Addressing Migration of Unaccompanied Minors from and through the Western Balkans

Regional Report
2015

Prepared for the International Organization for Migration by:
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This assessment report has been prepared by the International organization for Migration (IOM) in the framework of the project “Supporting Western Balkan Countries in Efficiently Responding to the Challenges Posed by Migration of Unaccompanied Minors”.

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# ACRONYMS AND ABBREVIATIONS

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<thead>
<tr>
<th>Acronym</th>
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<tr>
<td>BiH</td>
<td>Bosnia and Herzegovina</td>
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<td>CAT</td>
<td>The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment</td>
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<td>UAMs</td>
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<td>UN</td>
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<td>UNHCR</td>
<td>United Nations High Commissioner for Refugees</td>
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1. INTRODUCTION: COUNTRY AND REGIONAL TRENDS OF UAMs

The project “Supporting Western Balkan Countries in Efficiently Responding to the Challenges Posed by Migration of Unaccompanied Minors” sets as an overall objective to contribute to strengthening the capacity of the Western Balkan (hereafter WB) countries for applying common approaches and actions in responding to the challenges posed by the migration of unaccompanied minors (hereafter UAMs), in line with European Union (EU) priorities and actions in the area. The project is funded by the IOM Development Fund and implemented by the IOM missions in the WB countries in partnership with the relevant government stakeholders in each country. The first project component foresees the undertaking of a national gap analysis of responses to the migration of UAMs, including policies, legislation and institutional capacities in each WB country. This activity will contribute to improved evidence and enhanced knowledge on migration of UAMs from and through the WB region, which in turn is expected to facilitate the identification and referral of UAMs to protection services.

This report analyses the findings of six WB country reports, which are based on data collected through desk research and interviews with stakeholders between May and July 2015. For the purposes of this project, a UAM refers to “a migrant under the age of 18, who is not accompanied by either of his/her parents or an adult responsible for him/her and who originates from a country outside the European Union”1. Under this umbrella term, there are various categories of child migrants such as:

- separated migrant children;
- asylum-seeking and refugee children;
- trafficked children;
- internally displaced children;
- child labour and street children (migrated and engaged in economic activities in a WB or EU country – these two categories overlap);
- former child soldiers (children originating from war affected areas);
- HIV/AIDS orphans;
- circular migrants – left and returned and engaged in further migration.

The WB region has experienced different forms of migration in the past few decades. The most prominent ones are the “forced” migration due to the wars in the 1990s and the economic out-migration since the collapse of communist regimes in the region. The past five years, however, have recorded new patterns of migration and mobility. While economic out-migration from the region has not stopped (e.g. UNSC resolution 1244-administered

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1 As per Article 2(f) of the Council Directive 2001/55/EC “On minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, 20 July 2001.”
Kosovo\textsuperscript{2}) and different forms of return and repatriation have taken place (e.g. through re-admission agreements; due to economic crises in Greece and its consequences), the WB countries appear to have become the scene of transit and circular migrations, as well as receiving countries of migrants from a diverse set of countries of origin. Forms of migration include both economic labour migration and asylum-seeking, as a result of war and safety issues in war-stricken countries. For example, the number of registered migrants was as high as 1,750 in 2014 in the former Yugoslav Republic of Macedonia.

The movement of UAMs shares the characteristics of migration patterns described above. However, there are differences among WB countries in terms of their positioning against such flows and their response to them. For example, the former Yugoslav Republic of Macedonia appears mostly as a transit country, whereas Montenegro consists predominantly of a destination country. Bosnia and Herzegovina (hereafter BiH), on the other hand, reports that due to its specific national and regional governance, it is difficult to evaluate the intensity of migration into, through and from the country. Kosovo/UNSC 1244 appears mostly as a country of out-migration – a phenomenon that has intensified in the past few years, but it is also a destination country for women, children and men subjected to sex trafficking and forced labour, including the restaurant industry. As many as 337 UAMs were recorded migrating from Kosovo/UNSC 1244 in the period of 2010–2015. Like Kosovo/UNSC 1244, Albania also experiences an out-migration phenomenon but at the same time, it also plays the role of a transit country for UAMs from third countries trying to enter the European Union. As a result, the issue of immigrating or the transiting UAMs is considered insignificant in face of other forms of migration that have been recorded there in the recent past.

Categories of UAMs\textsuperscript{3} most frequently recorded in the region are: a) asylum-seekers, b) trafficked, c) repatriated and d) emigrants towards more developed countries. However, there appears to exist a hierarchy of UAMs in terms of their “visibility” and policymaking priority. Country reports show that trafficked children and asylum-seeking children are the most visible when it comes to available statistics, and policymaking on UAMs. In other cases, visibility is referred to in the literal sense: Montenegro, for example, reports that one of the first categories to be included in the policymaking on child migration were child beggars.\textsuperscript{4} However, when it comes to provisions that countries have put in place in terms of assistance, a hierarchy of “subcategories” of UAMs is noticeable, which privileges those who migrate due to forceful events, such as trafficking or war.

When it comes to statistical data, there is a high variation of numbers of UAMs across the region. For example, Albania is mostly concerned with emigration of UAMs toward EU

\textsuperscript{2} References to Kosovo shall be understood to be in the context of Security Council resolution 1244 (1999). Hereinafter referred to as Kosovo/UNSC 1244.

\textsuperscript{3} These definitions are based on migration literature and do not correspond to a systematic definition used across the WB region.

\textsuperscript{4} It should be noted that child beggars are not always UAMs. A recent study by Terre des Hommes showed that many beggars in Kosovo/UNSC 1244 and the former Yugoslav Republic of Macedonia had migrated there with their families from Albania, or were local residents http://tdh.ujlap.hu/upload/document/7228/Mario_Macedonia_Web.pdf and http://tdh.ujlap.hu/upload/document/7231/Mario_Albania_Kosovo_Web.pdf
countries. By the end of May 2015, Italy\(^5\) reported the presence of 1,233 Albanian UAMs in its territory, representing 15 per cent of the total number of minors in Italy. Almost half of the asylum applications in 2014 in the United Kingdom were from Albanian citizens under the age of eighteen. Other countries such as France and Germany have also reported an increase of the presence of UAMs from Albania who migrate or seek protection through the asylum process in these countries using the free visa regime between Albania and the EU Schengen area. Serbia records a high number of asylum-seekers, reporting a number of 2,663 (2,515 boys, 148 girls) UAMs seeking asylum in the period of 2012–2015. The former Yugoslav Republic of Macedonia reports a steady number of UAMs appointed a guardian, varying from 49 in 2012 to 64 in 2014. BiH reports that there were a total of 22 UAMs for the period of 2010–2015; 9 cases were all trafficked children and 13 consisted of returned/repatriated ones. Similarly, Kosovo/UNSC 1244 reports that out of 49 cases of UAMs in the past 5 years, 44 were asylum-seeking minors originating from war-stricken countries. Due to its history of emigration, Kosovo/UNSC 1244 also recorded a comparably high number of repatriated UAMs – 49 in the period of 2010–2015. In contrast, while the number of adults seeking asylum in Montenegro is high for the 2007–2015 period (8,802) in comparison to data reported by other countries, the number of UAMs was 21.\(^6\)

Although it is difficult to speak with certainty about the intensity and short-term trends of these movements due to inconsistent data the countries have, it appears that the 2010–2013 recorded high flows of UAMs across the region; for example, 2013 recorded the highest number (68) of UAMs appointed a guardian in the former Yugoslav Republic of Macedonia; Kosovo/UNSC 1244 recorded the highest number (22) of UAMs seeking asylum in 2010; in 2013 BiH recorded 83 asylum-seeking UAMs; there were 112 child migrants registered in 2012 in Montenegro – the highest in the period in question. Exceptionally, Serbia recorded the highest number of UAMs in 2014 (1,563). Countries of origin for UAMs residing or transiting in the region are primarily war-stricken countries, such as Syrian Arab Republic, Afghanistan and Occupied Palestinian Territory. The increase and diversification of countries of origin for the UAMs moving to and across the WB countries is worth emphasizing. In 2013 alone Serbia recorded UAM asylum-seekers from 32 different countries – a list which includes a range of new source countries that are not traditional sending countries for the WB region.

The geopolitical position of each WB country and developmental indicators of the countries involved in the project also matter. Although a primarily transit country, in comparison to other WB countries, Serbia for e.g. appears to receive a high number of asylum-seekers which enter the country via the former Yugoslav Republic of Macedonia or even Bulgaria. The former Yugoslav Republic of Macedonia on the other hand reports that it is mostly a transit country for UAMs. In comparison to other WB countries, BiH reports a much lower number of UAMs, and only a slightly higher number is reported by Kosovo/UNSC 1244, while Albania reports a rising number of UAMs, who are citizens of Albania migrating to

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6 It should be mentioned that the high number of asylum applications does not necessarily materialize in settlement of migrants in the WB countries. Kosovo/UNSC 1244 reports that out of 598 asylum applications since 2008, only 1 person was granted refugee status in 2014 and an additional 5 positive decisions were taken on subsidiary protection.
Italy for economic reasons, or seeking asylum in other EU countries. The pull factors for each country and the overall trajectories remain to be explored further through interviews with UAMs and their immediate carers and guardians.

There are two main issues worth mentioning in relation to the general approach towards UAMs in the WB. Firstly, the issue of UAMs remain slightly invisible due to the different challenges that countries go through – in terms of socio-economic changes, and also in relation to different types of migration that have been recorded in the area. In turn, institutional transformations exert two contradictory effects; the still inconsistent national legal and policy framework due to rapid transformations of past decades makes UAMs less visible. On the other hand, the process of EU integration brings the issues of UAMs to the fore of policy discourse. Indeed, the EU integration process and the visa liberalization for some of the WB countries is listed as one of the main reasons for the profound change in the migratory and mobility patterns in the region. The ability to travel without a visa to Europe is enabling many citizens of WB countries to travel more freely and to apply for asylum in more developed European countries. This is in particular the case for Albanian citizens, including the UAMs. At the same time, this new regime, coupled with the newly established asylum system, has made the region attractive to migrants originating from outside Europe who aspire to settle in a developed European country. Serbia, for example, faces intense demand for asylum, with 22,000 cases registered in the first 5 months of 2015. Considering the prospects of accession in the EU for WB countries, this aspect alone should count for increased migration into the region in the future.

The WB countries appear unprepared to handle this rapid change in the migration patterns. Orientated for a long time towards the management of migration flows as a result of war and economic stagnation, the developing legal framework contains fragmented provisions that could be referred to in order to regulate these movements and provide assistance to migrants. There also exists an inconsistency between the advancing legal and policy framework and the implementation, which tends to fall behind.

Furthermore, informality appears to characterize the situation with the new migration flows in the region, which also enhances smuggling and, as a result, increases the risk of human trafficking and other potential dangers related to migration.

The countries report difficulties with data and research on the topic of UAMs in the region is very scarce. The reasons for this from a regional point of view, is a generally weak infrastructure and data gathering culture and lack of coherent migration management systems in place. Other reasons link specifically to institutional developments in each country. BiH awards the problems with UAMs to the specific State organization; Serbia and Albania note that there is a lack of clarity when it comes to UAMs as a category in terms of migration management and also in terms of child protection services. Kosovo/UNSC 1244 and the former Yugoslav Republic of Macedonia appear better equipped when it comes to the legal and policy framework, but report challenges in implementation. Since national authorities struggle with the management of migration in the region, when it comes to the issues of UAMs the situation is even more problematic. It appears that in the WB countries it is the non-governmental sector that is handling the day-to-day work with UAMs.
2. LEGAL REGULATION OF UAMs

2.1 International legislation on migrant children adopted

The international legal framework adopted by WB countries includes: a) international documents developed at international level, primarily under the auspices of the UN; b) Council of Europe instruments; c) EU law, programmes, regulations and standards – even though WB countries that have or potentially will have EU candidate status cannot adopt EU law, they are expected to adopt laws which are in line with EU legislation and standards. Countries report that the adoption and integration of the international legal framework and, therefore, its implementation is problematic due to the nature of international law and issues related to the legal framework and institutional capacity of the WB countries. In addition, WB countries have signed readmission agreements – between WB countries and EU countries as well as between WB countries themselves. In Serbia the strategy for the reintegration of returnees under this agreement makes direct reference to children without parental care.

a) WB countries have signed the UN Universal Declaration of Human Rights and the two major deriving documents, such as the International Covenants on Civil and Political Rights and the International Covenant on Economic and Social Rights. Additionally, the WB countries have adopted and/or ratified a series of major conventions, as listed below:

1. The UN Convention on the Rights of the Child (CRC) and two optional protocols on children and armed conflicts and children and pornography;
2. The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT);
3. The UN Convention relating to the Status of Refugees;
4. The UN Convention against Transnational Organized Crime;
5. The International Convention on the Elimination of All Forms of Racial Discrimination and the counterpart on Women;
6. The Convention on the Rights of Persons with Disabilities;
7. The International Labour Organisation Convention no. 182 on the Worst Forms of Child Labour;
8. The ILO Convention no. 138 on Minimum Age for Employment;
9. The ILO recommendations No. 190 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour;
10. The ILO Conventions on Migrants in case of illness, old age or death.

Even though Kosovo is neither a member of the UN nor of the Council of Europe, the key documents of the international law are adopted in similar fashion with other countries in the region.
b) Several documents were signed as a result of membership in the Council of Europe. A complete list of the acts reported by the WB countries include:

- The European Social Charter (revised) 1996;
- The European Conventions for the Protection of Human Rights and Fundamental Freedoms;
- The European Convention on the Legal Status of Migrant Workers 1977;
- The Council of Europe Framework Convention for the protection of National Minorities;
- The Council of Europe Convention on Action against Trafficking in Human Beings 2005;
- The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse 2007;
- The European Convention on Cyber Crime;
- The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;
- The Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities.

c) EU law is primarily adopted through the conditionality that WB countries have accepted as part of their EU integration and future accession in the EU. The former Yugoslav Republic of Macedonia, for example, reports that this process has had an impact on the way issues related to UAMs are regulated. Some early legislation links to readmission agreements and also management of out-migration, which was directed towards more developed European countries; for example, Directive 2008/115 of the European Parliament and of the Council on 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals. In addition, countries operate under the directives included in the common European asylum system, which was adopted in 2013, although in the case of Serbia, the asylum system is only partially in line with these directives. Two more directly related documents are the resolution of the European Parliament (2013) on Unaccompanied Minors and the Action Plan on Unaccompanied Minors in the EU (2010–2014).  

8 The way and the degree to which this plan was adopted by each WB country varied.
2.2 National legislation

2.2.1 Legislation on child protection

The legal framework on child protection encompasses the following documents found in WB countries:

a. the constitution; These documents typically contain provisions that speak directly to the rights of children, as well as make reference to international acts (see above) that predict rights and fundamental freedoms to children and specify that such law is superior to any laws in their jurisdiction that may contradict international law;

b. the criminal code; further elaborated on specific laws on children and youth (see point f below);

c. law on social protection;

d. laws on key activities of children and youth; e.g. laws on education; laws on labour and employment;

e. laws on family, which contain provisions on parents and children, specific law on child protection; and

f. others which regulate the civil and political rights of children; e.g. the former Yugoslav Republic of Macedonia has a Justice for Children Law and the counterpart in Serbia is called Law on Juvenile Justice; documents that specify legal aid for certain categories. Additionally, Montenegro has a rulebook on the provision of counselling; BiH has a law on Protection from Family Violence; Albania has a law on the protection of children rights as well as a law on non-discrimination.

In order to provide day-to-day assistance to UAMs, WB countries act upon such legislation primarily through the authority and tasks awarded to the authorities/centres for social work (or social protection centres in BiH), which appear as paramount in ensuring that this framework is activated and related services are implemented, including legal representation of children in courts.

However, the situation in the WB countries in terms of the child protection system varies; to a certain extent this depends on the stage they are in relation to EU integration. Some countries report that they do not have an integrated child protection and safeguarding system (e.g. the former Yugoslav Republic of Macedonia). Provisions that regulate issues related to UAMs are “scattered” around different legal acts; Serbia for e.g. reports that there are more than 80 laws, which contain relevant provisions on child protection. A common theme across the region is the transition that the legal and policy framework is undergoing and the impact that this has on the way they adopt, further elaborate on and implement provisions on child protection and children’s rights. Montenegro is an important example here, since it is in the process of implementing the Child Care System Reform through the assistance of the United Nations Children’s Fund (UNICEF) and the financial assistance of the EU, and based on an internationally aligned Law on Social and Child Protection (2013). Albania is currently undertaking two important reforms; the territorial reform and the
social service reform which will impact the way in which the social protection is being provided to children in Albania. Serbia too is taking measures to prepare an integrated system of protection and a concrete example is the adoption of the General Protocol on Child Protection from Abuse and Neglect, which puts the emphasis on multisector/multi-agency working to ensure optimal services of protection to all children.

Another difference relates to the level of elaboration in terms of interpretation of the legal framework and detailed provisions. The former Yugoslav Republic of Macedonia and Albania rely on a number of relevant laws, which cover various aspects of child protection, whereas Montenegro appears to have a fairly developed framework in terms of specifying provisions for day-to-day services to children, predicted in several rulebooks which interpret the relevant laws, such as rulebooks on financial services to children, on family placement and fostering, supporting life in the community, etc. Serbia reports that good progress has been made in the past ten years to elaborate on the issue of child protection; however, there is much to be done on harmonisation of the law and mainstreaming of legal and policy activity of various sectors, which appear to only partially implement the relevant legal framework.

### 2.2.2 Legal framework on UAMs

The legal framework on UAMs embedded in the overall legislation on migration and that on children. In general, a typical set of laws that regulate migration is found in the WB countries, such as laws on foreigners, on asylum, on repatriation and readmission, and laws on border controls. This set reflects the migration profile of the WB countries up to the past few years when their profile has significantly changed. These and other related laws contain provisions on child migrants, although the overall framework has significant gaps and lacks specific provisions for this migrant category. Countries are increasingly adapting this part of their legal framework to the respective EU Acquis. Within such legal framework, there are traces of legislation, which is aimed at child migrants, which is of direct relevance to UAMs. The situation of UAMs is regulated through the provisions on children in general, particularly in those cases in which the law leaves room for interpretation. For example, the concept “child in need” in Kosovo/UNSC 1244 is referred to when UAMs are concerned. Similarly, in Serbia the Law on Foreigners recognizes unaccompanied minors as persons with special needs. In Montenegro the Law on Social and Child Protection predicts services for children without parental care, which can be extended to the cases of UAMs. The Law on Foreigners and the Law on Asylum in Albania, foresee specific provisions for the protection of foreign UAMs who seek asylum in Albania.

Nonetheless, currently the legislation on UAMs appears as underdeveloped and contingent on developments of other parts of the national legislation. For example, Montenegro and Albania report that there is no clear framework on appointing a custodian to an underage asylum-seeker due to the underdeveloped capacity for the reception, care and treatment of vulnerable categories of migrants, such as foreign UAMs and single mothers with small children. Developing provisions for UAMs in this context is, therefore, difficult, as is decision-making in accordance with the child’s best interest. In addition, Albania reports
that there is no platform in place for the treatment of unaccompanied children (neither Albanian citizens nor foreign citizens), reflecting the international standards and principles (Convention on the Rights of Child) and neither is there any designate institution guiding such treatment: they are treated as either victims of trafficking or irregular migrants or, in the best-case scenarios, as migrants who have re-entered in the framework of the voluntary assisted return programmes. The former Yugoslav Republic of Macedonia reports that the Law on Asylum defines UAMs but does not include an anti-discrimination clause and presumption of age, as well as uses vague language when setting legal obligations, such as the appointment of a guardian “as soon as possible”. Slightly different is the case of Kosovo/ UNSC 1244, which reports that a series of legal acts elaborate on the two main laws – Law on Foreigners and Law on Asylum – to provide detail on all procedures related to UAMs in the territory of Kosovo/UNSC 1244; for example, social services, accommodation, legal guardian, and the process of collaborations of different institutions and agencies.

However, here too we notice a privileging of certain categories of UAMs. For example, the former Yugoslav Republic of Macedonia reports that the Law on Social Protection contains provisions, which predict entitlements to migrants – here referring primarily to those who have regular residence status, and also to asylum-seekers, refugees and others under subsidiary protection. Such provisions exclude a good number of UAMs who, as mentioned above, are not necessarily asylum seekers and are highly mobile across the region. Similarly, the Family Law in the former Yugoslav Republic of Macedonia, while making explicit provisions on guardianship, it primarily provides to trafficked children. Albania, Serbia and Montenegro report that the explicit definition of UAMs is included in the Asylum Law though this definition does not define only UAMs with the asylum status.

The legal framework in BiH, on the other hand, appears as more directly relevant to the situation of UAMs, containing the Law on Movement and Stay of Aliens and Asylum, which explicitly defines UAMs (Article 5). This definition is favourable to the situation of UAMs since policy makers and service providers have a specific definition to refer to. However, in situations such as this, laws would need further elaboration through other legal acts and policymakers and other stakeholders working on UAMs should be mindful to utilise all the other provisions on UAMs to optimise support and protection to them. Serbia appears to utilise a broad legal framework encompassing the Law on Foreigners and the Law on Asylum in conjunction with the Family Law and Law on Social Protection when it comes to the appointment of a guardian to UAMs. In a similar fashion, Montenegro makes reference to the Family Law and its specific provisions on foreign UAMs and the institute of guardianship. The former Yugoslav Republic of Macedonia on the other hand is even more proactively working to elaborate the legal framework in place to ensure that clear standards are set for UAMs and their families, such as making provisions for their accommodation and training of staff working directly with UAMs. In Albania, the authorities interpret the situation of UAMs (Albanian citizens) in conjunction with the provisions of the Penal Code and Family Code on child abandonment and declaration of abandonment as well as the Law on the Protection of Children Rights. Nevertheless there is a need for a clear definition of UAMs in the case of Albanian citizens.
2.3 District and local level regulations

The form of State of most WB countries means that local authorities do not have legislative competences; however, they are the main bodies to develop programmes and procedures. As a result, evidence on district and local level legislation is not reported by most WB countries involved in this project. This aspect appears particularly relevant to BiH due to its unique State organization system. In this particular case, there are disparities between the different parts of the State and the way UAMs are regulated and provided for. For example, BiH does not recognise a number of subcategories of UAMs by including them in the broad category of neglected children. In contrast, Republika Srpska and Brcko District recognizes all categories of UAMs. In Albania, the Child Protection Units (CPU) operate at the level of each municipality to prevent child abandonment and maltreatment or any other potential child risk. Nevertheless emigration of UAMs is not yet considered as a risk or threat to children, hence not yet included as a sphere of CPUs work. This is an important example of the differences within the WB region and within each national territory.

More emphasis should be put on the local and district level since it is at this level that the effect of policies “materialise”. Serbia elaborates on this aspect in terms of the power of local authorities to make local policies and programmes, which have direct impact on UAMs and other children, and their day-to-day life. Areas such as education, health and social protection are governed locally as well as centrally, and it is these areas where the most progress has been made at a local level in Serbia.
3. POLICY FRAMEWORK

3.1 Policy on UAMs in relevant documents

In line with the debates highlighted above, the policy framework on migration and on UAMs is multidimensional, encompassing several policy documents, such as:

- EU integration documents – establish the candidate member country status, which carries obligations in the field of migration, asylum and border management.
- National strategies and action plans on migration. UAMs are usually not directly referred to; however, these documents appear to contain clauses on vulnerable categories or groups at risk, which can be extended to the cases of UAMs such as: identification of cases, adequate services, appropriate action on return and readmission. Nonetheless, in Serbia this document calls for additional capacity to accommodate UAMs.
- Border management strategies – specify national and international cooperation on the matter.
- Specific policies on trafficking and organized crime – one of the most consistent policies throughout the region due to its history with human trafficking particularly problematic during the 1990s.

When UAMs are not directly referred to, “children without parental care” appears to act as an umbrella concept to encompass UAMs and make them relevant in terms of policymaking and service provision. More specific documents appear to deal with issues of education, health, employment, social welfare registration and equipment with identification documents of people with recognized social protection.

However, the level of direct reference and relevance of the policy framework to UAMs varies greatly among countries. In specific countries, such as the former Yugoslav Republic of Macedonia, major policy documents, such as that on trafficking, appear to speak directly to the cases of migrant children. This document is further specified through a program on the reintegration of children victims of trafficking, which details the provisions and action to be taken on these children. Even though the programme is focused on trafficking, the clarity and level of detail and the all-encompassing focus of the programme represent a good practice which could be adopted at regional level, not least because of its direct reference to the international standards of child protection. Likewise, the Albanian National Anti-Trafficking Strategy and in particular the Referral Mechanism for the Identification and Referral of Victims of Trafficking foresees the procedure of identification and referral of UAMs at the borders of Albania. However, it does not indicate the type/s of assistance provided within the territory of the country. Montenegro has invested even more directly on the issue of UAMs by sponsoring The Study of Endurance to Strengthen the Capacities, Protection and Rehabilitation of UAMs and other vulnerable Groups of Minors – currently in progress. In contrast, Serbia reports that there is no specific documents or clearly
defined policy on UAMS, perhaps reflecting the lack of awareness among policymakers on these children. However, the issue of UAMs is catered for through different strategies and programmes; for example, through specific clauses in the National Plan of Action for Children – NPA. Its sixth priority makes direct reference victims of war, refugees and displaced children and minority origin children. Other programmes include the National Strategy for the Prevention and Protection of Children from Violence and the Youth health Development Strategy; the Anti-discrimination Strategy and its Action Plan; and the Social Protection Development Strategy.

### 3.2 The best interest of the (migrant) child

The assessment of the way the best interest of the migrant child is integrated in the social protection and migration policy of the counties aims to see how migrant children are regarded and provided for. Country legislations appear to make direct reference to the principle – both to children in general as well as to specific categories of migrant children. In Serbia such principle is contained in the national constitution and in the Family Law. Montenegro contains this principle in the Law on Social and Child Protection. When it comes to migrant children, in BiH such reference is found in the Rulebook on Protection of Foreigners who have been Victims of Trafficking. In Albania, the Family Code is being formulated over the philosophy of respecting and guaranteeing the best interest of the child; the Criminal Code has been amended and now includes this principle in its own provisions, while the Law on the Protection of Children Rights sanctions the best interest of the child as a prevailing consideration on all decisions pertaining to minors with respect to services delivered by public and private social providers, courts, administrative and legislative authorities.

However, a broader application should be aimed throughout the region to make sure that all categories of child migrants and particularly UAMs are covered by such policy. The former Yugoslav Republic of Macedonia has a similar policy framework in place with the National Strategy to Combat Human Trafficking and the Action Plan 2013–2016 being the main documents dealing directly with child migrants and therefore UAMs.

An important aspect of this principle is its implementation in practice. Therefore, the inclusion of clauses in specific laws is insufficient for this principle’s benefits to trickle down to children. Preparing clear guidelines for officials that deal with UAMs is imperative as well as training these staff to handle children by considering their specific needs in relation to the child’s background. The former Yugoslav Republic of Macedonia appears to have made the most significant progress in this regard in the WB, whereas in BiH there is still a need for more elaboration on what constitutes the best interest of the child, particularly when applied to migrant children.
4. INSTITUTIONAL CAPACITY AND EFFECTIVENESS

4.1 Institutional framework and service provision

4.1.1 Governmental institutions

The WB countries have developed different institutional and policy frameworks to deal with migration issues and UAMs more in particular. An important distinction is the countries that have specific ministries on migration (e.g. BiH) and others that cover migration issues through institutions in-built in a number of ministries; e.g. the former Yugoslav Republic of Macedonia lists the Ministry of Interior, Ministry of Labour and Social Policy, Ministry of Health, Ministry of Science and Education and the Ombudsman as institutions that either have specific centres on migration or have allocated tasks to issues of migration and those related to UAMs. Otherwise, WB countries have directories and departments operating at central governmental level that deal with issues of migration; for e.g. BiH elaborates on and implements most of the legal and policy framework on migration through the Ministry for Human Rights and Refugees. In Albania, the issues of migration of minors are covered at the central level by the General Department for Border and Migration at the State Police and the Office of the National Anti-Trafficking Coordinator at the Ministry of Internal Affairs, as well as by the State Social Service, a subordinate structure of the Ministry of Social Welfare and Youth. Montenegro has two directorates within the Ministry of Interior, which deal with migration: the Directorate for Foreigners, Migrations, and Readmission, and Asylum Directorate, and a Department for Integrated Management of the Border and Border Crossings. In Kosovo/UNSC 1244 the main governmental body on migration – the Department for Citizenship, Asylum and Migration (DCAM) is part of the Ministry of Internal Affairs. In some countries institutional capacity appears to be regulated with specific documents, such as the IPA II Action Document 2014–2020 “Strengthening Kosovo Institutions in Effective Management of Migration, Asylum and Fight against Trafficking with Human Beings”.

Across the region, there is a general consensus that issues of UAMs are not sufficiently recognised. Issues of UAMs are usually treated by institutions which deal with migration in general. The most important institutions involved in UAMs issues across the WB countries include: the respective border agencies/police and ministry of interior, the respective ministry that deals with issues of welfare, employment and labour, as well as the directories and offices on migration or asylum and the centres for social services. In some cases, institutions that were working on prevalent issues in the region, such as trafficking or IDPs, have been adapted to deal with the new migration challenges the countries face, such as UAMs. For example, the Commissariat for Refugees and Migration in Serbia is a separate organization within the public administration system whose primary responsibility has been to perform activities that protect refugees and IDPs. In 2012, its responsibilities were extended to include the management of reception centre and provision of housing for asylum-seekers and issues that relate to irregular migrants.
An important trend across the WB countries is the mismatch between the overall well-developed legal framework and the weaker institutional capacity, even though the differences in terms of numbers of UAMs they receive means that in some countries (Kosovo/UNSC 1244) the effectiveness of the system is still to be tested. Governmental bodies emphasize the effective legal framework but stress that this is not matched by the respective services. Montenegro for example, reports that the legal framework on child protection predicts a pluralism of services in line with the principle of multi-agency and interdisciplinary working as elaborated in West European Countries. Therefore, services for UAMs should bring together curious institutions, organizations, civil society and other legal and physical persons. Yet, the situation with the actual implementation is not the same.

The informality of the UAMs flows as well as the characteristics of WB countries has created several difficulties with the activities of national institutions. Countries report several challenges; Montenegro, for example, identifies the following issues with UAMs, which taken together represent the process which UAMs go through upon arrival to a WB country:

A. The process of minors identification;
B. The process of appointing of a custodian;
C. Access to legal assistance;
D. Acceptance and accommodation procedures;
E. The exercise of legal rights in the area of social and child protection.
F. Integration and re-integration of UAMs and families and long-term solutions.

The former Yugoslav Republic of Macedonia adds to the above issues related to translation and interpretation, human and infrastructural capabilities – particularly in relation technical and human resources, intersectoral cooperation, and finally data collection and database management.

The bulk of work that is done with UAMs focuses primarily on their legal status and their social welfare. In Kosovo/UNSC 1244 UAMs legal status, like all security issues, is dealt by the Ministry of Interior, whereas the social welfare by the Ministry of Labour and Social Welfare. Due to the profile of UAMs in the region (as described above, a high number of them originate from war-stricken countries) the asylum procedure is the most common one. One of the main problems encountered is the identification and age assessment of UAMs since they do not carry ID with them, particularly those originating from African countries. This has two main implications: asserting the age and right type of services for UAMs and attempting to establish links with their families and relatives back home or wherever they have migrated to.

The WB governments sponsor centres for social work, which ordinarily have regional and district offices, as well as social protection centres and day-care centres. These appear to handle different aspects of UAMs-related issues. For example, Kosovo/UNSC 1244’s Ministry of Internal Affairs is in charge of the Asylum-Seeker Center and the Detention Center for Foreigners. Across the board procedures for dealing with child migrants involve
social services. An important provision is the 6 months rule on UAMs applied in Kosovo/UNSC 1244 according to which UAMs should not stay more than 6 months in the Centre for Asylum Seekers. This provision is important considering that lengthy procedures and residence in migration institutions may hamper children’s development. Indeed, lengthy procedures are reported by the former Yugoslav Republic of Macedonia when it comes to the appointment of a legal guardian to UAMs from the Centre for Social Work, which handles the process. In Serbia the most important duty of the Centre for Social Care is to organize the appointment of a guardian for UAMs, whereas the Centre for Social Work in Kosovo/UNSC 1244 provides overall support to UAMs, including guardian appointment as well as general protection until UAMs legal status in Kosovo/UNSC 1244 has been ascertained. Albania does not yet provide a specialized centre for foreign UAMs, however it accommodates minors at the asylum-seeking centre until a solution is found.

Accommodation of UAMs is regulated differently; in Kosovo/UNSC 1244 this is part of the competencies of the Centre for Asylum-Seekers whereas in Serbia UAMs are accommodated in the Institution for Education of Children and Adolescents in Belgrade and Nis, while those UAMs who express an intention to seek asylum are accommodated in asylum centres. Similarly, Montenegro accommodates UAMs in the PI Centre for Asylum Seekers and PI for Children and Youth “Ljubovic” in Podgorica. Countries report issues in terms of the capacity and the overall conditions of accommodation centres. Kosovo/UNSC 1244’s Asylum Centre has 50 places, while in Serbia there are only 22 places. Montenegro’s respective centre has a capacity to accommodate 65 people. These centres appear to concentrate their service to the reception and accommodation and do not appear to have a follow up function and do not possess information on UAMs after they leave their premises. The former Yugoslav Republic of Macedonia reports that accommodation of UAMs is one of the most challenging aspects since, even though some alternative options to the ones mentioned above are regulated, these options are rarely used. In addition, upon assessment by the National Preventive Mechanism (NPM) as part of the Ombudsman’s competencies, it appeared that the conditions in the reception centres for migrants and UAMs are poor.

However, there is a lack of policies in place and clarity when it comes to specific procedures. The lack of procedures then give rise to confusion when it comes to roles, duties and responsibilities of specific actors involved in the process as well as lack of cooperation among different governmental bodies. Kosovo/UNSC 1244, for example, lacks an age-assessment procedure. Since age (being under 18) is a determining factor for UAMs to be considered as such (minor migrants) and benefit from State services, the age assessment procedure and its fair and sensible implementation is one of the crucial aspects for ensuring that UAMs rights are respected at all times. Additionally, Serbia and Albania both report that the provision of translating and interpreting is rare. This is particularly problematic since it consists of a major barrier in realising UAMs rights. Albania goes on to report that the procedure fails to ensure the presence of psychologists during the interviewing process and that often the obligations for granting the foreign minor a permit goes unacknowledged.
The training of professionals working with UAMs is identified as an immediate need by WB countries. The former Yugoslav Republic of Macedonia appears to have officials that are specifically in charge of UAMs asylum procedure. However, since countries’ legal, policy and institutional framework is primarily organized around asylum and trafficking, the other subcategories of UAMs remain mostly uncovered. Nonetheless, a general issue is the poor financing of the social services, which makes the accurate implementation of laws and procedures impossible. Considering that WB countries also practice detention of foreigners, including UAMs, the issue of clear procedures and training of staff is imperative. Detention is found to have deleterious effects on minors’ well-being. The former Yugoslav Republic of Macedonia also reports that the actual conditions of the detention centre there are particularly problematic despite the law making several provisions to ensure basic human rights to the detained.

Other issues of concern appear to be the provision of adequate health services as well as education of UAMs. Health care to foreigners appears to be an ambiguous policy area in Serbia, whereas the high mobility of UAMs across the region makes their education difficult, as reported by most countries. In addition, the language barrier is a major obstacle to the education of UAMs in the WB countries. In the former Yugoslav Republic of Macedonia the law makes provisions for medical services to UAMs, but these are not backed up with procedures and programmes. Montenegro refers also to potential issues that UAMs would encounter in terms of education and employment should they decide to settle there, due to lack of clear integration policies.

4.1.2 Local governance

The role of the local government in relation UAMs is overlooked, reflecting the emphasis across the WB on the legal and policy framework and the lack of focus on implementation. The way the local governance is involved in issues of UAMs varies between countries. Serbia, for example, reports that issues related to UAMs are concentrated in the decentralised governmental institutions, and local governance is irrelevant. Nonetheless, there are institutions at local level that are responsible for monitoring and reporting on issues of UAMs; for example, Serbia has 128 Councils for Migration in municipalities; Albania has established Child Protection Units in all municipalities of Albania.

One issue identified is the inconsistency between the central and local government. In BiH the level of awareness on UAMs among the central government institutions is not matched at local level, giving rise to issues in terms of action on reception, integration, return and settlement of UAMs. In addition, it appears that the logistics of dealing with UAM asylum-seekers are complicated by the fact that social centres do not have funds for such issues; in particular, the accommodation of UAMs is an aspect, which uncovers issues of funding and also the lack of specialised staff that would adequately support UAMs.
4.1.3 International organizations

A number of international organizations operate in the region due also to their troubled political and socio-economic past. Organizations such as United Nations High Commissioner for Refugees (UNHCR), IOM and International Center for Migration Policy Development (ICMPD) appear central in terms of issues of migration and asylum. Save the Children and Terre des Hommes whose activity is focused on children also operate in some countries in the region.

Even though there is an expected tendency among international and other NGO organizations to focus on children and activities that relate to the core of their mission, international organizations are very important in filling the gaps of the action of governmental institutions as well as building capacity and enhancing cooperation on migration issues. In Albania, the role of IOM has been crucial in bringing the phenomena of emigration of UAMs at the attention of the authorities and in assisting the government to undertake actions for properly addressing the emigration of UAMs from and through Albania. As of 2008, IOM is also assisting a number of EU Member States with family tracing procedures for cases of UAMs as well as with assisted voluntary return and reintegration of UAMs to the country of origin. Montenegro, for example, cites the important role the UNHCR plays in terms of providing translating and interpreting for UAMs. BiH reports that international organizations have been instrumental to positive changes in the legislation. Similarly, the former Yugoslav Republic of Macedonia points to the fact that it was UNHCR, in close coordination with IOM and in cooperation with MoI-Department of Asylum that initiated the development of SOP-Standard Operating Procedures for UAMs.

The issue of UAMs as such is not always explicitly addressed by some of the organizations; for example, in BiH UNICEF and Save the Children do not make direct reference to UAMs in their activities. Nonetheless, some of the compassionate and more intimate issues that relate to UAMs are addressed by humanitarian organizations. For example, the Red Cross of Montenegro emphasises the need to concentrate the work on restoring family links for UAMs paying thus attention to the right of family.

4.1.4 National and local NGOs and ad hoc assistance

The catalogue of these across the region includes organizations with a focus on:

- children’s services;
- services for people at risk;
- providing legal assistance to marginalised groups;
- community service as provided by religious organizations.

These organizations are often the institutions that offer the actual day-to-day support of various kinds (humanitarian, medical, psychosocial and legal assistance) to UAMs. They also engage in lobbying on issues of UAMs through civil society initiatives. Therefore, their role in the region is paramount, although contingent on the way government institutions
respond to their action. An important example is the case of Open Gate/La Strada in Skopje which focuses on people at risk or who have suffered violence and trafficking. The International Forum of Solidarity – Emmaus in BiH also appears as an important positive example in the region, since it has the capacity of 500 and the issue of accommodation of UAMs is prevalent across the region, as mentioned above.

One issue that the countries signal has to do with the effectiveness at different levels of governance and service. Montenegro and Albania, for example, report that while there is a variety of policies and strategies at State level, community services are insufficiently developed. In addition, due to the sensitive nature of issues related to UAMs these organizations’ activities depend on authorisation by the relevant institutions, as well as their funding. Since they are less dependent on funding and due to their longevity, religious organizations play an important role in improving the welfare of UAMs.
Despite differences between different countries, migration into the WB countries is now a consistent phenomenon – both in terms of persisting existing trends as well as the potential for its increase, including the movement of UAMs towards and across the region. WB countries come to the issue of UAMs with different exigencies and priorities, depending on the prevalence of the issue in their country. Countries such as Kosovo/UNSC 1244 and Montenegro report lower numbers; therefore, points to the preventive approach their policy makers are taking when regulating UAMs. Other countries such as Serbia and the former Yugoslav Republic of Macedonia are receivers of a relatively high number of UAMs and point to the emergency of the issue. Albania is affected mostly by emigration of UAMs who are citizens of Albania.

Nonetheless, a crucial feature across the region is the mismatch between the legal and policy framework with the implementation, not least because of lack of elaboration of higher-level laws in the form of programmes and regulation and “lower-level” legal documents, as well as a badly resourced and funded material and human infrastructure. An important factor contributing to this is the overall economic situation in the WB, which is characterised by relatively low GDP per capita and high unemployment as well as low governmental expenditure on issues of social protection. Even in the case of countries that have a detailed legal and policy framework (e.g. Kosovo/UNSC 1244) the weak and badly funded system of social services contributes to the actual problems or bleak prospects for the rights of the UAMs to be respected. In BiH the issues related to legislation and implementation arise from the form of governance and the numerous organizations still very active in the country, which often results in parallel initiatives and inconsistent action across the national territory.

The weak infrastructure contributes also the inconsistent data on UAMs – an issue that is in the way of the development of consistent policies and programmes. It is not unusual for different institutions in the same country to report different numbers of UAMs (e.g. BiH). Serbia sees the issue of data collection and management as crucial to the development of the consistent child protection system and as a part of a migration management system.

As a result, the response of the countries remains haphazard with the international organizations having to provide the actual functional support in face of gaps and inconsistencies in the legal and policy framework. For example, legal assistance to UAMs in the former Yugoslav Republic of Macedonia is completely dependent on NGOs. Regulations of the migration procedures and procedures for UAMs are intended to institutionalise their protection, mainstream governmental action, and prevent issues of abuse, such as smuggling and exploitation. Institutional inconsistencies and pitfalls give rise to serious informal practices such as detention of UAMs or accommodation in very poor conditions. Inter-sectoral communication and collaboration is still very weak although expected to be enhanced by the efforts that countries are putting to prepare detailed procedures for the treatment of UAMs.
There is a high diversity among UAMs moving to or across WB countries. As mentioned above, UAMs cases recorded in Serbia originate from over 30 countries. This diversity and the high mobility of these children who do not stick too long in one WB country makes the support services, particularly translation and interpretation on behalf of these children very difficult. This also gives rise to the exclusion of minorities among minorities – those children who consist of single cases, or just one of the few children originating from a certain country, making WB countries unable to respect the ‘every child matters’ principle. Even though WB countries are part of regional cooperation initiatives, the cooperation with the countries of origin of UAMs is unsatisfactory.
6. RECOMMENDATIONS

6.1 Improvement of policy framework

- Take a more proactive approach to the issue of UAMs and increase awareness at national and local level. It is important to avoid a “one-shoe-fits-all” attitude, since UAMs encompass several different categories, and not only asylum-seeking children.

- Develop a detailed policy document on UAMs where UAMs are clearly considered as vulnerable group and children in need (e.g. Standard Operation Procedures in the former Yugoslav Republic of Macedonia) and where UAMs rights and protection is outlined. This could then be a reference point for institutions that deal with UAMs when preparing programmes and guidelines and can ensure that the legal framework on UAMs is mainstreamed nationally.

- Include the regulation of UAMs in the national strategies on migration.

- Improve the material and human infrastructure that is concerned with UAMs.

- Intercountry cooperation in WB should be enhanced not least considering the movement across the region of UAMs.

- Transnational cooperation with at least the main sending countries of UAMs should be developed as soon as possible.

6.2 Improvement of legal framework

- Clearly define UAMs and advocate for better understanding of UAMs as an umbrella concepts including various categories of child migrants beyond asylum-seekers and the trafficked children.

- Prepare specialised child protection standards on the basis of children’s rights as proclaimed by the UNCRC.

- Monitor the implementation of the international law adopted. The national programmes of EU accession should be revised to contain provisions on UAMs issues in order to ensure harmonisation of the legislation with the EU one.

- The EU accession process provides an important opportunity for the countries to develop their overall legal and policy framework and in particular their material and human infrastructure through EU structural funds etc. However, WB countries ought to remain mindful that country specific policies should be tailored due to the many differences among them in terms of issues of UAMs.

- Clear legal documents that elaborate on national laws on issues of UAMs are needed to mainstream the legal framework and policy making as well as avoid gaps and confusion or lack of action at local level.
Multi-agency and multidisciplinary working should be sanctioned by law to ensure that all children get holistic social protection and that such support is extended to UAMs.

Vigorously investigate, prosecute and convict traffickers, including complicit officials. Provide advanced anti-trafficking training to judges, prosecutors, and law enforcement. Enhance efforts to identify and assist children forced into begging.

6.3 Improvement of institutional capacity

Develop initiatives at national level for the monitoring of the issues related to UAMs. This is particularly important for the practices of detention and the assessment of the accommodation venues.

Communication between the central and local government is crucial for the implementation of the centrally developed legal and policy framework.

Local governance and its capacity should be a priority of action across the region, with a focus on specific offices that handle the bulk of work on UAMs.

Governmental and non-governmental bodies should continue to work together and enhance their joint action on the issues of UAMs.

Develop data collection and management strategies at national level to inform adequate policy making. In order to respect “the every child matters” principle and provide adequate assistance, data should be collected for all accompanied minors and not just for the most prevalent categories.

Organizations whose activities may relate to issues of UAMs should try as much as possible to take a holistic approach to the provisions made to UAMs. Institutional constraints may be overcome through enhancing cooperation between different organizations that work on children.

Training of staff working directly with UAMs is imperative. Since implementation is identified as the main issue, and a shortage of human resources is also identified, it is important that existing staff are provided with as much support and training as possible. In particular, the issue of training can refer to border police and the equipment of police stations with child-friendly facilities as the first point of contact for UAMs.

Since there exists a high diversity of UAMs in terms of country of origin and native language, this makes it difficult for institutions to cater with translating and interpreting services. Therefore preparing comprehensive child-friendly written information in many languages for UAMs on their rights, services available and point of contacts would ensure some redress of this issue, even though universal literacy of UAMs should not be assumed.

Clearly define crucial procedures such as that on age assessment, accommodation, the institution of the guardian, provision of legal aid, in order to ensure that human rights of UAMs are respected. In particular, the institution of the guardians needs further development since the guardian is a key actor in the protection of UAMs.
• Increase the number of centres for social work and care and in some countries enforcement of such centres is needed to cover as much as possible the migratory routes of UAMs (e.g. the former Yugoslav Republic of Macedonia). The capacity of the social work centres should be enhanced so as to maximise support given to UAMs.

• Crucial services to UAMs such as medical care and education should be systematically organized.

• Develop programmes for UAMs so as to raise awareness among them on all issues related to their migrant status as well as risks related to it.

• Develop integration programmes for UAMs settling in WB countries.

• Since NGOs are playing an important role in covering the day-to-day services to UAMs, their capacity should be further developed, in parallel with efforts to improve governmental response.

• All initiatives for improvement of existing framework should involve all stakeholders, including children.
Addressing Migration of Unaccompanied Minors from and through the Western Balkans
Regional Report 2015

International Organization for Migration (IOM)