

Improving the quality of unaccompanied minor asylum seekers' guardianship and care in Central European countries.

This training manual is part of a project entitled "Improving the Quality of Unaccompanied Minor Asylum Seekers' Guardianship and Care in Central European Countries", implemented by IOM Budapest and partners in 7 countries with funding by the EU and co-funding by the Office for Foreigners from Poland and the Organization for Aid to Refugees from Czech Republic.



Training Manual

for Guardians
and Social Workers
dealing with unaccompanied
minor asylum seekers

In the framework of the project: **Improving the Quality of Unaccompanied
Minor Asylum Seekers' Guardianship and Care in Central European Countries**



IOM International Organization for Migration





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This training manual comprises information to be used as a resource for the training of legal representatives and social workers dealing with unaccompanied minor asylum-seekers. The content expressed herein does not necessarily reflect the views of IOM or its Member States, the European Commission or any donors of the programme, or partners but solely that of the authors of the training manual. The designations employed and the presentation of material throughout the report do not imply the expression of any opinion whatsoever on the part of IOM, the project donors and partners concerning the legal status of any country, territory, city or area, or of its authorities, or concerning its frontiers or boundaries.

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1

OVERVIEW

1.1 Introduction

In an increasingly globalised world, growing attention has been focused on migration patterns in recent years. As such it has become clear that not only adults but also minors undertake migration projects. Unaccompanied minors are among the most vulnerable of migrants; in addition to the difficult journeys which they make, their youth leaves them open to exploitation and abuse. Rising numbers of unaccompanied minors on the move have thus sparked concern for their welfare both at international and at European level. While their rights are stipulated in a variety of instruments, implementation in practice is patchy and uneven. Therefore guidance and training for those who work with unaccompanied minors is essential in order to adequately protect and safeguard their rights.

This Training Manual has been prepared within the framework of the project “Improving the Quality of Unaccompanied Minor Asylum Seekers’ Guardianship and Care in Central European Countries”. The project is financed by the 2010 European Refugee Fund of the European Commission and implemented between September 2011 and August 2012 jointly by the International Organization for Migration (IOM) and partners from Bulgaria, Czech Republic, Hungary, Poland, Romania, Slovakia and Slovenia. The project focuses on guardianship institutions and systems based on evidence that the aforementioned countries lack established practices to offer adequate standards of protection and assistance to unaccompanied minor asylum seekers (UAMAS). The project aims to address this gap and its objective is to enhance the quality of guardianship and care of UAMAS in the participating countries. It is based on a number of international conventions and relevant EU directives that safeguard and protect the rights of children in general, and those of the unaccompanied minors in particular view of their vulnerability. To achieve this objective, several activities were devised and implemented. First,



guardianship/caregiver practices for UAMAS in the region were reviewed and assessed and a Synthesis Report of the findings was compiled. The latter underpins the current manual, which can be used by stakeholders directly working with UAMAS. The manual is complemented by a training curriculum and a Training of Trainers (ToT) is to be organized in order to instruct selected trainers regarding the implementation of trainings in each participating country. Subsequently trainings for UAMAS guardians, counselors and social workers in the seven target countries are to be carried out. The results of the review, the training methodology, lessons learned from the trainings, and other topics are to be discussed at an international conference. Finally, an ex-post evaluation to assess the achievements of the trainings is to be conducted.¹

Considering a broad range of guardianship concepts, practices, and measures for UAMAS exist in EU MS,² this intervention aims to monitor and improve the quality of guardianship and care in order to ensure that the best interests of the child are represented. Overall, it draws on the UN Convention on the Rights of the Child and particularly on the General Comment No. 6 (para 95)³ stating that guardians shall receive specialized training. Furthermore, it follows the EU Action Plan on UAMs which under section 4.1 *Procedures at first encounter and standards of protection* indicated the European Commission's pledge to use funds to develop, *inter alia*, guidelines, common curricula and training. This has been reiterated in the recently launched "An EU Agenda for the Rights of the Child" as a measure to fulfil children's rights. Not least, this manual addresses a

¹ For further information please see: http://www.iom.hu/index.php?option=com_content&view=article&id=10&Itemid=13&lang=en#unaccompanied_minors (acc. March 2012)

² See also Hancilova, Blanka and Knauder, Bernadette (2011) *Unaccompanied Minor Asylum-seekers: Overview of Protection, Assistance and Promising Practices*. Budapest: International Organization for Migration.

³ Training shall cover the Convention's principles and provisions, knowledge of the country of origin of separated and unaccompanied children, appropriate interview techniques, child development and psychology, cultural sensitivity and intercultural communication (para 96).

training gap as pointed out by experts in several EU MS, namely the need for more and better-quality training.⁴

Therefore, this training manual aims to:

- enhance the professional competencies of guardians, counsellors and care workers working and interacting with UAMAS,
- improve the quality of guardianship and general care provided to UAMAS,
- increase knowledge of practitioners regarding issues concerning guardianship and care giving in Europe,
- increase awareness on the need to continuously improve and monitor the quality of guardianship and care of UAMAS.

IOM Vienna has developed and designed the following training manual to be used as a train the trainer (TOT) practical tool for guardians, caregivers and social workers who are in direct contact with UAMAS in the project countries. The training manual will also serve as a useful reference for the target group once the trainings have been carried out. It collects a variety of material relevant to the guardianship and care of UAMAS. The content is divided into a number of thematic chapters. The format is flexible; the training manual can be read as a whole or individual chapters can be referred to when necessary.

Methodologically, the training manual is based on the findings of the Synthesis Report compiled by IOM Budapest based on national reports prepared by IOM and NGO focal points in the participating countries, desk research of relevant legislation and previous studies as well as the practical experience of IOM Vienna in developing training manuals for various practitioners in the field of UAMAS and trafficking in human beings.

⁴ Ibidem 1, page 41. See also European Union Agency for Fundamental (2010) Separated, asylum-seeking children in European Union Member States. Comparative Report. FRA: Vienna.



Acronyms

BIC	Best Interests of the Child
BID	Best Interest Determination
CRC	Convention on the Rights of the Child
EC	European Commission
EU	European Union
FRA	European Union Fundamental Rights Agency
IOM	International Organization for Migration
UN	United Nations
UAM	Unaccompanied Minor
UAMAS	Unaccompanied Minor Asylum Seeker(s)
UNHCR	United Nations High Commissioner for Refugees

For easy reference, the following symbols have been introduced throughout the text:



= Important!



= Policy Documents

1.2 Introduction



Note on terminology: The terms *child* and *minor* are used by different actors to describe persons below the age of majority.⁵ This report will use the term *minor* except where the term *child* has been used in source texts.

The abbreviation UAMAS is used to refer to unaccompanied minor asylum seekers.

Definitions

Legal guardianship

“Legal guardianship complements the incomplete legal capacity of a child and gives the responsibility for a child’s well-being to a natural or legal person.”⁶

Guardian

“Legal guardian” has no proper definition in international law largely because its “precise definition, function and manner of appointment varies from jurisdiction to jurisdiction”⁷ However, the main characteristics of the function include, inter alia: A designated individual or competent entity that under relevant national legislation has been formally assigned responsibility for the child and is vested with the legal right and responsibility to make decisions in the place of parents, in full consultation with the child. Entities/persons exercising such legal responsibility should

⁵ The age of majority is normally 18, but may differ in certain countries.

⁶ FRA, 2010, Separated, asylum-seeking children in European Union Member States

⁷ International Committee on the Red Cross, 2004: Interagency Guiding Principles on Unaccompanied and Separated Children, p. 47.



have relevant knowledge of children's issues, an ability to work directly with children and an understanding of any special and cultural needs of the children to be entrusted to them so as to ensure that the interests of the child are safeguarded and that the child's legal, social, health, psychological, material and educational needs are appropriately covered. They should receive appropriate training and professional support in this regard. The overall role and responsibility of the designated entity/ person is to ensure that the rights of the child are protected."⁸

Best interests of the child

It is impossible to give a general definition of what is in the best interests of the child, since each case is different. Broadly speaking, the term "best interests" describes the well-being of a child. This is in turn based on individual circumstances such as age, level of maturity, presence or absence of parents, the child's environment and experiences.

"The ultimate aim in addressing the fate of unaccompanied or separated children is to identify a durable solution that addresses all their protection needs, takes into account the child's view and, wherever possible, leads to overcome the situation of a child being unaccompanied or separated."⁹

Best interests determination (BID)

Using strict procedural safeguards, "best interests determination" is the formal process aimed at determining the child's best interests, especially concerning important decisions affecting the child. The process seeks to facilitate adequate child participation without discrimination, involve decision makers with relevant areas of expertise and weigh all relevant factors to come up with the best possible option.

⁸ IOM, 2011, Unaccompanied Children on the Move, p. 19

⁹ CRC General Comment N°6, para. 79

A “best interests assessment” is carried out by staff taking action regarding individual children, except when a BID procedure is required. It is designed to ensure that such action gives primary consideration to the child’s best interests. The assessment can be carried out alone or in consultation with others by staff with suitable expertise and requires the participation of the child.¹⁰

Usage: International organisations¹¹

“*Unaccompanied children*” (also called “unaccompanied minors”) are children who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.

“*Separated children*” are those separated from both parents, or from their previous legal or customary primary care-giver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.

Usage: European Union

“Unaccompanied minor: a **third-country national** or **stateless person** below the age of eighteen, who arrives on the territory of the Member States unaccompanied by an **adult** responsible for them whether by law or custom, and for as long as they are not effectively taken into the care of such a person, or minors who are left unaccompanied after they have entered the territory of the Member States.”¹²

¹⁰ IOM, 2011: Unaccompanied Minor Asylum-seekers: Overview of Protection, Assistance and Promising Practices

¹¹ International Committee on the Red Cross, 2004: Interagency Guiding Principles on Unaccompanied and Separated Children, p. 13.

¹² EMN Asylum and Migration Glossary 2.0, p. 122. This term specifically refers to a third-country national or stateless person, but not to an unaccompanied EU national minor moving within the EU.



“Separated child: A child under 18 years of age who is outside their **country of origin** and separated from either parents or their previous legal/customary primary caregiver.”¹³

Asylum seeker: a **third country national** or a **stateless person** who has made an **application for asylum** in respect of which a **final decision** has not yet been taken.¹⁴

International Legislation and Standards

One of the most important documents related to the rights of UAMAS is the UN *Convention on the Rights of the Child (CRC)*. Apart from the rights guaranteed by the Convention, UAMAS are also entitled to international protection under international human rights law, international refugee law, international humanitarian law and various regional human rights instruments. It is important to note that these principles are interlinked and must be respected throughout the migration processes of all migrant children. These international standards are complemented by a multitude of regional and national standards.¹⁵

This chapter will deal with legislation and standards at international and EU level.



It is strongly encouraged, however, that guardians and prospective guardians familiarise themselves with the national legislation governing treatment of UAMAS in their country.

¹³ EMN Asylum and Migration Glossary 2.0, p. 33. This definition covers both third-country national and EU national children. A child may be totally alone while another may be living with extended family members. All such children are separated children and entitled to international protection under a broad range of international and regional instruments.

¹⁴ EMN Asylum and Migration Glossary 2.0, p. 21.

¹⁵ IOM, 2011, *Unaccompanied Children on the Move*, p. 16-17

2

INTERNATIONAL LEGISLATION AND STANDARDS

2.1 Convention on the Rights of the Child



“A child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.”¹⁶

The *CRC* declares that “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection”. The *CRC* sets out the basic human rights to which all children are entitled. The guiding principles of the *CRC* include non-discrimination, the best interest of the child, the right to life, survival and development, and respect for the views of the child.

Article 2 on non-discrimination states that governments should take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members.

Article 3 on the best interests of the child. The principle of the child’s best interests, derived from Article 3 of the *CRC*, is the second core principle, also applicable to non-national children. This principle clearly recognizes that the child is an agent and has rights. Article 3 (1) has been highlighted as one of the general principles of the *CRC*. The best interests of the

¹⁶ General Assembly, 1990: UN Convention on the Rights of the Child



child shall be a primary consideration in all actions concerning children. Interpretations of the best interests of children cannot trump or override any of the other rights guaranteed by other Articles in the Convention.

Article 6 refers to the child's right to life and full development. Article 6 (2) goes beyond the fundamental right to life to promote survival and development "to the maximum extent possible". This means that the State should promote any measures that further such development (administrative and legislative) and also make it possible for families, who have the primary responsibility for the child, to promote such development. The concept of "development" does not simply concern preparation of the child for adulthood; it is about providing optimal conditions for childhood. States should create an environment conducive to ensuring, to the maximum possible extent, the survival and physical, mental, spiritual, moral, psychological and social development of the child, in a manner consistent with human dignity, in order to prepare the child for an individual life in a free society.

Article 12 (2) notably refers to the right to be heard stating that 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.¹⁷

¹⁷ IOM, 2010: Manual of Best Practices and Recommendations, p. 30

Specific provisions on assistance

Article 5 stipulates that States Parties shall respect the responsibilities, rights and duties of parents, members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 18 of the Convention tasks the State with rendering appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities. These responsibilities are to be carried out in accordance with the best interests of the child. States are also instructed to develop systems for the care of children.

Article 20 of the Convention furthermore outlines the duty of the State to offer special protection and assistance to children deprived of a family environment. Alternative care provided by the State could include, inter alia, foster placement, kafalah of Islamic law, adoption or placement in suitable institutions for the care of children.

2.2 Children's Rights in the EU

Key Documents: Towards an EU Strategy on the Rights of the Child (2006)¹⁸
An EU Agenda for the Rights of the Child (2011)¹⁹

The rights of the child are protected by the *Charter of Fundamental Rights of the European Union*, while according to the *Treaty of Lisbon* the EU is

¹⁸ Commission of the European Communities, 2006a: Towards an EU Strategy on the Rights of the Child.

¹⁹ European Commission, 2011b: An EU Agenda for the rights of the child



enjoined to promote children's rights. In line with this, the European Commission has launched two Communications with the aim of fulfilling the rights of the child in internal and external EU policies.

Towards an EU Strategy on the Rights of the Child is based on specific objectives including:

- taking advantage of existing policies and instruments;
- establishing the priorities of future EU action;
- systematically taking the rights of the child into account in all EU external and internal policies (“mainstreaming”);
- ensuring efficient coordination and consultation mechanisms;
- reinforcing competence and expertise on the rights of the child;
- communicating more effectively on the rights of the child;
- promoting the rights of the child in the field of external relations.²⁰

An EU Agenda for the Rights of the Child contains eleven measures designed to achieve concrete results in fulfilling children's rights, including the development of:

- laws to better protect children (as an especially vulnerable group) during legal proceedings and in court;
- laws safeguarding children when they are suspects or accused of a crime;
- new laws ensuring that decisions on parental responsibility following divorce or separation are recognized and enforced in all EU countries;
- action to promote Council of Europe guidelines on child-friendly justice and take them into account in future civil and criminal law-making;

²⁰ Commission of the European Communities, 2006b, Summary: Towards an EU strategy on the rights of the child.

- support for training judges and other professionals to help children in court;
- **better training for authorities responsible for unaccompanied children, including those seeking asylum in the EU;**
- special attention for children in an upcoming EU plan to help the Roma integrate more in society;
- support for the quick introduction of the EU's 116 000 hotline for missing children (cross-border alert systems for abducted or at-risk children would also be encouraged);
- measures to counter cyber-bullying, grooming, exposure to harmful content, and other online risks through the EU's safer internet programme;
- support in combating violence against children and child sex tourism, and protecting victims of armed conflicts, through the EU's overseas and humanitarian aid programmes;
- a single EU website on children's rights.²¹

2.3 EU Policy on Unaccompanied Minors

Stockholm Programme

The 2009 *Stockholm Programme*²² sets out the EU's priorities for the area of justice, freedom and security for the period 2010-14. In this context, the rights of the child as laid out in the *CRC* concern all EU policies. As such they are to be taken into account systematically and strategically to ensure an integrated approach.

²¹ European Commission, 2011c: Stronger rights for children

²² European Council, 2010: The Stockholm Programme. An Open and Secure Europe Serving and Protecting Citizens.



The *Stockholm Programme* furthermore identifies unaccompanied minors arriving in the EU as a particularly vulnerable group. Particular attention to the following areas is recommended:

- the exchange of information and best practice
- smuggling of minors
- cooperation with countries of origin
- age assessment, identification and family tracing
- unaccompanied minors in the context of the fight against trafficking in human beings

EU Action Plan on Unaccompanied Minors

In line with this, the European Commission developed an *Action Plan on Unaccompanied Minors*,²³ proposing an EU approach consisting of three main strands for action: prevention of unsafe migration and trafficking, reception and procedural guarantees in the EU and the identification of durable solutions.

The Action Plan is based on the following ten principles:

- 1. All children should be treated first and foremost as children.** The best interests of the child should be the primary consideration in all actions concerning unaccompanied minors.
- 2. All children should be treated in accordance with the rules and principles followed in the European Union and its Member States,** in particular the Charter of Fundamental Rights of the European Union, the United Nations Convention on the Rights of the Child and the European Convention on Human Rights.
- 3. All possible efforts should be made to create an environment allowing children to grow up in their countries of origin with good prospects for personal development and decent standards of living.**

²³ European Commission, 2010: EU Action Plan on Unaccompanied Minors (2010-2014).

4. Children should be protected from traffickers and criminal groups and other forms of violence or exploitation.
5. Every effort should be made to find the family of the child and to reunite the child with his or her family provided that this is in the best interest of the child.
6. Child-specific reception measures and procedural guarantees should apply from the moment the child is found at the external border or within a Member State until a durable solution is found. *Guardianship and legal representation of the child are of crucial importance.*
7. A decision on the future of each child should be taken within the shortest possible period, preferably within six months.
8. Unaccompanied minors should always be placed in appropriate accommodation and treated in a manner that is fully compatible with their best interests. Where detention is exceptionally justified, it is to be used only as a measure of last resort, for the shortest appropriate period of time and taking into account the best interests of the child as a primary consideration.
9. **Durable solutions should be determined on the basis of an individual assessment of the best interests of the child.** They should consist of return to the country of origin where reintegration of the child should be guaranteed, granting international protection status or another legal status allowing the child to integrate in the Member State of residence, or resettlement in the European Union.
10. **All interested parties** – EU institutions, Member States, countries of origin and transit, international organisations and civil society organisations – **should join forces and strengthen their efforts in addressing the issue of unaccompanied minors and ensuring that the best interest of the child is protected.**²⁴

²⁴ Europa, 2010: European Commission calls for increased protection of unaccompanied minors entering the EU.



Guardians play an important role when it comes to the fulfilment of children’s rights:

“Member states shall as soon as possible take measures to ensure that a representative represents and/or assists the unaccompanied minor with respect to the examination of the application.”²⁵

“Member States shall as soon as possible take measures to ensure the necessary representation of unaccompanied minors by legal guardianship or, where necessary, representation by an organisation which is responsible for the care and well-being of minors, or by any other appropriate representation.”²⁶

Notes

²⁵ Council of the European Union, 2005: Council Directive 2005/85/EC (“Asylum Procedures Directive”), Art. 17.
²⁶ Council of the European Union, 2003a: Council Directive 2003/9/EC (“Reception Directive”), Art.19.

3

GUARDIANSHIP

3.1 Appointment of a guardian



“As they are without their parents or legal or customary primary caregivers, separated children seeking asylum should benefit from the prompt appointment of a legal guardian to defend their interests and ensure their well-being and they should also be placed in care and reception structures in keeping with their age and maturity.”²⁷

It is recognised that minors require particular safeguards and care; moreover unaccompanied and separated minors, lacking the protection of a family environment and outside their countries of origin are in a particularly vulnerable situation. Such minors are at higher risk of suffering discrimination and violence as well as of becoming victims of e.g. sexual exploitation and abuse, military recruitment, trafficking and detention. International standards recommend the implementation of specific protection measures for such minors, including the nomination of a designated guardian.

§ The 1997 UNHCR *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum* advocate that a guardian or advisor be appointed once an unaccompanied child is identified.

²⁷ Council of Europe, 2005, Parliamentary Assembly Recommendation 1703: Protection and Assistance for Separated Children Seeking Asylum.



This person should:

- have the necessary expertise in the field of child caring, so as to ensure that the interests of the child are safeguarded, and that the child's legal, social, medical and psychological needs are appropriately covered during the refugee status determination procedures and until a durable solution for the child has been identified and implemented.
- act as a link between the child and existing specialist agencies/ individuals who would provide the continuum of care required by the child.

§ The 2005 *CRC General Comment No. 6 Treatment of Unaccompanied and Separated Children outside their Country of Origin* underlines the responsibility of States to ensure that unaccompanied and separated children have their best interests represented through the nomination of a guardian or adviser. Furthermore it states that unaccompanied and separated children involved in asylum, administrative or judicial procedures should additionally be provided with legal representation.

Paragraph 33 of the *General Comment* specifies that:

- States are required to create the underlying legal framework and to take necessary measures to secure proper representation of an unaccompanied or separated child's best interests.
- States should appoint a guardian or adviser as soon as the unaccompanied or separated child is identified and maintain such guardianship arrangements until the child has either reached the age of majority or has permanently left the territory and/or jurisdiction of the State, in compliance with the Convention and other international obligations.
- The guardian should be consulted and informed regarding all actions taken in relation to the child.

- The guardian should have the authority to be present in all planning and decision-making processes, including immigration and appeal hearings, care arrangements and all efforts to search for a durable solution.
- The guardian or adviser should have the necessary expertise in the field of childcare, so as to ensure that the interests of the child are safeguarded and that the child's legal, social, health, psychological, material and educational needs are appropriately covered by, inter alia, the guardian acting as a link between the child and existing specialist agencies/individuals who provide the continuum of care required by the child.
- Agencies or individuals whose interests could potentially be in conflict with those of the child's should not be eligible for guardianship. For example, non-related adults whose primary relationship to the child is that of an employer should be excluded from a guardianship role.



Example: Belgium

In 2004, Belgium introduced the *Guardianship Act*. The legislation was introduced in response to the 2002 "Tabitha" case concerning a five year old Congolese girl travelling to rejoin her mother in Canada. The girl was detained in Belgium, held in a closed reception centre at the border for two months without a guardian and finally deported back to her country of origin alone. The European Court of Human Rights subsequently ruled that this treatment constituted a violation of Articles 3 (prohibition of inhuman treatment), 5 (right to liberty and security) and 8 (right to respect for private and family life) of the European Convention on Human Rights.

As a result of this, the *Guardianship Act* was enacted, requiring authorities to notify the Guardianship Services of any UAMAS encountered on Belgian territory. Once this has been done, the Guardianship Service and the guardian it appoints work together to assist the minor. Furthermore, the tasks and responsibilities of guardians are set out in the *Guardianship Act* and regulated by law.

The main tasks and responsibilities of the guardian are:

Legally represent and accompany the minor in all administrative or jurisdictional procedures (relative to the asylum claim, the immigration status or any other procedure);

Ensuring that all decisions are in the best interest of the child;

Appointing, without delay, a lawyer;

Being present at every hearing or interview;

Ensuring that the separated child is offered suitable care, accommodation, education, health care and psychological care (if needed);

Building a relationship of trust with the separated child and consult the minor to know his or her point of view before taking any decision in his name;

Contributing to and making proposals for a durable solution in coherence with the child's best interest;

Respecting the religious or political views of the minor;

Exploring the possibility of family tracing and reunification with the child;

Administering the minor's assets;

Preparing a report on the situation of the minor for the Guardianship Service (maximum 15 days after the appointment) and the justice of the peace (twice a year), and for both at the end of the guardianship.²⁸

²⁸ Belgium National Report, 2010-2011: Closing a Protection Gap. "You need to earn the title of a guardian", p.16.

Child protection structures

Since a number of actors are normally involved in caring for UAMAS, it is helpful to map out the way in which the child protection structures function. Such a mapping structure can clarify the roles of all concerned. An example is the simple diagrammatic structure of the Hungarian guardianship system below.

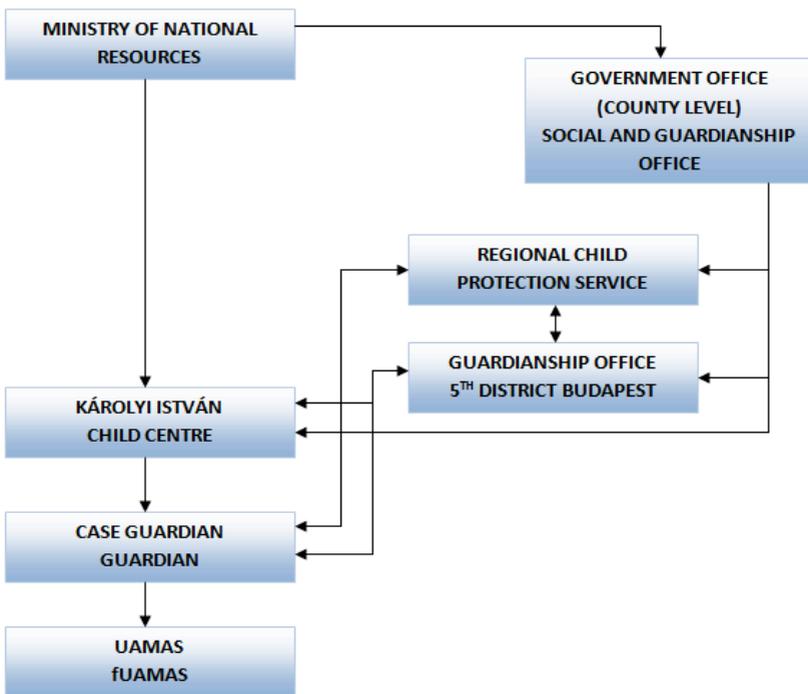


Illustration 1²⁹

²⁹ IOM, 2012, Synthesis Report: Improving the Quality of UAMAS' Guardianship and Care in Central European Countries.



3.2 Role of a guardian

“Well. We do all sorts of things together. I can always turn to her. She’s completely like a mother to me. If I need something or I need to ask about something, I can always ask her or call her. She’s the one person that I have in my life. She’s all that I have in Denmark. She’s like a mother to me.” (Child D2)³⁰

UAMAS have frequently experienced severe traumas in their country of origin or on their journey to Europe. Separated from their parents and from their homes, the minors find themselves in an unfamiliar land, in a system they do not understand. It is recommended that a guardian be appointed for each UAMAS as soon as possible once he or she has been identified. This should occur before the minor is referred to the asylum system (General Comment No 6, §21). The role of the guardian should be to advise and to protect the minor, and to serve as their point of reference.

Their responsibilities should be to:

- Ensure that all decisions have the child’s best interests as a primary consideration
- Ensure the child’s views and opinions are considered in all decisions that affect them
- Ensure that the child has suitable care, accommodation, education, language support and health care provision and that they are able to practice their religion
- Ensure the child has suitable legal representation to assist in procedures that will address protection claims and durable solutions
- Explore, together with the child, the possibility of family tracing and reunification

³⁰ Danish National Report, 2010-2011: Closing a Protection Gap. Core standards for guardians of separated children, p.25.

- Assist the child to keep in touch with his or her family where appropriate
- Contribute to a durable solution in the child's best interests
- Provide a link, and ensure transparency and cooperation between the child and the various organisations who may provide them with services
- Engage with the child's informal network of friends and peers
- Consult with and advise the child
- Advocate on the child's behalf³¹

First contact

UAMAS may not understand the system in the country of destination and may be confused by the assortment of people they meet in the first weeks and months. The guardian should meet with the minor as soon as possible, together with a qualified interpreter if necessary. S/he should outline his or her role to the minor, using simple and age-appropriate language. It may be useful for the guardian to map out the various actors involved in the process. This can be done for example by drawing a picture with the minor where s/he is in the centre, surrounded by other individuals with whom s/he will come into contact and explaining their functions. The drawing can then be kept for future reference and/or updated as necessary (see illustration 2).

³¹ SCEP, 2009⁴: Statement of Good Practice. Separated Children in Europe Programme, p. 22.



Tips

- Sit down with the minor in a comfortable private area
- Provide materials such as paper and coloured pencils
- Ask the minor what s/he understands by the term “guardian” (e.g. is it someone to help him/her, someone to support him/her?)
- If appropriate, encourage him/her to draw a picture of a guardian and label it with the qualities s/he feels a guardian should have (e.g. “a kind heart”, “good ears”)
- Explain the role of the guardian to the minor simply and clearly
- Consider creating a diagram together with the minor of the support structures available (see illustration 3)



Warning: The tips listed above are just recommendations and should be used with care. There have been cases where children didn't feel comfortable when asked to draw a picture of a guardian for instance. Therefore, the guardian should always use these tips with caution and only with the child's approval.

Actors chart

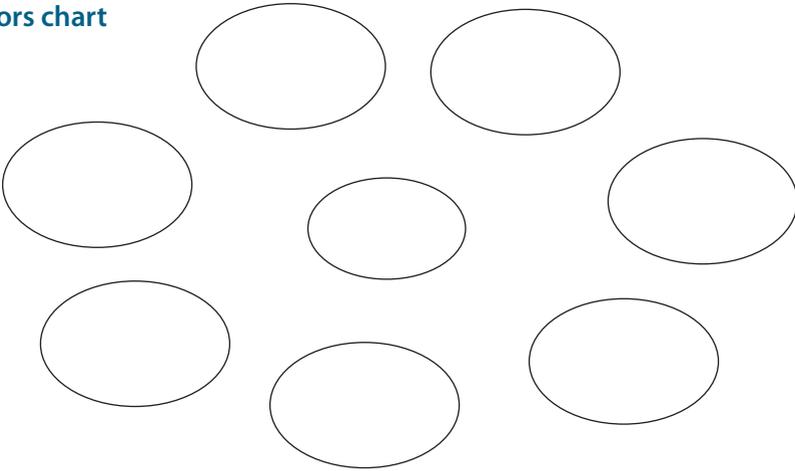
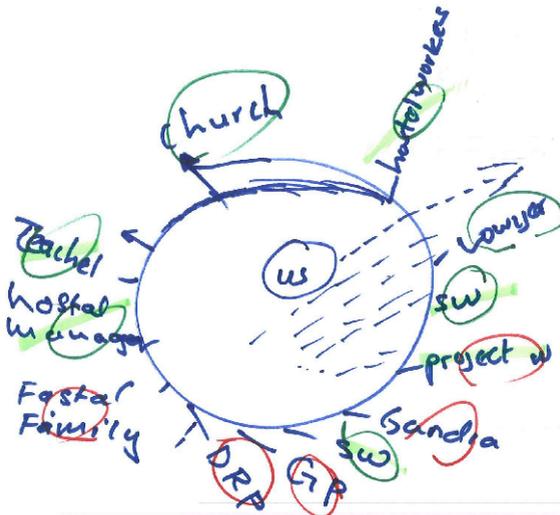


Illustration 2

Example of collaborative mapping of support structures



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Illustration 3

³² Ireland National Report, 2010-2011: Closing a Protection Gap. This particular mapping refers to support structures for aged-out minors; however the technique can equally be done for minors entering the system as is frequently the case in the Netherlands for example (cf. Dutch Report, 2010, p. 31).



Building a relationship

H: Sure, I came with smugglers from Afghanistan to Austria. At that time there was only one way. I went through Russia and Iran. I don't know the exact route, often I didn't know which country I was in. You're passed from smuggler to smuggler until you reach your destination. When I got to Austria, I didn't know I was in Austria. It's a small country, and many people in Afghanistan don't know Austria.

My journey took about two months, and it was horrible. You don't know what's going to happen in one hour, in two hours. We had to swim through rivers, ride in a small boat. That was really dangerous. I was travelling with three families with small children. My biggest fear was what would happen if the boat capsized. What about the family? Maybe at the time I didn't see how dangerous it really was. Now, I think about all the things I've experienced.³³

Many UAMAS have undergone traumatic experiences which make it difficult for them to place confidence in others. A relationship of trust may take time and patience to establish. Their youth and vulnerability should always be borne in mind, especially during official proceedings.

When talking with UAMAS, the following should be kept in mind:

- **Find out** as much as possible about the child's case prior to the interview and make clear and friendly introductions (talking about something the child is familiar with helps to establish a rapport).
- **Create** a space that is safe and comfortable for conversation (include toys, books, games, etc., to help build a rapport).
- **Establish** a rapport by talking about, or doing things that are not related to the experience (e.g., discuss things the child is familiar with, play games).
- **Dedicate** adequate time for discussions and do not rush.

³³ Better Integration for Separated Children, 2010: Challenges for Separated Children in Austria, Denmark, Poland, Slovakia and Slovenia., p. 3

- **Keep** the atmosphere simple and informal (e.g., do not assume an air of interrogation or press for responses).
- **Use** appropriate and child-friendly language (pick up terms the child uses).
- **Explain** things in a manner the child can easily comprehend (use visual aids wherever possible).
- **Begin** with open-ended questions, allowing the child to give her/his own account. Avoid leading questions, e.g., “Did the person abuse you?” and use more open questions, such as, “What did the person do?”
- **Do not pursue** and press for details when there are signs that the child has told all s/he knows. However, also bear in mind that children will leave information out if the right question is not asked, and will give the answer they believe the interviewer wants to hear.
- **Close** the interview in ways that reassures the child that s/he has done well, and that you will be available whenever s/he needs to talk again.³⁴

Hints

The guardian should be **easily accessible**; the UAMAS should be able to contact him/her directly. The guardian should consider using social media such as Facebook to keep in touch with the UAMAS and with his/her family where applicable.

The guardian should **meet with the UAMAS on a regular basis** in a comfortable and private location.

The guardian should respect the **boundaries** between him/her and the UAMAS.

The guardian should keep in mind the **cultural background** of the UAMAS and act accordingly.

The guardian should **dress and act professionally** in order to avoid

³⁴ Home Office, Crown Prosecution Service, et al., 2001: Achieving Best Evidence in Criminal Proceedings: Guidance for Vulnerable or Intimidated Witnesses, Including Children, p.210



possible misinterpretation of his/her role by the minor.

The guardian should **refer** the UAMAS to **relevant experts** if he/she is not able to answer questions raised by the UAMAS, i.e. legal advice.

The guardian should ensure that qualified and appropriate **interpretation** (e.g. **female interpreters for female UAMAS**) is available if required.

“There are good interpreters and there can also be really bad interpreters, and after a while you learn which interpreter in what language to ask for. I have learned to ask the children in the beginning ‘do you understand everything?’ And if it does not work out, I interrupt the meeting and ask for another interpreter.” Guardian 1.³⁵

Notes

³⁵ Swedish National Report, 2010-2011: Closing a Protection Gap. Core standards for guardians of separated children., p. 42

4 CHILD-CENTRED APPROACHES

4.1 Best interests of the child

According to the *CRC*, the **best interests of the child** are to be a primary concern in all actions which concern the child. It is impossible to give a general definition of what is in the best interests of the child, since each case is different. Broadly speaking, the term “best interests” describes the well-being of a child and the full realisation of the child’s rights. This is in turn based on individual circumstances such as age, level of maturity, presence or absence of parents, the child’s environment and experiences.

§ UNHCR has developed a checklist of factors which should be considered when determining the best interests of a child. Issues such as the views of the child, his/her safety, familial relationship and the child’s development and identity needs should be taken into account. The weight to be accorded to each factor will vary according to the individual child.³⁶

Checklist: Factors that determine a child’s “Best Interests”

All factors listed below are of relevance when determining which among the available options is in the child’s best interests, including identifying the follow-up measures required. The weight of each factor inevitably varies according to the individual child. Advice on the difficult task of balancing these factors is provided in Chapter 3 of the Guidelines.

³⁶ UNHCR, 2008: Guidelines on Determining the Best Interests of the Child, p. 97; see also Chapter 3.3 of the Guidelines for further guidance in weighing the various factors.



Views of the child

- Child's wishes and feelings and were these obtained from the child directly?
- The weight to be given to them, in light of the child's age and maturity;
- Child's ability to comprehend and assess the implications of the various options.

Safe environment

- Safety is normally a priority. Exposure or likely exposure to severe harm usually outweighs other factors. Consider:
 - safety in the geographical location/household under consideration
 - availability of life-saving medical treatment for sick children
 - past harm (frequency, patterns, trends)
 - ability to monitor whether root causes of past harm still persist.

Family and close relationships

a) General factors:

- Quality and duration of the relationship and degree of attachment of the child to:
 - siblings
 - other family members
 - other adults or children in the cultural community
 - any potential care-giver;
- Potential effect of separation from family or change in care-givers on the child;
- Capacity of current and potential future care-givers to care for the child;
- Views of persons close to the child, where relevant.

b) Factors specifically relevant to durable solutions for unaccompanied or separated children:

- Possibility of family reunification (normally presumed to be in the best interests). Consider whether:
 - tracing has been initiated and its results
 - the efforts made to contact the parents/family directly
 - the family relationship to the child has been verified
 - the child and family member are willing to be reunited and, if not, reasons for any reluctance.

[...]

Development and identity needs

- The child's cultural and community network;
- Continuity in the child's ethnic, religious, cultural and linguistic background;
- Specific considerations based on age, sex, ability, and other characteristics of the child;
- Particular physical or emotional needs;
- Physical and mental health considerations;
- Educational needs;
- Prospects for successful transition to adulthood (employment, marriage, own family).

§ The United Nations Committee on the Rights of the Child has indicated in its General Comment No. 6 (para. 79) that efforts to find durable solutions for unaccompanied or separated children outside their country of origin “should be initiated and implemented without undue delay and, wherever possible, immediately upon the assessment of a child being unaccompanied or separated”. According to UNCHR, lasting solutions that keep in mind the best interest of an unaccompanied or separated child



are those that ensure adequate child participation without discrimination, allow the views of the child to be given due weight in accordance with age and maturity, involve decision makers with relevant areas of expertise and weigh all relevant factors to arrive at the best option.



The UNHCR states that determining best interest should not have to wait until prospects for a durable solution emerge.³⁷

Good Practice: Best Interest of the Child model

As a practical tool for assessing the best interests of the child, some guardians in the Netherlands and in Belgium utilise a checklist based on the Best Interest of the Child model. This consists of fourteen environmental conditions concerning both the family and the society which should be present in order to protect and improve the minor's development into adulthood. When all the conditions are present favourable development is guaranteed. A positive effect on the development of the minor can be expected if the conditions are present in the minor's environment over a longer period of time. If these conditions are absent in the minor's environment, the minor's development may be threatened.

Every condition has been linked to one or more articles of the *CRC* and whenever a condition is not present, it leads to a violation of the associated articles.³⁸ In addition, absent conditions may mean the endangerment of Articles 3 and 6 of the *CRC* (the best interest of the child as a primary consideration; the right to development).

³⁷ Ibidem.

³⁸ Kalverboer, M. & Zijlstra, E., 2006: Het belang van het Kind in het Nederlandse recht., p. 83. For summary of the Best Interest of the Child Model see Annex I.

Developmental Conditions ³⁹	Specified
1. Adequate physical care	<i>Health care, physical well-being, e.g. a place to live, clothing to wear, enough food.</i>
2. Safe physical environment	<i>Physical protection of the child in his family and neighbourhood, e.g. the absence of physical danger in the house, no toxics, no threats in the house or neighbourhood.</i>
3. Affective atmosphere	<i>Emotional protection, support and understanding by parents or caretakers.</i>
4. Supporting, flexible upbringing structure, adapted to the child	<i>Daily routine, encouragement, rules and limits, control on his or her behaviour and enough space for his/her own initiative and a level of responsibility suitable for the child.</i>
5. Adequate examples by parents	<i>Opportunity for child to take on parental behaviour, values and cultural norms.</i>
6. Interest	<i>Showing interest by parents or caretakers for the child's perception of the world.</i>
7. Continuity and stability in upbringing conditions, a future perspective	<i>Through parents or caretakers attachment bonds do develop, and a basic trust is to be continued.</i>
8. Safe physical wider environment	<i>Safe neighbourhood and society. No war.</i>
9. Respect	<i>The society and environment of the child take the child's needs seriously.</i>
10. Social Network	<i>An available supportive network</i>
11. Education	<i>Suitable education.</i>

³⁹ Dutch Report, 2010: Closing a Protection Gap, p. 39.



12. Contact with peers or friends	<i>Opportunities for the child to meet friends, appropriate to the child's developmental level.</i>
13. Adequate examples in society	<i>Contact with others who are an example for current and future behaviour and societal values and norms.</i>
14. Stability in life circumstances, future perspective	<i>Continuity in life circumstances, Persons to identify oneself with and sources of social support are available to the child over time. Society offers the child chances and a future perspective.</i>

Table 1

4.2 Needs assessment

"I do think it is actually possible to enumerate some basic needs of the separated child. For example every child needs attention. Every child needs information. Information about school, return, the different procedures that exists. But I do agree that the level of attention needed, differs per child. Often this difference is linked to the location where a child is staying." (NG3).⁴⁰

The State is responsible for protecting the rights and ensuring appropriate alternative care for minors deprived of parental care. A needs assessment must be conducted by the guardian or other qualified representative to ensure that the most suitable forms of alternative care are identified and provided to the minor in order to promote his/her full and harmonious development.⁴¹



Ensuring alternative care for minors is a prerequisite to protecting his/her rights, including his/her right to development.⁴²

The **Pyramid of Maslow** is used as a tool by some guardians to guide their work:

- The physiological needs are taken care of by the guardian by finding a reception centre for the minor who answers the basic needs;
- The launch of a residence procedure by the guardian answers the security needs of the minor;

⁴⁰ Dutch Report, 2010: Closing a Protection Gap, p. 39

⁴¹ General Assembly, 2009: Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights Including the Right to Development. Guidelines for the Alternative Care of Children.

⁴² Ibid.

- 
- The psychological needs are supported by the guardian through the relationship of trust and psychological support. Here the guardian tries to support the social life of the minor;
 - On the “esteem needs” level the guardian searches for a durable solution and figures out a life project with the minor, where the guardian, with the minor, tries to define who and what the minor wants to be as an adult and what the steps are to get there;
On the experience purpose level, the guardian sees their role as to give the tools to the minor to do so, for example, by preparing for the autonomy of the minor and life as an adult;
 - The need for self-actualisation is seen as the goal for the minor, to which the guardian has tried to contribute. On this level the minor fulfilled his or her potential.⁴³

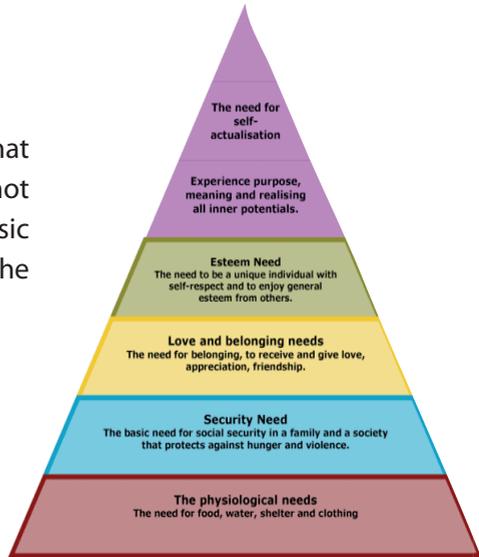
The Pyramid of Maslow

The pyramid of Maslow is a theory developed by Abraham Maslow in 1943 in “A Theory of Human Motivation”. His theory, which he called the “Hierarchy of Needs”, is a pyramid depicting the levels of human needs, psychological and physical. At the bottom of the pyramid are the “Basic needs or Physiological needs” of a human being. The next level is “Safety Needs: Security, Order, and Stability.” These two steps are important to the physical survival of the person. Once individuals have basic nutrition, shelter and safety, they attempt to accomplish more. The third level of need is “Love and Belonging,” which are psychological needs. The fourth level is achieved when individuals feel comfortable with what they have accomplished. This is the “Esteem” level, the level of success and status (from self and others). The top of the pyramid, “Need for Self-actualization,” occurs when individuals reach a state of harmony and understanding.

⁴³ Belgium National Report, 2010-2011: Closing a Protection Gap. “You need to earn the title of a guardian.” p. 30-31.

Illustration 4⁴⁴

The idea behind the pyramid is that the needs of the upper level cannot be realised as long as the more basic needs situated at the bottom of the pyramid are not fulfilled.⁴⁵



⁴⁴ Belgium National Report, 2010-2011: Closing a Protection Gap. "You need to earn the title of a guardian". Core standards for guardians of separated children. p.32

⁴⁵ The pyramid has been criticised as being ethnocentric and overly simplistic; it has also been argued that fundamental human needs are non-hierarchical. Nevertheless it can serve as a useful tool to guide guardians in their work.

5 CHILDREN AT RISK

UAMAS are children at risk and thus vulnerable to various forms of abuse. In the course of the long and exhausting trip from home to destination countries they may suffer discrimination and violence and/or their vulnerability may be exploited. One way in which this may occur is through recruitment by human traffickers.

Trafficking in children

UAMAS may become victims of human trafficking during their journey and/or upon arrival in destination countries. Their vulnerable situation makes them a target for criminal organisations intent on exploiting them for profit.



Guardians can play an important role in identifying potential child victims of trafficking at an early stage.

5.1 Introduction to Trafficking in Persons/Children

§ The *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons*⁴⁶ defines human/child trafficking as “recruitment, transportation, transfer, harbouring or receipt of persons (...) for the **purpose of exploitation**”, with the means usually used to this end including “the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of abuse of power or of a position of vulnerability”.⁴⁷ Frequently children are simply “bought” from their parents or persons having parental power.⁴⁸



Note: Art. 34 of the CRC urges states to prevent sexual exploitation and sexual abuse of children.⁴⁹

Children who fall victim to human traffickers are exploited in a wide variety of ways, including prostitution, child pornography, illegal adoption, drug trafficking, begging, theft and petty crimes and selling of, for instance, flowers and newspapers or removal of organs. Children are also exploited as cheap labour in households, agriculture, tourism, and the construction sector.

Usually trafficked children do not come forward and actually may not even see themselves as “victims of trafficking”.

⁴⁶ United Nations, 2000: Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations convention against Transnational Organised Crimes.

⁴⁷ Article 3 (a) of UN Protocol to Prevent, Suppress and Punish Trafficking in Persons

⁴⁸ A comprehensive overview of EU policies on (child) trafficking can be found on the homepage of IOM Budapest.
http://www.iom.hu/index.php?option=com_content&view=article&id=14&Itemid=19&lang=en#trafficking_in_human_beings (acc. March 2012)

⁴⁹ CRC <http://www2.ohchr.org/english/law/crc.htm> (acc. March 2012)



Please bear in mind: These children are subject to extreme psychological and/or de facto dependence on their traffickers who have also threatened them or their families in their home countries. They may have taken the children's documents, intimidated and frightened them. These boys and girls may have been exploited sexually by the traffickers, who have pounded into the children's heads that they must never trust, above all, the authorities, and who have threatened that "their debts will only rise" if the children do not "stick to their agreement".

Trafficked children may indicate that they have been sold, threatened or duped. However, children who have been sexually abused, raped and exploited sexually provide very little information. Identification is often made more difficult by their fear, shame and language problems. Thus, it is very important that guardians, social workers, interpreters, legal advisors etc. dealing with UAMAS are aware and trained on this topic in order to identify child victims of trafficking in an early stage and provide adequate care. Often the information provided by these children seems implausible, contradictory or even unrealistic. This is particularly the case if they are massively traumatized.

Irrespective of the situation in which the child is apprehended (in dire straits, on the street, while stealing or prostituting him/herself, etc.): he/she is apt to be severely traumatised. Because these children are intimidated and threatened by their tormentors and traffickers, they may well be uncooperative and not behave like "victims" but rather remain silent or even act aggressively.⁵⁰

⁵⁰ Federal Ministry of Economy, Family and Youth, 2009: Child Trafficking in Austria. Prevention of trafficking in children and protection of victims of child trafficking.



5.2 Identifying a child victim of trafficking⁵¹

Guardians and social workers are stakeholders who are in regular contact with UAMAS. If there is a suspicion that the UAMAS was trafficked it is recommended to ask the following questions regarding the above mentioned UN Protocol:

Mobilization

Was the child

- Recruited, OR
- Transported, OR
- Transferred, OR
- Harboured, OR
- Received?

If the answer is **YES**, go on to consider if there was **exploitation** (or the intent to exploit) during the experience. If the answer is **NO**, the child is **NOT** a victim of trafficking.

Exploitation

Was the child exploited OR was there an intent to exploit?

This **may** include:

- Prostitution, OR
- Other forms of sexual exploitation, OR
- Forced Labour, OR
- Slavery, OR
- Other practices similar to slavery (i.e. forced military service), OR
- Servitude, OR
- Removal of Organs.

⁵¹ IOM Counter-Trafficking Training Modules: CHILDREN, 2006

If the answer is **YES, the child is a victim of trafficking**. If the answer is **NO**, the child is **NOT** a victim of trafficking.

5.3 Referral Mechanisms

If the child has been identified as a victim of trafficking he/she must be referred, where possible, to a specialized shelter with trained staff. The following conditions should be met:

- Children should be placed in safe accommodation as soon as possible after their identification.
- Children should be provided accommodation appropriate for their age, maturity and sex.
- Efforts should be made to house family members together (if safe and appropriate given individual circumstances).
- Child victims should never be placed in detention facilities.
- Organizations providing shelter to children should ensure that they apply for and receive the necessary authority to house a child, in accordance with local law.
- Cooperation with child protection agencies in the community of origin and destination to help properly identify a child and its family is strongly recommended.

6 AGE ASSESSMENT PROCEDURES

Many UAMAS who arrive in the European Union do so without valid identification documentation, for a variety of reasons.

- Traffickers and smugglers are known to take identity documents from children, and many children who arrive unaccompanied do so without any proof of identity or age.
- Like adults, UAMAS might sometimes travel with false documents.
- In some countries (or in some ethnic communities) the absence of birth registrations of children makes the identification of the child nearly impossible, with unregistered children left in an extremely vulnerable situation.⁵²

UAMAS may also either not know their age or be suspected of falsifying their age in order to benefit from the increased protection accorded to minors under European legislation. These factors render it difficult to accurately identify minors, and therefore to provide age-appropriate care and assistance.



However, in cases where uncertainty remains, the individual shall be given the benefit of doubt and be considered a child.⁵³

⁵² IOM, 2006: Resource Book for Law Enforcement Officers on Good Practices in Combating Child Trafficking, p. 36.

⁵³ UN High Commissioner for Human Rights, 2005, General Comment No. 6: Treatment of Unaccompanied and Separated Children outside their Country of Origin, § 31.



Age assessment procedures are carried out in all EU Member States, using a range of methods. These can include interviews, medical and psychological examinations as well as dental and skeletal assessments. The reliability of these procedures has been called into question; criticism has been levelled e.g. at radiological tests which commonly entail a margin of error of up to two years. Furthermore such tests do not take into account differences influencing the development and growth of minors.

"I had a dental age assessment, which determined that I was 16. I told them I was 15 [...]. I don't believe the dental assessment is correct – it kept changing between 16 and 17 [...], but they treated me well. I am actually 15, because that is how old my mother told me I was. Who knows me better – my mother or the doctor?" (Boy, 15, UK)⁵⁴

Age assessment can be confusing and traumatic for UAMAS, who may not understand why the procedures are being carried out. They may feel as if they are being treated with suspicion or that they are accused of lying. Therefore it should be clear to the UAMAS what he/she can expect when going through an age assessment procedure. A qualified and appropriate interpreter should be used where necessary. The UAMAS should be aware of what the procedures involve and the results they entail.



The guardian should act as the contact point between the child and the authorities. It is important that the process be explained clearly to the child using simple and age appropriate language.

⁵⁴ FRA, 2010, Summary Report: Separated, Asylum-Seeking Children in European Union Member States, p.55.

While interviewing staff responsible for the care of UAMAS in different countries, the European Union Agency for Fundamental Rights (FRA) observed that many of them did not feel comfortable while conducting age assessments. As a consequence, FRA suggests that: “Age assessment should be undertaken in a gender appropriate manner **by independent experts** familiar with the child’s cultural background and fully respecting the child’s dignity.”⁵⁵



Age assessments should not be carried out without the informed consent of the child. Moreover, the assessment must be conducted in a manner that is scientific, safe, fair, child- and gender-sensitive and pays due respect to human dignity.⁵⁶

It must be noted that age assessment procedures are not standardised across the EU.⁵⁷ Therefore, there is no predetermined role for guardians when UAMAS are subject to an age assessment. In particular, guardians may find it difficult to explain negative decisions in cases of age assessment to UAMAS, who may not understand why he/she can no longer remain in the custody of the guardian.

⁵⁵ Ibidem, p. 55

⁵⁶ UN High Commissioner for Human Rights, 2005, General Comment No. 6: Treatment of Unaccompanied and Separated Children outside their Country of Origin, § 31.

⁵⁷ FRA, 2010, Comparative Report: Separated, Asylum-Seeking Children in European Union Member States, p. 9.



6.1 Physical age assessment

- Physical examinations: these focus on determining the maturity of a particular part of the body (bones, teeth, etc.). As these points of maturation do not occur in tandem with a particular chronological age, an age determination based on these methods can only establish a range of possible ages. The most commonly used techniques for assessing physical development include:
 - a) Sexual maturity assessment: Standards for puberty exams are largely based upon the work of JM Tanner, who in 1962 identified clear stages of puberty, which develop over a 2-3 year period. Unfortunately, 11 is the average age for the onset of puberty, often making this material ineffectual past the age of 13.
 - b) Dental observation: Like puberty, teeth develop in clear patterns in certain age ranges. Inopportunately, the only teeth that can be used as an indicator of whether or not someone is an adult are 3rd molars, which, due to genetic and environmental factors, may appear anywhere from 16-25 years of age. The alternative, a study of tooth mineralization, is unaffected by ethnicity or nutrition, but even without these influences has a +/-2 year margin of error.
- Radiological tests: these scrutinize skeletal changes that occur near the chronological ages of 15/16 or 18. The most commonly used technique is a carpal (hand and wrist) x-ray, where the fusing progression of the carpal bones is examined. This test is highly criticized as the reference material for it has not been updated since the 1930s and this material drew upon a test group from the United States of America only. Other options include dental x-rays where the presence of and/or development of the roots of 3rd molars are examined or the collar bone x-ray, where the fusing process is once again examined.
- Practical observations: these include a number of assessment techniques that use visual, cognitive, behavioural appraisal and

psychological assessment of a young person to assess age. These tests range from the very rudimentary – e.g. immigration officials using rough visual estimates, through to psychological and sociological reviews undertaken by trained professionals. Often, due to expense, psychological assessments are not undertaken by medical professionals, but instead by government staff. As they measure behaviour and cognitive ability, practical observations are highly influenced by environmental factors and are subjective.⁵⁸



§ According to the *EU Asylum Procedures Directive*, the rejection of an asylum application cannot be solely based on a refusal of medical examinations for age assessment.⁵⁹

6.2 Psychosocial age assessment

§ Where possible, it is recommended that a thorough psychosocial age assessment be carried out, in line with the UNHCR *Guidelines* which state that “age assessment should take into account not only the physical appearance of the child but also his/her psychological maturity”.⁶⁰

⁵⁸ SCEP, 2011: Review of current laws, policies and practices relating to age assessment in sixteen European Countries. For more detailed information on age assessment testing procedures see Resource Book for Law Enforcement Officers on Good Practices in Combating Child Trafficking, p. 41 ff.

⁵⁹ FRA, 2010, Summary Report: Separated, Asylum-Seeking Children in European Union Member States, p. 54

⁶⁰ UNHCR, 1997: Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum, p. 5.



This assessment should also indicate the support which the UAMAS would need in terms of

- Organization of his/her daily life
 - Housing
 - Daily structure (work, education, free time)
- Psychological support/coping with trauma
- Legal support (consulting, support, guardianship)
- Shaping of interpersonal relationships, including partnership and sexual relationships with a particular consideration of a danger of sexual and criminal exploitation.

Two one-and-half-hour-long interviews (in a span of approximately one week) are applicable – if substantial disturbing factors such as traumatic reaction and cultural shock are excluded – for an orientation on the questions posed above as well as to improve the age assessment.



The interview should be conducted by professional trained staff, such as guardians, in a language that the individual is familiar with, in an age-appropriate atmosphere in the presence of a trusted third party. The interviewer should consider culture-specific aspects of the interpersonal relationship and be mindful of severe traumatic reactions of the minor.

Further important questions would include finding out about⁶¹

- Social history and family composition of the minor – in this case the guardian can ask the minor to draw a graphic of the family tree with the

⁶¹ London Boroughs of Hillingdon and Croydon, 2003, Practice Guidelines for Age Assessment of Young unaccompanied Asylum Seekers.

names and ages of the family members. If it is too painful for the child to talk about his/her family, this must be understood and respected.

- Development considerations - questions related to activities and hobbies during spare time can give an idea of the age appropriate interests and activities. In that case, the cultural background of the minor should be taken considerations.
- Educational history – questions related to the age at which school was started, the number of years spent in any school and eventual disruptions in schooling, the names and addresses of schools attended or the subject studied can give an insight into the age of the minor.
- Independence and self care skills – has the minor ever lived away from home before, does the minor have experience in managing money or paying bills, is he/she able to cook?

Psychosocial maturity depends on ethnic and individual-biographic terms.⁶²

- The **intellectual maturity** depends notably on the level of education. The exchange of the thinking patterns offers a maturity parameter for the younger stages of age. (Around the age of eight there is a transition from magical animated thinking to a logical, real, concrete thinking, while around the age of 14, there is a transition from logical, real, concrete thinking to abstract thinking.)
- The **emotional maturity** describes the gradual change in the attachment and relationship structure, the transition from the relationship of the I. Order (the primary family) to the relationship of the II. Order (non-family structures). This process is gradual, and can only roughly relate to the stages of the chronological age. The orientation to the attachments in a peer group plays a major role in the transition period of adolescence for example. It is age-related to verify the coping with debonding process as well as the abilities for new emotional attachment.

⁶² Resource Book for Law Enforcement Officers on Good Practices in Combating Child Trafficking, p. 44.

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- The **social maturity** is evaluated by means of two central parameters, the ability of moral judgment and the anticipation ability in a social context; the ability of meaningful thinking for planning and acting by the attained insight. Requirements for these development abilities are the acquisitions of social rules (from the age of six) and the ability of a perspective adoption (to be in the position to try to understand someone, which would be approximately at the age of eight).



Warning: The presented maturity criteria contain no cornerstone for the age assessment in the relevant time span until the age of 18, but they are components for the assessment of the need for support and care in terms of a needs diagnostic.

If there is a possibility that the individual is a child, she or he should be treated as such.⁶³ In cases of uncertainty, the minor should be given the benefit of the doubt.

⁶³ UN High Commissioner for Human Rights, 2005, General Comment No. 6: Treatment of Unaccompanied and Separated Children outside their Country of Origin, p. 11.

Overview of methods used for assessing the age of an unaccompanied minor in the Member States

	Interview/ Documentation	Assessment by a Doctor	Dental Analysis	Skeletal Assessment ⁶⁴	Psychological
United Kingdom	•				
Sweden	•		•	•	
Spain	•			•	
Slovenia	•				•
Slovak Republic	•			•	
Portugal			•	•	
Poland	•	•	•	•	
Malta	•			•	•
Netherlands	•			•	
Lithuania	•	•		•	•
Latvia		•			
Italy	•	•	•	•	
Ireland	•				
Hungary	•	•			
Greece	•				
Germany	•		•	•	
France	•	•	•	•	•
Finland	•		•	•	
Estonia	•			•	
Czech Republic	•		•	•	
Belgium	•		•	•	•
Austria	•	•	•	•	

Table 2

⁶⁴ An X-Ray is taken normally of the hand, collarbone (clavicle) and/or wrist and methods such as the Greulich-Pyle (GP), Tanner and Whitehouse (TW-2) and Radius, Ulman, Short bones (RUS) are used to determine bone or skeletal age. These methods do not take into account racial, ethnic, nutritional, environmental, psychological or cultural differences which directly influence a child's development and growth and they typically have a margin of error of approximately 18 months.

7 § EU ASYLUM INSTRUMENTS

Since 1999 the EU has been moving towards the creation of a *Common European Asylum System*. To this end a number of legal instruments aimed at harmonising procedures across EU Member States in the area of asylum and immigration have been adopted. Annex IV provides a complete list of relevant EU legal instruments concerning immigration and asylum. Several of the EU instruments contain specific provisions for UAMAS, recognising them as a particularly vulnerable group.



When implementing provisions concerning minors, Member States are required to take the best interests of the child into consideration.

The following text presents a summary of the provisions for UAMAS contained in the various EU instruments.



NOTE: This summary is not authoritative and is intended to provide an overview only. For the definitive text always consult the original legislation.

Accommodation: Taking the views of the child into account, member states are instructed to place UAMAS (a) with adult relatives; (b) with a foster-family; (c) in accommodation centers with special provisions for



minors; (d) in other accommodation suitable for minors. UAMAS aged 16 or over may be placed in accommodation centers for adult asylum seekers. Siblings should be kept together where possible and changes of residence should be kept to a minimum.⁶⁵

Age assessment: UAMAS and/or their representatives are to consent to carry out an examination to determine the age of the minors concerned. UAMAS are to be informed about age assessment procedures in a language they may reasonably be supposed to understand. The method of examination, the results and the possible consequences of the results for the asylum application are to be explained. The UAMAS is also to be informed of the consequences of a refusal to undergo the medical examination. In cases where an UAMAS refuses to undergo a medical examination, this is not to prevent a decision on the application for asylum being taken. Refusal to undergo a medical examination is not to be the sole reason for the rejection of an asylum application.⁶⁶

Detention: UAMAS are only to be detained as a measure of last resort and for the shortest appropriate period of time. Minors in detention are to have the possibility to engage in age-appropriate leisure activities and are to be provided with age-appropriate accommodation as far as possible. The best interests of the child are to be a primary consideration in the context of the detention of minors pending removal.⁶⁷

The **Dublin II** Regulation provides that if an UAMAS has a family member legally resident in an EU member state then this member state should be responsible for examining the minor's asylum application. Otherwise the

⁶⁵ Council of the European Union, 2003a: Council Directive 2003/9/EC ("Reception Directive"); also 2001: Council Directive 2001/55/EC ("Temporary Protection Directive") and 2004: Council Directive 2004/83/EC ("Qualification Directive")

⁶⁶ Council of the European Union, 2005: Council Directive 2005/85/EC ("Asylum Procedures Directive")

⁶⁷ European Parliament, 2008: Directive 2008/115/EC ("Return Directive")

state where the asylum application was lodged is responsible for examining it. Furthermore, if the UAMAS has relatives in another Member State who can take care of him/her then they should be reunited if possible. These provisions are subject to the best interests of the minor.⁶⁸

Education: States should grant minor asylum seekers access to the education system under similar conditions to nationals (Reception Directive, Long Term Residents Directive). Minors granted refugee or subsidiary protection status are to be granted full access to the education system under the same conditions as nationals.⁶⁹ Minors in detention are to have access to education, depending on the length of their stay.⁷⁰

Family tracing: Member States are to attempt to trace the members of an UAMAS' family as soon as possible, on a confidential basis where necessary, while protecting the best interests of the child.⁷¹

Family reunification: The minor's first degree relatives in the direct ascending line are to be permitted to rejoin him/her; if these do not exist or cannot be traced then Member States may authorise entry and residence for the purposes of family reunification of his/her legal guardian or any other member of the family.⁷²

Health care: Member States are to take into account the specific situation of vulnerable persons such as UAMAS when implementing general provisions related to health care (Reception Directive, Qualification Directive). Access to rehabilitation services, mental health care and

⁶⁸ Council of the European Union, 2003b: Council Regulation (EC) No 343/2003 (Dublin II Regulation)

⁶⁹ Council of the European Union, 2004: Council Directive 2004/83/EC ("Qualification Directive")

⁷⁰ European Parliament, 2008: Directive 2008/115/EC ("Return Directive")

⁷¹ Council of the European Union, 2003a: Council Directive 2003/9/EC ("Reception Directive"); 2004: Council Directive 2004/83/EC ("Qualification Directive")

⁷² Council of the European Union, 2003c: Council Directive 2003/86/EC ("Family Reunification Directive")



qualified counselling where needed is to be provided to minors who have been victims of any form of abuse.⁷³

Procedures: UAMAS are to be interviewed by persons with the necessary knowledge of the special needs of minors; the decision by the determining authority on an UAMAS' application is to be prepared by an official with the necessary knowledge of the special needs of minors.⁷⁴

Representation: Member states are required to ensure representation of UAMAS by legal guardianship, or, where necessary by an organization which is responsible for the care and well-being of minors, or by any other appropriate representation. The authorities are obliged to conduct regular assessments. (Reception Directive; also Temporary Protection Directive, Qualification Directive) The Procedures Directive provides for a representative to aid UAMAS in respect to the examination of their application and to inform them regarding their interview.⁷⁵

Return: Before a return decision is made, assistance by appropriate bodies other than the authorities enforcing return is to be granted, with consideration of the best interests of the child. Member States are to be satisfied that UAMAS will be returned to a member of their family, a nominated guardian or adequate reception facilities in the State of return.⁷⁶ All decisions concerning alternative care should take full account

⁷³ Council of the European Union, 2003a: Council Directive 2003/9/EC ("Reception Directive")

⁷⁴ Council of the European Union, 2005: Council Directive 2005/85/EC ("Asylum Procedures Directive")

⁷⁵ However Member States may refrain from appointing a representative where the unaccompanied minor: (a) will in all likelihood reach the age of maturity before a decision at first instance is taken; or (b) can avail himself, free of charge, of a legal adviser or other counsellor, admitted as such under national law to fulfil the tasks assigned above to the representative; or (c) is married or has been married. Member States may, in accordance with the laws and regulations in force on 1 December 2005, also refrain from appointing a representative where the unaccompanied minor is 16 years old or older, unless he/she is unable to pursue his/her application without a representative. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:326:0013:01:EN:HTML> (acc. February 2012)

⁷⁶ European Parliament, 2008: Directive 2008/115/EC ("Return Directive")

of the desirability, in principle, of maintaining the child as close as possible to his/her habitual place of residence, in order to facilitate contact and potential reintegration with his/her family and to minimize disruption of his/her educational, cultural and social life.⁷⁷

Training: those working with UAMAS are to be trained appropriately.⁷⁸



Currently the main EU asylum and immigration instruments are undergoing revision, including Eurodac, the Reception Directive, the Dublin Regulation, the Long-Term Residents Directive, the Qualification Directive and the Asylum Procedures Directive.

⁷⁷ General Assembly, 2009, Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights Including the Right to Development. Guidelines for the Alternative Care of Children, para. 10.

⁷⁸ Council of the European Union, 2003a: Council Directive 2003/9/EC ("Reception Directive"); 2004: Council Directive 2004/83/EC ("Qualification Directive")

Relevant EU Legislation on Minors and Unaccompanied Minors⁷⁹

Legislation	Specific Article for Unaccompanied Minors (UAMs)	Specific Article for Minors (including UAMs)	Rights addressed in each Article
Reception Directive	Art. 19 (UAMs)	Art. 18 (Minors)	Art.19 Legal guardianship Regular assessment related to the necessary representation Family unity Accommodation Best Interests of the Child Age and maturity Family tracing Training Safety Confidentiality
Qualification Directive	Art.30 (UAMs)		Art.30 Best Interests of the Child Legal guardianship, Minor needs Regular assessment Family unity Accommodation Best Interests of the Child Views of child; Age and maturity Family tracing Training, Confidentiality
Asylum Procedures Directive	Art.17 (Guarantees for UAMs)		Art.17 Representation, Personal Interview Information. Special needs Medical examination, Language, Consent Best Interests of the Child
DUBLIN II	Art.6		Member States responsible for examining the application shall be where a member of his or her family is legally present, provided that this is in the best interest of the minor. In the absence of a family member, the Member State responsible for examining the application shall be that where the minor has lodged his or her application for asylum.
Returns Directive	Art.10 (Return and removal)	Art.17 (detention of minors and families)	Art.10 Assistance Return to family, nominated guardian, or adequate reception facilities
Directive 2011/36/EU ⁸⁰			Preventing and combating trafficking in human beings and protecting its victims
Council of Europe (2005)			Convention on Action against Trafficking in Human Beings and its Explanatory Report

Table 3

⁷⁹ Diop, Marie, 2008-2009 : Unaccompanied Minors' Rights within the European Union: Is the EU Asylum and Immigration Legislation in line with the Convention on the Rights of the Child?, p. 47

⁸⁰ A comprehensive overview of EU Legislation on (child) trafficking can be found at the IOM Budapest homepage: http://www.iom.hu/index.php?option=com_content&view=article&id=14&Itemid=19&lang=en#trafficking_in_human_beings (acc. March 2012)

Rights addressed in each Article	Other Articles with specific mention of Unaccompanied Minors and/or Minors
<p>Art.18 Best Interest of the Child Rehabilitation services for minors who have been victims of any form of abuse, neglect, exploitation, torture or cruel, inhuman and degrading treatment, or who have suffered from armed conflicts Appropriate healthcare Qualified Counselling</p>	<p>Art.2(2)(h) (Definition of UAM) Art.10 (Schooling and Education) Art.13.2 (Standard of living) Art. 17 (provisions for persons with special needs)</p>
	<p>Preamble, Rec. 12 Art.2(i) (Definition of UAM) Art.9 (Acts or persecution) Art.20 (General rules – Content of International Protection) Art. 27 (Access to education) Art.29 (Healthcare) Art.30 (Confidentiality)</p>
	<p>Preamble, Rec. 14 Art.2(h) (Definition of UAM) Art.4 (a)(b) (Access to the procedure) Art.12 (Personal interview) Art.35(3)(f) (Border procedures)</p>
	<p>Art. 2(h) (Definition of UAM) Art.15(3) (Humanitarian Clause)</p>
<p>Art.17 Detention, Leisure activities, Access to education Accommodation, Best Interest of the Child</p>	<p>Art.5 (Non-Refoulement, best interests of the child, family life and state of health) Art.7.2 (Voluntary Return)</p>

8 DURABLE SOLUTIONS

The ultimate aim in addressing the fate of unaccompanied or separated children is to identify a durable solution that addresses all their protection needs, takes into account the child's view and, wherever possible, leads to overcoming the situation of a child being unaccompanied or separated.⁸¹

Durable solutions may comprise either

- granting of international protection status or other legal status allowing minors to successfully integrate in the Member State of residence;
- return and reintegration in the country of origin;
- resettlement in third countries.

The guardian should discuss all of these options with the minor, explaining carefully what each entails. The minor should be given the chance to express his views and his opinion should be taken into account as far as possible. The possibility of family reunification should be analysed, with family tracing commencing if in accordance with the wishes of the minor.



In all cases durable solutions should be based on the best interests of the child and full respect of the child's rights. However, it is not necessarily a prerequisite to determining a child's best interest.

⁸¹ UN High Commissioner for Human Rights, 2005, General Comment No. 6: Treatment of Unaccompanied and Separated Children outside their Country of Origin, §79.

Determining a child's best interest "should be undertaken as early as possible in the displacement cycle. The person should not wait until prospects for a durable solution emerge."⁸²



regarding return

Based on 2004 research NIDOS, an independent guardianship organisation in the Netherlands recommends that guardians discuss the prospect of return with minors. Their findings indicate that with the aid of realistic guidance the minor can develop a more positive attitude towards return. The guardian should attempt to solve difficulties which the minor may experience. By talking about the country of origin, about the minor's social network and by working towards clear goals, a safe climate can be established.

From an early stage, the guardian involves the child in determining a durable solution, including consideration of return to the country of origin. The work of NIDOS on return is based on the wishes of the child and an assessment of their best interests. Plans cannot be made or changed without consultation with the child. If the guardian is of the view that there is adequate reception in the country of origin, the guardian supports the child in working through the processes of return to the country of origin. Each plan is tailored to the needs and situation of each individual child and the return plan is based on an initial

⁸² UNHCR, 2008: Guidelines on Determining the Best Interests of the Child, p. 32.



period of support and investment for the child when they arrive in the Netherlands, cooperation with reliable and trustworthy agencies in the country of origin and an assessment by NIDOS that return is durable. This is supported by a reintegration plan. [...] When considering return, the guardian facilitates various preparatory activities for the child, including meeting with organisations providing assisted voluntary return programmes (IOM, Maatwerk bij Terugkeer – the Mediation Agency for Return) in the Netherlands and vocational training targeted at activities after return and counselling on the return procedure.⁸³

⁸³ ECRE, 2011a, Directorate General Home: Comparative Study on Practices in the Field of Return of Minors. Final Report, p. 139.

9 LIFE PROJECTS

§ Life Projects⁸⁴ are a tool proposed by the Council of Europe aimed at developing the capacities of UAMAS. Such projects endeavour to allow minors to acquire and strengthen the skills necessary to become independent, responsible and active in society.

Life projects should be based on

- the CRC
- a comprehensive, integrated and interdisciplinary approach;
- an individual approach tailored to the child's situation;
- a mutual commitment by the UAMAS and the authorities.



Life projects have to be fully in accord with the best interests of the child, as stated in the CRC.

Stage 1: Commencing the life project

An assessment should be carried out in order to:

- analyse the minor's past history, background and experiences;
- analyse the minor's family ties;
- analyse the factors which contributed to the minor's migration;
- clearly identify the minor's expectations and needs.

⁸⁴ Council of Europe, 2007a: Recommendation CM/Rec (2007)9 of the Committee of Ministers to member states on life projects for unaccompanied migrant minors; Council of Europe, 2007b: Explanatory Memorandum to the Recommendation CM/REC (2007)9 of the Committee of Ministers to Member States on Life Projects for Unaccompanied Migrant Minors.



Also necessary is an analysis of what may be needed to ensure that the minor is fully informed about his or her position in the host country, which may include rights, such as the right to seek asylum, responsibilities, and services available and how to access them, the relationship between the minor and the appropriate authorities.

The life project, which is devised together with the minor, is based on reconciling the minor's expectations and skills with the opportunities that exist within the host country and in the country of origin or a third country. It should be broken down into clear, realistic, achievable objectives. Each objective must be of intrinsic value and usefulness to the minor, regardless of the country in which he or she finds himself. Each objective is designed to enhance the minor's skills so that he or she can successfully complete his or her life project.



Particular care should be taken to ensure that the minor understands that commencement of a life project does not imply the granting or otherwise of a residency permit.

Stage 2: Making the written agreement

Once clear and realistic step by step goals have been identified with the minor as an active participant according to his or her age and maturity, a clear method should be identified for setting out who will be responsible for facilitating each goal.

This is envisaged as a co-operative undertaking from all parties – the minor, the advisor, any family members if applicable, any carers, specialist services or organisations, and legal representatives.

The written agreement should be agreed and signed by the minor and all concerned parties. The life project thus becomes a moral commitment, with each party agreeing to take on certain roles. Life projects should comprise open-ended objectives which the minor undertakes to pursue, the arrangements for monitoring their implementation and a regular assessment based on exchanges between the minor and the competent authorities.⁸⁵

Stage 3: Implementation, monitoring and revision of a life project

The authorities and professionals responsible for assisting the child should put in place procedures for monitoring the progress of the life project, and dealing with any possible difficulties. These procedures may vary depending on the national circumstances. However, it is recommended that each life project should be formally reviewed at least every six months, or more frequently in the event of important changes which materially affect the life project itself.

A life project could be developed and implemented either in the host country, in the country of origin or in the host country and the country of origin. It could happen that a life project may only be put in place in a third country. No solution should be excluded. The overriding principle is to ensure the best interest of the child. Minors who have started a life project should be granted a residence permit for the time required to be able to complete their education or vocational training. In certain circumstances this will imply allowing the child to remain in the host country after the age of 18.⁸⁶

⁸⁵ Council of Europe, 2007a: Recommendation CM/Rec (2007)9 of the Committee of Ministers to member states on life projects for unaccompanied migrant minors, article 16.

⁸⁶ Council of Europe, 2007b: Explanatory Memorandum to the Recommendation CM/REC (2007)9 of the Committee of Ministers to Member States on Life Projects for Unaccompanied Migrant Minors.

In the Netherlands, the guardianship organisation NIDOS utilises a methodology similar to that proposed by the Council of Europe where the guardian and the minor develop a plan of action comprising specific goals to be achieved by the minor.

First step: Weaknesses and strengths

In the first six weeks after the arrival of the minor several 'positioning' interviews take place. Based on these interviews the guardian and his pupil try to count down the minor's weaknesses and his strengths. According to this phrased points the guardian can start drafting a plan of action.

Second step: Development profile

Using the information and impressions which occurred to him in the interviews, the guardian makes an analysis of the situation: how the minor is developing, the progress of the legal procedure and the present indications for a healthy development. The guardian draws a profile of the development of the minor by using a list of factors which can possibly impede the development. This list is based on the Best Interest of the Child- model of Kalverboer and Zijlstra, which contributes to the child's best interest.⁸⁷

Third step: Development results

Based on the weaknesses, strengths and the profile the guardian will focus on the development results. To establish a healthy development the guardian needs to ask some questions. How is the minor developing? Is it worrying compared to a normal development? In answer to these questions the guardians phrases the development results.

⁸⁷ Kalverboer, M. & Zijlstra, E., 2006: Het belang van het Kind in het Nederlandse recht.



Fourth step: Development goals

After all this the last step to phrase realistic and feasible development goals which give direction to the development results. The nature of the goals is very practical. It is about school, about their social abilities, about their capability to deal with daily and financial issues. It is important the goals can be reached in a foreseeable time. To be successful the plan of action has to be written within six weeks from the start of the intake. From the moment the plan of action is made, the guardian and his pupil will try to reach the development goals during the year. By continuously evaluating the developments both the guardian and the child will be aware of the progress the separated child is making.

However, room for improvement has also been identified by experts



Recommendations

- **The guardian ensures the plan of action reflects the views of the separated child and collaborates with the mentor during the development of the plan.**
- **The guardian ensures that the child understands and participates in the writing of the action plan.**
- **The separated child must be able to repeat the goals that he or she has set together with the guardian and the mentor.**
- **The separated child should also receive a copy of the plan of action to be able to read their goals again whenever they want.⁸⁸**

⁸⁸ Dutch Report, 2010: Closing a Protection Gap, p. 37.

10 CHALLENGES FOR GUARDIANS

Cooperation with other stakeholders

As a variety of different stakeholders (legal guardians, social workers, legal representatives, etc.) may be in contact with the UAMAS, cooperation among and between these actors is very important. However, such cooperation is frequently inadequate, due in part to the fragmented, contradictory and unclear legislation and policies identified by various studies in this area. Poor cooperation may also reflect competing and contradicting agendas, work ethics and frames of reference of the various actors that deal with issues relating to UAMAS.

Thus, it is very important that information is shared among stakeholders and that regular meetings are facilitated (perhaps even together with the UAMAS) in order to avoid misunderstandings. The best interest of the UAMAS can be secured if all the respective actors are cooperating and acting together on his/her behalf.⁸⁹

In the course of a recent IOM project on this subject one expert from the Czech Republic outlined the situation as follows: “Also social workers of other institutions should be aware whom to contact in case they don’t know how to deal with an UAMAS. I understand to a certain extend, that they only deal with a foreigner once every three years, however, they should at least know, whom to call for advice”⁹⁰

⁸⁹ IOM, 2011: Unaccompanied Minor Asylum-seekers: Overview of Protection, Assistance and Promising Practices

⁹⁰ IOM Project on Best Practices for a Coordinated Approach to Assist Unaccompanied Minor Asylum Seekers (UAMAS) and former UAMAS (fUAMAS) in EU MS, National Report, IOM and Organisation for aid to refugees, 2011



Under-trained and overburdened staff

Staff responsible for UAMAS are often not provided with enough resources to be able to deliver adequate standards of care. Staff are sometimes simply over-burdened by the sheer number of children that are expected to be under their responsibility. Sometimes they are unable to carry out their jobs properly because of lack of training and know-how.⁹¹



Recommendations

- Good time management is very important. Guardians should check if appointments with the UAMAS are confirmed and/or send a reminder message to the UAMAS.
- Guardians could use social media, such as Facebook, to interact with UAMAS. They could exchange wishes and needs frequently even if they are not living in the same town.
- Guardians could institute meetings among persons in direct contact with individual UAMAS. If possible these meetings should occur regularly in order to assess and discuss the needs of the UAMAS on an ongoing basis.
- The competences and responsibilities of all stakeholders working with UAMAS should be clearly defined.
- Regular trainings and seminars for guardians, social workers, etc. are recommended.

⁹¹ Ibidem.

11 CONCLUSION

Guardians and social workers dealing with UAMAS work in many different areas and have a variety of responsibilities regarding UAMAS. This training manual should enhance the professional competencies of guardians, counsellors and care workers dealing with UAMAS.

Although national legislation regarding the rights of UAMAS differs from country to country even within the European Union, there are increasing efforts to harmonize the legal policy framework at international and European level. In this context this training manual may also serve as a tool towards a harmonized approach.

Practitioners should use this training manual as a handbook to learn from the experiences and good practices of other countries in order to improve the quality of guardianship and general care available to UAMAS. In addition, the training manual provides information on UAMAS related topics such as international legislation and standards as well as EU asylum instruments, the appointment and role of a guardian, approaches targeting the best interest of the child and needs assessment, child trafficking, age assessment procedures and durable solutions and life projects.



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13 ANNEXES

Annex I

Fact Sheet: A summary of the rights under the Convention on the Rights of the Child⁹² (The entire CRC can be found at: <http://www2.ohchr.org/english/law/crc.htm> acc. February 2012)

Article 1 (Definition of the child): The Convention defines a ‘child’ as a person below the age of 18, unless the laws of a particular country set the legal age for adulthood younger. The Committee on the Rights of the Child, the monitoring body for the Convention, has encouraged States to review the age of majority if it is set below 18 and to increase the level of protection for all children under 18.

Article 2 (Non-discrimination): The Convention applies to all children, whatever their race, religion or abilities; whatever they think or say, whatever type of family they come from. It doesn’t matter where children live, what language they speak, what their parents do, whether they are boys or girls, what their culture is, whether they have a disability or whether they are rich or poor. No child should be treated unfairly on any basis.

Article 3 (Best interests of the child): The best interests of children must be the primary concern in making decisions that may affect them. All adults should do what is best for children. When adults make decisions, they should think about how their decisions will affect children. This particularly applies to budget, policy and law makers.

Article 4 (Protection of rights): Governments have a responsibility to take all available measures to make sure children’s rights are respected,

⁹² UNICEF, 1990, Fact Sheet: A Summary of the Rights under the Convention on the Rights of the Child.



protected and fulfilled. When countries ratify the Convention, they agree to review their laws relating to children. This involves assessing their social services, legal, health and educational systems, as well as levels of funding for these services. Governments are then obliged to take all necessary steps to ensure that the minimum standards set by the Convention in these areas are being met. They must help families protect children's rights and create an environment where they can grow and reach their potential. In some instances, this may involve changing existing laws or creating new ones. Such legislative changes are not imposed, but come about through the same process by which any law is created or reformed within a country. Article 41 of the Convention points out that when a country already has higher legal standards than those seen in the Convention, the higher standards always prevail.

Article 5 (Parental guidance): Governments should respect the rights and responsibilities of families to direct and guide their children so that, as they grow, they learn to use their rights properly. Helping children to understand their rights does not mean pushing them to make choices with consequences that they are too young to handle. Article 5 encourages parents to deal with rights issues "in a manner consistent with the evolving capacities of the child". The Convention does not take responsibility for children away from their parents and give more authority to governments. It does place on governments the responsibility to protect and assist families in fulfilling their essential role as nurturers of children.

Article 6 (Survival and development): Children have the right to live. Governments should ensure that children survive and develop healthily.

Article 7 (Registration, name, nationality, care): All children have the right to a legally registered name, officially recognised by the government. Children have the right to a nationality (to belong to a country). Children also have the right to know and, as far as possible, to be cared for by their parents.

Article 8 (Preservation of identity): Children have the right to an identity – an official record of who they are. Governments should respect children’s right to a name, a nationality and family ties.

Article 9 (Separation from parents): Children have the right to live with their parent(s), unless it is bad for them. Children whose parents do not live together have the right to stay in contact with both parents, unless this might hurt the child.

Article 10 (Family reunification): Families whose members live in different countries should be allowed to move between those countries so that parents and children can stay in contact, or get back together as a family.

Article 11 (Kidnapping): Governments should take steps to stop children being taken out of their own country illegally. This article is particularly concerned with parental abductions. The Convention’s Optional Protocol on the sale of children, child prostitution and child pornography has a provision that concerns abduction for financial gain.

Article 12 (Respect for the views of the child): When adults are making decisions that affect children, children have the right to say what they think should happen and have their opinions taken into account. This does not mean that children can now tell their parents what to do. This Convention encourages adults to listen to the opinions of children and involve them in decision-making -- not give children authority over adults. Article 12 does not interfere with parents’ right and responsibility to express their views on matters affecting their children. Moreover, the Convention recognizes that the level of a child’s participation in decisions must be appropriate to the child’s level of maturity. Children’s ability to form and express their opinions develops with age and most adults will naturally give the views of teenagers greater weight than those of a preschooler, whether in family, legal or administrative decisions.



Article 12 (Respect for the views of the child): When adults are making decisions that affect children, children have the right to say what they think should happen and have their opinions taken into account.

Article 13 (Freedom of expression): Children have the right to get and share information, as long as the information is not damaging to them or others. In exercising the right to freedom of expression, children have the responsibility to also respect the rights, freedoms and reputations of others. The freedom of expression includes the right to share information in any way they choose, including by talking, drawing or writing.

Article 14 (Freedom of thought, conscience and religion): Children have the right to think and believe what they want and to practise their religion, as long as they are not stopping other people from enjoying their rights. Parents should help guide their children in these matters. The Convention respects the rights and duties of parents in providing religious and moral guidance to their children. Religious groups around the world have expressed support for the Convention, which indicates that it in no way prevents parents from bringing their children up within a religious tradition. At the same time, the Convention recognizes that as children mature and are able to form their own views, some may question certain religious practices or cultural traditions. The Convention supports children's right to examine their beliefs, but it also states that their right to express their beliefs implies respect for the rights and freedoms of others.

Article 15 (Freedom of association): Children have the right to meet together and to join groups and organisations, as long as it does not stop other people from enjoying their rights. In exercising their rights, children have the responsibility to respect the rights, freedoms and reputations of others.

Article 16 (Right to privacy): Children have a right to privacy. The law should protect them from attacks against their way of life, their good name, their families and their homes.

Article 17 (Access to information; mass media): Children have the right to get information that is important to their health and well-being. Governments should encourage mass media – radio, television, newspapers and Internet content sources – to provide information that children can understand and to not promote materials that could harm children. Mass media should particularly be encouraged to supply information in languages that minority and indigenous children can understand. Children should also have access to children’s books.

Article 18 (Parental responsibilities; state assistance): Both parents share responsibility for bringing up their children, and should always consider what is best for each child. Governments must respect the responsibility of parents for providing appropriate guidance to their children – the Convention does not take responsibility for children away from their parents and give more authority to governments. It places a responsibility on governments to provide support services to parents, especially if both parents work outside the home.

Article 19 (Protection from all forms of violence): Children have the right to be protected from being hurt and mistreated, physically or mentally. Governments should ensure that children are properly cared for and protect them from violence, abuse and neglect by their parents, or anyone else who looks after them. In terms of discipline, the Convention does not specify what forms of punishment parents should use. However any form of discipline involving violence is unacceptable. There are ways to discipline children that are effective in helping children learn about family and social expectations for their behaviour – ones that are non-violent, are appropriate to the child’s level of development and take the best interests



of the child into consideration. In most countries, laws already define what sorts of punishments are considered excessive or abusive. It is up to each government to review these laws in light of the Convention.

Article 20 (Children deprived of family environment): Children who cannot be looked after by their own family have a right to special care and must be looked after properly, by people who respect their ethnic group, religion, culture and language.

Article 21 (Adoption): Children have the right to care and protection if they are adopted or in foster care. The first concern must be what is best for them. The same rules should apply whether they are adopted in the country where they were born, or if they are taken to live in another country.

Article 22 (Refugee children): Children have the right to special protection and help if they are refugees (if they have been forced to leave their home and live in another country), as well as all the rights in this Convention.

Article 23 (Children with disabilities): Children who have any kind of disability have the right to special care and support, as well as all the rights in the Convention, so that they can live full and independent lives.

Article 24 (Health and health services): Children have the right to good quality health care – the best health care possible – to safe drinking water, nutritious food, a clean and safe environment, and information to help them stay healthy. Rich countries should help poorer countries achieve this.

Article 25 (Review of treatment in care): Children who are looked after by their local authorities, rather than their parents, have the right to have these living arrangements looked at regularly to see if they are the most

appropriate. Their care and treatment should always be based on “the best interests of the child”. (see Guiding Principles, Article 3)

Article 26 (Social security): Children – either through their guardians or directly – have the right to help from the government if they are poor or in need.

Article 27 (Adequate standard of living): Children have the right to a standard of living that is good enough to meet their physical and mental needs. Governments should help families and guardians who cannot afford to provide this, particularly with regard to food, clothing and housing.

Article 28: (Right to education): All children have the right to a primary education, which should be free. Wealthy countries should help poorer countries achieve this right. Discipline in schools should respect children’s dignity. For children to benefit from education, schools must be run in an orderly way – without the use of violence. Any form of school discipline should take into account the child’s human dignity. Therefore, governments must ensure that school administrators review their discipline policies and eliminate any discipline practices involving physical or mental violence, abuse or neglect. The Convention places a high value on education. Young people should be encouraged to reach the highest level of education of which they are capable.

Article 29 (Goals of education): Children’s education should develop each child’s personality, talents and abilities to the fullest. It should encourage children to respect others, human rights and their own and other cultures. It should also help them learn to live peacefully, protect the environment and respect other people. Children have a particular responsibility to respect the rights their parents, and education should aim to develop respect for the values and culture of their parents. The Convention does not address such issues as school uniforms, dress codes, the singing of the national anthem or prayer in schools. It is up to governments and



school officials in each country to determine whether, in the context of their society and existing laws, such matters infringe upon other rights protected by the Convention.

Article 30 (Children of minorities/indigenous groups): Minority or indigenous children have the right to learn about and practice their own culture, language and religion. The right to practice one's own culture, language and religion applies to everyone; the Convention here highlights this right in instances where the practices are not shared by the majority of people in the country.

Article 31 (Leisure, play and culture): Children have the right to relax and play, and to join in a wide range of cultural, artistic and other recreational activities.

Article 32 (Child labour): The government should protect children from work that is dangerous or might harm their health or their education. While the Convention protects children from harmful and exploitative work, there is nothing in it that prohibits parents from expecting their children to help out at home in ways that are safe and appropriate to their age. If children help out in a family farm or business, the tasks they do be safe and suited to their level of development and comply with national labour laws. Children's work should not jeopardize any of their other rights, including the right to education, or the right to relaxation and play.

Article 33 (Drug abuse): Governments should use all means possible to protect children from the use of harmful drugs and from being used in the drug trade.

Article 34 (Sexual exploitation): Governments should protect children from all forms of sexual exploitation and abuse. This provision in the Convention is augmented by the Optional Protocol on the sale of children, child prostitution and child pornography.

Article 35 (Abduction, sale and trafficking): The government should take all measures possible to make sure that children are not abducted, sold or trafficked. This provision in the Convention is augmented by the Optional Protocol on the sale of children, child prostitution and child pornography.

Article 36 (Other forms of exploitation): Children should be protected from any activity that takes advantage of them or could harm their welfare and development.

Article 37 (Detention and punishment): No one is allowed to punish children in a cruel or harmful way. Children who break the law should not be treated cruelly. They should not be put in prison with adults, should be able to keep in contact with their families, and should not be sentenced to death or life imprisonment without possibility of release.

Article 38 (War and armed conflicts): Governments must do everything they can to protect and care for children affected by war. Children under 15 should not be forced or recruited to take part in a war or join the armed forces. The Convention's Optional Protocol on the involvement of children in armed conflict further develops this right, raising the age for direct participation in armed conflict to 18 and establishing a ban on compulsory recruitment for children under 18.

Article 39 (Rehabilitation of child victims): Children who have been neglected, abused or exploited should receive special help to physically and psychologically recover and reintegrate into society. Particular attention should be paid to restoring the health, self-respect and dignity of the child.

Article 40 (Juvenile justice): Children who are accused of breaking the law have the right to legal help and fair treatment in a justice system that respects their rights. Governments are required to set a minimum



age below which children cannot be held criminally responsible and to provide minimum guarantees for the fairness and quick resolution of judicial or alternative proceedings.

Article 41 (Respect for superior national standards): If the laws of a country provide better protection of children's rights than the articles in this Convention, those laws should apply.

Article 42 (Knowledge of rights): Governments should make the Convention known to adults and children. Adults should help children learn about their rights, too. (See also article 4.)

Articles 43-54 (implementation measures): These articles discuss how governments and international organizations like UNICEF should work to ensure children are protected in their rights.

Annex II

Best Interest of the Child Model (as developed by Kalverboer & Zijlstra)⁹³

A Family conditions: the present

I Physical well-being

1 Adequate physical care

Adequate physical care refers to the care for the child's health and physical well-being by parents or caretakers. They offer the child a place to live, clothing to wear, enough food to eat and (some) personal belongings. There is a family income to provide for all this. Besides the parents or caretakers are free of worries about providing for the child's physical well-being.

CRC provisions that might be threatened if the condition is not supplied for:

Art. 19, 20, 24, 26, 27, 32, 33, 34, 37, 39.

2 Safe physical environment

A safe physical environment offers the child physical protection. This implies the absence of physical danger in the house or neighbourhood the child lives in. There are no toxics or other threats in the house or neighbourhood. The child is not threatened by abuse of any kind.

CRC provisions that might be threatened if the condition is not supplied for:

Art. 19, 20, 23, 24, 26, 27, 32, 33, 34, 37, 39.

⁹³ Kalverboer, M. & Zijlstra, E., 2006: Het belang van het Kind in het Nederlandse recht.



II Care and upbringing

3 Affective atmosphere

An affective atmosphere implies that the parents or caregivers of the child offer the child emotional protection, support and understanding. There are bonds of attachment between the parent(s) or caregiver(s) and the child. There is a relationship of mutual affection.

CRC provisions that might be threatened if the condition is not supplied for:

Art. 9, 10, 19, 20, 27, 37.

4 Supporting, flexible upbringing structure, adapted to the child

A supporting, flexible upbringing structure means that the environment offers the child: enough daily routines in his or her life; encouragement, stimulation and instructions to the child and the requirement of realistic demands; rules and limits and instructions and an insight in the arguments for these rules and limits and instructions; control on his or her behaviour; enough space for his/her own wishes and thoughts, enough freedom to experiment and to negotiate over what is important to him or her; no more responsibilities than he or she is capable of to handle (in this way the child learns what the consequences are of his/her behaviour within the limits which the parents or caretakers have set).

CRC provisions that might be threatened if the condition is not supplied for:

Art. 12, 13, 14, 16, 18, 27, 37.

5 Adequate examples by parents

The parents or caretakers offer the child the opportunity to take over their behaviour, values and cultural norms which are important, now and in the future.

CRC provisions that might be threatened if the condition is not supplied for:

Art. 9, 18, 19, 32, 33, 34, 37.

6 Interest

The parents or caretakers show interest in the activities and interests of the child and in his/her perception of the world.

CRC provisions that might be threatened if the condition is not supplied for:

Art. 12, 13, 14, 17, 27, 31.

B Family conditions: the past and the future

7 Continuity and stability in upbringing conditions, a future perspective

The parents or caretakers care for the child and bring it up in a way that attachment bonds develop. Basic trust is to be continued by the availability of the parents or caretakers to the child. The child experiences a future perspective.

CRC provisions that might be threatened if the condition is not supplied for:

Art. 7, 8, 9, 10, 11, 12, 18, 20, 27.

C Societal conditions: the present

8 Safe physical wider environment

The neighbourhood the child grows up in is safe, as well as the society the child lives in. Criminality, (civil) wars, natural disasters, infectious diseases et cetera do not threaten the development of the child.

CRC provisions that might be threatened if the condition is not supplied for:

Art. 11, 23, 24, 27, 32, 33, 34, 35, 36, 37, 38, 39.

9 Respect

The needs, wishes, feelings and desires of the child are taken seriously by its environment and the society the child lives in. There is no discrimination because of background, race or religion.



CRC provisions that might be threatened if the condition is not supplied for:

Art. 2, 5, 8, 12, 13, 14, 15, 16, 19, 23, 30, 37.

10 Social network

The child (and his or her family) has a supportive social network he or she can count on.

CRC provisions that might be threatened if the condition is not supplied for:

Art. 20, 37, 31.

11 Education

The child receives a suitable education and has the opportunity to develop his/her personality and talents.

CRC provisions that might be threatened if the condition is not supplied for:

Art. 17, 28, 29, 31.

12 Contact with peers or friends

The child has opportunities to have contacts with other children in various situations suitable to his or her perception of the world and developmental age.

CRC provisions that might be threatened if the condition is not supplied for:

Art. 19, 31.

13 Adequate examples in society

The child is in contact with children and adults who are an example for current and future behaviour and who mediate the adaptation of important societal values and norms.

CRC provisions that might be threatened if the condition is not supplied for: Art. 17, 19, 31, 32, 33, 34, 36, 37.

D Society: the past and the future

14 Stability in life circumstances, future perspective

The environment the child is brought up in, does not change suddenly and unforeseen. There is continuity in life circumstances. Remarkable changes are prepared for and comprehensible for the child. Persons to identify oneself with and sources of social support are available to the child over time. The child has ample opportunities to build up relations by language. Society offers the child chances and a future perspective. CRC provisions that might be threatened if the condition is not supplied for:

Art. 8, 9, 10, 11, 20, 27, 30, 37, 38, 39.⁹⁴

⁹⁴ Dutch Report, 2010: Closing a Protection Gap, p. 87-89.



Annex III

Core Standards for guardians of separated children in Europe⁹⁵

The role and responsibilities of the guardian

Standard 1

The guardian advocates for all decisions to be taken in the best interests of the child, aimed at the protection and development of the child.

The guardian is able to advocate, assess and adjust the best interest of the child on a regular basis, involves all relevant actors and ensures that the assessment of the best interest of the child is based on the views of the child and the individual circumstances.

Standard 2

The guardian ensures the child's participation in every decision which affects the child.

The guardian provides information in a child friendly way and checks if the child understands and recalls the information, listens carefully to the child and ensures plans are based on the views of the child and shared with the child, is open to feedback and manages expectations.

Standard 3:

The guardian protects the safety of the child.

The guardian gives the highest possible priority to the child's safety, knows the signals of child abuse and trafficking, acts and reports upon signals of any harm or danger, ensures the child knows he/she is welcome to voice anything concerning his/her safety, only breaks the confidentiality norm when a child is at risk, ensures victims get appropriate treatment and is open to being monitored on own behaviour.

⁹⁵ The full report is available at <http://www.defenceforchildren.nl/images/69/1632.pdf>. (acc. February 2012)

Standard 4

The guardian acts as an advocate for the rights of the child.

The guardian is an assertive, committed watchdog, dedicated to defending the rights of the child, shows emotional strength, opposes decisions which are not taken in the best interests of the child and pursues fair procedures concerning the child.

Standard 5

The guardian is a bridge between and focal point for the child and other actors involved.

The guardian keeps in contact with all relevant actors, ensures to be informed about all decisions which have an impact on the child and is where necessary present at meetings, assists in establishing links with the child's community and developing relationships that give the child a sense of belonging to a family or group.

Standard 6

The guardian ensures the timely identification and implementation of a durable solution.

The guardian ensures the identification of a durable and safe solution and challenges others to prove that their proposed solutions take the best interest of the child as a primary consideration, supports the reunification of the child with his/her family and supports the integration of the child in the host country when this is in the best interest of the child, defends safety guarantees when a child is returned and prepares the child for all predictable changes which will occur after turning eighteen.

The guardian and the separated child:

Standard 7

The guardian treats the child with respect and dignity.

The guardian demonstrates appropriate behaviour, treats the child unprejudiced with respect to the child's identity, privacy and cultural



differences, supports the child in developing peer relationships and shows a flexible approach tailored to the individual needs of the child.

Standard 8

The guardian forms a relationship with the child built on mutual trust, openness & confidentiality.

The guardian is always honest with the child, keeps his/her promises and keeps all information confidential unless it is necessary to break confidentiality to keep a child safe, pays attention to verbal and nonverbal communication, is empathic towards the child and gives moral support and makes clear to the child that a child who disappears is always welcome to return.

Standard 9

The guardian is accessible.

The guardian can be reached easily, lives near enough of the child to be able to respond quickly to difficulties, sees the child as soon as possible after his/her appointment and pays visits to the child on a frequent basis and communicates in a way which fits the age and development of the child, making use of interpreters whenever necessary and contacts the child to keep in touch also when there is no specific need to do so.

The qualifications of the guardian:

Standard 10

The guardian is equipped with relevant professional knowledge and competences.

The guardian is proactive in identifying learning and development needs, manages his/her caseload and available resources, is accountable, works according to a set methodology, knows personal and professional limits, seeks support and counselling whenever necessary and is open to supervision and monitoring.⁹⁶

Annex IV

EU instruments on asylum, immigration and trafficking in human beings

- Council Regulation No 2725/2000 of 11 December 2000 concerning the establishment of '**Eurodac**' for the comparison of fingerprints for the effective application of the Dublin Convention.
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000R2725:EN:HTML>
- Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving **temporary protection** in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof ("Temporary Protection Directive")
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0055:EN:HTML>
- Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the **reception** of asylum seekers ("Reception Directive")
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0009:EN:HTML>
- Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national ("**Dublin II** Regulation")
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003R0343:EN:HTML>

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- Council Directive 2003/86/EC of 22 September 2003 on the right to **family reunification** (“Family Reunification Directive”)
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0086:EN:HTML>
 - Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are **long-term residents** (“Long-Term Residents Directive”)
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0109:EN:HTML>
 - Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the **qualification** and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (“Qualification Directive”)
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:HTML>
 - Council Directive 2005/85/EC of 1 December 2005 on minimum standards on **procedures** in Member States for granting and withdrawing refugee status (“Asylum Procedures Directive”)
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:326:0013:01:EN:HTML>
 - Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for **returning** illegally staying third-country nationals (“Returns Directive”)
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:01:EN:HTML>

- Directive 2011/36/EU of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>