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The deportation of unaccompanied minors from the EU

Family tracing and government accountability in the European Return Platform for Unaccompanied Minors (ERPUM) project

Workshop report

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Cover: A 14-year-old boy from Afghanistan enjoys the last of the afternoon sun in Calais before looking for a place to sleep in the open. UNHCR / H. Caux.

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List of abbreviations

BID	best interest determination
CRC	UN Convention on the Rights of the Child
ERPUM	European Return Platform for Unaccompanied Minors
IDCU	Identity Checking Unit
IOM	International Organization for Migration
MoFA	Afghan Ministry for Foreign Affairs
MoRR	Afghan Ministry of Refugees and Repatriation
MoSLA	Afghan Ministry for Labour and Social Affairs
MoU	memorandum of understanding
UDI	Norwegian Directorate of Immigration

Preface

Martin Lemberg-Pedersen, University of Copenhagen

This report is the outcome of a joint effort between the University of Copenhagen and the Refugee Studies Centre at the University of Oxford to examine European governments' plans to deport unaccompanied minors from the EU. With support from the Migration Industry Research Network, Danish Institute for International Studies, the workshop "The deportation of unaccompanied minors from the EU: family tracing and government accountability in the European Return Platform for Unaccompanied Minors (ERPUM) project" was convened at the Refugee Studies Centre (RSC) in Oxford on 3 May 2013. Its explicit aim was to subject the little-publicised ERPUM project to a comprehensive and multidisciplinary examination.

The workshop consisted of two sections: first, it convened leading scholars from the disciplines of law, sociology, political science and philosophy, each addressing different aspects and challenges for the project, and thus complementing each other; and second, it featured a panel discussion with representatives from UNICEF, UNHCR and the Danish Refugee Council as well as the aforementioned speakers. It should be noted that both ERPUM and the International Organization for Migration (IOM) were invited to take part in the panel but that both declined. It proved to be an extremely fruitful workshop about a current issue of great political and moral controversy, with a packed, inquisitive and engaged audience consisting of academics, NGOs, policymakers and journalists. I would like to extend my gratitude to all who helped make it so. Moreover, gratitude is due to all the speakers, who agreed to adapt their presentations into papers for this report, to the RSC staff for all their hard work, to the panellists, and to Dawn Chatty for her support in encouraging and co-arranging this workshop.

The evolution of the ERPUM project

Martin Lemberg-Pedersen, University of Copenhagen

This paper maps out the institutional dynamics and key issues connected to the evolution of the ERPUM project. In so doing it offers a useful overview of a project, which, ever since its inception, has been notoriously difficult to gain accurate information about. One reason for this lack of clarity is undoubtedly that it is a pilot project, and has therefore been the subject of changes along the way. However, a more significant reason has been that the governments involved have repeatedly appealed to ongoing negotiations with other states in order to avoid answering criticisms voiced against the project. Moreover, while some of the governments involved have preferred to keep the project out of their national media, others have used it selectively during national election campaigns to harvest votes demanding stricter asylum policies.

This means that the information provided by one government has sometimes conflicted with that from others, and sometimes even with statements coming from actors involved directly in the project, such as officials from the Afghan Ministry of Refugees and Repatriation (MoRR), IOM or ERPUM. At other times, these actors too, have voiced remarkably different takes on the project. Taken together, these reasons have meant that the information distributed about ERPUM has varied greatly between national contexts. More than once, civil society actors and journalists in the countries involved have been given the impression from governments that ERPUM had been stopped. This is most certainly not the case.

I will start by sketching out the project, and then move on to some more critical and descriptive points about its institutional dynamics and the implications it has already had, and potentially can have in the future, both for the participating states and for the unaccompanied minors that ERPUM concerns. Then I will problematise it by asking a few questions about the project´s relations to the best interests of the child, and, towards the end, briefly summarise some of the main discernible arguments for the project, as they have been presented by the states involved in ERPUM. As the following presentations will address the situation on the ground in Afghanistan, the relation between ERPUM and the Convention on the Rights of the Child, and the normative intuitions and dilemmas grounding debates about the project, I will not go into depth with these issues, but rather introduce their relevance as a way to construct the backdrop which we will develop and discuss further during the day.

The ERPUM project

ERPUM is a pilot project involving several European countries and is concerned with ensuring the ordered and secure return of unaccompanied minors, who have received final rejections of their asylum applications, to third countries of transit or origin. ERPUM states: "The partner countries intend to organize family reunification and return for unaccompanied minors…The objectives of ERPUM are to develop methods and contacts in order to find the parents of the minors who must return home, but also to find safe and adequate shelter in the country of origin."[1] Throughout, the project is framed by reference to concepts like "family tracing," "family reunification," "humane and safe return," "reintegration" and "reception facilities," and sometimes references to the Convention on the Rights of the Child. The ERPUM documents convey the impression that a central component of the pilot project is to ensure the unity of the family.

ERPUM envisions that the goal of returning unaccompanied minors to families in their countries of origin can be achieved by deploying Third Country Relations Teams, establishing Tracing Contact Points, training Local Facilitation Teams, launching an ERPUM Log Book and by organising Reintegration Support. Initially, the ERPUM webpage listed unaccompanied minors between 10 and 17 years old as the target group. Given the controversies surrounding deportations to Afghanistan in general, this was quite remarkable. Subsequently, though, the reference to 10-17 year olds has been deleted from the webpage, which now has no reference to a specific age span of the target group involved.

The official coordinating actor behind the ERPUM project is the Swedish Migrationsverket (Migration Board), which was also responsible for the initial grant application in 2010 to the European Return Fund, as well as the most recent grant application for ERPUM II in late 2012, extending the project. The other core members are the United Kingdom (the UK Border Agency), the Netherlands (the Repatriation and Departure Service) and Norway (Directorate of Immigration). Moreover, ERPUM has two so-called observer countries: Denmark and Belgium. The prefix "observer" indicates a rather vague affiliation with the project, but as we shall see, this may not reflect a country's actual involvement. The project also has a Steering Group, which consists of civil servants from the countries involved. These actors communicate continuously regarding the coordination of the project, the arrangement of meetings and conferences and how to respond to media or academic scrutiny of ERPUM.

In the first grant application from 2010, the project focused on unaccompanied minors from two unspecified countries. It also, however, pointed explicitly to Iraq and Afghanistan as examples of "ongoing cooperation" concerning the establishment of "dedicated care centres...for unaccompanied

[1] ERPUM website: http://www.migrationsverket.se/info/4597_en.html

minors who return, but for whom guardians/parents cannot be found."[2] In the second grant application from late 2012 (ERPUM II), the stated ambition is to expand the project to a third, as of now, unspecified country of origin. Since ERPUM has devoted by far the most attention to Afghanistan, and very little progress has been made with regards to Iraq, this presentation focuses mainly on the former country.

The project consistently highlights family tracing as a key component. This has the effect of downplaying central questions concerning another component: the reception facilities. These are framed as secure locations offering care and education where returned children can be placed temporarily while tracing efforts for their families are ongoing. However, one may ask, what happens in the event that it proves impossible to locate their families? To this question, ERPUM unfortunately offers no reflection. In fact, throughout all of the reports and applications produced by the project, there is no mention of scenarios where the child's family have fled the country, have been killed, are unable to care for the child, or do not want to receive the child. These omissions reveal that ERPUM is premised upon a very optimistic assessment of the feasibility of family tracing in Afghanistan. This assessment is, however, not backed up by empirical evidence. In fact, all the actors with experience and knowledge about tracing programmes, such as UNHCR, IOM, ECRE and the Danish Refugee Council, agree that family tracing in Afghanistan is all but impossible. Given the withdrawal of coalition forces from the country in 2014, the likelihood that this view will change anytime soon is slim to none.

ERPUM's sustainable goals

It is important that we keep two connected and crucial questions in mind. The first concerns what kinds of policies will follow *after the pilot*, and the second, how the pilot, although still ongoing, has *already* facilitated changes in national deportation policies.

The coordinating actor behind ERPUM, the Swedish Migrationsverket, only provides brief hints at what this post-pilot future might look like. In the first grant application to the European Return Fund, Migrationsverket lists what is termed "sustainable results" for the project, that is, its longer-term goals. These include that tracing contact points remain in the third countries and that feedback is generated from reintegration programmes in the third countries. Two further "sustainable results" are worth focusing on in more detail. Firstly, it is stated that "the activities of the project could either continue separately or be incorporated and/or made use of in other suitable fora, such as GDISC [General Directors of Immigration Services Conference], EASO [European Asylum Support Office] and Frontex [EU external border agency]." Secondly, a "medium term impact" would be "a more smooth and increased return of unaccompanied minors who should return." Moreover, Migrationsverket expects a "long-term impact" is "that those minors who are not in need of protection will not make the long and risky journey to Europe since the risk of being returned is higher." The ambition is thus that ERPUM leads "to a lowering influx of unaccompanied minors to Europe that are not in need of protection."[3]

The first of these goals is the closest any ERPUM documents come to reflecting on the crucial questions of what will happen *after* the pilot project has expired with the return priorities and policies regarding unaccompanied minors. Migrationsverket envisions two distinct possibilities: that return operations either continue under the auspices of each national state participating, or continue under a supranational, EU umbrella. In the first scenario, ERPUM priorities and policies can be

[2] ERPUM Grant Application to the Return Fund, European Commission, Directorate-General Justice, Freedom and Security, 2010: 7.
[3] ERPUM Grant Application to the Return Fund, European Commission, Directorate-General Justice, Freedom and Security, 2010: 15.

diluted and integrated into five or more EU countries. In the second, the ERPUM agenda could be integrated into the newly formed European Asylum Office or the EU's external border agency, Frontex. Unfortunately, the grant application offers no further reflection on what such continuations could look like, or the fact that EASO and Frontex have quite different approaches to border control policies and both actors have faced different forms of critique.

At the same time the first goal is tailored to negotiate the ever-present conflict within the EU – that between national and supranational interests. Whereas the Commission, ultimately the actor doling out the most funds for ERPUM, favours the increase of supranational institutionalisation and competences, the Member States favour policies that rest on national implementation, thereby allowing them to retain competences. ERPUM's first sustainable goal is simply a compromise that states both of these options as a national/supranational disjunction.

While the first goal thus straddles the gap between Commission- and Member State-priorities, one activity that is not given as a goal for the pilot is the collection of information in order to ascertain whether or not the deportation, tracing and reception of unaccompanied minors in Iraq and Afghanistan *is actually possible*, given the legal obligations of the participating countries. Such a goal of ascertaining feasibility would otherwise be exactly what pilot projects are designed to examine. Yet, ERPUM seems to be premised on the controversial assumption that European deportations of unaccompanied minors to Afghanistan must necessarily be escalated in the future, in one way or another.

This is explicit in the second "sustainable goal," as it quite clearly frames ERPUM as *deterrence policy*: the pilot will be a long-term success if it manages to deter unaccompanied minors from migrating to ERPUM countries. The deportation of unaccompanied minors is, in other words, to be used as an example, making it clear to other minors thinking of travelling to the EU, that even if they should succeed in arriving in an EU country, they will be deported back to Afghanistan.

Forerunners and video clips

What kinds of methods does ERPUM envision applying to realise these goals? In the project application, it is stated that there should be a "forerunner country," which is supposed to be a test case, paving the way for the remaining participant countries by entering into negotiations with the origin country in question. In this manner, it was thought, the project could organise reception, in the form of "care and education facilities" in at least two countries. ERPUM was also meant to boost the cooperation with these two countries on family tracing.

While the original grant application does not identify the "forerunner country" or the countries of origin[4], the project was designed around the bilateral relations between Norway and Afghanistan, as the former country – even before the launch of ERPUM – had initiated both internal legal reforms and negotiations on a Memorandum of Understanding (MoU) with Afghanistan predating the efforts of the other ERPUM countries. Through this MoU, Norway has already begun to deport so-called aged-out minors[5] to the Jangalak shelter in Kabul, which is under the jurisdiction of the MoRR and receives "post-return support" from IOM.

During the spring of 2013, Norway conducted around 5-7 such deportations a week and all of these deportees face extremely difficult situations. Some have difficulties getting the financial compensation paid out, others only remained in the shelter a very short time and many had no

[4] The ERPUM II application does explicitly refer to Afghanistan as an origin country.
[5] "Aged-out minors" refers to young people who arrived in Norway as minors, but who have since then turned 18 years of age.

social network or places to go in a country that was foreign to them. Even though these deportees are not minors, the policies guiding their returns are connected to ERPUM. Firstly, because ERPUM opens up for deporting minors if certain conditions, such as reception facilities, are met. If these conditions are not met, ie, if there are no facilities, this means that Norway currently waits until the children turn eighteen and then initiates the deportation procedures. Secondly, because the hardships experienced by the aged-out minors today, could apply to minors deported under similar circumstances tomorrow.

The initial grant application also had a component called "Returned children tell their story." The ambition was to produce video clips where deportees would be recorded telling how they had been reintegrated in the country, how they had been reunited with their families and how life had improved due to ERPUM's efforts. These video clips were explicitly framed as "motivational tools" to be used by officials from the ERPUM countries when trying to persuade unaccompanied minors to leave for Afghanistan voluntarily.

The "children tell their story" component of ERPUM is problematic for a number of reasons. One is that ERPUM also envisions paying the minors a fee after their successful return. We should ask whether vulnerable children in such a stressful situation will be able to distinguish between the request to participate in such a video, and the promise of being paid money. Another more fundamental problem is that the whole component seems to be instrumentalising the lives of already-deported children in order to make other children change their minds and agree to voluntary returns.

The pilot application predicted that production of these video clips could start in April 2011 and be completed by September 2011. This was, mildly put, overly optimistic. To date, ERPUM has produced no video clips for the simple reason that no minors have yet been deported to Afghanistan. Moreover, given the fate of deported aged-out minors, it remains to be seen whether there would in fact be any "success stories" to tell, even if deportations had been initiated. Presumably, ERPUM could have approached aged-out minors instead, but as mentioned above, they are now facing a range of difficulties and untenable situations, which make them unsuitable as examples persuading others to follow in their footsteps.

Perhaps due to the lack of prospects for this ERPUM component, there is no mention of it on the ERPUM website. Nevertheless, the component is useful for our inquiry as it illustrates the kind of mindset that went into formulating and launching the ERPUM project as a whole. Both the timeline for the video clip component, but also the optimism about the feasibility of family tracing in Afghanistan, illustrates the existence of a fundamental disconnect between the ERPUM plans and the actual reality of returning and receiving unaccompanied minors in Afghanistan.

IOM, IDCU and ERPUM

There has also been a fair amount of confusion about the role played by IOM in the ERPUM project. Through Freedom of Information Act-insights into mail correspondence between the participating countries in the period up to the launch of the project, one finds multiple references to an IOM project in Kabul that the ERPUM project could build upon. When asked about this in the UK press, however, an IOM spokesperson went on the record saying that the organisation "is not and will not be involved with the return of unaccompanied minors under the ERPUM project" and elaborated: "We don't support the repatriation of children because a lot of them left at an early age so we are not sure we can find their parents or relatives…They could fall into the hands of drug addicts, Taliban or criminal gangs."[6] This statement, naturally, led many people to assume that IOM was not

[6] BBC News UK (November 24th 2011) "UK 'may return Afghan asylum children next year.'"

involved in ERPUM after all, but as the devil resides in the details, later information has shown that the seemingly clear IOM response was very much a case of a politically careful choice of words and semantics.

Thus, while it is true that IOM is not envisioned to be part of the return process under ERPUM, the organisation will be involved as a project partner in Afghanistan, as well as coordinating efforts between the European states and Afghanistan, offering "post-return support" to the deported minors and offering assistance to the Afghan authorities in constructing the reception facilities. So, while it is true that the current plans for ERPUM do not involve IOM in the actual deportations, this is not the same as saying that the organisation is not involved at other levels in the project. Semantics matter. Yet, despite IOM involvement, it is important to note that the organisation both rejects taking part in the deportations, as well as the ERPUM countries' optimism regarding family tracing. These reservations tell us that IOM harbours serious concerns regarding the ERPUM project.

The seeming refusal of IOM to take part in the tracing efforts was a blow to the ERPUM countries, which had originally assumed that IOM would be the tracing actor. Facing this obstacle, but not wanting to drop the tracing component, ERPUM has now decided that tracing is to be undertaken by the Identity Checking Unit (IDCU), framed as an NGO, with a unit working from within the Afghan Ministry of Interior. Yet the IDCU, launched in 2004, is quite far from the conventional NGO actor. It is, in fact, another example of how IOM navigates towards contracts in a politically charged environment. Thus, the IDCU is in fact a project initiated by IOM and it is currently being funded by the two observer states of ERPUM: Denmark and Belgium. IOM acknowledges having "helped the IDCU's Fraud and Forgery Section increase their capacity to conduct more sophisticated investigations." IOM also promises that its "continuing coaching, mentoring and training for IDCU staff will ensure not only the efficient running of the Unit, but also its long term sustainability."[7]

According to ERPUM officials, the IDCU has already begun tracing efforts, but let us be clear about what this means: tracing may mean interviewing unaccompanied minors in order to ascertain the whereabouts of their family; it may also mean the actual search for persons in Afghanistan. Indications point to the fact that it is the former version of tracing being done now. In fact, the IDCU was in Denmark during the spring of 2013, interviewing families as well as unaccompanied minors alongside the Danish police and the Danish Refugee Council. Controversy ensued as the IDCU failed to inform both the interviewees, the Danish police and the Danish Refugee Council that the Unit sent the recorded interviews back to the Afghan authorities that some of the asylum seekers had escaped from.[8]

Risks stated and omitted

As part of the grant applications processed in both 2010 and 2012, Migrationsverket was obliged to list potential risks to the ERPUM plans. It is informative to look at the risks highlighted by Migrationsverket, as well as the risks that the application does not address. Moreover, as there are differences between the risks listed in the 2010 and the 2012 applications, comparing these two documents also yields interesting results, especially when keeping in mind the central points of critique that ERPUM has faced since its inception.

[7] IOM Afghanistan (2008): Technical cooperation on migration (TCM).

[8] This happened during the first two days of interviews, whereafter interviewees were asked for consent to share their information. This was, however, too late for those interviewed during the first two days.

The risks listed in the 2010 proposal include: that the number of unaccompanied minors arriving in European countries remains high; that the third countries are uncooperative; and that the security situation in these countries worsens. Looking at the present day situation, it appears that all three risks have, in fact, come true. The number of unaccompanied minors is indeed still considerable, there has been considerable resistance to the project from the Afghan MoRR and the security situation in Afghanistan (and Iraq) has also continued its downward spiral.

What could have helped to explain ERPUM's failure to mitigate these risks, though, are exactly those issues that the grant application chooses not to address. Thus, nowhere in the application is the feasibility of family tracing addressed. This is remarkable given that the country of origin is experiencing an armed occupation, violent regional conflicts, corruption and, consequently, multiple forms of displacement. The application also fails to mention the risk of deportees being individually persecuted after their return. Yet, both local and international NGOs have pointed to the fact that deportees returned to Afghanistan are in fact experiencing persecution, in many cases because they are perceived as having been "Europeanised" or because of the money they have been paid to return. Many children are also being targeted by child prostitution networks, or are being forcibly recruited as child soldiers by armed militias. ERPUM makes no reference whatsoever to these grave risks although they are presumably the very reasons why mass deportations of children have not yet begun. This connects to a further issue, which remains all but untouched in the proposal: namely the quite foreseeable difficulties of aligning the ERPUM goal of returns-as-deterrence with the best interest of the child. There is, in fact, one, but only one, mention of the best interests of the child in the entire proposal. This is when it is simply stated that ERPUM will lead to more elaborate forms of cooperation with third countries, and that "The basis for the work will be the best interest of the child."[9]

If we compare the risks listed in the two applications, it is remarkable that while some risks feature in both, a range of new problems have been added and others proliferated in the ERPUM II application. Moreover, it repeats the omissions of its predecessor. The new risks include: "the number of unaccompanied minors remaining high"; "the deterioration of the security situation in Afghanistan and the other third countries"; "being unable to enforce the project due to the security situation in the country"; "the lack of political will in the third country"; "loss of knowledge due to staff rotations"; "NGO difficulties with tracing work"[10]; and "security risks during the training of local facilitators."[11][12]

Given both the failure of ERPUM to mitigate the risks in the first proposal, and how the second list of risks reads like a road map of the difficulties encountered during the project's first phase, one might have thought that the project faced a serious risk of being shut down. Instead it was renewed in December 2012 and scheduled to run from 1 January 2013 to 30 June 2014, receiving €25,290.25 from each of the participating states in addition to an unspecified amount of EU funds. The Norwegian Directorate of Immigration (UDI), in an internal communication to the Department of Justice, gave the following reasons for why an extension was desirable: "We have invested much time and effort in the project and it is therefore reasonable to be able to cross the goal line…We have had great progress and achieved important milestones in our work despite demanding challenges. The model we have suggested is sustainable and takes due consideration of the principles and guidelines of the convention on the rights of the child. The model is getting a positive reception with

[9] ERPUM Grant Application to the Return Fund, European Commission, Directorate-General Justice, Freedom and Security, 2010: 13.
[10] The NGO in question being the ICDU.
[11] ERPUM Logframe: Description of the action. Risks and Assumptions. ERF CA 2011.
[12] The lack of precision and clarity in these statements is illustrative of the ERPUM II application's ambiguity.

cooperation partners, NGOs and voluntary organisations."[13] As the UDI, sadly, neglects to identify which NGOs and voluntary organisations are so supportive of ERPUM's endeavors, and since no organisations have yet publicly stated such support, it is, however, difficult to assess the merits of this justification.

The evolution of ERPUM as a sovereignty game

It is useful to think of ERPUM as a three-level sovereignty game[14] where certain actors shift between national, intergovernmental and supranational frameworks, in pursuit of the venues most suited for achieving the desired goal. Such an analysis can be applied to the ERPUM framework in order to trace both the development and the implications of the project's political economy. This is illustrated in Figure 1 below.

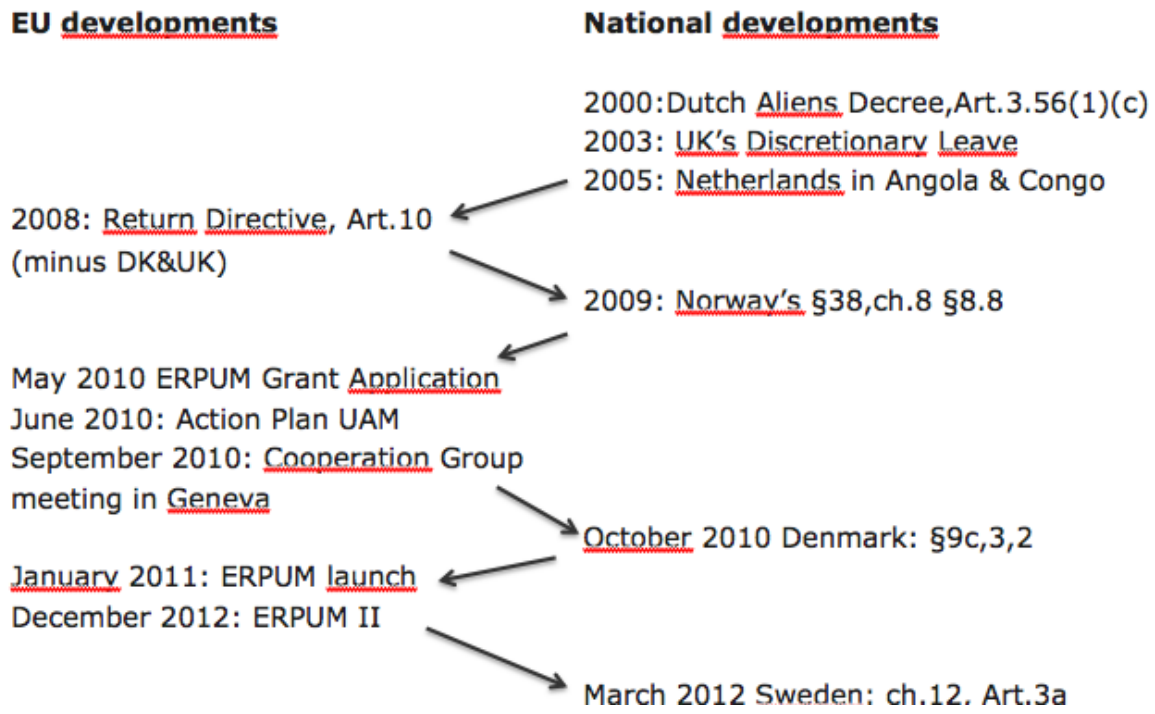

Figure 1: The genealogy of ERPUM and associated national reforms

Figure 1 illustrates the genealogy of the processes of the ERPUM agenda. It shows how ERPUM, even if slow paced and facing considerable criticism, has in fact already had a groundbreaking impact by facilitating legal reforms of deportation policies for unaccompanied minors in some of the participating countries.

There are certain European precedents to parts of the ERPUM mechanisms, such as the UK's concept of Discretionary Leave from 2003. Most crucial is the legal reform of the Netherlands' Aliens Decree in 2000. Article 3.56(1)(c) is the first time we find references to the concept of reception in the country of origin, as it states:

[13] UDI (2012) ERPUM – Videre deltagelse. Communication from UDI to Justis- og beredskabsdepartementet. 12/1610-1/OSVA.
[14] Adler-Nissen and Gammeltoft-Hansen (2008) *Sovereignty Games. Instrumentalizing sovereignty games in Europe and beyond*. Palgrave Macmillan.

> *The residence permit for unaccompanied minors may only be granted to aliens who are unaccompanied and who are underage. The unaccompanied minor must furthermore meet the conditions that (a) he or she cannot support himself or herself independently in the country of origin or (b) in another country where he or she could reasonably go to and that (c)* adequate reception, by local standards*, is absent in the country of origin or another country where he or she could reasonably go to.*

From 2004 and onwards, this revised article paved the way for the Dutch attempts to deport unaccompanied minors to orphanages in Angola and Congo. This event inspired considerable interest first within the EU and thereafter in other member states. So much so, that politicians and ERPUM officials have since used the Dutch "experiences" repeatedly as an argument for ERPUM's Afghan plans. Doing so, however, requires that one is willing to ignore the facts. Besides the obvious differences between security conditions in Angola/Congo and Afghanistan, UNICEF Netherlands has also pointed out that only one child has in fact stayed in one of the facilities in Angola and Congo, and only for a few days. [15]

This notwithstanding, in 2008, the EU launched its Return Directive, which, in Article 10.2, states that "Before removing an unaccompanied minor from the territory of a Member State, the authorities of that Member State shall be satisfied that he or she *will be returned to a member of his or her family, a nominated guardian or adequate reception facilities* in the State of return."[16] Due to their legal exceptions from the EU, both the UK and Denmark were not, however, obliged to implement this Directive. One year later, Norway followed suit by changing its Aliens Act's §38, ch.8 §8.8. It states, in a slightly different manner to the Dutch paragraph, familiar conditions:

> *Unaccompanied minor asylum seekers, who have turned 16 years at the time of the final decision, and which has no other reason for stay other than the fact that Norwegian authorities consider the applicant to be without* proper care *in the case of return, can be granted stay…until he or she turns 18 years of age. The stay cannot be renewed and does not constitute a reason for granting stay for family members…*[17]

At this point in time, around 2009, the plans to institutionalise the new, restrictive deportation policies towards unaccompanied minors were thus gaining pace. Due to the previous reforms, the Netherlands and Norway were already in line with the new EU developments, and Sweden, Denmark and the UK joined in as co-members of a "cooperation group" trying to boost the agenda further.

The cooperation group produced the first ERPUM grant application in May 2010, timed and formulated to link up with the EU's launch of its first ever Action Plan for Unaccompanied Minors, one month later, in June 2010. The Action Plan urged member states to "systematically examine the possibility of introducing, in agreements with third countries, specific provisions addressing the migration of unaccompanied minors and enabling cooperation on issues such as prevention, family tracing, return or reintegration." However, while the parties behind the ERPUM proposal had attempted to align the proposal as much as possible with the Action Plan, it is worth noting that this was impossible in at least one aspect: where the Action Plan emphasised that "return is only one of the options and the best interests of the child must always be a primary consideration."[18] This rift between the project and the Action Plan is significant because it highlights the obvious fact that

[15] See UNICEF Netherlands (2012) Return of separated children to return houses in countries of origin. Policy and practice in the Netherlands, European and international governing instruments, and recommendations for protecting the best interests of the child: 47-49
[16] EU Return Directive (2008) Article 10.2, Highlighting added.
[17] The Norwegian Foreigners Law. FOR 2009-10-15 nr.1286: Utlendingsforskriften. Highlighting added.
[18] European Commission (2010) Action Plan on Unaccompanied Minors (2010-2014), SEC(2010) 534.

ERPUM is, at its core, a "Return Platform" and not, despite its multiple references to family unity and its (fewer) references to the best interest of the child, a "Child Protection Platform." The Action Plan is, therefore, unlike ERPUM, able to contemplate the alternatives for unaccompanied minors that ERPUM is not. For instance, that it might be in the child's best interest *not* to be returned to their country of origin, even if their family can be found.

The flurry of activity from 2009 and onwards illustrates how countries like Denmark and Sweden used intergovernmental – and later with ERPUM, supranational – forums actively in order to facilitate legal reforms at the national level. While illustrating the three-level sovereignty game interpretation, it also reveals as problematic the Danish claim to be only an "observer" member of ERPUM. In fact, the activities of another country can be used to further exacerbate the inconsistency of the Danish explanation. The country in question is Finland, because the cooperation group actually invited the Finns to join a Geneva meeting in September 2010. The Finns thanked the group and participated in the meeting, but only after having voiced concern about the post-pilot policy and funding. Shortly after the meeting, the Finns returned to the group with the message that it was not possible for them to participate in the project, citing financial burdens. As such, the activities of Finland provide a textbook example of a country entering the cooperation group, observing and then deciding. This, however, seems quite far from the Danish activities as an observer member.

One reason for this could be that Denmark has been doing a lot more than just observing. If we look at the mail correspondence between the countries in the pre-ERPUM cooperation group, it is clear that Denmark plays a central role. Thus, civil servants from Denmark were very much involved in the pre-ERPUM cooperation group that formulated the first Grant Application, and invited the Finns to the meeting in Geneva. This is crucial because these activities actually predate the Danish legal reform in October 2010, which brought the Danish legislation into alignment with ERPUM goals, before the actual launch of ERPUM in January 2011. This central Danish role was also confirmed in an internal 2012 mail from the Danish Ministry of Justice to the Danish Ministry of Foreign Affairs.[19] In it, the main points of ERPUM are outlined, and it is then admitted that: "It should be noted that while Denmark formally speaking is an observer in the project group, we are, in fact, involved in the development of the project."[20] Also, in 2012, the newly elected SRSF government, strongly encouraged by its civil servants, chose to earmark DKK5.1 million to the establishment and operation of reception centers in Afghanistan. Since it wasn't spent, this amount has since then been transferred to the 2013 budget.

If we look at the revised Danish Aliens Act's §9,c,3.2, it states that an unaccompanied minor whose application for stay has been rejected cannot be returned "if there is reason to assume, that the foreigner when returning to the country of origin or former stay, will be without family network or without the possibility of stay at a reception and care-center, and thus be placed in an actual emergency. The stay cannot be extended beyond the foreigners' 18th year." If we examine this paragraph closer, several important points emerge. Firstly, while it introduces the central ERPUM goals, we also observe slight differences with the Dutch and Norwegian formulations. For instance, it does not follow the Dutch condition that adequate reception should be evaluated in terms of the situation in the country of origin, and it is much more specific than the Norwegian paragraph. Furthermore, the Danes formulate the relation between family reunification and reception centres as a disjunction. This means that the Danish authorities do not necessarily have to locate the family

[19] The mail was obtained by Danish journalists through the Freedom of Information Act, but was, like many others, extensively redacted, which was argued to be necessary due to "ongoing negotiations" and "relations to other states."
[20] Mail from the Ministry of Justice's International Foreigners Office to the Ministry of Foreign Affairs. February 2012.

of unaccompanied minors before initiating deportation procedures. The existence of a reception centre is, in other words, considered a sufficient condition for rejecting stays and returning the minors.[21]

Secondly, we can see how groundbreaking the ERPUM-related reform is by comparing the revised Danish of §9c,3.2 with its former wording. This also gives a hint at what a Danish post-pilot policy could be like. In the previous wording of §9c3.2, a condition for being granted stay was if the authorities had reason to assume that the minor, if returned, would end up in a "actual emergency" *beyond those of individual persecution and refoulement.* However, the 2010 reform dropped this reference to emergencies beyond persecution and *refoulement*. Thus, while the previous wording recognised that returned unaccompanied minors could end up in "actual emergencies" beyond persecution or *refoulement*, the new wording does not. A reason for this change could be that the new paragraph is intended to yield outcomes where any child returned to reception centers is unable to meet the conditions for being in a "real emergency." Yet, this constitutes a massive limitation of the protection for unaccompanied minors, for if children whose families cannot be found are forced to live for long periods in reception centers in unsecure conditions, it is very likely that they would have met the conditions of the previous wording.[22]

The Danish case illustrates several points about the ERPUM project and its evolution. Firstly, the parties of the current Danish SRSF government, which has defended the ERPUM project repeatedly, were in fact rejecting the very same project when it was launched in 2010. This changed when they came into power. In a similar fashion, governments of other countries have come and gone, but the drive to realise the project remained. This indicates that we should not search for the prime engines behind the ERPUM agenda at the political level, but instead at the bureaucratic level of civil servants. This is also confirmed by the fact that no ministers have partaken in the discussions of ERPUM in any of the mail correspondences of the cooperation group and later the ERPUM forum.

Secondly, despite national differences, the legal reforms of the 00's associated with the ERPUM agenda have expanded the conditions for initiating deportations of unaccompanied minors greatly and limited the protection of unaccompanied minors similarly. This serves to reinforce concerns over how post-pilot policies will be managed once they are diluted to five different nation states, with varying legislations.

Thirdly, in terms of sovereignty games, one might view the processes surrounding ERPUM as an "Escape to Europe,"[23] that is, the use of EU's supranational venues as a means to strengthen particular actors – here, civil servants – and their policy agenda over other parts of the domestic constituency, such as other bureaucratic entities, the parliament, political parties and courts. By playing the EU game, it could be said, the bureacratuc network behind ERPUM has been able to promote and galvanise policies, which would have faced massive opposition if only pursued in national contexts. This certainly captures how ERPUM participants have repeatedly invoked cooperation and negotiations with other states as a "fail-safe" in order to block critical inquiries from political parties, NGOs and journalists. It also seems appropriate as a description of how participant countries have used the political capital of the EU instruments to facilitate national changes.

However, the "Escape to Europe" perspective bypasses important dynamics in the political economy of ERPUM. Thus, the participant countries have also "Escaped *from* Europe" when convenient.

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[21] The Swedish equivalent operates with a disjunction similar to that of Denmark.
[22] As is also the case with asylum seekers in European countries experiencing long stays in camps.
[23] Lavenex and Wagner (2007) *Which European Public Order? Sources of Imbalance in the European Area of Freedom, Security and Justice*. European Security, 16:3: 225-243.

Thus, when the supranational project has been stalled or faced mounting public attention and criticism or when the EU's Action Plan for Unaccompanied Minors has emphasised that consideration of the best interests of the child means that there are alternatives to return, several countries have simply switched to bilateral negotiations with the Afghan authorities, applying pressure through trade and development aid agreements. Consequently, a more accurate description of the sovereignty game played, is one where the participating countries have jumped back and forth between supranational, intergovernmental and national forums in order to realise their aim of deterring child migration to European countries, by demonstratively deporting unaccompanied minors to Afghanistan.

Afghan perspectives on ERPUM

Liza Schuster, City University London

The following is based on conversations with two government representatives and a representative of one of the European Return Platform for Unaccompanied Minors (ERPUM) partners in Afghanistan, none of whom were willing to be named.

At the end of March 2013, representatives from the Afghan Ministry for Refugees and Repatriation, (MoRR) met with a European Return Platform for Unaccompanied Minors (ERPUM) delegation to discuss progress (or the lack of it) on the return of unaccompanied minors to Afghanistan. Although an MoU has been signed by the MoRR, the reality is that so far there has been no progress, although this is due to a lack of commitment to the project on the Afghan side for a variety of reasons. The British, Dutch, Norwegian and Swedish partners continue to push ahead in spite of misgivings from some of their own representatives on the ground (who asked not to be identified) and the Danes who have decided to observe rather than participate.

"Mr Anwari of MoRR has no interest in the project. They don't like it. But they seem to be unaware that there is no other solution" – this was the view of one of the EU partners I spoke to in Kabul in December 2012. There is considerable condescension towards Afghan partners among the Europeans working in Kabul. While it is true that there is very little migration expertise among Afghan governmental employees, those involved in the discussions are fully aware of, and concerned about, what the programme will mean for the young people, for their families and for Afghanistan. The European view that "There Is No Alternative" rings very hollow in Kabul, where the general feeling is rather that EU Member States can offer much better alternative than the Afghan government.

Afghan Government

This issue is seen as a very critical and delicate matter by the government, one which MoRR is unable to manage, never mind resolve, on its own. Therefore, the ERPUM issue was passed to the Ministerial Council for consultation. The Ministerial Council appointed three ministries to work on the issue: the Ministry for Foreign Affairs (MoFA), the Ministry for Labour and Social Affairs (MoSLA), and the weakest and least resourced, the Ministry for Refugees and Repatriation (MoRR). The latter was first approached by ERPUM and Minister Anwari signed the MoU, but since then has wavered on whether to implement it or not. The main stumbling block appears to be how much of the budget assigned to the project the Ministry can keep. The ERPUM team seem to have pursued discussions separately with representatives of the different Ministeries.

MoFA examined the MoU to see what could be done. They concluded (together with others in MoRR) that it breached the Convention on the Rights of the Child and implementation would definitely not be in the best interests of the child, and informed the ERPUM delegation and the Swedish Board of their conclusions. MoSLA concluded it was a migration issue and nothing to do with them. However, in spite of all the concerns, MoFA also concluded that since the MoU had been signed, there was a duty to implement it, and this is the view of Deputy Minister Hami at MoRR. There is also a sense as succinctly expressed by him that "we cannot spoil our relationship with Norway for the sake of a 100 children, when we have millions here that need their help."

Pressure was recently been ratcheted up again and during the last visit in March, the Minister agreed to implement the project on the condition that MoRR was given control of the USD2.5 million budget, but ERPUM has refused. It has decided to cut the budget to USD1.5 million and give it to IOM to administer. In theory, the agreement of the government is required for this programme to go ahead, but realities on the ground may mean that IOM is in fact allowed to go ahead regardless. As IOM already runs return and reintegration programmes in Afghanistan, it would be relatively easy to create a space for young people, albeit one that is wholly unsuitable and far from safe.

Currently IOM runs the Refugee Reception Centre at Jangalak near the MoRR at Wasal Abad in Kabul. This was an industrial complex built by the Soviets. Over the last few years it has been squatted by IDPs and last year a mental health facility, largely targeting drug addicts, was opened. It is here that IOM/MoRR run the Refugee Reintegration Centre, originally built by the Australian government in 2003 as part of its Pacific solution. In the following two years, the Australians sent 41 people there, of whom eight had training and of those eight, six found work. Currently, those coming back to Afghanistan via IOM's so-called voluntary return programmes can be housed here for up to two weeks.

It is not really possible to speak of a coherent government view, but it is fair to say that members of the government have real concerns about how the public will react to the return of minors, and especially to their deportation. These concerns are both for the children and their families, as well as for the government's own legitimacy. Some members of the government are reluctant to be seen to collude with European governments in actions that will result in the loss of families' investments and an end to their hope of a child educated and working in Europe. An MoRR representative argued strongly that it would have been better if ERPUM members could let the minors attend and finish their education and higher education, and then think of a mechanism to return them back home. This same representative pointed out that it is vital to include young people in discussions about their future and it is the duty of MoRR to insist on their participation. The best interests of child must be at forefront of all plans and the process must include all participants including children.

There is understanding – and a surprising degree of sympathy – for the burden that the EU is carrying in hosting not only minors but adult Afghan asylum seekers and refugees, but as was politely pointed out, European capacity for hosting and solving this delicate issue is much greater than that of Afghanistan, which the representative felt obliged to point out "happens to be war ravaged and economically in a very poor condition." This barbed comment was provoked by the fact that the ERPUM partners all have a presence in Afghanistan, so they are aware of the situation in the country, the conditions and challenges facing children and young people, and the very limited government capacity to look after them, never mind offer protection.

Perhaps inevitably, the issue of 2014 also came up. It was pointed out that the next 1-2 years are filled with uncertainty that grows daily. One government representative expressed the view that having been through "such harsh and troublesome circumstances" to get to Europe they will do their best to leave again and return to Europe (having met young men in Afghanistan and Europe

in precisely this situation that certainly seems a reasonable assumption). He also expressed concern that if they fail to leave again, they will go through a psychological reaction which may lead them to join the insurgence, which will not be only harmful for not Afghanistan but also for host countries and others.

My own fieldwork in Afghanistan and that of Nassim Majidi, for example, reveals that deportation inflicts real psychological damage, from which a young person may or may not recover. While it is not certain that this damage will inevitably lead to joining the insurgency, if young people go back to certain parts of the country where there is no alternative source of income and nothing else to do, and where they will be paid for planting bombs and for carrying out attacks, this is a realistic possibility.

Regardless of the reasons why, those I spoke to were unanimously pessimistic that a) the programme would go ahead, or b) that it would be successful (whatever success might mean). In Afghanistan, the best laid plans frequently go awry so the project may well not happen. However, opponents of the project should not be too complacent. It is possible here, with enough money and a few scruples, to make things happen surprisingly quickly.

ERPUM and the Convention on the Rights of the Child

Rebecca Stern, University of Uppsala

ERPUM is a complex project of which there are many dimensions and issues to be discussed. The lack of information is an obvious problem; I think many questions could have been answered if the ERPUM project had been more open and information had been made easily accessible. I would however like to mention that in my preparations for this workshop the Swedish Migration Board has shared a number of ERPUM documents with me, including project plans and project reports.

As we have heard in this morning's presentations, the ERPUM project in its different phases is complex and touches upon a number of different aspects. In this presentation, the idea is to look at ERPUM from the perspective of the 1989 UN Convention on the Rights of the Child (CRC)[24], its general principles in particular as expressed in articles 2, 3, 6 and 12 – focusing on articles 3 and 12 – but also a couple of other articles – articles 9 and 20 – of special relevance for migrant and refugee children, unaccompanied and separated ones in particular.

For obvious reasons I will not be able to cover all aspects in the time allocated to me; the idea is rather to provide some insight into the compatibility of the ERPUM project with the CRC.

The Convention on the Rights of the Child is relevant for ERPUM for a number of reasons, including that the best interest principle as expressed in Article 3.1 of the CRC is referred to as "a crucial foundation for all the plans and activities for ERPUM"[25] and that "safe-guarding the best interest of the child considerations is paramount"[26]. Concern has been expressed not least by child rights organisations as to whether the project and the way it is implemented – or would be implemented – is compatible with the rights and obligations established for states by the Convention.

[24] United Nations Convention on the Rights of the Child, 20 November 1989, 1577 U.N.T.S. 3, entered into force 2 September 1990.
[25] ERPUM I Final report, Annex III to Grant Agreement HOME/2009/RFXX/CA/1001, p. 12.
[26] ERPUM I Final report, p. 19.

As we have heard in this morning's presentations, the pillars of the ERPUM are family tracing, return and co-operation between ERPUM countries and third countries (both government and civil society). Information is also referred to as a key objective for the project.

Just to provide a couple of examples, the implementation in practice of these objectives requires the establishment of effective methods for assembling sufficient information for a decision on the possibility of family reunification to be made, the creation of so-called welcome centres (which is what the reception facilities are called) in Kabul for children being returned, and the creation of reintegration programmes for each returned child.

The reintegration programmes could include facilitating access to education or training for the child that has been returned, and also financial aid to the family, aimed at, for example, supporting the family in establishing a small business and thus improving their standard of living – that is, a better environment for the child to return to than the one the child left behind.

Also, the dissemination of information includes video clips in which returned children can tell their story, presumably both what happened when they were in Europe and also when they had returned to their country of origin. These video clips will be available for case officers when working with children in the ERPUM countries who have received their final decision of rejection for a residence permit.

Key articles of the CRC

There are four general principles in the Convention on the Rights of the Child. These principles are identified by the CRC Committee – the monitoring body of the Convention (in its General Comment No. 5[27]) as:

- Article 2 on non-discrimination;
- Article 3.1 on the best interest of the child to be a primary consideration in all actions concerning children (not only those referred to in the CRC; wider scope);
- Article 6 on the child's right to life and development, which includes the state's obligation to ensure to the maximum extent possible the survival and development of the child (physical, mental, psychological etc); and
- Article 12 on the child's right to express his or her views in all matters affecting the child and for those views to be accorded due weight.

The general principles are to permeate the interpretation and implementation of all of the articles of the Convention, in addition to being at the core of children's rights as such.

All of the ERPUM states and the targeted third countries have ratified the CRC and are thus bound to fulfil the obligations established by the Convention. Additionally, the ERPUM countries are bound by the EU Charter on Fundamental Rights in which the general principles of the CRC are integrated, at least articles 3 and 12, although slightly differently worded, in Article 24.

The special situation and vulnerability of unaccompanied and separated children is routinely addressed (when being an issue in the country in question) by the CRC Committee in its

[27] Committee on the Rights of the Child General Comment No. 5 (2003) General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6) CRC/GC/2003/5.

Concluding Observations to the State Party reports submitted by the Convention states. It has also been the topic of a General Comment[28], No. 6 of 2005.

In the initial paragraphs of the general comment, the CRC Committee states that the Convention applies to all children, irrespective of status, who are present on the territory and that the enjoyment of the rights stipulated in the Convention should be available to them all without discrimination (ie, Article 2).

This does not prohibit differentiation between groups of children but limits it to where there are objective and acceptable grounds for doing so. It also aims to prevent different standards being applied to children when, for example, assessing conditions of care and protection needs based on their legal status as a citizen, asylum seeker or irregular migrant.

Article 3.1, stating that "the best interest of the child should be a primary consideration" is one of the phrases most cited and most referred in the child rights discourse. A determination of what actually constitutes "the best interest of the child" must always be the result of an individual assessment, taking into account the child's socio-cultural background, his or her identity, particular vulnerabilities and his or her age, maturity, gender and similar aspects.

It is therefore impossible to give a general definition of what is the best interest of the child: a definition that is applicable to children in general. It is, for example, impossible to say it is always in the best interest of the child to reunite with their parents: such a decision or conclusion has to be the result of a proper examination of all the facts and circumstances concerning that particular individual. An additional issue is to determine who has the authority to decide what is in the best interest of a child – who makes the decision and from what perspective is that decision made? These issues, and similar dimensions of this principle, are what make it difficult to pinpoint its actual meaning in any general sense of the word. As a result, the "best interest of the child" in some contexts has come to cover/mean everything and nothing. Furthermore, the principle is sometimes referred to without those using it actually knowing, or caring about, the assessments on an individual level that are required for the principle to be properly implemented.

So far the CRC Committee has not issued a General Comment on Article 3 although one is to be published in the near future. The forthcoming General Comment is likely to address the matter of unaccompanied and separated children specifically. There is a vast literature on the best interest principle and I will not attempt to summarise the discussions here. In General Comment 6 on unaccompanied or separated children, the CRC Committee emphasises the importance of making an individual assessment when stating that:

> *In the case of a displaced child, the principle [of the best interest of the child] must be respected during all stages of the displacement cycle. At any of these stages, a best interest determination must be documented in preparation of any decision fundamentally impacting on the unaccompanied or separated child's life.*[29]

It is the best interest principle of section 1 that has acquired status as a general principle. However, the two following subsections are also of interest in the context of today's topic as they establish the state parties obligations in order for the best interest principle to be properly implemented. As the scope of the state parties is generally limited to the jurisdiction of the state party it is unclear whether, for example, the obligations set out in Article 3.3 could be seen as having any extraterritorial effects concerning reception centres established abroad, but it is not impossible.

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[28] Committee on the Rights of the Child General Comment No. 6 (2005) Treatment of Unaccompanied and Separated Children Outside of Their Country of Origin CRC/GC/2005/6.
[29] General Comment No. 6, para. 19.

Article 6, on the right to life and development, is relevant in the context of unaccompanied children for the obligations it confers on states with regards to the right to survival and development of the child, a right which includes the protection from violence and exploitation, which would jeopardise a child's right to life, survival and development to the maximum extent possible. Also, the article is linked to the principle of *non-refoulement* (when referring to the right to life).

Last but not least of the general principles there is Article 12**,** an article often referred to as expressing the right to participation in decision making processes. It can be noted that "views" can be expressed in ways other than orally, thus including children that for some reason (young age, disability, fear, illness, distrust etc) use another method of communication. As stated in the article, the weight accorded to the views expressed is to be made in accordance with the child's age and maturity, indicating that an individual assessment must also be made in this case.[30]

Article 12 is considered as the provision most explicitly referring to the child as an autonomous individual rather than an object of protection. It is one of the most controversial articles of the Convention and one of the articles considered most difficult by states to implement effectively. The difficulties lies both in ensuring that children are heard in societies and environments where this traditionally has not been the case, and in allowing for the views of the child not only to be heard but also to have an impact on the decisions being made. As stated in General Comment 5 on implementation "appearing to 'listen' to children is relatively unchallenging; giving due weight to their views requires real change"[31].

In its General Comment 12 on the right of the child to be heard, the CRC Committee emphasises that the right of the child to be heard and to have his/her views taken into account is essential in immigration and asylum proceedings.[32] In GC 6 on unaccompanied and separated children the CRC Committee states that:

> *Pursuant to article 12 of the Convention, in determining the measures to be adopted with regard to unaccompanied or separated children, the child's views and wishes should be elicited and taken into account (art. 12 (1)). To allow for a well-informed expression of such views and wishes, it is imperative that such children are provided with all relevant information concerning, for example, their entitlements, services available including means of communication, the asylum process, family tracing and the situation in their country of origin (arts. 13, 17 and 22 (2)).*[33]

It can be added here that to express one's views or to participate in a decision making process is a *right* and not an obligation, which means that a child should never be forced or coerced to do so. In the case of ERPUM this can be problematic, for example, in relation to the interview techniques used in the process of family tracing and also when it comes to the aforementioned video clips – is participating in recording these films completely voluntary, or perceived as such by the children?

The relationship between the best interest principle and the right to be heard and have one's views taken into account is at the core for understanding and implementing the CRC to its full extent.

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[30] Committee on the Rights of the Child General Comment No. 12 (2009) The Right of the Child to be Heard CRC/C/GC/12 paras. 2031.

[31] General Comment No. 5, para. 12.

[32] General Comment No. 12, paras. 123-124.

[33] General Comment No. 6, para. 25.

In the General Comment on Article 12, articles 3 and 12 are referred to as interdependent and the principle outlined in Article 3.1 is described as:

> *similar to a procedural right that obliges States parties to introduce steps into the action process to ensure that the best interests of the child are taken into consideration. The Convention obliges States parties to assure that those responsible for these actions hear the child as stipulated in article 12. This step is mandatory.*[34]

In other words, you cannot decide what is in the best interest of the child without listening to the child and taking his/her views into account; and it is in the best interest of the child to be able to exercise his/her right to participation in a decision making process.

The CRC Committee continues by stating that:

> *There is no tension between articles 3 and 12, only a complementary role of the two general principles: one establishes the objective of achieving the best interests of the child and the other provides the methodology for reaching the goal of hearing either the child or the children. In fact, there can be no correct application of article 3 if the components of article 12 are not respected. Likewise, article 3 reinforces the functionality of article 12, facilitating the essential role of children in all decisions affecting their lives.*[35]

The fundamental importance of including the general principle of the child's right to participation in a best interest determination is thus explicitly stated by the monitoring body of the Convention.

An additional article of interest in the context of unaccompanied minors is Article 9.1, on children *involuntarily* separated from their families and the state's obligation to ensure that this does not happen except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. In other words, family unity is a core interest but not one that overrides all others. In General Comment 6, the CRC Committee refers to Article 9 in the context of family reunification and emphasises that a best interest determination must be made, taking full account of the views of the child, and that family reunification in the country of origin is *not* in the best interests of the child both if there is a risk of abuse or neglect of the child by the parents or legal guardians and/or where there is a "reasonable risk" that such a return would lead to the violation of fundamental human rights of the child, that is if the principle of *non-refoulement* comes into play.[36]

Given the difficult situation in Afghanistan described to us by Liza earlier today, it is probably not going too far to say that both of these limitations could enter into play for children returned there, both as a result of the unstable and dangerous situation in the country in general, and of frustration from families when the returned child has proved unable to fulfil the expectations placed on his (the children who travel to Europe are most often boys) shoulders.

Articles 20.1 and 20.2, finally, establish that a child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the state. Article 20 in the context of unaccompanied children primarily refers to the provisions of care offered in the destination country but is also relevant for children being returned back to institutional care in the country of origin.

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[34] General Comment No. 12, para. 70.

[35] General Comment No. 12, para. 74.

[36] General Comment No. 6, paras. 81-83.

Some matters of concern

Having outlined some of the main articles of interest in the context of unaccompanied children in the process of return and family reunification, I now look at their compatibility with certain aspects of ERPUM.

As mentioned earlier, the best interest principle is referred to both in the project plans and in additional key documents of the ERPUM project. In the methodology chapter of the ERPUM I project plan, it is clearly stated that "the decisions, activities and agreements made in the project shall be based on the principles of the best interests of the child"[37].

What is lacking however is a concrete analysis of what "the best interest of the child" means in the particular context of ERPUM and what, for example, it would mean in relation to the aim of the project, which is to facilitate the return of children to a country in conflict such as Afghanistan. So the best interest principle is not ignored or invisible in the ERPUM project, but how it is actually implemented and interpreted is not clear.

Also, the general principle expressed in Article 12 on the child's right to express his/her views and for them to be accorded due weight is considerably less visible, or even absent, in the project plans and descriptions of key objectives of ERPUM. The interdependence of the two principles is not referred to in any noticeable extent, not even when the best interest determination is described in somewhat more detail.

As a proper and effective implementation of the best -interest principle presupposes an implementation of Article 12, the absence of the right to participation from the project is problematic. As has been emphasised by the CRC Committee, the interdependency between the principles of best interest and the right to participation is key for an effective implementation of either Article 12 or Article 3. Without allowing for children not only to express their views but also for these views to have an impact on the decisions being made, an assessment of the child's best interest simply is not complete.

It could of course be argued that taking the child's views into account is an integrated part of the best interest determination (BID) and that is also the way in which the BID process is described in the 2008 UNHCR Guidelines on Determining the Best Interest of the Child[38]. However, looking at the material available from the ERPUM project – project plan, final report of ERPUM I, concept notes and so on – very few, if any, references are found to the participation aspect of the best interest determination, which makes it easy to draw the conclusion that it is not a main concern in the project.

Even when the project description refers to the importance of an ongoing dialogue with the minor, it appears to be more as a source of information than as a right for the child to express his/her views or have them taken into account – an example of this can be found in the description of the tracing process outlined in the summary of tracing discussions from the ERPUM Tracing Contact Points (TCP) team. Also, when identifying the steering documents for tracing, the CRC is indeed referred to, but only articles 3, 4 and 9 are mentioned specifically.

In sum, the lack of emphasis or even recognition of the importance of the child's right to participation in creating structures and tools for the return of unaccompanied minors is problematic as it allows for seeing children more as objects than as rights-holders. It also leaves

[37] ERPUM Project Plan 2011-01-15 – 2012-07-15, p. 9.
[38] UN High Commissioner for Refugees, UNHCR Guidelines on Determining the Best Interests of the Child, May 2008.

out – even if unintentionally – a key part of the BID process. I should add that even if the BID is included in the asylum and return processes of one or several of the individual ERPUM countries that does not mean that it will automatically transfer to the structures established by a transnational project such as ERPUM.

Apart from this general point concerning ERPUM, I would also like to comment on a couple of specific issues of concern in the project. One is the proposed placement of children in special reception facilities, so called "welcome centres", in Kabul. According to ERPUM officials, children are only supposed to remain in these facilities for a couple of weeks until family reunification can be accomplished; children will not be sent to these reception facilities unless the family has been notified that the child is returning to Afghanistan and decisions have been made on how actual reunification with the family is to take place. It is, however, unclear what happens if the family or legal guardians are delayed or simply fail to show up. Also, it is not clear from the project description if the tracing process has to be wholly completed before the child is returned. The question is: for how long will the children be allowed to stay at the centre, and if this stay is indefinite, can the reception facilities be considered "adequate" as referred to in Article 10 of the Return Directive?[39] Not to mention whether this is in accordance with the child's best interest.

The return of children to these reception facilities is also problematic with regards to the quality of the facilities themselves, as well as to security issues, access to education and health care. The threshold established in the Return Directive is "adequate". "Adequate" is understood in the ERPUM context as adequate "according to Afghan standards".

The reception facilities are the responsibility of the Afghan authorities, not run by the ERPUM countries. The CRC Committee in its latest Concluding Observations on Afghanistan, published in April 2011, expresses major concern regarding institutions for children who for some reason do not live in a family environment, and the fact that these institutions are not adequately regulated and monitored.[40] The CRC Committee, in its recommendations, urged the State to undertake a number of measures in order to improve these institutions.[41] In the final report of ERPUM I, ensuring the "adequate" standard is described as "challenging in the Afghan context", indicating that there is awareness within the project of the problems on the ground.[42]

It can also be mentioned that the CRC Committee, in the same 2011 observations, expresses concern over the inadequate implementation in Afghanistan of the best interest of the child by legislative bodies as well as in judicial and administrative decisions, policies and programmes relevant to children.[43]

In the context of these concerns, expressed both from outside and within ERPUM, it can be questioned whether the placement of children in such reception facilities when the length of stay is uncertain – ie, when the parents or legal guardians are not in place in Kabul to meet the child upon return – fulfils the obligations of Article 3 and the best interest determination as well

[39] Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally-staying third-country nationals.
[40] Committee on the Rights of the Child Concluding Observations Afghanistan CRC/C/AFG/CO/1, paras. 41-43.
[41] Committee on the Rights of the Child Concluding Observations Afghanistan CRC/C/AFG/CO/1, para. 44.
[42] ERPUM I Final report, p. 18.
[43] Committee on the Rights of the Child Concluding Observations Afghanistan CRC/C/AFG/CO/1, para. 27.

as Article 20 on alternative care. The extent to which the views of the child have been heard and taken into account in accordance with Article 12 can also be discussed. For example, as return is to be voluntary, what has been the child's position on returning not to a family environment, but to a centre in Kabul? Has there been a dialogue where different alternatives have been discussed, considering that being returned to a reception facility might be very different to being returned to one's relatives?

Last but definitely not least, the return of children in general to Afghanistan, a country where the security situation as well as the human rights situation is serious, can also be questioned from a best interest perspective (Article 3.1 again) and, more specifically, in relation to CRC Article 9 and what is stated in General Comment 6 on unaccompanied and separated children in particular[44], which refers both to Article 6 on the right to life and development, and Article 37 (a) on torture or other cruel, inhuman or degrading treatment or punishment.

The General Comment, as I said before, specifically states that it is not in the best interest of the child to return to a country when there is a "reasonable risk" that such a return would lead to the violation of the fundamental human rights of the child. Determination of risk must include investigation, through social work networks, of the security and socioeconomic conditions, the precise care arrangements for the children, their views and level of integration in the host country and their right to preserve identity and continuity of upbringing.

This concern can of course be met by the argument that, following the principle of *non-refoulement*, a child exposed to such risk would not be eligible for return anyway. The risk assessment depends on what is considered a violation of human rights, and if one includes violations such as lack of access to education, lack of food and adequate housing or if it remains primarily a question of lack of security and exposure to violence. Many of these and other basic rights of children are not available to large numbers of Afghan children, which of course is one of the reasons for children leaving in the first place. In the context of the ERPUM project, questions can be asked of how these risks are evaluated and how weighting is accorded to them in light of the state interest of returning these minors to their country of origin.

Just to be clear: I am not saying that the best interest of the child is *not* at all times to remain in the destination country. However, returning children to a volatile security situation such as that prevailing in Afghanistan should be considered with the outmost caution. These concerns are shared by organisations such as the Swedish Red Cross, Save the Children Sweden and the UNHCR.

I would also like to briefly comment on the use of video clips of returned minors I mentioned earlier – clips recorded for the use of case officers when working with children who have received their final decision of refusal. From an Article 12 perspective and the fact that expressing your views is a right, not an obligation, it can be questioned how voluntary the participation in the making of these films is perceived as, by minors who might be residing in the welcome centres, ie, being in institutional care, and taking part in reintegration programmes which might involve economic benefits not only for themselves but also for their families. This, as far as I have been able to see, is not an aspect that has been addressed within the project so far.

A lot more could be said about ERPUM from a CRC perspective, for example, with regards to the matter of follow-ups, both of the effectiveness and outcomes of the ERPUM project and of individual children who have returned.

[44] General Comment 6, paras.81-83.

Finally, I would just like to say that the controversial nature of a project like ERPUM is obvious, however much this would like to be downplayed by those describing it not as operative, but rather as creating models and strategies for future returns, and examining how these can be exercised in the best possible way for the individual child. This is also recognised by the ERPUM project management, who in the final report for ERPUM I refer to the "political debate" and the attention the project has attracted from the media and NGOs as a problem encountered in the implementation of the project (page 18). After all, this is about returning children to one of the world's poorest and unsafe countries; how could it not be controversial?

In connection to that, I think that the signals sent by a project like ERPUM are very important, and is perhaps also one of the key aims of the project even if it is not stated as such. What ERPUM communicates to the numbers of Afghan boys (or children from other third countries) who contemplate embarking on the long and dangerous journey to the European Union is that it is not a risk worth taking as we send back children if we think so fit. Considering that limiting the numbers of Afghan minors coming to Europe is a key objective for many European governments, the message conveyed by ERPUM should not be underestimated.

Ethical reflections on ERPUM

Matthew J Gibney, University of Oxford

The deportation of children – which is what ERPUM pretty much comes down to – is a bit of a tough sell ethically. This is partly due to public ambivalence about deportation generally. As Antje Ellerman has shown, people's view of the acceptability of deportation changes across the public policy life cycle. Considered abstractly, in parliamentary debates, they support it, but they're more hesitant when they see immigration officers come for their neighbour, colleague or fellow church goer. The closer one looks at its human realities, the more repellent deportation often seems.

But deportation is difficult also because we're talking about *children* here. It's hard to square them with the kind of *Daily Mail* headlines that construct most of the public's attitudes to deportees – the benefit cheat, bogus asylum claimant, or convicted criminal. The tough sell gets even tougher when the children concerned are being sent back to some of the most dangerous and insecure countries on the face of the earth, effectively fragile states.

In this talk I want to explore some of the ethical issues raised by ERPUM, and, to some extent, the deportation of non-citizen children generally. In so doing, I want to critically assess the ethical adequacy of this particular project, and to raise issues that would need to be addressed in any attempt to reform the project, if indeed that is possible.

Now I need to start by noting that the kind of ethical critique I want to provide here faces two common objections. The first is the belief that moral values don't really *have much influence on what actually goes on in the world*. The Australian PM Paul Keating once famously said: "Back self-interest, son, it wins every time." In other words, if forced to choose between principled beliefs and people's interests, self-interest tends to motivate people. We might think this is particularly true in the case of governments seeking to win the next election and bureaucracies whose role is merely to act on the instructions of such politicians.

A second reason for resisting a moral perspective is that moral conflicts can't be resolved. It's pointless to talk about values, this argument goes, because everyone's values are different and irreconcilable. Better to talk about what the law says or pitch our arguments at self-interest.

Neither of these claims is completely absurd. But neither is completely accurate. On the subject of self-interest, what's interesting about refugees is that even though states often have the power simply to resist the entry of people, they almost always draw upon moral language to *justify* restrictions and exclusions. Typically, politicians don't just say that refugees have no right to come; they characterise them as morally deficient or undeserving: they are "queue jumpers" or "welfare cheats" or "bogus asylum seekers". They appeal to these characterisations because they judge that they will influence the attitudes and behaviour of the citizenry they claim to represent. In other words, because they see moral language as being causally important in terms of legitimating themselves to their citizenries (and perhaps in the eyes of other states, too).

The second claim is also misleading, though for somewhat complex reasons. But we needn't let them detain us here because what I propose to use for our ethical standard in assessing ERPUM are the values *to which the supporters of ERPUM themselves appeal*. I'm going to engage, then, in a kind contextual normative critique; one which relies on the values implicit in the project, rather than parachuting in with an external (and potentially alien) value system.

Now in order to undertake this task, I will start by identifying what I see as the major values implicit in the ERPUM project. In doing so, I will attempt to defend the project in the most vigorous way I can. I'll then move to interrogate the applicability of the values themselves, asking whether they are indeed compatible with the deportation of children back to countries like Afghanistan. I'll conclude by suggesting that ERPUM does not take the implications of its core values seriously enough, as well as suggesting some further ethical questions raised by the project.

I.

What is to be said – ethically – for ERPUM? What are its guiding values? I think these might be stated as such: first, it aims to protect the ***integrity of asylum***; second, it affirms the importance of ***home***; and third, it aims to protect the ***security*** of those sent back. Let me now outline these values in more depth.

The first value that ERPUM claims to promote is the ***integrity*** of (and, consequently, public confidence in) the asylum systems of the participating countries. It does this by returning unsuccessful asylum seekers to their countries of origin. What is the point of an asylum system, one might well ask, unless it can achieve its end of separating out those who should stay (whose circumstances warrant protection) from those who should not? If asylum systems merely allow people to stay regardless of their need for protection (as was arguably the case with Germany's asylum system in the early 1990s), the public will lose faith in asylum and protection will fall into disrepute.

To extend this argument morally, we might say that return of unsuccessful asylum seekers is a morally defensible part of the implicit "asylum contract" between states and (asylum) applicants. Under this contract, states have a duty to employ sound and fair procedures to assess an individual's need for protection, and to provide it if it is needed; and, in return, individuals have a duty to leave the country if their protection claim is unsuccessful. Thus, one reason to support ERPUM is that if we care about the provision of asylum (and we are seriously morally deficient if we do not), we must respect the legitimacy of state's enforcing the return of those whose claims do not warrant protection. The removal of unsuccessful asylum applicants upholds the principle of asylum.

The second value, evidenced in ERPUM, I shall loosely call that of *respect for home*. ERPUM is ethically defensible because it returns people back where they *should* be, back to their home. Home here is conceptualised, in the first instance, as one's country of citizenship, valued in part because of the specific cultural and national context it provides. This feature of deportation – that it returns people to where they *belong* – is what differentiates deportation from forced migration. After, all deportation is perhaps the most coerced form of movement there is. ERPUM is morally respectable, then, because it enables children to reconnect with their homeland, their culture, national history and environment. An appropriate analogy might be the way that social workers attempt to place adopted children with parents of a similar ethnic and racial background.

There is a second dimension to this aspect of "home". Under ERPUM, efforts are made to trace and, in some cases, return unaccompanied children to their parents. As well as the state of citizenship, home is also conceived as the family relationship. ERPUM might, then, be defended as a kind of family reunification policy in reverse. Just as states often make provision for families to be reunited by allowing immediate relatives of immigrants to enter, ERPUM unifies families the through return or expulsion. In both cases, the importance of the family bond is affirmed by state action.

The third value embedded in the ERPUM is that of *security*. A prominent feature of all defences of ERPUM is the central role the security of the children involved is said to occupy in the scheme. In the UK government's articulation, for example, return will apply only to: unsuccessful asylum seekers; those above 16; and then only to those who have been individually screened to ensure that they would be "safe and secure" upon return to Afghanistan. Those who cannot be returned to their families will be placed in funded children's homes in Kabul.

There is also another way in which the ERPUM prioritises the security of the children in its care. By returning unsuccessful asylum seekers, it might be said to *deter* (or if I can be excused for using the term), dis-incentivise long, dangerous trips by children from Afghanistan to Europe in search of protection (by those who are unlikely to need it). This is perhaps particularly the case if the returns under ERPUM are reasonably well-publicised. A similar logic is at work in the Australian government's current policy of using Nauru as a processing centre for asylum claims. According to Australian officials, the aim is to deter life-threatening trips to Australia by sea.

So, there it is: according to its supporters, ERPUM is compatible with the integrity of asylum; proper respect for the importance of home and family; and with the security of the children returned and others who might embark upon dangerous treks to Europe. These are not trivial virtues, and ones that one should not lightly dismiss.

Now it might be said that these values are not really the ones that motivate the states concerned: really, they are simply extending their immigration controls for the various reasons – to minimise costs, to get rid of unwanted foreigners, or achieve other electoral ends. But the motivation may not matter greatly here if the ends are valuable in themselves. After all, the fact that the National Party government in South Africa supported the end of apartheid because it feared civil war, rather than because it was committed to racial equality, did not make abolishing apartheid any less right as a policy.

II.

A better approach – at least to start with – is to take these moral goals at face value. We can then critically question whether ERPUM is really is an appropriate way of promoting them. Let me now return to them with a critical eye.

Integrity of Asylum

While this may be an important goal, there are some reasons for doubting its force in the ERPUM case. First, it is not clear to me that public confidence in asylum is so lacking in nuance that it mandates the sending back of children who have failed to receive asylum. After all, the UK policy hitherto has been not to send children back home and this practice has been relatively uncontroversial. Certainly, it has not damaged public confidence in asylum. Indeed, it seems to me that the case that needs to be made to the public is *for* the necessity of deporting children rather than against it.

I was recently taken on a tour of a specially designed UK immigration detention centre for families with children, the Cedars. It was a pretty impressive place: unlike other removal centres, there were child friendly murals on the walls, hotel-like accommodation, hidden fences, huge toy and learning rooms for the children detained there, and qualified staff from Barnados on hand to supervise and assist the children. No expense had been spared. The thing was that, when we visited it, the Cedars was empty. Moreover, even at capacity it could only take a relatively small number of families. It left one wondering: why all this effort and expense for such a small number of children? But this was the wrong question. The centre was designed the way it was less to ease the anxieties of the detained children, than to reassure the public that the detention of children could be acceptable. The point is this: if we have to go to such efforts to convince the public that detaining children or deporting children can be done "humanely", one can hardly argue that public confidence in the asylum system depends upon it.

A second limitation of the integrity rationale is that the implicit contract between asylum seeker and the state breaks down in the case of children. It might be reasonable for the state to argue that adult asylum seekers, by lodging their claim, have implicitly accepted that they have a duty (for the sake of the proper working of the asylum system) to return home if they are unsuccessful. But children are too young to be bound by such compacts (implicit or explicit): they are incapable of giving informed consent. That's why, of course, special ethical arrangements that must take place before research, for example, can be conducted with them. It's thus clear that one important moral reason why the state demands that unsuccessful applicants return home (or can be forced home) cannot be applied in this case.

Finally, there seems to me something morally dubious about arguing for the deportation of children as a means to protecting the integrity of the asylum system. This is because it seems that we are using the welfare and security of children merely as an ends to achieve an institutional goal (preserving asylum or immigration control). I'm no expert on interpreting what the best interests of the child means, but surely by any relatively stringent reading it means that consideration of the child's welfare should not be made subservient to other social goals. If we take children as individuals, in Kantian terms, who must be treated as means rather than ends, the whole idea of employing integrity arguments seems somewhat dubious.

Respect for home

A more promising line of defence of the ERPUM is the claim that it respects the identities of the children involved by returning them "home" and, if possible, enabling them to rejoin relatives. This claim of home, however, is immediately made dubious by the need to take into account security concerns and adequate places to host the children concerned. It is Kabul that will become home for most of them, regardless of whereabouts in the country their actual home is.

But on a deeper level, the problem the value of home embodied in ERPUM is its very static interpretation of the concept. Above all, it takes little account of how these young people's identities have changed during their time in the European countries within which they have sought

protection. It ignores, for example, the fact that the children may now feel they belong – and morally have good grounds to believe they belong – in the European country where they are living.

The idea that those who *belong* in the liberal State extends beyond holders of legal citizenship chimes with recent writing by a range of legal and political theorists, including Joseph Carens, Rainer Baubock and Ayelet Shachar. From a range of perspectives, these scholars have stressed that non-citizens may have powerful moral claims to citizenship and protection in the states they have been living, especially when they have live there for many years and become integrated into these societies. One form of this argument draws upon a communitarian view of state membership. In this view, our individual identities are constructed by the social and cultural community in which we live. Hence, people who live in the state for long periods, by coming part of that social and cultural community, have strong moral grounds for being considered members and thus protected from deportation.

This view of "societal or moral membership" has special relevance for young non-citizens. Because, even though they may have lived in the state for a relatively short period of time, they often adapt at great speed to the society's dominant norms, values and culture.

The malleability of their personality, their participation in schools, and their networks of friends, tends to telescope the process of social integration: turning them quickly into societal members. If we are to take seriously children's claims to home, we may be led – at least in some circumstances – to accept their moral right to stay in Europe.

There is another aspect to this conception of identity to which the ERPUM appeals, of course – and that is to *family*: to the fact that children should be with their relatives and, if possible, their parents. This is clearly a powerful moral claim. But it is important to note that sending children to Afghanistan is not necessarily the only way of respecting it. We could also reunite families *in Europe*, by offering the parents the opportunity to join their children here. This would be particularly appropriate if security concerns make it dangerous for young people to return to their family homes. Of course, governments seem unlikely to take this step. But this merely raises the question of how serious governments are in their commitment to reuniting families.

Security

This leads us to the last value affirmed by ERPUM, that of *security*. The claim that the security and welfare of the returnees can be ensured is obviously a key element in the project's legitimacy. Grave doubts have been expressed about whether any person living in Afghanistan today can enjoy a secure life, especially children. Here is a country that by almost any indicator is a failing state and where parts of the country are still experiencing bloody conflict. Whatever else we might say about the ERPUM project, one thing is sure: it involves sending children from countries where the average life expectancy is 80 years or more to one where it is 48.3 years.

But let's put aside the question of the security situation *inside* Afghanistan. Let's instead consider the implications of ERPUM for the security of those children *in Europe* subject to its provisions. I'm concerned here with security *not* in brute physical protection terms (ie, their access to rights, and a non-life threatening environment). It's clear that Europe is superior to Afghanistan in this regard. But in terms of children's overall well-being, their psychological health and subjective experience of security. Here we need to ask: what are the implications of ERPUM making children subject to deportation once they reach a certain age, be it 16 or 18?

Clearly, any unsuccessful asylum seeker child advancing towards that age would have to live under the shadow of deportation. If the cut-off is 18, one would expect it to weigh particularly heavily on the mind of a 17 year old; if it were 16, on the mind of a 15 year old. A supposedly "safe" age at

which we deport someone does not mean that the anxiety (the sense of a life in limbo) will begins only when removal is being effected. On the contrary, it will colour the individual's experiences for months or even years before. Indeed, that is what *anxiety* is – worry about a *future* event.

If we're going to take the security of children seriously as a concept it would pay for us to consider a concept like "ontological security" rather than simply brute, physical security. I borrow this term from Elaine Chase, who studied unaccompanied children in the UK. She found that what they most valued in their lives was "a biographical narrative; a sense of belonging and attachment; a belief that life had routine, predictability and could offer security and sense of projected self with a clear trajectory". These are hard enough things to establish in childhood, and youth. But they are next to impossible in a context when children live under the shadow of possible expulsion from the state. If we adopt this kind of broad view of children's security, can we really say it can be compatible with ERPUM? I don't this so.

Conclusion

Let me draw my discussion to a close, then. But before I do so, it's worth saying that I have only scratched the surface of the moral terrain of ERPUM in this talk. There are plenty of other moral questions we might consider: do countries, like the UK, have *special* obligations – obligations of a higher order – to protect from harm children from Afghanistan and because of their military involvement in the country? How does the moral landscape of ERPUM change if the children concerned *consent* to being returned their country of origin, or are even eager to return? Finally, are asylum systems in European countries procedurally fair enough to make us confident that the children whose claims are rejected really are not really refugees?

This last question seems particularly relevant given that last year a study by the Children's Society found that most children experienced the system as "long, traumatic, and upsetting" and some that it was pervaded by a "culture of disbelief."

Even my scratching of the surface here, however, shows serious problems with ERPUM. The key values that are supposed to inform this project – the integrity of asylum; respect for young's people's identities; the importance of security – are conceptualised too narrowly or uncritically to ground the practice of deportation. A cynic might say that is because these values are simply a fig leaf for the real state aim: to get out of the state as many unwanted foreigners as possible. Certainly, if we take the values ERPUM claims to embody seriously, deportation, particularly to countries like Afghanistan, seems hard to defend.

Panel discussion

Jennifer Allsopp, University of Oxford (raporteur)

Panelists: Martin Lemberg-Pedersen, University of Copenhagen (Chair); Jan Murk, UNICEF Netherlands; Eva Singer, Danish Refugee Council; Andrea Vonkeman, UNHCR; Liza Schuster, City University London; Rebecca Stern, University of Uppsala

The panel discussion, chaired by Martin Lemberg-Pedersen from the University of Copenhagen, was a chance to reflect on the themes that emerged throughout the day's proceedings. Panelists were Jan Murk from UNICEF Netherlands, Rebecca Stern from the University of Uppsala, Eva

Singer from Danish Refugee Council, Liza Schuster from City University of London and Andrea Vonkeman from UNHCR's Bureau for Europe, who joined the panel via video link from Brussels.

Jan Murk began by drawing attention to the emphasis on family tracing that had emerged throughout the workshop and, in particular, to the difficulties associated with tracing families in Afghanistan. He also alluded to the institutional ambiguity surrounding the future of ERPUM, asking, what will follow this pilot project if it succeeds in establishing an institutional reception in Afghanistan? Drawing on the oft-cited but little understood example of Dutch returns to a reception centre in Angola, he argued that while this policy has often featured in ERPUM references as the "Dutch success-story" on which ERPUM is modelled, this narrative is both ill-conceived and omits crucial and problematic facts about the Angolan experience. In fact, according to Murk, no forced returns took place. Only five or six minors ever left the Netherlands in the direction of the reception centre and they were picked up by alleged family members before they even arrived, so consequently, no minors have ever lived there. The existence of the reception centre was, however, used to reject any residence to Angolan minors as a group, on the basis of adequate reception facilities being available.

If the same approach were to be applied to ERPUM, Murk pointed out, there is the possibility of the project pushing large groups of minors into a state of "illegality" in Europe rather than enforcing return, which could lead to "just as many problems." Murk also raised the point that whilst deterrence, even if not explicitly stated, may be one of the main arguments for ERPUM, it is in reality hard to prove a causal link between the increasing number of return policies aimed towards children and lower numbers of child immigrants. He stressed that if states were to actively promote return to reception facilities in Afghanistan, it is unclear how certain practical aspects of the ERPUM project would function in practice, such as how post-return monitoring would take place, or the impact of the returns on the long-term development of children. Given these concerns, he concluded, returning minors to institutional reception under standing policies in the ERPUM countries would breach the rights of this group of children.

Beginning with a brief overview of the 2010 EU Action Plan on Unaccompanied Minors and corresponding shift in Danish law, Eva Singer pointed out that the response to the increasing number of young Afghan asylum seekers in Denmark has taken place in a particular political context. Whilst no minors are, as of yet, being returned, the Danish law now allows for the return of minors to a reception centre, even when family members cannot be traced, Singer explained. One of the assumptions behind the EU Action Plan and the amendment of the Danish Aliens law was that most Afghan minors are not at risk of persecution in their home country. Looking at the recognition rates in Denmark, this is not true, since 53% of all Afghan asylum seekers (both adult and minors) were recognised as being in need of international protection in 2009, and 41% in 2010. Curiously, even though Denmark is officially only an observer state to ERPUM, the country has held two public discussions in parliament on the subject of ERPUM, which is more than any other ERPUM member. However, as Singer explained, as of yet, the public is still awaiting answers to most of the questions asked during the parliamentary discussions and NGOs in Denmark continue to ask questions. Finally, Singer stressed the particular context of persecution that asylum seekers may be fleeing in Afghanistan and, in particular, the fear of persecution from private actors. The overall situation of children in Afghanistan is also bleak, she pointed out. Twenty percent of all children in Afghanistan suffer from post-traumatic stress disorder, and a staggering 60,000 children are addicted to hard drugs.

Andrea Vonkeman next outlined UNHCR's position in relation to ERPUM. She spoke of anxiety on the part of UNHCR, raising the question of how to engage with ERPUM in a context where member states are seeking advice on how to proceed. Return in itself, she pointed out, forms part and parcel of a well-functioning asylum system; adding that return may be in the best interests of some

children. However, Vonkeman drew attention to the importance of dignity and safety of the person, especially for children, in the context of returns. The best interests of the child, she stressed, should form a primary consideration in any determination of a durable solution.
Vonkeman pointed out that ERPUM countries have said that they will abide by the UNHCR Aide Memoire covering specific safeguards for the return of unaccompanied and separated children to Afghanistan, which some countries have attached to the Tripartite Agreement between the Afghan government, UNHCR and their own government. This Aide Memoire sets out safeguards around best interest determination, family tracing and family assessment prior to return. Return to institutional care in this context, she argued, should be a last resort; the ERPUM project needs to focus on determining the best interests of the child and finding individual durable solutions for children and consider all relevant options, including possible third country solutions, instead of focussing on just one. Such best interest determination should be holistic, multidisciplinary and independent, and should include child participation, counselling and engagement with families in countries of origin (or in some cases third countries) as appropriate.

Vonkeman concluded by pointing out that while the ERPUM project appears to be premised on the Afghan government having to take overall ownership of care, the difficult security and economic situation and an "at best nascent" child protection system make this extremely challenging. Echoing several participants throughout the workshop, Vonkeman raised the issue of the opaqueness, vagueness and contradictions around the ERPUM project, yet stressed that it is important to note that until now, no children have been returned under ERPUM.

In response to Andrea Vonkeman's outlining of the position of UNHCR, Liza Schuster echoed concerns regarding the lack of a child protection system in Afghanistan, and asked why, in this context, international organisations such as UNHCR were not explicitly rejecting the ERPUM project. Building on her earlier presentation, Schuster reiterated the concern, which she pointed out was expressed to her personally by Afghan Ministers, that although the Afghan government is not in a position to deal with child deportees, the ERPUM countries choose to ignore this, instead applying massive political-economic pressure to make the Afghan authorities assume responsibility of child deportees anyway. People in Afghanistan are still worried about the future, Schuster argued, and parents on the ground will continue to do what they think is in the best interests of their children, including paying for their children to migrate out of the country in dangerous circumstances.

This gave rise to an interesting exchange between Schuster and Murk about the potential impact or lack thereof, of NGOs giving a "constructive critique" of European states' policies aimed at restricting immigration. While Murk argued that full and absolute rejection of any form of return policy is not instrumental in guiding state policies, Schuster took the position that NGOs sometimes need to disassociate themselves from clearly inhumane policies. In this context, Lemberg-Pedersen pointed out that the case of ERPUM illustrates how European states can use constructive NGO critique to seek "legitimacy by association," claiming that controversial policies are developed in consultation with actors such as UNHCR. This prompted Vonkeman to clarify that UNHCR is not involved in ERPUM, and that the project has not been developed in consultation with UNHCR. She emphasised that at the ERPUM conference in November 2012, UNHCR had, together with Save the Children and the Red Cross, made clear to the ERPUM states that the necessary safeguards for returning unaccompanied minors to Afghanistan and for ensuring best interest determination were not in place, neither in the receiving countries nor in Afghanistan. Rebecca Stern echoed Jan Murk in drawing attention to the lack of follow-up structure factored into the ERPUM project. There is also, she stressed, a question of ownership: the extent of responsibility of ERPUM counties for what happens in reception centres. Echoing Liza Schuster and Andrea Vonkeman, Stern expressed concern that the Afghan authorities would be in a position to cope with child deportees.

In his concluding remarks, Martin Lemberg-Pedersen stressed that, as Jan Murk and Eva Singer had demonstrated, the level of information available regarding ERPUM varies greatly from country to country. Linking these differences to Murk's and Stern's concerns about post-pilot policies, he found it very problematic that the ERPUM project offers no reflections whatsoever regarding how participating European states may seek to implement child deportations according to their own legislations and internal policy trends, or the way in which the underlying aims of the ERPUM project can therefore be manifested differently in each country.

Alluding to the question of responsibility raised by Rebecca Stern, he argued that the ERPUM project also represents a deeply worrying landmark event. This, he said, is because the project is the first time that the European trend to externalise responsibilities for migration control and care is being applied to unaccompanied child refugees coming from one of the most fragile states in the world. While the 2000s gave rise to many of EU externalisation policies, the ERPUM project is the first one to target unaccompanied children. As such, Lemberg-Pedersen concluded, the project seems to take to another level the European "race to the bottom" in terms of restrictive immigration policies, this time from two countries recently savaged by wars in which European states participated.

The discussion then opened to the floor. A participant problematised the messaging around ERPUM in terms of "saving children" from dangerous journeys. Here, Schuster emphasised that ERPUM- and EU-discourses appealing to humanitarian values underlying interception and deportation policies must never be taken at face value, but should always be compared with the actual consequences on the ground. Lemberg-Pedersen pointed to how the intense European-Libyan push back practice – whereby potential boat migrants are intercepted before embarking on boats and returned to detention facilities – has also been justified in a similar fashion. Yet, while not drowning, these returnees faced violent, inhumane and sometimes fatal conditions in Libya, something that did not feature in the European discourses.

Another question concerned the situation of young migrants in Europe who are already being deported when they "age out" at the age of 18. Here, Eva Singer remarked that this issue is of special concern to Danish Refugee Council in Denmark. These young migrants, who are not surrounded by the same safeguards as minors, also needed to be factored into the discussion, said one participant. Other questions concerned the nature of "assisted voluntary returns," further discussion on the issue of responsibility sharing, the role of civil society and the tension between international guidelines and state practice.

One participant asked about the response of other European states to ERPUM and what the difference is in practice between "observer" and "participant" states. Here Lemberg-Pedersen said that while Denmark was officially only an observer state, this is only due to the Danish opt-out from key EU legislations and the Danish authorities have, in reality, been part of the project's planning efforts from the beginning. Finland was asked to join ERPUM early on, but rejected, and the Finns have never been listed as an observer state, he said. Jan Murk added that the participant/observer distinction is, in fact, of no practical difference. Several further questions raised by participants focused on issues including poor decision making on asylum cases. More specifically, the discussion turned to how European authorities' denials that unaccompanied and separated children are individually persecuted do not square with reports detailing how children risk forced recruitment to militias as child soldiers, recruitment to child prostitution networks, or persecution, sometimes with fatal ends, because they are perceived as having been 'Europeanised.'