Victims or Criminals? The Vulnerability of Separated Children in the Context of Migration in the United Kingdom and Italy

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and their active roles in decision making in

Davidson and Farrow 2007; Mai 2011). Furthermore, there has not been a consistent assessment of the positive and negative effects of child migration, or an analysis of the impact that immigration policies and laws of the host country have on the production and framing of separated

and Farrow 2007; Enenajor 2008). Far from being recognised as agents for social and cultural changes, separated children are reckoned to be naturally dependent and inherently vulnerable (Costella, Furia and Lanti 2010), their specific situation is neglected or rooted in disputable assumptions and their migration is merely

to be solved. As argued by Nando Sigona:

social group, by and large, have been off the migration agenda. If migrating as dependants, their experiences of migration have often been assimilated to those of their parents or guardians; if migrating alone, their mobility has been interpreted often as the result of coercion on the child (e.g. human trafficking) or as a menace to the welfare system of the country of destination (e.g. adult migrants claiming to be minors in order to access social benefits) (Sigona 2011: 3).

The lack of a comprehensive and consistent policy approach in dealing with child rights issues associated with migration, is in turn reflected in a failure of attempts to agree on definitions and on the design of strategies which are mainly based on the

interests, cultural values and political objectives (Petti 2004; and Farrow 2007; Sigona 2011).

As highlighted by

Farrow (2007), the complex and diverse child migration phenomenon has in fact been partitioned and managed through mutually exclusive groups or categories: for example, legal vs illegal, forced vs voluntary, permanent vs temporary, etc.; and by attaching narrow and restrictive labels to migrant children, for example accompanied vs unaccompanied, victims of trafficking, exploitation and smuggling, asylum seekers vs non asylum seekers. As a matter of fact, these categories do not necessarily mirror

and protection needs, and at any one time a migrant child may belong to two or more of the categories, or may move between

2007; Sigona 2011). With particular reference to children migrating alone, specific attention should be given to the provision and assessment of the requirements an adult must meet to be recognised as having the legal or customary responsibility of a child.

Following the approach proposed by the

(SCEP), in this paper the term separated children is used to refer to individuals who are under 18 years of age, outside their country of origin and separated from both parents, or their previous legal, or

3). This definition suggests that the term

they arrive in Europe, but the accompanying adult(s) may not be their customary and primary caregiver, or be able and suitable to assume responsibility for their care and protection (SCEP 2010). Furthermore, it includes not only asylum-seeking children but also children who may not apply for asylum, such as children who have come from conditions of poverty and deprivation, or who have been smuggled for exploitation or trafficking. Finally, this definition states that all considerations relating to separated immigration

secondary and anchored in the principles of

Not surprisingly, although most of the literature and policy work is beginning to reflect this change in terminology, the term e-

mentioned categories, is still officially used

by European institutions and governments.

provide the main body of analysis through a general overview of the British and Italian legislative and policy frameworks, as well as a discussion of the main harmful practices that prevent children from getting access to the support and rights to which they are properly entitled. The conclusion considers how the analysed policies and practices relate to the interpretation proposed in the first section.

Criminalisation, Victimisation and the Vulnerability of Separated Children

For almost a century, since the first analysis on the subject by scholars of the Chicago School was made, the relationship between migration and crime has been studied in great depth by sociologists and anthropologists using а variety of approaches methodological and perspectives (Cecchi 2011). In this paper the concept of criminalisation is identified as one of two predominant and interlinked processes that are useful to capture the logic, which is rarely explicit, underlying and legitimising the contemporary situation consisting of exclusionary laws and policies, harmful practices, omissions and

practices are intended to punish migrants for border crossing and presence on the territory of the state. More specifically, I argue that the criminalisation process plays an important role, directly and indirectly, in producing and making worse the vulnerability of separated children.

s Foucauldian approach, the criminalisation of migrants

facts and practices because of which the police, judicial authorities, but also local governments, the media and a part of the population hold immigrants/aliens

(Palidda 2009a: 2). As suggested by this definition, the process of criminalisation being multifaceted, operating at different levels (legislative, political, public opinion, media) and through a wide range of different strategies, instruments and

practices is often hard to define and detect (Palidda 2009a). This is similar to

Wæver,

Buzan, Kelstrup and Lemaitre 1993; Huysmans 1998; Furia 2011) of migration issues.

In order to address its impact on the production and framing of separated

process needs to be considered in its connection with the even more elusive victimisation process. This process can be considered as the result of the criminalisation process, more than as an autonomous process in itself.

According to Palidda the concept of

immigrants/aliens are themselves victims of misdemeanors committed by the nationals of the host country, by police

2009a: 2). Under thiindire43619 0 1 464.74 798(1

As highlighted in the literature onnell

fragility, and on their experiences (for example, physical and psychological dangers of migration, condition of the country of origin, memories of war, etc.)

Enenajor 2008; Costella, Furia and Lanti 2011).

Such perspectives are rarely balanced with an analysis of the impact of the conditions of the host country and of the

challenges separated children face in the country of destination. This results in measures which are not effective in taking into account their needs and in promoting their agency, personal resources and extraordinary resilience even in the most challenging situations (Costella, Furia and Lanti 2011). On the contrary, as I will later demonstrate in this paper, the political and legislative systems of countries of destination, as well as their criminalising and victimising discourses, should be considered as closely linked to the production and/or worsening of separated

Overview of Legislative and Policy Frameworks

Italy and the United Kingdom have both ratified the United Nations Convention on the Rights of the Child (CRC)³ and several international and European other covenants which are applicable to the situation of separated children. In September 2008, the United Kingdom lifted its previous reservation to Article 22 of the Convention recognising that the

alongside immigration status issues rather than subordinate to them. Consequently, all legal provisions protecting the rights of children in the two countries should equally apply to all minors irrespective of their nationality. The best interests of the child actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative

³ It is worth highlighting that the United Kingdom has not yet incorporated the Convention into national law.

the 1989 Children Act. Section 11 of this Act imposes a duty on public bodies who

that their functions are discharged having regard to the need to safeguard and

mentioned Section 55 of the 2009 Borders, Citizenship and Immigration Act placed a similar duty also on the UK Border Agency, which had previously been excluded from it (UK Border Agency and Department for Children, School and Families 2009).

The Children Act 2004 also introduced a statutory framework for local cooperation requiring agencies to work together more closely in multidisciplinary teams to promote the formation of Local Safeguarding Children Boards (LSCBs) and to coordinate the functions of all partner agencies (Giner 2008; Sigona 2011). Until recently, concerns had been raised for the exclusion from compulsory participation of the Immigration Service, National Asylum

professional officials (Nandy 2006; Crawley 2006; Giner 2008), although with the advent of the statutory guidance

, the UK Border Agency is required to commit to greater participation in LCSBs (UK Border Agency and Department for Children, School and Families 2009).

Victoria Climbié was set out in various documents amongst which □

(2003) and a Green Paper entitled (2003) which led to the 2004 <u>Children Act</u> above analysed. The Green Paper instigated a wide-ranging debate about services for children, young people and families, which culminated in

(2004). The framework provided through this document constituted the basis of a new approach to childcare services entitled (Crawley 2006) The (ECM) framework aims

to bring about a large-scale reform of child services in order to ensure that children and young people are able to achieve, irrespective of their background or their circumstances, the following five main outcomes: be healthy, stay safe, enjoy and

protection system was conducted. Available at: <u>http://news.bbc.co.uk/1/hi/in_depth/uk/2002/vict_oria_climbie_inquiry/default.stm</u> (accessed December 2011).

(Bhabha and Finch 2006; Crawley 2006; Giner 2008; Coles and Farthing 2011).

While the Home Office considers itself as

those who are seeking asylum from prose ⁸ the procedures for

asylum are considered controversial and, according to many legal experts and

Home Office decision-makers (Bhabha and Finch 2006; Gibney 2011). A Tm[(Avon)53ce -3(ons)a1 56.664 730.78 Tm[(W)-2(hile)-p6(A Tm[(Avon)53)

with public order and State security. In such cases the Juvenile Court will order their removal (art. 19, para 2 and art. 31, para 4 of Immigration Iaw). Under Italian immigration Iaw, separated children cannot be detained with immigrants but must be placed in children-

and time frames for taking care of separated children and enforcing the relevant regulations are still very different and often not effectively based on partnership between different agencies (Rozzi 2008; Pittau, Ricci and Ildiko Timsa 2009; Candia, Carchedi, Giannotta and Tarzia 2010; Furia and Gallizia 2011). The quality of provision for separated children is extremely variable due to the different numbers of separated ch expressing serious concern because this

sea system for migrants and asylum seekers and at the same time could make rescue operations much more hazardous

Even before the recent mass influx of migrants, the attitude of the Italian government towards migrants had become more harsh, aiming at preventing or deterring, also through extraterritorial measures, ¹⁷ the arrival of migrants or ensuring their return to the country of origin (Rastello 2010; Santoro 2010). As a consequence of the new political scene since April 2008, in August 2009 a law on

is to focus on those that are common and not particularly country-specific, but which may also occur at the very first stage of the

destination. Evidence is in fact increasingly suggesting that the first contact with the new context and the measures or practices implemented at that stage, mark a decisive

a crucial impact on his/her well-being and safety from that stage onwards (Enenajor 2008; Costella, Furia and Lanti 2010).

It is widely acknowledged that the introduction of increasingly tougher immigration policies and stricter border controls by destination countries has led to the emergence of a growing market for clandesti smuggling across borders, fa(r5firs)3(t0)-5ravel

(memorandum of 9 July 2007). Upon request of the Ministry of Interior, in 2009 the Ministry of Health issued a set of Daphne III Project²⁴, which involved separated children and guardians from eight European countries, proper guardianship systems are essential in identifying a durable and proper solution for separated children and in promoting their participation and the respect for their identity.

Besides being the legal representative of the child, an adequately trained and supported guardian should develop a personal relationship with the child. A quardian should play a crucial role in the following: sharing information with the child, voicing their needs and views, promoting respect for their identity. In addition, the guardian is crucial for protecting their safety their and supporting development, participation and autonomy, while promoting cooperation and monitoring of action of all the actors involved in their care (Turri 2005; Furia Gallizia 2011; Defence

data collection on separated non-asylumseeking children at national level, such as the improvement of the national data collection system run by the Committee for Foreign Minors, ²⁸ the United Nations Committee on the Rights of the Child has also recently repeated its concern for the significant discrepancies in the capacity effectiveness regional and of data collection mechanisms and for the limited data available on refugee and asylumseeking children in Italy (Committee on the Rights of the Child 2011). Despite the seriousness of the concern, also expressed by national and international organisations, recently the Ministry of Interior has made available comprehensive statistics on asylum in which no age-disaggregated data are provided.29

Besides being extremely limited, the available data should also be considered

²⁸ According to the inflow data collected by the Committee for Foreign Minors, from January to

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