensified. Therefore, powerful push factors in the region and pull factors in the U.S. appear to be overwhelming these efforts.

The primary determinant of children migration, or push factor contributing to migration outflows, is a combination of lack of the rule of law, corrupted governments, high levels of violence, food insecurity, poverty, and a desire for better education. Northern Triangle countries have accounted for the highest murder rates in the world for several years, affecting women and children. Additionally, economic condition is another important push factor. The long-lasting poverty, limited employment opportunities, and severe drought derive unaccompanied child migration. Furthermore, the top sending countries of unaccompanied children arriving in the EU have been identified by the Global Peace Index as the least peaceful countries in the world today. In 2015, over 60 percent of total migrants arriving in the EU were fleeing violence in the Middle East and North Africa.

Factors in the U.S. have encouraged the migration of CAM to remain undiminished. After three decades of migration from the Northern Triangle countries, about one in five Salvadorans and one in 15 Guatemalans and Hondurans live in the U.S., making it the attractive destination for most children and families fleeing the region.

Problems Unaccompanied Child Migrants Face

UMC face various problems before migration, during migration, and after migration. Before migration, as stated above in “push and pull factors,” due to lack of access to education, health care, and employment, insecure and violent conditions, gang activity, extortion, briberies, and corrupt governments, children decide to move into EU or the U.S.

The minors usually leave their home countries without an entry visa to their destinations; therefore, they must rely on smugglers. As border enforcement made reaching the border of the destination countries more difficult, smugglers have changed the transportation of migrants into a lucrative business. As a result, to cover the cost of the journey to the EU or U.S., migrants end up indebted for long periods of time after arriving at the final destination. Once they enter in their destinations, they face multiple hurdles that magnify the stress, which include screenings to determine if they qualify for protection under international and country-specific laws.

History

Even though increases in the migration of unaccompanied minors to the EU and the U.S. have attracted media and policy attention in recent years, this case is not unique. They have migrated alone throughout history, and international bodies and conventions have recognized these flows for over two decades. In 1997, the UNHCR set guidelines and definitions of an unaccompanied child. In the 1960s, Cuban children were sent to the U.S. by their parents to avoid the perceived dangers of communism under the Cuban revolution. Taiwanese families have been sending their children to acquire education in U.S. schools. In 2010, Haitian children orphaned by a devastating earthquake were paroled in and adopted by U.S. families. Similarly, the migration of Central American minors without adults is not unprecedented. What is new is the size of the migration today and the media attention and policies generated in response to the situation.

In the EU, there have been previous flows of unaccompanied minors. For example, the Spanish Civil War (1936-1939) left approximately 90,000 children orphaned, and many of them
were sent to various countries, such as France, Belgium, the Union of Soviet Socialist Republics (USSR), Mexico, Switzerland, Denmark, and the UK. More recently, the Second World War produced a large number of unaccompanied children, approximately 13 million according to the United Nations Educational, Scientific and Cultural Organization (UNESCO) and Red Cross estimates.

**International Actions**

*Cooperation of the United States with Central America*

In July 2014, President Obama had a meeting with the presidents of Guatemala, El Salvador, and Honduras at the White House to discuss their shared responsibility to reduce the flow of migrants into the U.S. The four leaders agreed to address the underlying causes of migration by reducing criminal activity and promoting more significant social and economic opportunity. As a result, all three countries have launched media campaigns to discourage illegal migration. The U.S. is also working on investigating and prosecuting human smugglers.

*UNHCR Guidelines on Policies and Procedures in Dealing with Unaccompanied Child Seeking Asylum*

In February 1997, UNHCR released guidelines to effectively protect and assist unaccompanied children in a systematic, comprehensive and integrated manner. It provides detailed guidelines regarding the identification of the children, initial action that should be taken, and durable solutions. It also urges close cooperation of a variety of government bodies for information-sharing.

*Implementation of the Action Plan by EU*

In 2010, the EU adopted an Action Plan that helped to bring the focus into the issue of unaccompanied minors arriving at Europe. Action Plan states “each decision affecting a minor’s future must be taken with the best interests of the child at heart, regardless of his migratory status.” It has acknowledged that the following areas need more efforts: preventing the disappearance of an unaccompanied child from the protection system, assessing the conditions of the family, and improving the process of defining what is in the best interest of the child and the process of return and reintegration. International Organization for Migration (IOM) cooperates with EU to provide practical solutions.

**Places of High Concern**

*Central America (especially Guatemala, El Salvador, and Honduras)*

Poverty rates are extraordinarily high in the northern countries of Central America. In 2014, 63 percent of the population of Honduras lived in poverty, 59 percent in Guatemala, and 31 percent in El Salvador. Moreover, there is a significant unemployment. Conditions of violence have affected the agriculture economic growth of these countries in which agriculture is one of the main forms of employment. While Central American children generally have better access to education than those in the states with a war in the Middle East, they still face considerable challenges in reaching schools as internal travel and transportation are significantly reduced in
violence-ridden areas. Gangs often recruit young girls and boys in Guatemala, El Salvador, and Honduras. Consequently, youth at the risk of gang violence tend to end their studies for fear of being targeted or recruited by gangs. In 2015 in this region, 39,000 students left school due to harassment or threats of gangs. Many Central American children find temporary jobs during transit to support themselves.

**Afghanistan**

40 percent of the population lived in poverty in 2014 and 50 percent in 2015. Over half of those living in poverty are children under age 15. In 2001, girls in Afghanistan didn’t have access to education and only one million boys were enrolled in primary school. While this has changed over time, even in 2015, only 21 percent of girls had completed primary education. Afghan unaccompanied youth travel the 3000-mile journey entering Europe by first crossing into Turkey and then moving through the Mediterranean Sea to enter the EU through Greece.

**Somalia**

63 percent of the Somalian population is unemployed, and 70 percent of the population live in poverty. Similar to Syria, the conflict in the region disrupt access to education as schools are turned into military security spaces. Youth from the Horn of Africa, mostly Somalis, travel through Sudan and Libya to enter EU through Italy.

**Syria**

The majority of the Syrian population is unemployed, and the overall poverty rate is estimated at 83 percent in 2014, compared to 12.4 percent before the conflict started in 2007. The conflict in the region disrupts access to education as schools are turned into military security spaces.

**Stance of the P5 Nations:**

**China**

There is no much information about how China responds to this issue and how it is related to the issue. It is known that some unaccompanied children from China travel to EU; however, there is no accurate statistics or information regarding them.

**France**

Unaccompanied children, arriving at an airport or seaport without parents or guardians to protect them, are held in one of more than fifty transit zones for up to 20 days. France detains 500 children at most each year in transit zones at the borders. The French government can deny due process rights of children in transit zones as it claims children in transit zones are considered
not to be in France. Children's rights researcher at Human Rights Watch pointed out that “France is using a legal loophole to compromise children's rights” and that “Children are physically in France, but not in France in the eyes of French law, and this legal trick denies them protection.”

**Russian Federation**

The term “unaccompanied and separated children” was introduced by the UN Convention on the rights of the child. It is widely used by both international human rights community and governments in numerous countries. However, the Russian Federation does not use the term with the same definition developed on the international level in the national law. The term was literary translated and adjusted to national perceptions. In other words, the definition of “unaccompanied and separated children” was redefined based on its perspectives as “children deprived of parental care.” The change puts all the blame for the situation on the parents, rather than the country itself.

**United Kingdom**

The United Kingdom had Dubs scheme which provides refuge for unaccompanied children arriving in the UK. However, the government decided to end the Dubs amendment as it believes the scheme has become a magnet for people traffickers. The UK argues that it had already admitted many children through other refugee schemes, a total of 8,000 in 2016. Moreover, it was asserted that the scheme had incentivized children to move to Europe. The Labour Party and Scottish National Party (SNP) benches described this decision as shameful, pointing out that there are still numerous children in need of help.

**United States of America**

The U.S. does have laws to protect minors from Central Africa and Mexico. However, it is important to understand that they can be sent back to their home countries. Under the *William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008*, the U.S. immediately has deported those from Canada and Mexico without legal proceedings. In contrast, every child arriving in the U.S. from Central America has been put into deportation proceedings. U.S. Customs and Border Protection (CBP) encounters unaccompanied child migrants and sent them to the Office of Refugee Resettlement (ORR) within 72 hours. ORR is then responsible for caring them and sending them to family members or sponsors. Due to the continuous increase in the number of minors, President Barack Obama proposed immigration reforms, stretching social and legal services that receive the migrants. However, President Donald Trump warned that unaccompanied child migrants are potentially exposing the nation to eventual gang crime. “We have the worst immigration laws of any country, anywhere in the world,” President Trump said. “They exploited the loopholes in our laws to enter the country as unaccompanied alien minors.” “They look so innocent. They’re not innocent.” Meanwhile, he
is considering removing temporary shelters at military bases to accommodate the growing number of unaccompanied minors.

**Possible Solutions:**

*Reducing the Root Causes of Child Migration*

Push factors mentioned above induce unaccompanied child migration. Children who decide to travel to the U.S or EU are in the unsafe conditions in their home countries. They are widely exposed to violence, gang, and war and has little access to food, sanitation, and education. Because of a desire for better lives, they take a journey even if it is time and cost consuming. Some countries do not even have a proper governmental system to protect them due to corruption. Among many other possible solutions, eliminating the push factors in countries like Central Africa, Afghanistan, Somalia, and Syria should be prioritized.

*Ensuring Appropriate, Integrated Child Protection Care and Services for all UMC*

States should consider the principle of the best interests of the child and the special needs of UMC to protect them against all forms of abuse, neglect, exploitation, and violence and should work to provide for their health, education, and psychosocial development. The human rights and fundamental freedoms of all migrants should be promoted and protected effectively.

**Glossary**

*Central America:* It is bordered by Mexico to the north, Colombia to the southeast, the Caribbean Sea to the east, and the Pacific Ocean to the west and south. Central America consists of seven countries: Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama.

*Department of Homeland Security (DHS):* It is a department of the U.S. federal government, responsible for improvement of the security of the U.S. Its work includes customs, border, and immigration enforcement, emergency response to natural and manmade disasters, antiterrorism work, and cybersecurity.

*Dubs Scheme/Dubs Amendment:* a scheme, named after Lord Alf Dubs who led the scheme being introduced, enabling a number of unaccompanied children to come to live safely in the UK even if they do not have a family link in UK.

*Gang:* an organized group of criminals

*Loophole:* an ambiguity or inadequacy in the law or a set of rules

*Minor:* a person under a certain age, usually the age of majority, which legally distinguishes childhood from adulthood

*Pull Factor:* something that attracts people to go and live in a particular place

*Push Factor:* something that makes people want to leave a place or escape from a particular situation

*Unaccompanied migrant child:* a person who is under the age of eighteen and who is separated from
both parents and is not being cared for by an adult who by law or custom has responsibility to do so.

**Timeline:**

1904 – Guards for the U.S. Department of Commerce and Labor began patrolling the U.S.-Mexico border.

1936 – the Spanish Civil War (1936-1939) left approximately 90,000 children orphaned and many of them were sent to various countries.

1960 – Cuban children were sent to the U.S. by their parents to avoid the perceived dangers of communism under the Cuban revolution.

1994 – The Clinton administration reinforced the border program that doubled Border Patrol officers and initiated the construction of 5 miles of a border wall along the U.S.-Mexico border. Because of the enforcement, migrant routes were changed into more treacherous desert regions.

1997 – The UNHCR set guidelines and definitions of an unaccompanied child.

2008 – President George W. Bush signed a law that migrant children, except for those from Canada and Mexico, must be granted an immigration hearing.

2010 – Haitian children orphaned by a devastating earthquake were paroled in and adopted by U.S. families.

2014 – President Obama had a meeting with the presidents of Guatemala, El Salvador, and Honduras at the White House.


2017 – President Trump signed an executive order requiring the Department of Homeland Security (DHS) to no longer consider parole requests from individuals, denied refugee, in El Salvador, Guatemala, and Honduras.
Sources

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