



# **STANDARDS TO ENSURE THAT UNACCOMPANIED MIGRANT CHILDREN ARE ABLE TO FULLY PARTICIPATE**

IDENTIFICATION  
RECEPTION  
PROTECTION &  

---

OF UNACCOMPANIED  
CHILDREN

**A TOOL TO ASSIST ACTORS IN LEGAL  
AND JUDICIAL PROCEEDINGS**





**Author:** Nadine Finch, Independent Consultant and barrister at Garden Court Chambers, acting for Coram Children's Legal Centre

The tool was produced within the context of the EU funded project CONNECT – “Identifying good practices in, and improving, the connections between actors involved in reception, protection and integration of unaccompanied children in Europe”. 2014

This tool has been produced with the financial support of the European Commission. The contents of this report can in no way be taken to reflect the views of the European Commission.

**Project partners:** Save the Children Sweden, UNHCR's Bureau for EU Affairs, Swedish County Administration in Västra Götaland, Save the Children Italy, Don Calabria, The Italian Ministry of Social and Labour Affairs, Coram Children's Legal Centre and Stichting Nidos.

Year: 2014

**With special thanks to:**

- Garden Court Chambers for logistical and administrative support
- Jennifer Blair, pupil barrister, for research
- UK National Advisory Committee for comments and additional information.

## TABLE OF CONTENTS

---

<b>Introduction</b> .....	6
<b>The need for standards</b> .....	7
<b>The impact of a multiplicity of actors</b> .....	8
<b>The basis for these standards</b> .....	11
<b>Methodology</b> .....	11
<b>Overarching principles underpinning these standards</b> .....	12
Principle one.....	12
Principle two.....	12
Principle three.....	13
The individual standards.....	13

<b>SECTION A: STANDARDS FOR ACTORS WHO PRIMARYLY WORK ON BEHALF OF THE CHILD IN THE LEGAL OR JUDICIAL PROCESS</b> .....	14
<b>Standard one</b> .....	14
The appointment of an independent legal guardian.....	14
Examples of noteworthy practices.....	16
<b>Standard two</b> .....	16
The appointment of a lawyer.....	16
Examples of noteworthy practices.....	17
<b>Standard three</b> .....	18
The provision of an interpreter.....	18
Examples of noteworthy practices.....	19
<b>Standard four</b> .....	20
The provision of a cultural mediator.....	20
Examples of noteworthy practices.....	20
<b>Standard five</b> .....	20
Social workers.....	20
Examples of noteworthy practices.....	21

<b>SECTION B: INTERACTION WITH OTHER ACTORS</b> .....	22	<b>Standard twelve</b> .....	29
<b>Standard six</b> .....	22	Reliance on expert evidence .....	29
Initial directions hearing or discussion .....	22	Examples of noteworthy practices.....	29
Examples of noteworthy practices.....	23	<b>Standard thirteen</b> .....	29
<b>Standard seven</b> .....	23	Co-operation in the resolution of any age dispute in legal or judicial proceedings.....	29
The police and the prosecution service .....	23	Examples of noteworthy practices.....	30
Examples of noteworthy practices.....	24	<b>Standard fourteen</b> .....	31
<b>Standard eight</b> .....	24	Special measures during court proceedings .....	31
The immigration service.....	24	Examples of noteworthy practices.....	32
Examples of noteworthy practices.....	25	<b>Standard fifteen</b> .....	33
<b>Standard nine</b> .....	25	Cross - jurisdictional professional and/or judicial training.....	33
Interviewing an unaccompanied migrant child .....	25	Examples of noteworthy practices.....	34
Examples of noteworthy practices.....	26	<b>Standard sixteen</b> .....	34
<b>Standard ten</b> .....	27	Professional accreditation and supervision .....	34
Exchange of information and evidence by all actors .....	27	Examples of noteworthy practices.....	34
Examples of noteworthy practices.....	27		
<b>Standard eleven</b> .....	28		
Reference by all actors to country of origin information which is guided by the rights contained in the UNCRC .....	28		
Examples of noteworthy practices.....	28		

# INTRODUCTION

These standards are designed to alert different actors in legal and judicial proceedings to relevant obligations which arise from the UN CRC and EU law and to ensure that unaccompanied migrant children benefit from the rights which derive from these legal instruments. They also provide practical suggestions as to how these actors can work together collectively to meet these obligations. When doing so they build on current good practice in various courts and tribunals.

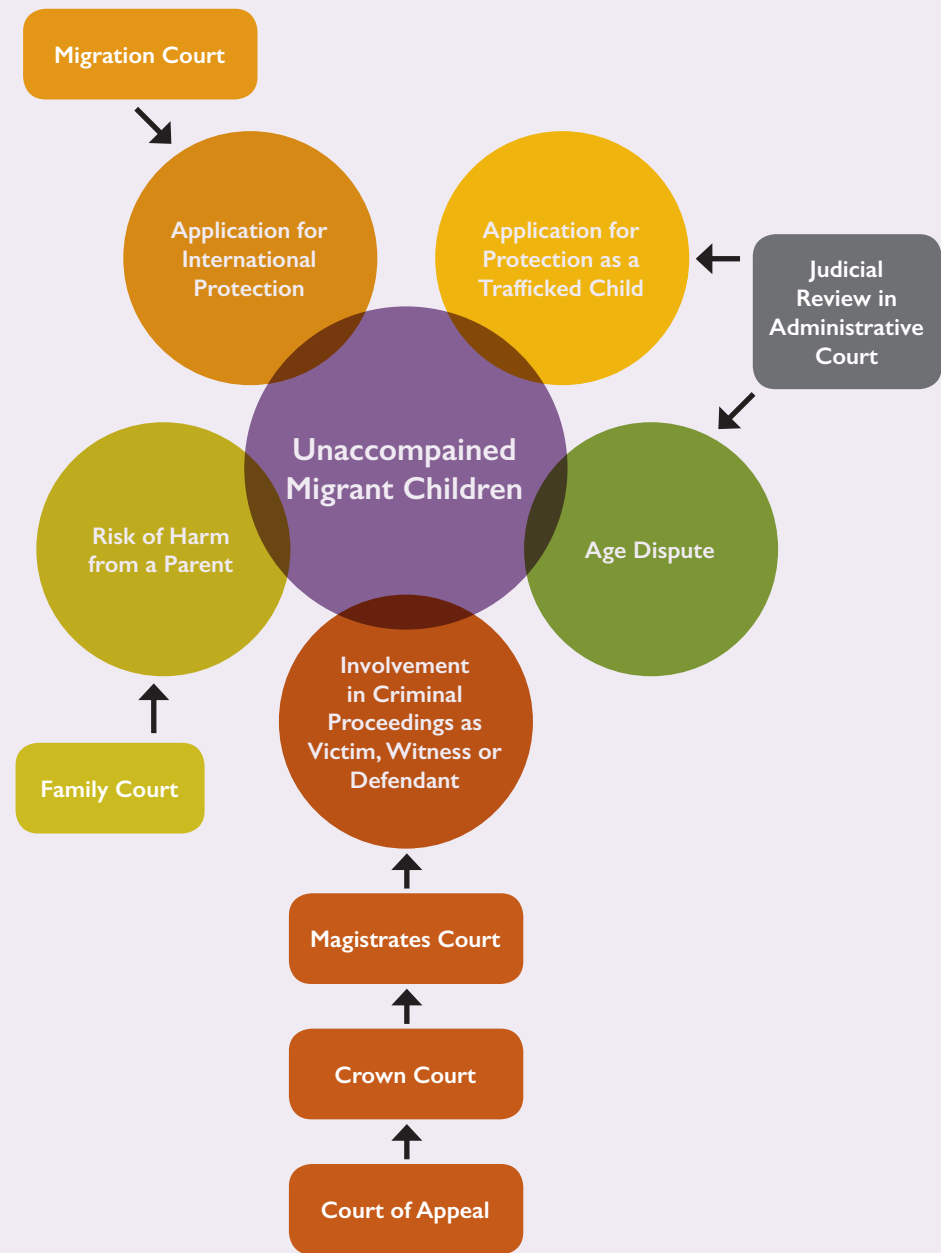
The research which underpins the production of these standards suggests that there are common tasks in many legal and judicial proceedings and that there is currently unnecessary duplication by a number of different actors and also failures of communication between different actors working with the same unaccompanied migrant child. It also indicates that this has an adverse effect on outcomes for both the unaccompanied migrant child and the Member State itself.

It is often possible to tackle some of these shortcomings by sharing information and establishing common procedures. In some circumstances, the ultimate remedy would be to develop a children's court which would be responsible for all legal and judicial proceedings involving an individual unaccompanied migrant children. Such a court would build on the standards suggested below and would have a duty to ensure that the different procedures ultimately lead to the identification of a durable solution for the child.

## THE NEED FOR STANDARDS

An unaccompanied migrant child may have to engage with a wide range of legal procedures, courts and tribunals after his or her arrival in a country of destination. These may include a criminal court, if he or she is a victim of human trafficking, sexual abuse or labour exploitation. In the alternative, he or she may have been wrongly charged with a criminal offence connected with his or her entry into the country or his or her exploitation as a victim of human trafficking. He or she may also have to take legal action in order to dispute an assertion that he or she is over 18, if he or she has been placed in unsuitable accommodation or has not been recognised as victims of human trafficking. Or he or she may be a party to family proceedings because child protection concerns have arisen about his or her previous treatment by a parent or relative.

At the same time, he or she may have been refused asylum or other international protection and be appealing against that decision. Some unaccompanied migrant children may also be seeking compensation from the relevant court or tribunal for false imprisonment, assault or exploitation as a victim of human trafficking.



**Figure 1 :** An unaccompanied migrant child’s possible engagement with multiple courts and tribunals

## THE IMPACT OF A MULTIPLICITY OF ACTORS

An unaccompanied migrant child is also likely to have to interact with what may be a large number of different actors within these legal and judicial proceedings. These actors may include, but are not limited to, border guards, police officers, prosecution and immigration service employees, independent legal guardians, social workers, employees of prosecution and immigration services, lawyers, interpreters, cultural mediators, advocates provided by non-governmental organisations, court officials and judges. In turn these actors may be in close contact with each other and also with their own professional or judicial bodies and training colleges, which may have an indirect impact with their engagement with the individual child.

The situation for unaccompanied migrant children is further complicated by the fact that they may be a defendant or witness in one court, an applicant in another and an appellant in a third. In addition, it may be difficult for an individual unaccompanied migrant child to distinguish between actors whose primary role is a child protection one and others whose primary role is to enforce migration, criminal or other law.

In addition, many of these actors will share joint responsibility for the same or different parts of the legal and judicial processes which the unaccompanied migrant child will be involved in.

Most importantly in many cases the unaccompanied migrant child and the actors working in migration and prosecution departments will not recognise that immigration and prosecution officials and the judges sitting in these jurisdictions also have a role in the wider child protection system.

**Figure 2 :** Joint Responsibility of Actors for the same tasks within different legal and court processes

Process	Actors						
	Border Guard	Guardian	Lawyer	Social Worker	Immigration Service	Prosecution Service	Judiciary
Identification	✓	✓		✓			
Age Assessment	✓	✓	✓	✓	✓	✓	✓
Interview	✓	✓	✓	✓	✓	✓	
Data Collection	✓			✓	✓	✓	
Obtaining Information about Country of Origin		✓	✓		✓		✓
Obtaining Expert Evidence		✓	✓				✓
Judicial Proceedings		✓	✓	✓	✓	✓	✓



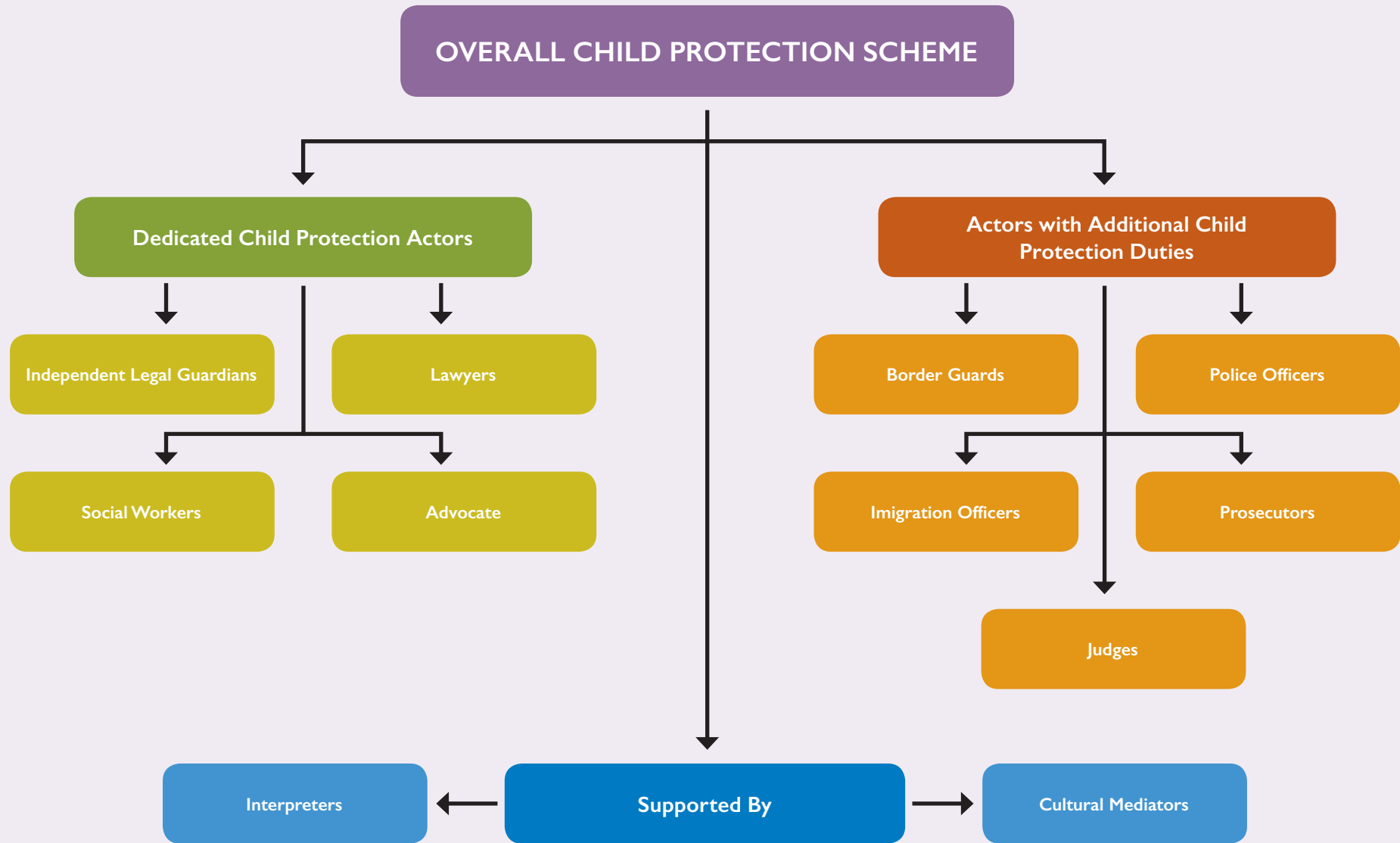


Figure 3 : The wider child protection system

The failure on the part of different actors to understand that they are part of this wider child protection system and that they should co-operate with each other in order to ascertain the particular need of unaccompanied migrant children may ultimately lead to the wrong decision being made in legal and judicial proceedings to the detriment of individual unaccompanied migrant children. In particular,

- ❶ Different courts and tribunals may be making decisions on the basis of differing information about the same individual child. For example, one or more court and tribunal may be treating him or her as a child and others as an adult.
- ❷ Some courts or tribunals may have additional information about a particular child which, if known to other courts and tribunals, would lead them to reach a fairer and more sustainable judgment.
- ❸ A lack of co-ordination between different courts may result in one court presuming that a child is being provided with sufficient protection when this is not the case.
- ❹ A lack of information may lead to a child not being referred into judicial proceedings which may provide him or her with appropriate protection and a durable solution.
- ❺ A child may be wrongfully criminalised because the fact that he or she has been recognised as a victim of trafficking has not been communicated to the immigration tribunal or the criminal court, relevant police officers or those working for the prosecution service.
- ❻ If an unaccompanied migrant child is interviewed about the same or similar facts by a large number of different actors, the quality of his or her evidence may deteriorate over time.
- ❼ The stress of having to appear as an appellant, a defendant and/or a witness in multiple court proceedings may have a very serious adverse effect on an individual child, exacerbating any trauma he or she may have experienced and reducing his or her ability to provide cogent and reliable evidence.
- ❽ The fact that no court or tribunal has comprehensive responsibility for the unaccompanied migrant child may mean that some forms of persecution and exploitation are not identified, that the adults perpetrating any abuse may go unpunished and the unaccompanied migrant child may not be provided with the international protection he or she is entitled to.
- ❾ The segmentation of the different legal and judicial processes may make it extremely difficult to arrive at a durable solution for the individual unaccompanied migrant child.
- ❿ It may also lead to an unaccompanied migrant child being indirectly discriminated against in legal or judicial proceedings by being expected to comply with procedures designed for adult applicants, appellants and defendants.

## THE BASIS FOR THESE STANDARDS

---

The standards outlined below are based on an analysis of the rights owed to unaccompanied migrant children by the UN Convention on the Rights of the Child and the UN Committee on the Rights of the Child's General Comments. They were further refined by reference to developing guidance in relevant EU directives and the EU Charter on Fundamental Rights. Reference to come of these provisions is made in relation to each particular suggested standard.

The standards are also informed by the fact that the UN CRC recognises that children may be at risk from a wide range of different forms of persecution, exploitation and ill-treatment. For example, articles 9, 11, 19, 22, 33, 34, 35 and 37 oblige States to protect children from abuse and neglect by their own parents, physical or mental violence, injury, abuse or neglect, economic exploitation, the illicit use of drugs and the use of children in the production and trafficking of drugs, sexual exploitation and abuse, child trafficking, torture or other cruel, inhuman or degrading treatment or punishment. Unaccompanied migrant children may have suffered from a number of these forms of persecution, exploitation and ill-treatment in the past and may still be at risk of further persecution and exploitation now and in the future.

These obligations are underpinned by three more general articles. Article 6 requires a State to protect a child's inherent right to life, survival and development. This has particular relevance to unaccompanied migrant children, who may be re-traumatised by legal or judicial proceedings which do not address their needs and rights. In addition, article 20 states that a child who has been deprived of his or her family environment shall be provided with special protection and assistance. This may include special assistance within any legal or judicial proceedings.

Most crucially Article 12.2 of the UN CRC says that a child shall be provided with the opportunity to be heard in any judicial and administrative proceedings.

These obligations were acknowledged in paragraph 75 of the Committee on the Rights of the Child's Report on the 2012 Day of General Discussion,<sup>1</sup> which said that States should ensure that their legislation, policies, measures and practices guarantee due process in all migration procedures and judicial proceedings affecting the rights of the children in the context of migration. It also said that children should be treated as individual rights-holders and that their child-specific needs should be considered equally and individually and their views should be appropriately heard. It was also said that children should have access to judicial remedies against decisions made about them in order to guarantee that all decisions are taken in their best interests.

## METHODOLOGY

---

After a period of desk research, these standards have been further refined following consultation with actors in England & Wales, Scotland and Northern Ireland, which are the separate judicial jurisdictions which exist within the United Kingdom. We have also had some discussions with lawyers, non-governmental organisations and policy makers in other EU States. This consultation took place in both individual interviews and at conferences and seminars in which the researcher was involved. They also draw on the findings of a judicial colloquium which took place in Barcelona on 8th July 2011.<sup>2</sup>

<sup>1</sup> <http://goo.gl/I09QDn>

<sup>2</sup> Judicial Implementation of Article 3 of the Convention on the Rights of the Child: The case of migrant children UNICEF & Office of the United Nations High Commissioner for Human Rights Regional Office for Europe June 2012, <http://goo.gl/ESWkWK>

The standards are designed to assist the different actors to work more successfully together, to prevent duplication in legal and judicial proceedings and to build on current good practice in various courts and tribunals with experience of hearing cases involving unaccompanied migrant children.

In addition, they aim to alert the actors to the obligations which particularly arise from the UN CRC and EU law and to ensure that unaccompanied migrant children can successfully rely on these rights and obligations.

They largely refer to current UK practices and seek to provide illustrations of possible useful guidance, tools and reference material. Actors in other jurisdictions may be able to combine these illustrations with useful national practices and references. These standards should also be read with the CONNECT EU Reference Document, which summarises relevant EU law, policy and practical measures of support.

## OVERARCHING PRINCIPLES UNDERPINNING THESE STANDARDS

---

There are certain principles which arise from the UN CRC and which are also referred to in many EU directives and relevant policy documents. They underpin all of the individual standards for actors working with unaccompanied migrant children.

### PRINCIPLE ONE

---

**The best interests of each unaccompanied migrant child should be a primary consideration at each stage of legal and judicial proceedings.**

“1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

Article 3 of the UNCRC

“2. In all actions relating to children, whether taken by public authorities or private institutions, the child’s best interests must be a primary consideration.”

Article 24 of the EU Charter on Fundamental Rights

### PRINCIPLE TWO

---

**An unaccompanied migrant child should be provided with the necessary information, representation and assistance to be able to participate in any legal and/or judicial proceedings in a meaningful way.**

“States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.”

“For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.”

Article 12 of the UNCRC

## PRINCIPLE THREE

**No actor should discriminate against an unaccompanied migrant child in any legal or judicial proceedings on the basis of race, nationality, gender, sexual orientation, disability or on account of any special educational needs.**

Therefore, actors should put in place the necessary provisions to ensure that an unaccompanied migrant child is able to participate in any legal or judicial proceedings despite their particular characteristics or vulnerabilities, lack of language skills or lack of legal capacity.

Training for actors working with unaccompanied migrant children should include a module addressing the characteristics of children which may tend to attract discrimination and the steps which may be needed to combat any such discrimination.

Supervision for actors working with unaccompanied migrant children should include the need to demonstrate an awareness of the actions needed to combat any such discrimination.

“States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”

Article 2 .1 of the UNCRC

“It is essential that children with disabilities be heard in all procedures affecting them and that their views be respected in accordance with their evolving capacities.”

Paragraph 32 of the United Nations Committee on the Rights of the Child’s General Comment 9 on the Rights of Children with Disabilities

## THE INDIVIDUAL STANDARDS

These standards apply to all actors working with unaccompanied migrant children in legal and judicial proceedings. Certain standards will be of more relevance to particular actors but it is important that each actor is aware of the standards to be applied to the work of other actors as child protection responsibilities are shared by all actors working with unaccompanied migrant children.

The first group of standards suggests how certain actors, whose roles are primarily guided by child protection concerns, should work with unaccompanied migrant children and other actors. It is premised on the fact that Member States should provide these children with an independent legal guardian, a lawyer, a social worker, an interpreter and, if appropriate, a cultural mediator. It is acknowledged that some States do not yet provide unaccompanied migrant children with this support and assistance and in these cases these standards should be viewed as aspirational.

# SECTION A: STANDARDS FOR ACTORS WHO PRIMARILY WORK ON BEHALF OF THE CHILD IN THE LEGAL OR JUDICIAL PROCESS

## STANDARD ONE

---

### THE APPOINTMENT OF AN INDEPENDENT LEGAL GUARDIAN

- ① As a child does not ordinarily have legal capacity, every unaccompanied migrant child should be provided with an independent legal guardian accountable to an independent guardianship service as soon as he or she is identified.
- ② The independent legal guardian should have the skills and responsibilities referred to in the EU Fundamental Rights Agency's forthcoming *Guardianship for children deprived of parental care: A handbook to reinforce a guardianship system for the specific needs of child victims of trafficking*. In particular, he or she should have an appropriate level of knowledge and experience of child protection systems, child development, child psychology, child trafficking, international human and children's rights.
- ③ The independent legal guardian should provide the unaccompanied migrant child with an explanation of any legal or judicial proceedings in which he or she will be participating in and the nature of the information he or she will have to provide within these proceedings.
- ④ The independent legal guardian should also enable the unaccompanied migrant child to participate in any legal or judicial proceedings in a manner which is commensurate with the child's age, maturity and capabilities.
- ⑤ The independent legal guardian should locate an appropriately skilled and trained lawyer for each and every legal and judicial proceeding in which the child may be involved.

- ⑥ The independent legal guardian should instruct the lawyer on behalf of the unaccompanied or separated migrant child where he or she does not have the capacity to do so.
- ⑦ The courts and tribunals in which the unaccompanied migrant child may appear should take into account any representations made by the independent legal guardian which are based on his or her knowledge of the child, his or her personal circumstances or the child's country of origin.
- ⑧ The legal guardian should work in co-operation with other actors in order to ensure that the outcome of any legal or judicial process gives rise to a durable solution for that child and any relevant information is shared.
- ⑨ The legal guardian's over-riding duty is to act in the unaccompanied migrant child's best interests at all times.
- ⑩ The independent guardianship service should take responsibility for monitoring the support provided by the individual guardian to each unaccompanied migrant child and ensuring that the guardians are provided with regular and appropriate information and training.

“1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.”

Article 12 of the UNCRC

“Member States shall take the necessary measures to ensure that, where appropriate, a guardian is appointed to unaccompanied child victims of trafficking in human beings.”

Article 16.3 of Directive 2011.26/EU on preventing and combating trafficking in human beings and protecting its victims

“States are required to take necessary measures to secure proper representation of an unaccompanied or separated child's best interests. Therefore, States should appoint a guardian or adviser as soon as the unaccompanied or separated child is identified. The guardian should have the authority to be present in all decision-making processes, including immigration and appeal hearings and all efforts to search for a durable solution.”

Paragraph 33 of the UN Committee on the Rights of the Child's General Comment No. 6 on the Treatment of Unaccompanied and Separated Children Outside Their Country of Origin

“Every unaccompanied child should be provided immediately with a legal guardian mandated to safeguard the child's best interest. The legal guardian should be independent and should have the necessary expertise in the field of childcare. Every guardian should undergo regular training and be subject to regular and independent review/monitor.”

Paragraph 5.5. of Council of Europe Committee on Migration, Refugees and Population Report on Unaccompanied children in Europe: Issues of arrival, stay and return 21.03.2011

“Member States shall: a) Take measures as soon as possible to ensure that a representative represents and assists the unaccompanied minor to enable him or her to benefit from the rights and comply with the obligations provided for in this Directive. The unaccompanied minor shall be informed immediately of the appointment of a representative.

<sup>3</sup> <http://www.refworld.org/pdfid/4d8b1e002.pdf>

*The representative shall perform his or her duties in accordance with the principle of the best interests of the child and shall have the necessary expertise to that end. The person acting as the representative shall be changed only when necessary. Organisations or individuals whose interests conflict or could potentially conflict with those of the unaccompanied minor shall not be eligible to become representatives.”*

**Article 25(1) of the Recast Asylum Procedures Directive**

“States shall ensure that the minor’s needs are duly met in the implementation of this Directive by the appointed guardian or representative.”

**Article 31.2 of the Recast Qualification Directive**

## EXAMPLES OF NOTEWORTHY PRACTICES

- 1 Article 16.3 of Directive 2011.26/EU *on preventing and combating trafficking in human beings and protecting its victims* represents an understanding by the EU that unaccompanied migrant children who have been trafficked are in the need of protection require a legal guardian and not merely an undefined “representative”
- 2 *Core Standards for guardians of separated children in Europe: Goals for guardians and authorities*<sup>4</sup> Defence for Children, ECPAT The Netherlands, Plat-form Mineurs en exil-Service Droit des Jeunes, Save the Children, Defence for Children International (2011) which is a tool to strengthen guardians’ ability to improve child protection.
- 3 *Guardianship for children deprived of parental care: A handbook to reinforce a guardianship system for the specific needs of child victims of trafficking* EU Fundamental Rights Agency (2014).

## STANDARD TWO

### THE APPOINTMENT OF A LAWYER

- 1 The independent legal guardian should instruct a suitably qualified and experienced lawyer or legal adviser to represent an unaccompanied migrant child as soon as he or she engages with a legal process. This should be in co-operation with the child when he or she has the necessary understanding of the proceedings. This will include, but not be restricted to, being charged with a criminal offence, being identified as a victim of human trafficking or exploitation or needing to apply for international protection or immigration status in a country of destination.
- 2 The Ministry of Justice or equivalent body should pay for the lawyer or adviser without imposing prior merits and means tests.
- 3 The independent legal guardian should not instruct a lawyer or adviser who is employed by any central or local government department whose interests may conflict with those of the child. This may include children’s services or an immigration or prosecution service.
- 4 Any lawyer should be accredited by his or her appropriate professional body and attend annual Continuing Professional Development training to maintain his or her expertise.
- 5 Any legal adviser, who is not a professional lawyer, should be regulated by a statutory body established at national level.
- 6 The independent legal guardian should check that the lawyer or legal adviser has the appropriate skills and training to represent the child in the legal and/or judicial process in which he or she is due to engage.

<sup>4</sup> <http://www.defenceforchildren.nl/images/69/1632.pdf>



- 7 Members of the judiciary should also check that lawyers or legal advisers appearing before them have the necessary accreditation.
- 8 The lawyer should arrange for the attendance of an appropriate interpreter, a cultural mediator, where this is necessary, and an appropriate adult for any interview with the unaccompanied migrant child.

“1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.”

**Article 12 of the UNCRC**

“Where children are involved in judicial proceedings, they should, in addition to the appointment of a guardian, be provided with legal representation.”

**Paragraph 36 of the UN Committee on the Rights of the Child’s General Comment No 6 on the Treatment of Unaccompanied and Separated Children Outside Their Countries of Origin**

“Where a child is referred to a judicial procedure involving the determination of his or her best interests, he or she should be provided with a legal representative in addition to a guardian or representative of his or her views, when there is a potential conflict between the parties in the decision.”

**Paragraph 96 of General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration**

“States shall ensure that child victims have access without delay to free legal counselling and to free legal representation, including for the purposes of claiming compensation, unless they have sufficient financial resources.”

**Article 15.2 of the EU Directive on preventing and combating trafficking in human beings and protecting its victims**

“They shall be informed in a language which they understand or are reasonably supposed to understand of the procedure to be followed and of their rights and obligations during the procedure and the possible consequences of not complying their obligations and not cooperating with the authorities.”

**Article 12(1) (a) of the recast EU Directive for granting and withdrawing the provision of international protection**

## EXAMPLES OF NOTEWORTHY PRACTICES

- 1 *The Right to Justice: Quality Legal Assistance for Unaccompanied Children*<sup>5</sup> project funded by the European Union Fundamental Rights and Citizenship Programme.
- 2 In the United Kingdom the Office of the Immigration Services Commissioner has powers to regulate the provision of immigration advice by individuals who are not regulated by a law society or bar council. The Office publishes a *Guidance on Competence*<sup>6</sup> and has established three levels of competence which advisers have to attain through training courses and examinations before they can give advice and assistance in different areas of immigration and asylum law.

<sup>5</sup> <http://goo.gl/UT7N8Y>

<sup>6</sup> <http://goo.gl/LunkcH>

- ③ It is a criminal offence in the United Kingdom for anyone to give advice and assistance in an immigration or asylum case unless he or she is regulated by a law society or bar council or the OISC.
- ④ In Holland there is a pool of qualified lawyers who represent unaccompanied migrant children.
- ⑤ The Francophone Bar in Belgium provides training on representing unaccompanied migrant children.
- ⑥ In Barcelona there is a pool of experienced lawyers with experience of working with unaccompanied migrant children.

## STANDARD THREE

### THE PROVISION OF AN INTERPRETER

- ① It may be necessary to provide an interpreter because the unaccompanied migrant child does not speak the language being used in any legal or judicial process. It may also be necessary to provide an interpreter because an unaccompanied migrant child is deaf.
- ② The relevant national ministry should arrange for interpreters to be provided at no cost to the unaccompanied migrant child.
- ③ The unaccompanied migrant child's guardian and lawyer should arrange for an appropriate interpreter to be present to interpret for the unaccompanied migrant child when they wish to interview the child in relation to any legal or judicial proceedings in which the child is involved.
- ④ The prosecution or immigration service should arrange for an interpreter to be present to interpret for an unaccompanied migrant child when it wishes to interview the child in relation to any legal proceedings in which the child is involved.
- ⑤ Appropriate court or tribunal staff should arrange for a suitable interpreter to be available if an unaccompanied migrant child has to give evidence in that court or tribunal.
- ⑥ Professionals, courts and tribunals should only employ interpreters who have the necessary level of linguistic or communication skills.
- ⑦ They should also employ independent interpreters who are regulated by appropriate professional organisations in order to ensure that there is no appearance of bias in legal and judicial proceedings.
- ⑧ Interpreters should familiarise themselves with the appropriate additional vocabulary which may be necessary to understand the case being put by a particular unaccompanied migrant child.
- ⑨ Judges should have the power to adjourn any trial or hearing if he or she does not consider that the interpreter has the necessary linguistic or communication skills to convey the evidence being given by an unaccompanied migrant child.

“1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative

*proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.”*

**Article 12 of the UNCRC**

“As participation is dependent on reliable communication, where necessary, interpreters should be made available at all stages of the asylum or immigration procedure.

**Paragraph 25 of UN Committee on the Rights of the Child’s General Comment No. 6 on Treatment of unaccompanied and separated children outside their country of origin**

“1. Member States shall ensure that victims who do not understand or speak the language of the criminal proceedings concerned are provided, upon request, with interpretation accordance with their role in the relevant criminal proceedings, free of charge.

*Without prejudice to the rights of the defence and in accordance with rules of judicial discretion, communication technology such as videoconferencing, telephone or internet may be used, unless the physical presence of the interpreter is required in order for the victims to properly exercise their rights or to understand the proceedings.*

*Member States shall ensure that victims who do not understand or speak the language of the criminal proceedings concerned are provided, in accordance with their role in the relevant criminal justice system in criminal proceedings, upon request, with translation of information essential to the exercise of their rights in criminal proceedings in a language that they understand, free of charge.”*

**Article 7 of Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings**

## EXAMPLES OF NOTEWORTHY PRACTICES

- 1 In the United Kingdom there are a number of self-regulatory professional bodies which set appropriate standards for interpreters and language service professionals. These include the *National Register of Public Services Interpreters*<sup>7</sup>, the *Council for the Advancement of Communication with Deaf People*<sup>8</sup> and the *Association of Police and Court Interpreters*.<sup>9</sup>
- 2 These bodies provide professional codes of practice for their members.
- 3 Within the UK National Criminal Justice System there is also a *National Agreement on Arrangements for the Use of Interpreters and Translators*.<sup>10</sup>

<sup>7</sup> <http://www.nrpsi.org.uk>

<sup>8</sup> <http://goo.gl/4vrPkf>

<sup>9</sup> <http://www.apciinterpreters.org.uk>

<sup>10</sup> <http://goo.gl/rD2e51>

## STANDARD FOUR

### THE PROVISION OF A CULTURAL MEDIATOR

- ❶ Other actors and, in particular an independent legal guardian or social worker, may need to contact a cultural mediator to be present when the unaccompanied migrant child is interviewed in any legal or judicial proceedings.
- ❷ The role of the cultural mediator is to place any questions being asked or explanations being provided in the appropriate cultural context for an unaccompanied migrant child from a particular community or country.
- ❸ This may be particularly necessary where an unaccompanied migrant child has experienced persecution or exploitation by members of his or her own linguistic group and from which any interpreter may originate.
- ❹ In addition, if an unaccompanied migrant child has no or little trust in those interviewing him or her, the presence of a cultural mediator may assist communication and disclosure.
- ❺ Other actors should not expect the cultural mediator to act as an interpreter unless he or she has the necessary training to do so.

“1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.”

Article 12 of the UNCRC

### EXAMPLES OF NOTEWORTHY PRACTICES

- ❶ *Cultural Mediators in Italy: a new breed of linguists*<sup>11</sup> Amalia Amato & Chris Garwood, inTRAlinea.
- ❷ *Interpreters & Cultural Mediators*<sup>12</sup> Mayte Martin & Mary Phelan, *Translocation, Migration and Social Change* ISSN Number 2009-0420.

## STANDARD FIVE

### SOCIAL WORKERS

- ❶ National or local government should provide each unaccompanied migrant child with a social worker who will be primarily responsible for ensuring that he or she is provided with suitable accommodation and support and is protected from harm on a day to day basis.
- ❷ This social worker will also have an important role to play in relation to information gathering in the context of any legal or judicial proceedings which the unaccompanied migrant child may be involved in.
- ❸ In particular, the social worker may be responsible for keeping a contemporaneous record of any information which the unaccompanied migrant child discloses about his or her past experiences, persecution or exploitation. In addition, the social worker should explain other circumstances disclosed by the unaccompanied migrant child, which have an effect on his or her ability to participate in any interviews or hearings.

<sup>11</sup> <http://goo.gl/U4LpgA>

<sup>12</sup> <http://doras.dcu.ie/16481/>

- ④ The social worker may need to exchange such information with other actors if this is in the best interests of the unaccompanied migrant child. Disclosure may also be necessary to ensure that he or she stays safe from harm and is granted any protection to which he or she is entitled.
- ⑤ The social worker may also provide information which is relevant to any age assessment and the decision as to whether the unaccompanied migrant child is a victim of child trafficking.
- ⑥ In relation to any such disclosure the social worker should comply with any confidentiality and data protection duties.

“1. 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.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.”

**Article 20 of the UNCRC**

## EXAMPLES OF NOTEWORTHY PRACTICES

- ① *Safeguarding children who may have been trafficked: Practice Guidance*<sup>13</sup> UK Department of Education and Home Office (18.10.2011) This guidance ensures that all actors in the wider child protection system are aware of their individual and collective obligations to a child who may have been trafficked.
- ② In 2013 the UK Home Office provided a grant to the National Society of Prevention of Cruelty to Children and other NGOs so that they could deliver training about child trafficking to social work students and practitioners.

<sup>13</sup> <http://goo.gl/dV9H9v>

## SECTION B: INTERACTION WITH OTHER ACTORS

There will also be some tasks which all actors in the wider child protection system are likely to have to undertake. The ability of these actors to share information and evidence and expertise is also likely to be of benefit to unaccompanied migrant children as long as appropriate standards of confidentiality and data protection are maintained.

### STANDARD SIX

---

#### INITIAL DIRECTIONS HEARING OR DISCUSSION

- ① At the earliest possible stage relevant actors, including the unaccompanied migrant child's legal guardian, lawyer and social worker, should meet together with the unaccompanied migrant child to consider the steps that should be taken to ensure that the child obtains any international protection to which he or she may be entitled and that he or she is provided with a durable solution which meets all of his or her needs and rights.
- ② At the same time, these actors should consider what other legal proceedings the unaccompanied migrant child may be involved with in the family, criminal or civil courts.
- ③ In some civil law jurisdictions, it will be possible to bring these actors together at an initial directions hearing in an appropriate court or tribunal presided over by the judge who takes legal responsibility for the unaccompanied migrant child.
- ④ In common law jurisdictions there may not be a judge who takes an over view of all the legal processes in which the unaccompanied migrant child may be involved. If this is the case, the legal guardian should arrange a multi- disciplinary meeting of all relevant actors so that relevant information can be shared and different legal applications and court appearances appropriately timetabled.

- ⑤ The directions hearing or multi-disciplinary meeting should consider what evidence needs to be obtained about the individual unaccompanied migrant child and his or her particular circumstances and country of origin.
- ⑥ It should also consider what steps can be taken to assist different actors to co-operate in relation to the unaccompanied migrant child's protection needs and any immigration, family, administrative or criminal proceedings he or she may be involved in.

### EXAMPLES OF NOTEWORTHY PRACTICES

- ① The UK Protocol of 19<sup>th</sup> July 2013 : *Communications Between Judges of the Family Court and the Immigration and Asylum Chamber of the First-Tier Tribunal*<sup>14</sup> and the Upper Tribunal obliges judges of the family and immigration and asylum chamber to communicate with each other as soon as they become aware that there are parallel proceedings in the other jurisdiction. They will exchange relevant orders and documents and inform each other about the progress made so far in their own jurisdiction.
- ② In the United Kingdom, if there are grounds to suspect that an unaccompanied migrant child is a victim of human trafficking, his or her social worker may set up a strategy discussion with any police officers involved in the case and may also invite any relevant immigration officer to attend.

<sup>14</sup> <http://goo.gl/smVmwJ>

## STANDARD SEVEN

### THE POLICE AND THE PROSECUTION SERVICE

- ① A police officer or an employee of a prosecution service will principally have a law enforcement role.
- ② However, he or she is also part of the wider child protection system on which an unaccompanied migrant child can rely. This is particularly the case if the child has been a victim of human trafficking or has been exploited in a country of destination.
- ③ Police officers and employees of a prosecution service will also have a duty to treat an unaccompanied migrant child's best interests as a primary consideration.
- ④ Police officers and employees of a prosecution service should alert an unaccompanied migrant child's social worker or independent legal guardian to any information, which may indicate that the child is still at risk of human trafficking or sexual or labour exploitation.
- ⑤ Police officers and employees of a prosecution service should co-operate in any information gathering process which is designed to achieve a durable solution for an unaccompanied migrant child.

“States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 35 of the UNCRC

“States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 36 of the UNCRC

## EXAMPLES OF NOTEWORTHY PRACTICES

- 1 Position from the ACPO lead on cannabis cultivation on *Children and Young People Recovered in Cannabis Farms*<sup>15</sup> (2004) Association of Chief Police Officers of England, Wales and Northern Ireland. This provides advice to police officers on child safeguarding duties which arise when children have been trafficked for exploitation in cannabis farms and their roles in the wider child protection system.
- 2 *Children Trafficked for Forced Begging and Criminality*<sup>16</sup> Council of the Baltic States (2013). This research provides very useful information on the characteristics of such trafficking and how it can be combated.

## STANDARD EIGHT

### THE IMMIGRATION SERVICE

- 1 An immigration officer will primarily have an immigration control function.
- 2 However, he or she is also an actor within the wider child protection system.

<sup>15</sup> <http://goo.gl/sNaLMW>

<sup>16</sup> <http://goo.gl/GnzGsd>

- 3 He or she will have a duty to treat the unaccompanied migrant child's best interests as a primary consideration and to take into account evidence which may suggest that remaining in the country of destination is likely to be the durable solution which is in the unaccompanied migrant child's best interests.
- 4 As a consequence, he or she should alert the child's social worker and independent legal guardian and the police to any information which may indicate that the child is at risk of human trafficking or sexual exploitation.
- 5 He or she should also inform the unaccompanied migrant child's guardian or social worker if the asylum or other international protection process identifies physical or psychiatric conditions which may place the child at risk or decisions which may cause him or her to run away from care.
- 6 He or she should also co-operate with any information gathering exercise which is designed to protect the child from child trafficking or sexual or labour exploitation.
- 7 Within the immigration process the immigration officer should also adopt child-friendly processes and take into account child-specific reasons for persecution, which may indicate that a child is in need of international protection even though an adult would not be.

“States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

Article 22 of the UNCRC



“1. Before deciding to issue a return decision in respect of an unaccompanied minor, assistance by appropriate bodies other than the authorities enforcing return shall be granted with due consideration being given to the best interests of the child.

2. 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.”

Article 10 of the Return Directive

## EXAMPLES OF NOTEWORTHY PRACTICES

- 1 UNHCR Guidelines on Policies and Procedures in dealing with Unaccompanied Minors Seeking Asylum 1997<sup>17</sup>
- 2 UNHCR Guidelines on International Protection No.8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees<sup>18</sup>

<sup>17</sup> <http://www.refworld.org/docid/3ae6b3360.html>

<sup>18</sup> <http://www.refworld.org/pdfid/4b2f4f6d2.pdf>

## STANDARD NINE

### INTERVIEWING AN UNACCOMPANIED MIGRANT CHILD

- 1 A border guard, police officer or employee of an immigration or prosecution service, who is the first actor to make contact with an unaccompanied migrant child, should identify whether the child is in need of protection or assistance on account of being a child outside his or her country of origin with no adult with parental responsibility for him or her.
- 2 No substantive interview should take place until the child has been provided with an independent legal guardian and a lawyer and should be facilitated by an interpreter and, if necessary, a cultural interpreter.
- 3 No substantive interview should be conducted at a port of entry or border.
- 4 Where an unaccompanied migrant child's age, maturity, ability or psychological condition means that he or she is not fit to give cogent evidence immigration officers or caseworkers should rely on information about the child provided by his or her independent legal guardian and/or lawyer.
- 5 Border guards, police officers and employees of immigration and prosecution services should receive training in child rights, child development, child trafficking, the importance of being aware of relevant country of origin information and the necessary skills to communicate with unaccompanied migrant children before being allocated to the case of an unaccompanied migrant child.
- 6 Border guards, police officers and employees of immigration and prosecution services should provide a separate child-friendly venue for any preliminary or substantive interview.

7 As a general rule, the first actors to conduct a substantive interview of an unaccompanied migrant child should make a video recording of the interview, which will generally stand as evidence in chief for the purposes of investigations subsequently made by other actors.

8 But there may be cases in which an unaccompanied migrant child is too traumatised to give full disclosure at such an early stage or where he or she is still under the influence of trafficker or smuggler. In these situations, it may be necessary to conduct a video interview at a later stage.

“1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.”

**Article 12 of the UNCRC**

“In order to facilitate the process of determining the Member State responsible, the determining Member State shall conduct a personal interview with the applicant.”

**Article 5.1 of Regulation 604/2013 (Recast Dublin Regulation)**

“Member States shall take the necessary measures to ensure that [...] (a) interviews with the child victim take place without unjustified delay (b) interviews with the child victim take place, where necessary, in premises designed or adapted for that purpose;

(c) interviews with the child victim are carried out, where necessary, by or through professionals trained for that purpose;”

**Article 15.3 of the Anti-Trafficking Directive**

“Member States shall ensure that: (a) if an unaccompanied minor has a personal interview on his or her application for international protection...that interview is conducted by a person who has the necessary knowledge of the special needs of minors.”

**Article 25(3) of the Recast Asylum Procedures Directive**

## EXAMPLES OF NOTEWORTHY PRACTICES

1 In the UK where a child has been the victim of child abuse which may amount to a criminal offence, he or she is interviewed by a police officer and a social worker who have been specifically trained for this purpose in a room which has been designed for this purpose to be more child-friendly. The interview is video recorded and is used as evidence for the purpose of the criminal investigation and the criminal and family court proceedings. See also *Achieving Best Evidence in Criminal Proceedings: Guidance on vulnerable victims and witnesses and guidance on using special measures*<sup>19</sup> UK Ministry of Justice March 2011.

2 Draft statutory guidance for local authorities on the care of unaccompanied asylum seeking and trafficked children put out for consultation on 28th January 2014 states that steps should be taken to minimise distress caused by asking children to repeat information that they may already have provided, for example, to border officials, police or social care staff assessing their child safeguarding needs.

<sup>19</sup> <http://goo.gl/bFXprM>

## STANDARD TEN

### EXCHANGE OF INFORMATION AND EVIDENCE BY ALL ACTORS

- ❶ Actors, which include, but are not restricted to, border guards, police and immigration officers, social workers, legal guardians and lawyers, should ensure that they share relevant information with each other immediately that an unaccompanied migrant child is identified, if a failure to exchange such information would place the child at risk of child trafficking, sexual or labour exploitation or self-harm.
- ❷ Provision should be made for the independent legal guardian and/or the child's lawyer to confirm that they or the unaccompanied migrant child, where he or she is capable of doing so, has given informed consent to the sharing of his or her personal data during any status determination process or any proceedings in the family, criminal, immigration or civil courts or tribunals.
- ❸ Actors, including border guards, police officers, immigration caseworkers, social workers, legal guardians and lawyers, should adopt information sharing protocols and procedures for multi-agency working and the transfer of relevant information. These protocols should pay due attention to laws and policies related to confidentiality and data protection. They should also respect the principle of legal privilege and unaccompanied migrant children should not be obliged to disclose and share instructions given on their behalf to their lawyers. The underlying purpose should be to ensure that every unaccompanied migrant child is fully protected from all forms of harm.
- ❹ The actors should agree to this shared information being stored in a paper or electronic file which they can all have access too subject to appropriate data protection procedures.
- ❺ They should also designate one particular actor as the person responsible for ensuring that a shared file is opened in relation to each unaccompanied migrant child and updated, as necessary, and that any further evidence is sought when this becomes relevant.
- ❻ Judges in one particular court should provide information about the law which is applied in their own court to judges in other jurisdictions to enable them to better understand decisions which may be made in each court. Child protection concerns should be given primary consideration even if the proceedings are adversarial.

Directive 95/46/EU on the protection of individuals with regard to the processing of personal data and of the free movement of such data.

### EXAMPLES OF NOTEWORTHY PRACTICES

- ❶ The UK Protocol of 19th July 2013: *Communications Between Judges of the Family Court and the Immigration and Asylum Chamber of the First-Tier Tribunal*<sup>20</sup> and the Upper Tribunal assists these judges to disclose relevant information to each other. In particular, as soon as a judge becomes aware that there are parallel proceedings in another jurisdiction, he or she should contact the other court to inform it of the progress to date in his or her own court. Both courts should then share relevant evidence and timetable future hearings to best protect the child in question.
- ❷ The UK Protocol and Good Practice Model on *Disclosures of information in cases of alleged child abuse and linked criminal and care directions hearings*<sup>21</sup> (October 2013) permits disclosure of evidence between criminal and family proceedings involving the same child victim and/or the same adult offender.

<sup>20</sup> <http://goo.gl/smVmwJ>

<sup>21</sup> <http://goo.gl/9WgpFf>

- ③ See also *Related Family and Criminal Proceedings* General Editor Ananda Hall, Law Society of England and Wales (2007)
- ④ See also *Safeguarding children who may have been trafficked: Practice Guidance*<sup>22</sup> UK Department of Education and Home Office (18.10.2011) which discusses the need for all actors to share information held on an unaccompanied migrant child who may have been a victim of child trafficking.

## STANDARD ELEVEN

### REFERENCE BY ALL ACTORS TO COUNTRY OF ORIGIN INFORMATION WHICH IS GUIDED BY THE RIGHTS CONTAINED IN THE UNCRC

- ① Actors should ensure that country of origin reports include adequate evidence about whether an unaccompanied migrant child's country of origin meet the obligations which arise from different articles within the UN CRC.
- ② Any country of origin evidence relied on by any relevant actors should be based on objective, up-to-date, reliable and verifiable sources. It should also be disclosed to the unaccompanied migrant child and his or her guardian and lawyer before any decision in the status determination process or any hearing in an immigration, family, criminal or civil court or tribunal.

<sup>22</sup> <http://goo.gl/dV9H9v>

- ③ Actors should not presume that the immigration service necessarily has the most objective, up to date and reliable country of origin information.
- ④ Country of origin information which has been collected and/or produced by academic or other experts, NGOs or individual actors should also be given appropriate weight.

### EXAMPLES OF NOTEWORTHY PRACTICES

- ① *An Analysis of the Coverage of Issues Related to Children in Country of Origin Reports Produced by the Home Office*<sup>23</sup> (Prepared for the Independent Advisory Group on Country Information) Ravi Kohli & Others, October 2012,
- ② *Common EU Guidelines for Processing Country of Origin Information*<sup>24</sup> EU April 2008
- ③ *Judicial Criteria for Assessing Country of Origin Information: A Checklist*<sup>25</sup> (Paper for 7th Biennial IARLJ Conference 2006) International Journal of Refugee Law, Vol 21, Issue 1, pp 149 – 168
- ④ *Country Information in Asylum Procedures – Quality as a Legal Requirement in the EU*,<sup>26</sup> Hungarian Helsinki Committee (2011)
- ⑤ UNICEF Project on *Child Specific Country of Origin: Child Notices* (2014 – 2016)

<sup>23</sup> <http://goo.gl/cLRNwF>

<sup>24</sup> <http://www.refworld.org/docid/48493f7f2.html>

<sup>25</sup> <http://goo.gl/V7Q4la>

<sup>26</sup> <http://goo.gl/Yfll0a>

## STANDARD TWELVE

### RELIANCE ON EXPERT EVIDENCE

- ❶ All actors should give due weight to expert evidence provided by suitably qualified and/or accredited experts who can provide evidence which is outside of the unaccompanied migrant child's knowledge or competence but which is relevant to the outcome of the legal or judicial proceedings.
- ❷ These experts should provide details of any relevant training, experience, visits to relevant country of origin, publications or research. Some of them may also be able to show that they belong to appropriate university departments or research organisations.
- ❸ Experts may also be available from specialist NGOs with expertise in torture, trauma, child trafficking or different forms of child specific persecution.

### EXAMPLES OF NOTEWORTHY PRACTICES

- ❶ In the United Kingdom expert evidence about medical and psychiatric conditions, post traumatic stress disorder, country conditions, human trafficking and forms of exploitation may be relied upon by a range of actors at the application and the appeal stage of legal and judicial proceedings.
- ❷ *Practice Direction 25A: Experts and Assessors in Family Proceedings.*<sup>27</sup> UK Ministry of Justice.

<sup>27</sup> <http://goo.gl/OQqjj9>

## STANDARD THIRTEEN

### CO-OPERATION IN THE RESOLUTION OF ANY AGE DISPUTE IN LEGAL OR JUDICIAL PROCEEDINGS

- ❶ Actors in legal and judicial proceedings should only undertake an assessment of an unaccompanied migrant child's age where there is a reasonable doubt about his or her age.
- ❷ If there is a reasonable doubt, actors in legal and judicial proceedings should co-operate and exchange evidence held by them in order to arrive at a multi-disciplinary and holistic assessment of the unaccompanied migrant child's age.
- ❸ Actors in legal and judicial proceedings should presume that a child is the age claimed until a lawful age assessment has been completed.
- ❹ Actors in legal and judicial proceedings should obtain informed consent to any age assessment from the unaccompanied migrant child through his or her independent legal guardian and/or lawyer.
- ❺ Actors in legal and judicial proceedings should primarily rely on documentary and expert evidence as opposed to medical evidence.
- ❻ The independent legal guardian should provide evidence about the unaccompanied migrant child's own knowledge of his or her age and also provide his or her opinion of the child's age.

“States Parties undertake to respect the right of the child to preserve his or her identity.”

Article 8 of the UNCRC

“Member States shall ensure that, where the age of a person subject to trafficking in human beings is uncertain and there are reasons to believe that the person is a child, that person is presumed to be a child in order to receive immediate access to assistance, support and protection.

EU Anti-Trafficking Directive

“2. Where the age of a victim is uncertain and there are reasons to believe that the victim is a child, the victim shall, for the purposes of this Directive, be presumed to be a child.”

Article 12 of Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime

## EXAMPLES OF NOTEWORTHY PRACTICES

- 1 In the case of *Re L & Others*<sup>28</sup> [2013] EWCA Crim 991, the English Court of Appeal (Criminal Division) held that the prosecution was under an obligation to disclose all material which is relevant to a child’s age and that a court may adjourn the case for further information from actors such as the immigration service. It also criticised defence lawyers for not being more aware of the manner in which a trafficked child’s age may be wrongly assessed. In addition, it also suggested that any issue of age should be resolved at the earliest opportunity on the basis of co-operation between the various relevant actors.
- 2 *Suspects who may be children- Additional Requirements* section of *Human Trafficking, Smuggling and Slavery*<sup>29</sup> UK Crown Prosecution Service policy, which is currently on the CPS website.

<sup>28</sup> <http://goo.gl/PMlo8J>

<sup>29</sup> <http://goo.gl/h35S7r>

- 3 The Executive Summary of the *EASO Age Assessment Practice in Europe*<sup>30</sup> European Asylum Support Office (December 2013) confirms that no method currently available can tell with certainty the exact age of an individual and that there are concerns about the invasiveness and accuracy of the methods in use. As a consequence, it goes on to promote common procedures and approaches rather than a particular methodology.
- 4 *When is a child not a child? Asylum disputes and the process of age assessment*<sup>31</sup> Heaven Crawley. Immigration Law Practitioners Association (May 2007)
- 5 *Medical, statistical, ethical and human rights considerations in the assessment of age in children and young people subject to immigration control*<sup>32</sup> A. Aynsley-Green, T.J. Cole, H. Crawley, N. Lessof, L.R. Boag, *British Medical Bulletin* 102 pp 17 – 42
- 6 *Age assessment practices: a literature review & annotated bibliography*<sup>33</sup> Terry Smith & Laura Brownlees, UNICEF (April 2011)

<sup>30</sup> <http://goo.gl/cW7Q91>

<sup>31</sup> <http://www.ilpa.org.uk/pages/publications.html>

<sup>32</sup> <http://goo.gl/GZxkua>

<sup>33</sup> <http://goo.gl/6XEzjJ>

## STANDARD FOURTEEN

### SPECIAL MEASURES DURING COURT PROCEEDINGS

- ❶ The presiding judge should take responsibility for ensuring that the unaccompanied migrant child's best interests are a primary consideration during any hearing or trial.
- ❷ This may include making the actual court or tribunal child-friendly by re-arranging its layout and excluding all but essential actors.
- ❸ The presiding judge should give directions which recognise that an unaccompanied migrant child is, by reason of his or her age, a vulnerable witness, whether he or she is appearing as an applicant, appellant, defendant, victim or witness of fact.
- ❹ The presiding judge should also check that an unaccompanied migrant child has been provided with an independent legal guardian, a suitably qualified lawyer and is accompanied to the court or tribunal by a social worker or other appropriate support worker.
- ❺ The presiding judge should put in place special measures to assist any unaccompanied migrant child who is appearing in any court or tribunal. These may include letting the child give evidence from behind a screen or letting his or her written statement stand as his or her initial evidence. It may also involve a foster carer sitting beside the unaccompanied migrant child or a legal guardian giving evidence on behalf of the child.
- ❻ Where appropriate unaccompanied migrant children should give their evidence in chief on video or DVD at a venue which is separate from the actual court or tribunal building and in the presence of their independent legal guardian and their lawyer.
- ❼ The presiding judge should give due weight to any expert evidence served or given on behalf of the unaccompanied migrant child. This should include any evidence given by the child's independent legal guardian.

“A child cannot be heard effectively where the environment is intimidating, hostile, insensitive or inappropriate for her or his age. Proceedings must be both accessible and child-appropriate. Particular attention needs to be paid to the provision and delivery of child-friendly information, adequate support for self-advocacy, appropriately trained staff, design of court rooms, clothing of judges and lawyers, sight screens, and separate waiting rooms.”

Paragraph 34 of the UN Committee on the Rights of the Child's General Comment No. 12 on the right of the child to be heard

“Without prejudice to the rights of the defence, Member States shall take the necessary measures to ensure that in criminal investigations and proceedings in relation to offences relating to trafficking in human beings:

- (a) interviews with the child victim take place without unjustified delay after the facts have been reported to the competent authorities;
- (b) interviews with the child victim take place, where necessary, in premises designed or adapted for that purpose;
- (c) interviews with the child victim are carried out, where necessary, by professionals trained for the purpose;
- (d) the same persons, if possible and where appropriate, conduct all interviews with the child victim;

(e) the number of interviews is as limited as possible, and interviews are carried out only where strictly necessary for the purposes of criminal investigations and proceedings;

(f) the child victim may be accompanied by a representative or, where appropriate, an adult of the child's choice, unless a reasoned decision had been made to the contrary in respect of that person.

#### EU Anti-Trafficking Directive

“Member States shall take the necessary measures to ensure that in criminal proceedings relating to offences related to human trafficking all interviews with a child victim shall be video recorded and that such video recorded interviews may

#### Article 15.4

“Member States shall take the necessary measures to ensure that in any criminal proceedings it may be ordered that:

(a) the hearing take place without the presence of the public; and

(b) the child victim be heard in the courtroom without their being present, in particular, through the use of appropriate communication technologies.

#### Article 15.5

“Member States shall take the necessary measures with a view to finding a durable solution based on an individual assessment of the best interests of the child.

#### Article 16.2

Directive 2012/29/EU *establishing minimum standards on the rights, support and protection of victims of crime.*

“1. Member States shall ensure that where the victim is a child: (a) in criminal investigations, all interviews with the child victim may be audio- visually recorded and such recorded interviews may be used as evidence in criminal proceedings;”

#### Article 24

“1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.”

#### Article 40

## EXAMPLES OF NOTEWORTHY PRACTICES

- 1 UK Adjudicator Guidance Note No. 8 on *Unaccompanied Minors*<sup>34</sup> (April 2004)
- 2 UK Youth Court Bench Book 2010,<sup>35</sup> March 2010
- 3 UK Joint Presidential Guidance Note No. 2 of 2010 on *Child, vulnerable adult & sensitive appellant guidance*<sup>36</sup>
- 4 UK Crown Prosecution Service policy<sup>37</sup> on prosecuting criminal cases involving children and young people as victims and witnesses

<sup>34</sup> <http://goo.gl/XOWr8X>

<sup>35</sup> <http://goo.gl/TEbdMU>

<sup>36</sup> <http://goo.gl/1hcnx5>

<sup>37</sup> <http://goo.gl/D7oyWK>



- 5 In 2014, the Ministry of Justice established a six month pilot project<sup>38</sup> in crown courts in Leeds, Liverpool and Kingston-upon-Thames within which vulnerable witnesses, including child victims of trafficking and exploitation, are to be cross examined in a venue outside the court premises and a video of their evidence used in court. Usually a vulnerable witness has to be cross examined in open court in the presence of the adults who may have abused, exploited or trafficked him or her.
- 6 The UK National Group on Sexual Violence Against Children and Vulnerable, co-ordinated by the Home Office is considering further measures to protect vulnerable witnesses including child victims of child trafficking and sexual and labour exploitation.

## STANDARD FIFTEEN

### CROSS - JURISDICTIONAL PROFESSIONAL AND/OR JUDICIAL TRAINING

- 1 All actors involved in legal and judicial proceedings involving unaccompanied migrant children should receive training which includes modules on child development, children's rights, relevant EU law, child trafficking and child specific forms of persecution, abuse and exploitation.
- 2 Basic initial training should be provided before these actors start to work with unaccompanied migrant children.

<sup>38</sup> <http://www.bbc.com/news/uk-27156660>

- 3 Further training should be offered in cross-jurisdictional groups of professionals so that, for instance, lawyers, judges, social workers and independent legal guardians working in England and Wales would be trained together.
- 4 Existing judicial colleges, professional associations and NGOs should co-operate to design and provide such training.

*“Particular attention should be paid to the training of officials working with separated and unaccompanied children and dealing with their cases. Specialized training is equally important for legal representatives, guardians, interpreters and others dealing with separated and unaccompanied children.”*

**Paragraph 95 of the UN Committee on the Rights of the Child's General Comment No. 6 on the Treatment of Unaccompanied and Separated Children Outside Their Countries of Origin**

*“Such training should be specifically tailored to the needs and rights of the groups concerned. Nevertheless certain key elements should be included in all training programmes, including:*

- Principles and provisions of the Convention
- Knowledge of the country of origin of separated and unaccompanied children
- Appropriate interview techniques
- Child development and psychology
- Cultural sensitivity and inter-cultural communication
- Initial training programmes should also be followed up regularly, including through on-job learning and professional networks.”

**Paragraph 96**

*“Those working with unaccompanied minors shall have had and shall continue to receive appropriate training concerning their needs, and shall be bound by the confidentiality rules provided for in national law, in relation to any information they obtain in the course of their work.”*

Article 23.4 of the Recast Reception Conditions Directive

### EXAMPLES OF NOTEWORTHY PRACTICES

- ❶ In the UK immigration judges have been provided with guidance on family law to assist them when they are hearing immigration cases where there are also parallel family proceedings.
- ❷ UK immigration judges have been provided with some training on the needs of unaccompanied children, who are seeking asylum or who are victims of child trafficking, during professional development training days, which each judge is obliged to attend.

## STANDARD SIXTEEN

### PROFESSIONAL ACCREDITATION AND SUPERVISION

- ❶ National professional bodies, such as Law Societies, Bar Councils and social work associations, should establish accreditation schemes for their members who work with unaccompanied migrant children and ensure that these professionals maintain appropriate professional standards when working with this particular group of children.
- ❷ National professional bodies should also publish detailed Codes of Practice to assist their members to act in the best interests of unaccompanied migrant children throughout any legal and judicial processes.
- ❸ National governments should recognise the need to respect the professional independence of these bodies as long as they maintain the necessary professional standards.

### EXAMPLES OF NOTEWORTHY PRACTICES

- ❶ The Law Society in the United Kingdom has established a Children Law Accreditation Scheme for solicitors and qualified case workers wishing to represent children in family court proceedings. They have to show that they have the necessary level of knowledge, skills and experience to be awarded this “quality mark”.
- ❷ The Law Society in the United Kingdom has also published a Code of Practice for Children Law.
- ❸ The Northern Ireland Bar Association has provided training for lawyers and solicitors on the interface between family, immigration, administrative and immigration law.



