

TRAINING MANUAL

- MODULE 5 - ENSURING A CHILD- FRIENDLY APPROACH TO UNACCOMPANIED CHILDREN IN ASYLUM PROCEDURES: PRACTICAL DIMENSIONS



Fostering Quality Legal Assistance in the Asylum Procedure



The project is co-funded by the Rights, Equality and Citizenship (REC)
Programme of the European Union

TABLE OF CONTENTS

MODULE CONTENT	3
LEARNING OBJECTIVES.....	3
1. ENSURING CHILD FRIENDLY PROCESSES IN PLACE	3
1.1 WHAT INTERNATIONAL AND REGIONAL GUIDANCE SUPPORT THE ADOPTION OF CHILD FRIENDLY PROCESSES?	3
1.2 HAVE KEY PROCEDURAL SAFEGUARDS FOCUSING ON UNACCOMPANIED CHILDREN SEEKING ASYLUM BEEN OBSERVED?.....	7
1.3 CONTRIBUTING TO A MULTIDISCIPLINARY APPROACH: IDENTIFYING THE DIFFERENT ACTORS INVOLVED IN STATUS DETERMINATION JUSTICE PROCESSES CONCERNING UNACCOMPANIED CHILDREN AND HOW THEY WORK TOGETHER	11
1.4 WHAT PROCEDURES ARE AVAILABLE TO ADDRESS THE SITUATION OF UNACCOMPANIED CHILDREN, AND THEIR BEST INTERESTS, AS A WHOLE?	14
2. ENGAGING WITH THE UNACCOMPANIED CHILD SEEKING INTERNATIONAL PROTECTION	16
2.1 UNDERSTANDING THE GENERAL SITUATION OF A CHILD.....	16
2.2 UNDERSTANDING CHILD DEVELOPMENT.....	18
2.3 UNDERSTANDING CULTURAL ISSUES WHICH MAY ARISE FOR UNACCOMPANIED CHILDREN OF THIRD COUNTRY ORIGIN AND INTER-CULTURAL COMMUNICATION	21
2.4 ADDRESSING THE INDIVIDUAL CIRCUMSTANCES OF THE CHILD: MENTAL HEALTH, SHAME AND STIGMA, IMPACT OF LACK OF TRUST, GENDER AND EDUCATION	24
2.5 COMMUNICATING WITH THE CHILD: PRACTICAL TIPS.....	27

MODULE CONTENT

LEARNING OBJECTIVES

This module aims to encourage and support legal professionals in ensuring that child friendly processes are in place in cases concerning unaccompanied children. This includes learning about:

- child friendly justice guidance and resources in general
- practical issues which may arise when seeking to ensure the application of specific safeguards for unaccompanied children seeking international protection
- what a multidisciplinary approach to justice proceedings for unaccompanied children entails
- procedural pathways: how to ensure that the child's situation as a whole, and their best interests, are considered.

This module also aims to support legal professionals in learning to engage with unaccompanied children, including

- the specialized knowledge required to engage with unaccompanied children
- how to communicate with children and what ethical issues might be at stake.

1. ENSURING CHILD FRIENDLY PROCESSES IN PLACE

1.1 WHAT INTERNATIONAL AND REGIONAL GUIDANCE SUPPORT THE ADOPTION OF CHILD FRIENDLY PROCESSES?

- When any child is involved in a justice proceeding, whether in an administrative and judicial proceeding, the proceeding needs to be adapted to ensure that children can properly access and participate in these proceedings and that the proceedings properly take account of the situation, rights and views of the child.
- The term “child *friendly* justice” should not suggest that this is a discretionary process. The UN Convention on the Rights of the Child contains principles and rights which oblige States to ensure the rights of the child are fulfilled in justice settings.
- As a lawyer representing an unaccompanied asylum seeking child, it is important to be familiar with the elements of child friendly justice in general.
- In particular it may be helpful to refer to and draw from general international guidance on child friendly justice to support your representation of an asylum seeking child. Key resources are identified below.

→ It may also be useful to identify national child friendly measures that can support your work. For example, there may be periodic general training available to lawyers on child friendly justice which can support your practice. Child friendly justice support services run by children's organisations may be available to provide information and assistance to children. There may be complaints mechanisms to children's ombudsmen that are relevant for unaccompanied children. If there is guidance on case management meetings for relevant actors in children's cases before the courts, this might be applied to proceedings concerning unaccompanied children. This can be especially true where the child is involved in several different procedures which require some coordination (e.g. where they are witnesses in trafficking prosecutions and applicants in international protection proceedings). Such case management mechanisms should ensure that the best interests of the child, and their right to protection, are fulfilled.

In summary, legal professionals should be assertive of the general rights of the child of their client at all times, alongside their rights under international protection laws, and be alert to resources and tools that can be deployed to support their representation in this regard.

International Guidance

Council of Europe

[The Council of Europe Guidelines on Child Friendly Justice](#) is a key regional source of guidance on what child friendly justice entails. Its aim is "to ensure that, in any such proceedings, all rights of children, among which the right to information, to representation, to participation and to protection, are fully respected with due consideration to the child's level of maturity and understanding and to the circumstances of the case."

A [Council of Europe leaflet](#) summarises central elements of child friendly justice in general as follows:

- **Information, representation and participation:** children should be informed on their rights, have free access to a lawyer, have a say and have decisions affecting them explained in a way that they can understand.
- **Protection of privacy:** A child's privacy should be protected, including from the media. In particular, no one is allowed to print a child's name, picture or personal information including about him/her or his/her family in the newspaper or on the internet. If children are being heard in court or other official settings only the concerned people should be present.

- **Safety:** Children should be protected from harm and when they have been hurt, it is important to keep them safe. Everyone working with children should be checked to make sure they are not likely to harm them.
- **Multidisciplinary approach and training:** Professionals working with children should work together towards the child's best interests. They should receive training on child rights, communication and needs at different ages so as to protect them from hardship of procedures as well as to ensure the reliability and good administration of justice.
- **Safeguards before, during and after all proceedings:** When children go to court, the settings and process should be well described and explained to them. They should have the possibility to have their own lawyer and to have a say in cases that affect them. Decisions should be taken as quickly as possible and be clearly explained to children.
- **Deprivation of liberty:** A child should be detained only when there is no other option, and should never be detained on immigration grounds. If a child is detained, it should be as briefly as possible and apart from adults except if in his/her best interests. Despite the detention, they should enjoy all their other rights, especially the rights to contact family and friends, education or training, religion and have access to sports and leisure facilities. They should be prepared for their return home.
- **Promoting and monitoring child-friendly actions:** Governments should set up information structures for children (e.g. free helpline or Children's Commissioner), make sure children know how and who to complain to about their treatment, teach children, parents and professionals about children's rights, foresee protective legislation understandable for children, regularly check children's treatment in justice and take measures to improve it.

For further information, see the [online course](#) on Child-friendly Justice and Children's Rights which was developed by the Council of Europe Children's Rights Division and the Human Rights Education for Legal Professionals (HELP) with the primary purpose of strengthening and harmonising the knowledge of the ECHR and other relevant European standards on child-friendly justice across the Council of Europe member states.

UN Committee on the Rights of the Child

The Committee on the Rights of the Child (CRC) is the body of 18 Independent experts that monitors implementation of the Convention on the Rights of the Child by its State parties. The Committee publishes its interpretation of the content of human rights provisions, known as general comments on thematic issues.

It has issued [General Comments](#) which are both generally and specifically of relevance to the situation of unaccompanied children. Section (1.2) below refers to examples of the latter, in particular General Comments no 6, 22 and 23. General Comments of a broader scope, which may usefully support your representation of an unaccompanied child, include:

[General Comment no 12 on the right of the child to be heard](#)

[General comment No. 13 on the right of the child to freedom from all forms of violence](#)

[General comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration](#)

[General comment No. 20 on the implementation of the rights of the child during adolescence](#)

It is worth noting that all State parties to the UN Convention on the Rights of the Child are obliged to submit regular reports to the Committee on how the rights are being implemented. The Committee examines each report and addresses its concerns and recommendations to the State party in the form of “concluding observations”. Where the UN Committee on the Rights of the Child has issued concluding observations on issues relevant to unaccompanied children (e.g. concluding observations on the availability of guardianship), these may support representations to decision makers (perhaps particularly in appeal and judicial review contexts) concerning their situation.

See also [Module 2](#) and [Module 4](#) for reference to the third Optional Protocol to the UN Convention on the Rights of the Child on a communications procedure (OP3), which allow individual children to submit complaints regarding specific violations of their rights under the Convention and its first two optional protocols.

EU measures

EU Member States are obliged to provide conditions, procedures and information to children in order for them to have effective access to their rights under the Charter of Fundamental Rights of the EU (CFR) (see [Module 1](#)). Article 24 of the Charter focuses on the rights of children and explicitly provides that their best interests as a primary consideration. A number of specific EU instruments may be relevant to cases concerning unaccompanied children, including the [EU Trafficking Directive](#)¹ and the [EU Return Directive](#).² There are several other instruments which require the application of specific safeguards to children, including the [EU Directive on sexual](#)

¹ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.

² 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.

[abuse and exploitation of children](#),³ the [EU Directive on victim's rights](#)⁴ and the [EU Directive on the rights of child suspects or accused of crime](#).⁵ Should your representation of an unaccompanied child touch on any issues concerned by these directives, it will be important to ensure that the procedural safeguards in them are properly observed, such as measures to avoid retraumatisation, non-prosecution, individual assessments of the circumstances of the child.

For further information on other EU measures and resources which support child friendly justice processes in general, see in particular:

[European Commission Directorate General Justice webpage on Child Friendly Justice](#)

[Fundamental Rights Agency Child Friendly Justice studies](#)

1.2 HAVE KEY PROCEDURAL SAFEGUARDS FOCUSING ON UNACCOMPANIED CHILDREN SEEKING ASYLUM BEEN OBSERVED?

The importance of child friendly justice processes for children seeking asylum or in international migration is explicitly highlighted in the Council of Europe Guidelines, [UN CRC General Comment No. 6: Treatment of Unaccompanied and Separated Children Outside Their Country of Origin](#) and [UN General Comments Joint General Comment No. 3 of the CMW](#) and [No. 22 of the CRC](#) in the context of International Migration: General principles and [Joint General Comment No. 4 of the CMW and No. 23 of the CRC](#) in the context of International Migration: States parties' obligations in particular with respect to countries of transit and destination.

Also highly relevant are the [UNHCR Child Asylum Claim Guidelines](#). UNHCR has also published a valuable report which addresses credibility assessments of child asylum claims [The Heart of the Matter](#). Upcoming guidance from [the European Asylum Support Office](#) will also address the best interests of children seeking international protection.

Modules 1, 2 and 3 have referred to several key procedural elements which are of specific relevance to the situation of unaccompanied asylum seeking children. They also illustrate that regional courts in Europe have paid increasing attention to whether adequate procedural safeguards are in place in cases concerning unaccompanied children.

Lawyers should carefully consider whether these procedural safeguards have been/are being

³ Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography.

⁴ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime.

⁵ Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings.

observed in cases in which they are involved. For this purpose, it is useful to be aware of some practical issues that might arise in relation to the application of some of the most central procedural issues, including: identification of a person as an unaccompanied or separated child; whether they have received information, support and assistance; whether their needs have been assessed; whether child friendly interviews have taken place; how family tracing has occurred and in what context; and whether detention has been used and why.

Identification of a person as a child

Where an individual claims to be a child, they should be afforded the benefit of the doubt, and receive the support and assistance of a guardian or a representative prior to an age assessment. In the event of a challenge to an age assessment, legal professionals should be familiar with the specific procedural safeguards that should be in place for age assessments.

See further [Module 1](#). The [EASO Practical Guide on Age Assessment](#) provides valuable guidance on whether and how an age assessment should be conducted.

It may also occur that an individual without documentation has been identified as an adult but is in fact a child. For example, children in the hands of traffickers or smugglers may have been told to claim that they are adults to avoid child protection services becoming involved. Legal professionals need to be alert to the issue of age and whether or not their client should benefit from rights as a child. The fact that your client is a child will have implications not only for the procedures in place but also the substantive assessment of a case. For example, in the case of trafficked children, there is no need to prove the use of force or coercion in relation to the exploitation (see Article 2.5 of the [EU Trafficking Directive](#)).

Identification of a child as unaccompanied or separated

Equally, lawyers and guardians may need to address whether or not a child has been appropriately “attached” to an adult in their company on the basis that they are “an adult who, by law or custom, is responsible for” taking care of the child, within the definition of the EU legislation. If this occurs where it should not, it would prevent an unaccompanied child from accessing guarantees in the law that should be available to them when they are considered to be “unaccompanied” within the meaning of the law. It could put a child at risk of abuse. Accordingly legal professionals need to consider requiring a review of such assessments that the child is not unaccompanied or separated.

Information, support and assistance

One of the biggest practical impediments to a child accessing certain procedures such as procedures under the Dublin Regulation is lack of information. Legal professionals should confirm whether information was in fact provided and whether it was provided in an appropriate way, having regard to its format and language and whether support and assistance was provided with the information.

The timely appointment of a guardian and/or representative, who has appropriate skills to perform their duties and is sufficiently supported to do so (e.g. where necessary with the support of interpreters), is a vital safeguard for unaccompanied children. Modules 1 and 2 address these issues. Legal professionals should scrutinize carefully whether this obligation has been met. Failure to do so may undermine the child's access to international protection procedures and/or may undermine the manner in which the child makes a claim (for example, where the guardian would have been able to ensure the availability of relevant information for the assessment of the claim). The [FRA Handbook on guardianship of children deprived of parental care](#) provides valuable support to legal professionals who are considering this issue.

Individual needs assessment

It is also important to verify whether there has been an effective individual assessment of the child's circumstances as is specifically required by Article 22 the [EU recast Reception Conditions Directive](#)⁶ and/or Articles 13-16 of the [EU Trafficking Directive](#)⁷ where it applies. Failure to identify the child's needs and address them may become the subject of proceedings against the State concerning the provision of proper support and care for a child. In some cases, such failure clearly may hamper the child's ability to properly participate in international protection procedures and may diminish the amount of relevant information before the decision maker for international protection. In contrast, where an effective individual assessment has been carried out, the lawyer should have access to all the information that may assist effective representation of the child.

[Section \(1.3\) below addresses more broadly the issue of the assessment of the best interests of the child as a whole.](#)

Child friendly interviews

Equally, all children should be interviewed in a child sensitive way, by trained professionals, in

⁶ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection.

⁷ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.

adapted settings, and in a manner that is appropriate to their age. In any review of a decision based on an interview, the legal professional should verify that these conditions have been met. The European Asylum Support Office provides training and guidance on interviewing children. UNHCR's report [The Heart of the Matter](#) also is a resource for legal professionals in this regard.

Family tracing

Family tracing and reunification where it is in the best interests of the child is an important procedure in relation to unaccompanied children. Typically the guardian will play an important role in family tracing. Legal professionals should usefully bear in mind a number of practical considerations.

- During international protection status determination procedures, family tracing can prove a sensitive issue in terms of the manner and purpose for which it is carried out. Children may have genuine well-founded fears in relation to family tracing and may believe that family tracing may place them or their family at risk. Equally, unaccompanied children may not wish to return to their country of origin, and see the opening of a family tracing, as a step which is directed towards their return, and sometimes they may be under pressure from families to remain.
- Under Dublin III Regulation, the tracing of, and unification with, family members and relatives is a key criterion in its application. Legal professionals involved in proceedings may need to consider whether the child has received adequate assistance and support – in a timely way – for the proper application of these procedures. Evidencing the relationship between the child and the family member or the relative may require the assistance of organisations, such as the Red Cross or relevant NGOs such as Safe Passage. For these reasons, it is important to ensure that the best interests of the child is observed in any procedure concerning family tracing. For further resources, see [Module 3](#) on family reunification which contains key provisions of EU law and commentary thereon. See also [EASO's practical guide on family tracing](#).

Detention

As addressed by the International Commission of Jurists in their [Module on "Access to Justice in Detention"](#), while the EU law does not expressly prohibit detention of unaccompanied children, it does provide a number of strict safeguards prior to any detention and as regards the conditions of detention.

Legal professionals should scrutinize very carefully any decisions to detain an unaccompanied child and the conditions of their detention. They should confirm that an individualised assessment

of all the relevant circumstances of each case was carried out prior to the imposition of detention measures, that detention was established as a measure of last resort, with the authorities demonstrating that no alternative non-coercive measure is available. They should also verify that detention of the child was for the shortest time possible and in appropriate conditions.

Resources to support your representation include guidance from the UN Special Rapporteur on the human rights of migrants, the Parliamentary Assembly of the Council of Europe, the European Parliament Committee on Civil Liberties, Justice and Home Affairs, the UN Human Rights Council's Working Group on Arbitrary Detention and UNHCR that have all taken the position that detention is never in the best interests of an unaccompanied child seeking international protection.⁸

1.3 CONTRIBUTING TO A MULTIDISCIPLINARY APPROACH: IDENTIFYING THE DIFFERENT ACTORS INVOLVED IN STATUS DETERMINATION JUSTICE PROCESSES CONCERNING UNACCOMPANIED CHILDREN AND HOW THEY WORK TOGETHER

Central to the effective application of safeguards for unaccompanied children is what actors are involved (such as specially trained interviewers, health professionals, psychologists, etc.) and how they work together in an appropriate, clearly structured, and child-centered way.

- The EU legal obligations and guidance increasingly reinforce the need for multidisciplinary approaches. They include provisions which concern the involvement of actors with a knowledge of children, requirements as to qualifications of actors concerned with children's cases, mandatory training of certain actors, comprehensive assessments of the circumstances of a child and appropriate support services.
- A multidisciplinary approach has a number of key purposes including obtaining a comprehensive understanding of the child and assess their legal, psychological, social, emotional, physical and cognitive situation (for more explanation please see Chapter 5.2). It typically requires working tools to allow for appropriate inter-agency communication, coordination and/or cooperation.

- General Comment no 14 of the UN CRC notes that "In case of separation, the State must

⁸ United Nations, Human Rights, Office of the High Commissioner, "UN Special Rapporteur on the human rights of migrants concludes his follow up country visit to Greece", 16 May 2016. 50 CoE, PACE: Resolution 2020 (2014), The alternatives to immigration detention of children, 3 October 2014 (36th Sitting); Recommendation 1703 (2005), Protection and assistance for separated children seeking asylum, 28 April 2005 (15th Sitting). European Parliament Committee on Civil Liberties, Justice and Home Affairs, Ref. IP/C/LIBE/IC/2006-181, Ref. 12/2007, December 2007 p. 22. Report of the Working Group on Arbitrary Detention, U.N. Doc. A/HRC/13/30, 15 January 2010, pp. 24,25, 58-61. Working Group on Arbitrary Detention, Revised Deliberation no. 5 on deprivation of liberty of migrants, 7 February 2018, para. 11. UNHCR's position regarding the detention of refugee and migrant children in the migration context, Jan 2017 p. 2.

guarantee that the situation of the child and his or her family has been assessed, where possible, by a multidisciplinary team of well-trained professionals with appropriate judicial involvement, in conformity with article 9 of the Convention, ensuring that no other option can fulfil the child's best interests."

- As far as possible, a multidisciplinary team of professionals should be involved in assessing the child's best interests. (GC 14)
- A common assessment framework should be established for professionals working with or for children (such as lawyers, psychologists, physicians, police, immigration officials, social workers and mediators) in proceedings or interventions that involve or affect children to provide any necessary support to those taking decisions, enabling them to best serve children's interests in a given case. (CoE Child Friendly Justice guidelines)

In relation to separated children in judicial proceedings, there are a range of actors potentially involved in justice processes, including

- actors directly involved in the specific proceedings who have special skills to engage with children or specialist knowledge of children's issues,
- actors more generally involved in the circumstances of the individual child who can contribute to the general assessment of the child's best interests or
- actors who will contribute to the implementation a decision in a manner that fulfils the best interests of the child.

Table: Actors involved in justice proceedings involving unaccompanied children

Information	Immigration officials, child welfare officials, NGOs, guardians, cultural mediators
Assistance and support	Guardians, mentors, persons of support
Exercise of legal capacity	Guardians
Legal representation	Lawyers
Care and custodial responsibilities	Care centre directors, foster families, relatives
Restoring family links	Guardians, NGOs, International Committee of the Red Cross
Information on education & welfare	Teachers, doctors, psychologists, mental health experts, social workers
Justice professionals	Trained immigration officials, interpreters, translators, trained judges
Experts	Experts on particular issues such as female genital mutilation,

trafficking, child soldiers, country expertise, NGO research, academics.

In order to fulfil a multidisciplinary approach, the different actors, and indeed different decision making bodies where the same child is involved in several cases, may need to cooperate to achieve certain things. An example of cooperation in this setting are protocols in judicial proceedings to promote information sharing in the UK between the Family Court and the Immigration and Asylum Tribunal and criminal courts and the Family Court.⁹

For the purposes of successfully supporting and assisting children in decision making processes in their regard, lawyers should reflect on the actors that will be, or should be, involved in the status determination process. Are case workers qualified to interview children and evaluate their evidence? Has a guardian supported and assisted the child? Will persons who are sources of relevant information on the child be involved in contributing to the process and how, e.g. through the activities of the lawyer or directly by the decision maker. How is information gathering being effectively managed? Are experts on child specific issues (e.g. F.G.M) engaged where necessary? Have there been failures to work together which have impacted the circumstances or the assessment of the child's case?

Further resources

European and international guidance and research findings underlined the need for a multidisciplinary approach, with extensive and consistent guidance on multi-disciplinary, interagency practices. These include, in particular, [the Commission Reflection Paper on integrated child protection systems](#), [the FRA Guardianship Handbook](#), [the Council of Europe Guidelines on Child Friendly Justice](#), [Council of Europe Policy guidelines on integrated national strategies for the protection of children from violence](#), [the Council of Europe Recommendation on children's rights and social services friendly to children and families](#), [the Fundamental Rights Agency study on child friendly justice– Perspectives and experiences of professionals on children's participation in civil and criminal judicial proceedings \(FRA Study\)](#), [General Comments of the UN Committee on the Rights of the Child](#) (in particular GC [5](#), [12](#), [13](#) and [14](#)).

⁹ See www.connectproject.eu, tool, "Standards To Ensure That Unaccompanied Migrant Children Are Able To Fully Participate".

1.4 WHAT PROCEDURES ARE AVAILABLE TO ADDRESS THE SITUATION OF UNACCOMPANIED CHILDREN, AND THEIR BEST INTERESTS, AS A WHOLE?

It is important to plan how best to ensure that the child's circumstances, and their best interests, are considered by the decision maker(s) in a comprehensive way, taking into account all relevant laws, including international protection, national humanitarian laws and the provisions of the UN Convention on the Rights of the Child.

As noted in [Module 1](#), the best interests of the child are a primary consideration in all procedures, including international protection procedures. In particular, the examination of the best interests of an unaccompanied child seeking international protection ultimately will involve identifying the country which will provide a durable solution for them, in light of both the general asylum and migration framework and the child rights framework more broadly. For further guidance, see UN CRC General Comments no 6, 14, 22 and 23.

Unaccompanied children may make a claim for international protection. However, where there are no grounds for international protection or where grounds for international protection fail, it is also important to understand how the best interests of the child are considered when finding a durable solution for the child, including when considering the application of grounds under national laws, such as humanitarian leave under national law or under return procedures.

For example, there may be a single procedure which considers all of the possible grounds that might be relevant to determining the durable solution, including international protection. In the alternative, there may be a separate international protection procedure which may be the initial procedure in which you engage. In some countries, in situations where the international protection claim fails, a further procedure will take place, to consider the situation of children and the appropriate durable solution. In other countries, a failed claim for international procedure may lead directly to a return decision. In such instances it will be very important to identify all potential grounds for stay in the context of the initial procedure, even though it appears primarily focused on international protection.

Lawyers and guardians should identify the different possible procedures in which an unaccompanied child may be engaged, analyse their possible outcomes and also carefully review the way in which they relate to each other to ensure that the right arguments and evidence are provided at the right moments of the procedure.

However, the processes for examining best interests (either in the international protection procedures or in procedures addressing the situation of a child who has no claim or whose claim

has failed) are not fully developed in all countries. This can provide a challenge for lawyers and guardians, but also should be considered carefully as a potential as a ground for challenging decision making.

As [Module 1](#) illustrated, a comprehensive examination of the best interests of the child requires assessment of a variety of different issues and may demand input from a range of different actors. It may depend significantly on properly engaging with the child's situation (see Section 2 below) and actively seeking information that is relevant to their situation.

It is important to consider whether you have sufficient information not only from the child, but also other persons, including social and health professionals who are aware of the situation of the child, as well as expert reports or third country information. (see multidisciplinary approaches above). Conversely, it is also important to consider whether sufficient information has been put forward to substantiate any best interests' assessment which goes against the child's claims, such as a finding that the child's best interest lies in family reunification, in cases where there has been insufficient assessment of the circumstances of the family members.

BACKGROUND DOCUMENTS

International instruments

- ❖ UN Committee on the Rights of the Child [General Comments](#) (in particular GC [5](#), [12](#), [13](#) and [14](#))
- ❖ [EU Trafficking Directive](#) - Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA
- ❖ [EU Return Directive](#) - 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
- ❖ [EU Directive on sexual abuse and exploitation of children](#) - Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography
- ❖ [EU Directive on victim's rights](#) - Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime
- ❖ [EU Directive on victim's rights and the EU Directive on the rights of child suspects or accused of crime](#) - Directive (EU) 2016/800 of the European Parliament and of the Council

of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings

- ❖ [European Commission Directorate General Justice webpage on Child Friendly Justice](#)
- ❖ [Fundamental Rights Agency Child Friendly Justice studies](#)
- ❖ [EU recast Reception Conditions Directive - Directive 2013/33/EU](#) of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection
- ❖ [Commission Reflection Paper on integrated child protection systems](#)
- ❖ [Council of Europe Policy guidelines on integrated national strategies for the protection of children from violence](#)
- ❖ [Council of Europe Recommendation on children's rights and social services friendly to children and families](#)

Key international comments, guidelines and reports

- ❖ [The Council of Europe Guidelines on Child Friendly Justice](#)
- ❖ [Council of Europe leaflet](#)
- ❖ [Online course](#) on Child-friendly Justice and Children's Rights which was developed by the Council of Europe Children's Rights Division and the Human Rights Education for Legal Professionals (HELP)
- ❖ UNHCR Guidelines [UNHCR Child Asylum Claim Guidelines](#)
- ❖ UNHCR, [“The Heart of the Matter - Assessing Credibility when Children Apply for Asylum in the EU”](#) (2014)
- ❖ [EASO Practical Guide on Age Assessment](#)
- ❖ [FRA Handbook on guardianship of children deprived of parental care](#)
- ❖ [EASO's practical guide on family tracing](#)
- ❖ “Standards To Ensure That Unaccompanied Migrant Children Are Able To Fully Participate” www.connectproject.eu, tool

2. ENGAGING WITH THE UNACCOMPANIED CHILD SEEKING INTERNATIONAL PROTECTION

Ensuring a rights-based approach, with a focus on the right of the child to be heard and the right to have their best interests as a primary consideration requires:

2.1 UNDERSTANDING THE GENERAL SITUATION OF A CHILD

It is essential for the (legal) professionals who deal with unaccompanied asylum seeking children

to have a solid background knowledge on their specific situation and on possible reasons and push factors that cause unaccompanied children to leave their home countries.

It is also crucial to understand that unaccompanied asylum-seeking children form part of a (doubly) vulnerable group- children and asylum seekers which is also strongly recognized by the Jurisprudence of the ECtHR.

Their inherent vulnerability comes from their migratory background by escaping their country as well as from what they have experienced and witnessed back home.

They have escaped to Europe without any guidance of their parents or a legal representative/guardian and have been alone while having to go through all kinds of difficult and dramatic experiences during their route to Europe. They left behind many important things such as family, house, culture, etc. Additionally, the experiences of loss, homesickness and unknown and strange surroundings, causes a fundamental feeling of being uprooted.

When these children finally arrive in Europe, they face another period of stress and uncertainty caused by the asylum process which is designed with adults in mind. Besides, in most European countries children have to be 'alone' to be eligible for protection and reception services for unaccompanied children.

As a result, due to their inherent vulnerability, unaccompanied children require additional special assistance to navigate asylum and migration procedures which are extremely complex across Europe.

As noted in [Module 1](#) and for the purpose of successfully assessing **the credibility** of asylum claims presented by unaccompanied children, focus should be on ensuring the best interest of the child as a primary consideration during all the stages of the of the asylum process.

Assessing credibility of the asylum claims presented by unaccompanied children is particularly challenging and requires special preparedness. Aside from several additional child-specific difficulties, several distortion factors may appear more intensely or in a different way when interviewing children and engaging with them. Section (2.4) below addresses more broadly how. For example, children may not understand what is happening and why because they do not have the competence to analyze the situation due to a lack of information and a lack of understanding. A child might not understand that they need to express details about their situation for them to get help.

Furthermore, many of them fear that they may have to return home if they provide information

about their family. This could mean that they keep secrets and that it is often difficult to involve the biological family of the unaccompanied child in their support, supervision and protection. In addition, they are often instructed by the smugglers or their network on what to say or not to say about their flight.¹⁰

For further information, see the [Manual for staff working with reception families and unaccompanied children living in reception families](#), [The Heart of the Matter - Assessing Credibility when Children Apply for Asylum in the European Union](#)

2.2 UNDERSTANDING CHILD DEVELOPMENT

In this sub-section legal professionals will gain some knowledge on the development of the child. This knowledge is helpful to conduct the interview in a child-appropriate manner and to obtain the most reliable information according to the developmental stage of the child, without re-traumatizing the child.

Legal professionals have to understand that children are not simply “adults in miniature”¹¹. They should understand the different aspects of child development as essential to be able to interview a child properly. On the basis of this understanding, the person interviewing would be able to assess what he/she may or may not expect from the child, how the child’s memory functions, and how to create a safe and child-friendly environment for the interview.

Furthermore, understanding how the child’s development affects her/his ability to recall past events, and examining child specific factors (related to culture, mental health, shame) are all crucial elements for examining the information gathered and credibility indicators in practice.

Assessing the age and maturity of the child is also very important as it helps the practitioner in gaining an understanding of the child’s developmental changes. These include rapid changes which affect the thinking processes, memory, risk-taking, and emotional understanding of the child, which changes depending on the age and developmental stage as described in more detail in paragraph. Please see Table below.

Additionally, legal professionals should know the legal age for interviewing children in the respective country so as to ensure that age appropriate proceedings are in accordance with the national law.

Child development

¹⁰ See ALTERNATIVE FAMILY CARE (ALFACA) ‘Manual for staff working with reception families and unaccompanied children living in reception families’, at <https://engi.eu/projects/alfaca/>, p.39

¹¹ J. Bhabha and W.Young, “Not adults in Miniature: Unaccompanied Child Asylum Seekers and the New U.S Guidelines”, *International Journal of Refugee Law*, 11/1 (199), 84-125

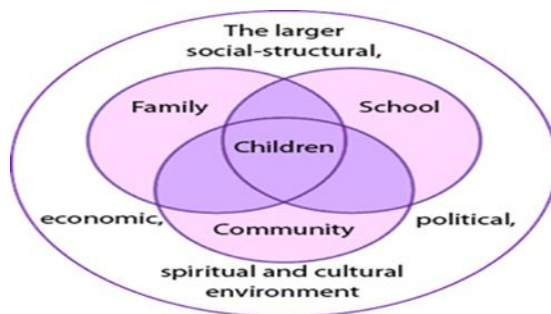
Children undergo rapid development which does not finish until their early twenties. The legal professionals should be aware of the transitions from childhood to adolescence, defined as the beginning of puberty and the transition from adolescence to adulthood. This latter is less clearly defined as highlighted in the quote “adolescence begins in biology and ends in culture”.¹²

Evidence from psychology and neurology indicates that there is particularly rapid body and brain development which occurs during adolescence and continues past the age of 18 years into the early twenties. Puberty triggers development which include changes in the brain, particularly the frontal lobes – a part which allows for better planning, abstract thinking, understanding oneself and others, and language development. The environment in which someone develops will also play an important role in shaping them.¹³

Understandably, unaccompanied asylum seeking children experience the difficult asylum process and going through this process often interferes with the development of their identity and it has an impact on their psychological functioning.

A child’s development can be divided into different stages.

The developmental changes, happen through the multiple interactions between the child’s biology and their environment, such as, cultural background, parents, relationships, education and personal experiences as both graphs¹⁴ below show.



12 J. Conger and A. Petersen, Adolescence and youth: Psychological development in a changing world, New York, 1984

13 Hungarian Helsinki Committee, Credibility Assessment in Asylum Procedures, A Multidisciplinary Training Manual, Volume 2, 2015, p 93

14 Hungarian Helsinki Committee, Credibility Assessment in Asylum Procedures, A Multidisciplinary Training Manual, Volume 2, 2015, p. 97.



Children often experience four distinguishable developmental stages. Each stage has a set of various aspects which are strongly interconnected. These aspects are the physical, cognitive,¹⁵ psycho-social, and moral development of the child. Understanding these different aspects of development is essential to interview a child in a proper way. As a result, this understanding can lead to clarify what to expect from the child in terms of understanding, relational and socio-emotional behavior, and how a child’s memory functions.

However, it has to be taken into consideration that the majority of the children in asylum procedure are in the adolescence phase.

The information in the table¹⁶ below helps to understand about when and how the development’s changes happens.

	YOUNGER ADOLESCENTS	→	OLDER ADOLESCENTS
CHANGES IN THINKING PROCESSES	The developments in the brain during puberty influence the way in which someone thinks. Children and early adolescents <u>think about things in a more concrete way</u> , making assumptions based on their <u>own experiences</u> . For example they may think “the authorities have exploited me and my family in the past, so all people in authority do this”.		But during adolescence, brain changes allow thinking to <u>become more abstract</u> . This means adolescents begin to think beyond their own experiences and consider <u>others’ perspectives</u> . For example, an older adolescent might think “although I have experienced exploitative authorities in my home country, the rules and values of the authorities in this country might be different”.
RESPONSE TO RULES	Differences in thinking also affect how children understand and respond to rules. Young adolescents are more likely to <u>follow a rule regardless of the consequences</u> , just because it is a rule.		By contrast, an older adolescent who has developed abstract thinking might question the rule and <u>make their decision based on their own values</u> . However it is important to remember that this will differ between individuals depending on their culture, gender and individual nature.

15 Cognitive development- Piaget method <https://www.verywellmind.com/piagets-stages-of-cognitive-development-2795457>

16 Hungarian Helsinki Committee, Credibility Assessment in Asylum Procedures, A Multidisciplinary Training Manual, Volume 2, 2015, p 94-95

EMOTIONS AND RISK-TAKING	Adolescence is usually a time when, due to <u>hormonal changes</u> , emotions feel much more intense. As these new feelings surge through the body, the skills in understanding and regulating emotion might not be fully developed yet. Consequently younger adolescents are more likely to feel <u>overwhelmed by their emotions</u> and may act before thinking about the consequences. Adolescents can therefore be more impulsive, and seem to be <u>more likely to take risks</u> that an adult would be unlikely to take.	Older adolescents develop <u>more understanding and control of their emotions</u> and are able to make links between their emotions and behaviour and can adjust their responses accordingly. This means that they can evaluate the risk and reward of their actions more effectively. While this skill is still developing, adolescents may seem unpredictable.
UNDERSTANDING OTHERS	Children think that everyone sees and experiences the world the way they do – this is called “ <u>egocentrism</u> ”. As they grow and their brain develops, they learn that other people have different ways of seeing and experiencing the world. By young adolescence, this skill of understanding another’s perspective is more developed, but can still fail them at times. Other times, their understanding of another’s thoughts and feelings might be quite limited.	The developing understanding of emotions and ability to think abstractly also affects how adolescents understand other people. This allows more understanding of what another person might be thinking or feeling, and so they <u>learn to adjust their responses</u> according to this. It is important to consider how this might affect an asylum interview. For example, if the adolescent is overwhelmed by their own emotions they may struggle to think about another’s perspective. This might happen in an asylum interview, when the anxiety overwhelms them and they cannot think about what information the interviewer needs to hear and may not disclose information relevant for their claim.

For further information, see [Hungarian Helsinki Committee, Credibility Assessment in Asylum Procedures, A Multidisciplinary Training Manual, Volume 2, 2015,](#)

Why is it important to have a notion about child development while interviewing children?
<https://www.youtube.com/watch?v=HXRA9W781HwBronfenbrenner>.

2.3 UNDERSTANDING CULTURAL ISSUES WHICH MAY ARISE FOR UNACCOMPANIED CHILDREN OF THIRD COUNTRY ORIGIN AND INTER-CULTURAL COMMUNICATION

It is important to know that reality is more varied and that the personal evolutionary path of a child should be taken into account. More-over, this personal evolutionary path from the children you will be interviewing, is affected by different cultural backgrounds. These children often come from war-affected countries.

As a result, to conduct an interview effectively it is needed to acquire knowledge about the influence of culture and education on the development of a child and on how trauma and being unaccompanied or other vulnerabilities might influence the development of a child.

Understanding the cultural influence

Cross – cultural difference are present due to each country’s specific legal system, social organizations, family structure, and the type of the economy influencing that culture. **Culture has a large influence on the development of the child** as children acquire communication skills within a socially and culturally influenced context.

Notions of childhood are culturally variable and cultural norms influence what a person’s thinks a child should know. There are also cultural norms about what forms of expression are appropriate

- the use of physical touch, or eye contact, for example, will vary between cultures, while the degree of formality and social distance between adults and children may, in some societies, limit the exchange of personal information and feelings.¹⁷

Most of the children in the procedure for international protection are coming from an environment where the group/the family is more important than the individual. This has repercussions on what it means to be a child in terms of identity, loyalty, place in a relationship with a parent, goals in life, motivation, etc.

Cultural background of an asylum seeking child

Additionally, the cultural background **of the asylum-seeking child** is almost always different from that of any professionals. They come from different cultures that have different norms about interpersonal communication.

Cultural differences can be the cause of many misunderstandings, including but not limited to, those arising from the fact that the asylum seeking child and the professional they engage with rarely speak the same language.¹⁸

Besides, these cultural differences as well as their level of education may lead to different expectations of what a child at a particular age can do or is capable of which might not fit with the society they are seeking asylum.

As a result, it is necessary for lawyers/legal professionals handling unaccompanied asylum seeking children's claims and interviewing them to have cultural competence. They should be aware that culture is variable so is continuously changing.

Legal professionals should also be aware that every unaccompanied asylum seeking child has its own evolution in terms of culture. So any classification of culture needs to be verified with the interviewee; as an interviewer you should not make assumptions.

At any given moment legal professionals interacting with the child, should be on the alert for cultural differences and traditions that may influence the interview with the child. They should be aware of the non-exhaustive list of differences in cultural traditions:

17 EASO Module on Interviewing Children; Kroeber A.L. and Kluckhohn D., Culture, a critical review of concepts and definitions, 1952.

18 UNHCR 'The heart of Matter, Assessing Credibility when Children Apply for Asylum in the European Union', 2014, at <http://www.refworld.org/pdfid/55014f434.pdf>, p. 71.

1. **Perception of self:** As explained above one of misunderstandings in the interview is the culturally determined nature of self-image and self-perception of an asylum seeking child.
2. **Time:** Members of different cultures have varying conceptions of time and its relevance. Using time as an important factor in assessing a child's credibility is therefore a challenge, even more so when the child did not receive any education. However other ways should be used to establish when something has happened.
3. **Extended Family patterns:** There are cultural variations in family patterns-for example "brother" or "cousins" are not necessarily close family members, but can also mean members of an ethnic group or tribe. Most of the children in the procedure for international protection are coming from an environment where the group/the family is more important than the individual. This has repercussions on what it means to be a child in terms of identity, loyalty, place in a relationship with a parent, goals in life, motivation, etc.
4. **Class-**What class a child belongs to can be as important as where they geographically come from. Class structures may define how the child interprets and understands him/herself and the world around them and their opportunities and limitations in life. For example in some countries what class you belong to can determine your possibilities to get an education.
5. **Guilt versus shame culture** -the guilt culture is suggested to be the emotion of guilt that keeps a person from behavior that goes against own honor, code of conduct as the culture.
6. **Religion:** Culture and religion can greatly influence opinions on illness and Western healthcare has a hard time connecting with asylum seeking and refugee children (including here migrant children).

Another aspect to bear in mind is that children do not easily give information about shameful and traumatic events. Undoubtedly, lawyers/legal professionals should be conscious of the danger of an ethnocentric bias and to recognize prior its own expectations, cultural prejudices or stereotypes in the meeting with the child.

Therefore, in communicating with children the interviewer/legal professionals has an even greater responsibility for ensuring a common understanding between the child and himself.

The method developed by Pinto (2007) suggests the following three steps that may contribute to a more effective intercultural communication with children.

Step 1: You become conscious of the influence of your own culture on your own behavior.

Step 2: You become conscious, ask about, learn about and gain insight into culture of the other person and the behavior that stems from it.

Step 3: The insights this knowledge gives you, enable you to really connect and bridge the divide.¹⁹

2.4 ADDRESSING THE INDIVIDUAL CIRCUMSTANCES OF THE CHILD: MENTAL HEALTH, SHAME AND STIGMA, IMPACT OF LACK OF TRUST, GENDER AND EDUCATION

As explained in the above sections during their asylum interview, unaccompanied asylum seeking children may be exposed to a variety of factors and/or circumstances, which might be traumatic in nature and can lead to an even more increased vulnerability.

Such factors might be both internal as well as external:

- Internal factors are factors such as gender, sex, physical and mental health conditions.
- External factors could be that children have no family or social network and experiences they have undergone in their host country (racism, uncertainty of papers, experiences they have undergone in their country of origin (such as war, deaths of family members or sexual abuse), during the journey (exposure to violence, discrimination...), or upon their arrival in the host country.)

Health issues

Unaccompanied asylum seeking children are much more likely to have had a traumatic disorder and **mental health problems**²⁰ than the other non- refugee peers. Both internal and external factors may highly contribute to the mental health problems and post-traumatic stress disorder (PTSD) and in particular the following factors:

- ✓ Feeling their life was threatened;
- ✓ Poor family functioning (such as not having support from parents)
- ✓ Being socially isolated²¹

It is important for legal practitioners and guardians to be aware of the mental health issues of an unaccompanied asylum seeking child in general and how these mental health problems can affect their testimony and how to take into account these vulnerabilities during the interview. Furthermore, they also should know how to deal with a traumatized child in the setting of an interview.

Mental health problems can influence what they recall and how they tell their story (i.e. less details, dissociated, more emotionally disconnected) and may leave them appearing less credible. Apart from PTSD (post–traumatic stress disorder), grief, sleep disturbances, separation anxiety

¹⁹ ALTERNATIVE FAMILY CARE (ALFACA)‘Manual for staff working with reception families and unaccompanied children living in reception families’, <https://engi.eu/projects/alfaca/>, p 37

²⁰ Fazel, V. Reed, Panter-Brick, Stein (2012)

²¹ D. Trickey, A. Siddaway, R. Meiser-Stedman, L. Serpell, & A. Field, “A meta-analysis of risk factors for posttraumatic stress disorder in children and adolescents”, *Clinical Psychology Review*, 32, (2012), 122–138

disorder and depression are commonly encountered amongst children applicants for international protection. Moreover, these children may have pre-existing developmental difficulties such as autistic spectrum disorder, attention deficit disorder or learning difficulties.

The table below, taken from the valuable training manual "[Credibility Assessment in Asylum Procedures](#)", volume 2, illustrates in concrete terms, the manifestations and impact on credibility assessment.

	CONCRETE MANIFESTATIONS IMPACT ON CREDIBILITY ASSESSMENT	IMPACT ON CREDIBILITY ASSESSMENT
Depression	<ul style="list-style-type: none"> • Difficulty in concentrating; • Sleep disturbances; • Low self-esteem; • Strong feelings of guilt. 	<p>Concentration problems and low motivation may make them more withdrawn and poorer at communication, which can be interpreted as a lack of cooperation and a negative credibility indicator.</p> <p>Depression favours an "over-general memory": a way of remembering which has limited detail, is filled with broad generalizations and is not specific. An over-general memory lacks emotional content. The story sounds flat. Concentration problems and low motivation may make the child withdrawn and poorer at communication.</p>
Anxiety	<ul style="list-style-type: none"> • Restlessness, hyperactivity, constant moving of body and sight; • Constant feeling of "being on edge"; • Avoiding topics that increase worry. 	<p>Nervous behaviour and shifting eyes around the room (lack of eye contact) may be interpreted as a sign of lying.</p> <p>Psychologists also found that if someone is anxious she/he is more likely to change her/his answers in an interview situation.</p>
Aggression	<ul style="list-style-type: none"> • Antisocial behaviour; • Insults, intimidating verbal communication and demeanour; • Physical violence. 	<p>Such behaviour may easily be perceived as a lack of cooperation, and as such a negative credibility indicator.</p> <p>It may also distract the interview from the relevant topics and reduce the interviewer's ability to empathetically listen to the child.²²</p>

Attachment disruption, fear and lack of trust

Unaccompanied asylum seeking children have often experienced disrupted attachments due to early separation from their parents or caregivers, who are the very people who first teach a child trust.

As explained by psychology, the strong relation between young children and their principal caregivers shapes the development of their ability to trust the others regulate their emotions. This puts a strain on the basic trust children need to have in themselves and in others to develop and might undermine this trust, with a low self-worth and the loss of the ability to trust others.

Trust is an important element to consider when interviewing children, as without it, they are likely

²² *Ibid.*

to become anxious and withdrawn, failing to disclose the full account of their experiences.

Shame /Guilt and stigma

Another aspect to bear in mind is Shame as another barrier of disclosure. Unaccompanied asylum seeking children may feel shame about what they have done or experienced, or their sense of duty to their family may shape what they feel willing to disclose at an asylum interview. They may also feel shame and guilt about having survived and escaped to safety, when the others did not. Besides, unaccompanied asylum seeking children may have experienced disapproval and other negative messages received by society that lead to a feeling that they are different or that something within them is wrong, and needs to be changed or at least hidden.

Gender and asylum procedures

Article 4(3) of the recast Qualification Directive specifically identifies gender as one of the 'personal circumstances' of the applicant to be taken into account when assessing an application for international protection. Many asylum seekers may have experienced persecution because of their gender. Examples of this harm include rape, sexual violence, forced marriage, female genital mutilation (FGM), honour based violence, trafficking etc.²³

While the recast Asylum Procedures Directive recognizes the need of the applicants for special procedure safeguards due to their gender,²⁴ it is also necessary to recognize that gender related cultural, social norms may affect the applicant's testimony and the manner in which it is assessed. The above is true of child applicants as well as adults.

Education

Quite often legal professionals consider chronological age when deciding how to approach interviews with children and assessing their testimony, but a child's level of education can be equally important.

Evidence from research shows that, in most cases, unaccompanied asylum seeking children had either only a few years of primary schooling or had not attended school at all. This has led to a situation in which children were not able to understand even simple questions.

²³ UNHCR 'The heart of Matter, Assessing Credibility when Children Apply for Asylum in the European Union', 2014, at <http://www.refworld.org/pdfid/55014f434.pdf>, p. 71.

²⁴Asylum Procedure Directive (Recast), Recital 29 and article 15 (13) a, b and c. Interviews are to be conducted by a person of the same sex as the applicant, and with an interpreter of the same sex, if the applicant so requests, in some cases, however, the applicant may feel more comfortable with the interviewers and interpreters of the opposite sex. The Netherlands Aliens Circular provides that an applicant may ask for a male or female interpreter or interviewer (Aliens Circular 2000 C1/2.5)

As a result, is necessary to consider both the level and the type of education received by the child during the asylum procedures.

Further resources : [COE HELP Online Courses: Refugee and Migrant Children, Child-friendly procedures](#), [ALTERNATIVE FAMILY CARE \(ALFACA\)'Manual for staff working with reception families and unaccompanied children living in reception families'](#), UNHCR, 2014 'The heart of Matter, Assessing Credibility when Children Apply for Asylum in the European Union', [EASO Training Platform: Module on Interviewing children](#)

2.5 COMMUNICATING WITH THE CHILD: PRACTICAL TIPS

Practical aspects

The asylum interview is the principal opportunity for the applicant to set out his or her reasons for seeking protection, and for the determining authority to elicit further evidence or seek clarification. Finding ways to interview a children (including adolescents) that encourage a full and truthful account is of interests to a number of disciplines, including child welfare, police and medicine.²⁵

Pre-interview considerations

Meeting the child is a crucial moment in the interview both for the lawyer and the child. Once the lawyer/ legal professional meet the child and after have managed to establish a trustful relation and a child friendly communication with the child, they must be able to establish whether the child is able to give the necessary statements regarding the protection status determination procedure.

One of the most important aspects of representing a child is the **interview**. What a lawyer/ legal professional is able, or not, to elicit from the child will have consequences for the rest of the claim. Poor interviewing can lead to the full claim never been elicited and thus never in front of the decision maker; any attempt thereafter to remedy this failure may lead to adverse credibility findings. Poor interviewing may also be indicative of lawyer's failure to adapt the interviewing technique and conduct to one that is more suitable for children.

More often than not, the child client will be referred to a lawyer by a third party such as an NGO for example, a social worker or foster parent. In these circumstances it can be easily forgotten that it is not the adult who is your client, rather it is the child and remains the child at all times. Working with children requires a shift from your instinct of engaging only with the adult to the

²⁵ UNHCR 'The heart of Matter, Assessing Credibility when Children Apply for Asylum in the European Union', 2014, at <http://www.refworld.org/pdfid/55014f434.pdf>, p. 105.

exclusion of the child.

Of course that is not to say that the adult must not be engaged with at all, to the contrary their role is crucial. It may be from the adult that you will gain initial details of your prospective client such as name, date of birth, nationality, language, whether there has been any claim made already to the asylum authorities or one is to be made and preferred gender of advisor and any interpreter.

Are you the best person to conduct the interview?

Specific criteria apply before one can assume to conduct of a child's case. All lawyers and those who provide immigration and asylum advice and service must be eligible to work and receive payments for work carried out under a Legal Aid.

Interviewing room

Prior thought to the layout of the interview room can aid effective communication and avoid subtle non-verbal messages which may undermine the relationship of trust yet to be established. As previously explained, many unaccompanied children seeking asylum will have been in some way or form exploited, deceived or otherwise mistreated by an adult or an adult in a position of authority.

UNHCR's²⁶ training document on interviewing clients provides the following:

Where you should sit

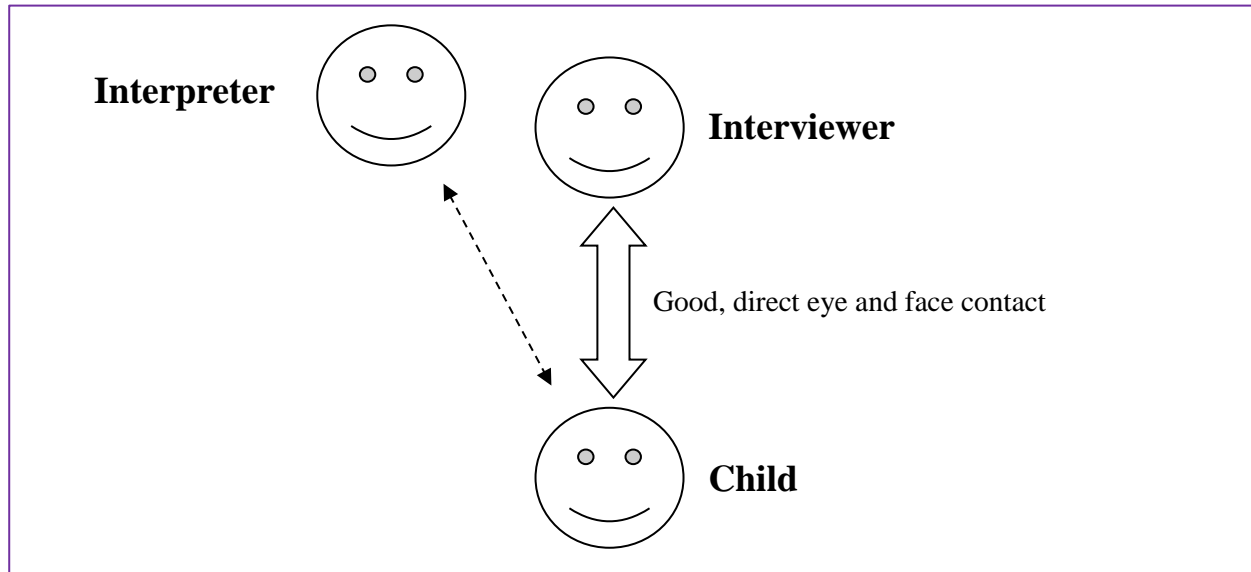
- The place where the interviewer and interpreter occupy in relation to the applicant is an important detail.
- You should try to arrange the seating so that the interpreter is to the side of the interviewer and slightly withdrawn.
- This will allow the interviewer and applicant to communicate face to face.
- In the event you are interviewing a child, the interpreter should sit closer to the child than to the interviewer in order to avoid being perceived in a position of authority and to put the applicant at ease.

To aid concentration ensure the interviewing room is free, as far as possible, from distracting noises such as ringing telephones and minimised secondary noise. It is important to try to arrange seating all on one level to avoid perceptions of authority; do not have your client seated in such a

²⁶ UNHCR, Handbook for Interpreters in Asylum Procedures at http://www.unhcr.org/dach/wp-content/uploads/sites/27/2017/09/AUT_Handbook-Asylum-Interpreting_en.pdf

position that they are facing a source of light, such as a window, in order to avoid “blinding” light. Refreshments are also important and ensure they are at hand or easily accessible.

In addition and when is possible, the interview room should be: specially designed and age and developmentally appropriate; in a child friendly setting, neutral and safe.



Interpreters

Most refugee children will not have English or your native language as their first language and thus the role of the interpreter becomes vital. The consequences of poor interpreting are obvious: confusion, inaccuracy, and contradictions in statement.

Always use a good reputable, professional interpreting agency and preferably specific child trained interpreters.

Ensure your client is made fully aware of the role of the interpreter – to provide an impartial, complete and confidential rendition of everything that is said; that the interpreter is not to offer opinion, comment or answer questions on behalf of the client.

If both you and your client are satisfied with the interpreter, it is good practice to retain the same interpreter for all appointments. This will allow your client to feel more at ease with the interpreter and consequently more at ease in disclosing his or her experiences.

Of great importance is that despite the employment of the interpreter, you must conduct every appointment by asking questions directly to the client in the first person and not to the interpreter in the form of:

“Can you ask him what happened that day...?”

rather, it should be :

“Can you tell me what happened that day...?”

The reason why you have employed an interpreter is to ensure your non-native speaking client is placed on an equal footing with those clients who understand your language– so speak to

your non-native client as you would to your native speaking client.

By not asking questions to the client directly in the first person also leads to very muddled responses, for example:

“He said that he was told”

“Who was told?”

“He said he was”

And so it continues. This in turns can lead to your client becoming frustrated, feel as though he or she is not being listened to and become less communicative.

As you are acting for a child client, you must remain vigilant to any modulation in the interpreter’s voice – this can sometimes be a sign of a reproaching or disbelieving attitude on the part of the interpreter. Related to this is that child clients tend less to vocalise their difficulties or unease with interpreters compared to adults; thus remain aware of the non-verbal indicators such as body language and facial expressions and if required, terminate the appointment.

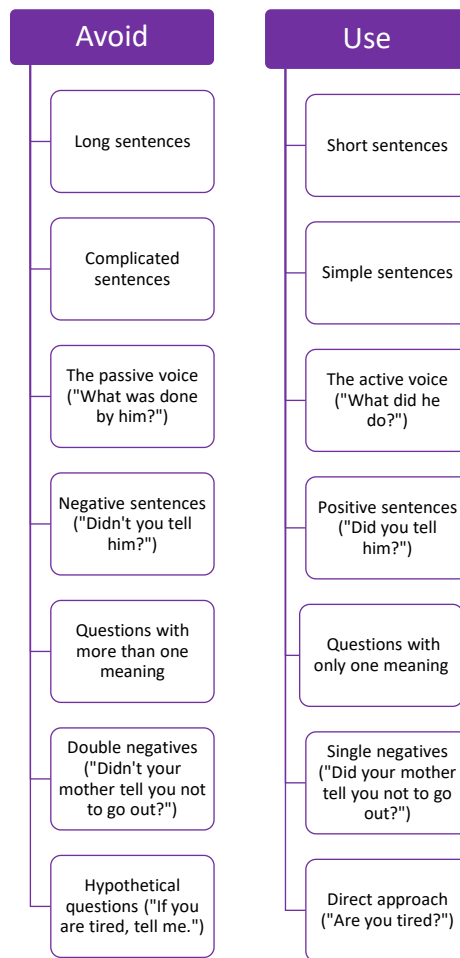
Further resource: Section 2 on the Right to be Heard of [Module 2](#), “Fundamental Procedural Rights for Unaccompanied and Separated Asylum-Seeking Children”.

Taking instructions – interviewing techniques

Interviewing children is one of the hardest skills to master. This guide does not intend to set out the “right” way to interview children but rather provide a foundation of skills that each practitioner should seek to develop according to the needs of the child.

As has already been touched upon above, different considerations need to be taken into account when taking instructions from a child.

Below is a simple framework from the Manual of the Consortium on Street Children to be kept in mind and to inform your interviewing:



STARTING THE INTERVIEW

Put your client at ease: employ steady, friendly visual expressions, maintain good eye contact, open body language and appropriate vocal tone. Explain who you are and who all other parties in the room are and their roles. Check to see if your child is well; whether he or she has eaten or requires something to drink- (think hot chocolate for cold days!).

Ownership: emphasize to the client that you are their solicitor and you will be working for them, irrespective of the number of bodies in the interviewing room that they are the most important person there and it is them that you want to hear from. Give your client your contact details, as opposed to simply providing them to the appropriate adult, and make certain that your client is aware that he or she can talk to you at any time in confidence and call you whenever they need to. Encourage them to ask questions.

Adaptation: interviewing techniques will need to be adapted according to the understanding of your client – a simple tick box exercise for all child clients is not advisable: it is likely to only produce the most rudimentary of instructions. The most thorough of instructions are obtained by

those practitioners who are skilled listeners, ask twice as many questions and remain patient at all times.

Plan your time: lengthy appointments are not appropriate for child clients – 2 hours for any appointment is more than sufficient at any one time. Since children are not able to retain focus for any prolonged period, frequent breaks is a must; on average a 10 minute break after 45 minutes into an appointment should be enforced. Plan your time accordingly.

Managing expectations: define your boundaries and explain everyone's role. Do not promise that which you cannot deliver. Be honest with your client. Whilst one can show empathy, being emotional is unlikely to build a strong relationship.

Assumptions: do not assume that all children of a particular country must have certain documents and experiences – it may be that not all Afghani children have an identity document or have been forcibly recruited by the Taliban. Doing the best for each client means not pre-judging or making assumptions.

Techniques and tips

As mentioned above, it is clear that sometimes children will merely respond in a manner which they believe will please the adult interviewer. Therefore it is of the utmost importance that you remain self-aware of your body language, your own facial expressions, and your tone of voice and any other non-verbal indicator of displeasure, frustration, disbelief, judgement or lack of patience.

Cognitive Interviewing

Additionally as has already been touched upon above, different considerations need to be taken into a cognitive situation. "The Cognitive Interviewing of Children" by the Institute of Forensic Expert Opinion, Krakow²⁷ informs us that the cognitive interview (CI) is a method of enhancing memory through facilitating the process of recall. Its objective, in relation to children, is to help interviewed children improve the process of recall without increasing the amount of inaccurate or invented data. It attempts to do this by focusing on memory process and communication process. A client must make effort firstly to recall the details of an event and then secondly, to communicate this information to you, the interviewer. Successful interviewing depends on both processes.

²⁷ <http://www.canee.net/files/The%20Cognitive%20Interview%20of%20Children.pdf>

The cognitive interview is based on two fundamental laws concerning human memory:

1. A memory trace consists of several elements and the effectiveness of its recall is closely related to the number of overlapping elements, i.e., with the complexity of the event.
2. There are several possible ways of retrieving an encoded event, so information that cannot be retrieved in one way, may turn out accessible using another method.

When employing the CI technique to a child client, we must allow our child client to speak continuously asking auxiliary questions only when it is really necessary and adhere to the following principles:

- sit naturally, leaned towards the child;
- express friendliness and support;
- use eye contact frequently but do not stare at the child;
- speak slowly, use short sentences and pause between sentences;
- express your attention through nodding, saying “aha” etc but do not use evaluative terms such as “that’s right”;
- praise the child for his/her efforts;
- avoid rapid movements or chaotic style of speaking;
- do not interrupt the child;
- allow breaks;
- show patience.

The cognitive interviewing of children consists of several phases which have been identified by the Institute of Forensic Opinion as follows:

Phase 1 - Personalise the interview and establish rapport

- greet the child using his or her name
- introduce self and any third parties
- begin a brief conversation on a totally unrelated issue

Phase 2 - Explain the goals of the interview to the child

- emphasise that the child describes everything that comes into his or her mind when asked questions even if he or she believes it not to be important
- explain that the appointment will require concentration
- discourage the child from guessing or inventing things when he/she cannot remember or does not know

Phase 3 - Reinstating the context of the event

- this can be obtained by either asking specific questions or free account
- **if by questions** -
 - ask the child to listen to the instruction carefully. Emphasize that you want to help him/her to recall all details of the event;
 - give the child enough time to reinstate the context;
 - ask questions slowly, making intentional pauses;
 - ask one question at a time;
- **if by free account** -
 - ask the child to describe his/her memories of the event;
 - do not interrupt the child or ask any specific questions;
 - paraphrase the child's last thought, without adding any details (active listening);
 - if the child stops at some point when giving the account, demonstrate patience and stay quiet, even if the pauses in the child's report are long. It is important to remember that this phase precedes asking questions, and silence may be a very effective tool of eliciting more elaborate answers;
 - when the child makes an impression of having finished the narrative account, do not start asking questions immediately, but rather encourage the child to try to recall more details, by asking: "Do you remember anything else?", and waiting a few more seconds.

Phase 4 - Asking questions

- explain to the child that he/she is going to be asked about the detail of the event;
- emphasize once again that the child should describe everything that will come to his/her mind, without guessing or inventing anything;
- may add that this is going to be a difficult task, which requires much effort and attention.
- Asking questions is associated with **activating imaginative pictures** (or representations) in the interviewee's mind. Asking a question makes the child use an imaginative picture and "read out" the required information. For example, if we request the child to describe his/her teacher, a picture of that person will emerge in the child's consciousness. If the next question concerns the same picture (e.g., What was he wearing?), the child will continue to use the same picture. If, however, the next question concerns another imaginative representation (e.g., Who else was there in the room?), the first representation will be abandoned and the child will evoke another picture, corresponding to the question. Every single act of evoking a new representation interrupts the process of memory scanning and requires some mental effort. Therefore hopping from representation to representation may seriously reduce the amount of information recalled by the child.
- Among older children who have reached the appropriate level of cognitive development, when more details are needed concerning a particular circumstance of the event, you may try to use the reversed sequence mnemonic. The child may start such an account from the most recent episode or another important fact that has already been described, and then move on to describing earlier events. It can be helpful to use the instruction: "*Tell me about it as if it was a movie played backward from the end.*"
- The changed perspective mnemonic, i.e. the instruction to report the event from the perspective of another person involved in the event, may prove difficult, especially for younger children. If, however, you try to apply this technique, it may be helpful to use the instruction: "*Tell me what your teddy-bear could see if it was there.*"

Phase 5 - Closure

- try to create a positive impression of the whole process;
- thanking the child for his/her participation and effort, praising the child for the detailed instructions, and expressing interest in the child's feelings and emotional state.

Obstacles to effective interviewing

Key observations:

- Usually you will not be the first person the child has had to reveal part or all of his/her experiences; by the time a lawyer is instructed it is probable that the child may have had to divulge to at least two people if not more and may likely to be fed up and tired of having to state their circumstances again – patience is required.
- Be aware of the time of the appointment for a child – you do not want it to run too late as most children have a fear of dark.
- If an appointment is made after school, the child may be tired and not want to talk and have to think about traumatic experiences.
- Usual teenage angst – there may be appointments when no instructions are actually obtained.
- Interviews should take place where the child feels safe – this does not necessarily mean at solicitor's office. If so, identify another safe space; the legal aid system will fund if you can justify it.

Barriers to communication

Trust

- You are a stranger – time is required to build relationship of trust.
- It is possible that in the process of seeking asylum, your client's trust of others has been broken. More work will need to be done on your part to assure them that you are putting their interests first at all times.

Fear

- Fear of adults / people in positions of authority – it may be that the child has suffered exploitation, abuse, domination and control at the hands of adults / those in authority. You will be an adult in a position of authority and will need to eliminate any fear accordingly.
- Fear of interpreter and fear of any related community ties.
- Fear of having done wrong – self-blame and self-doubt.
- Fear of the system – ensure you fully explain each step and that the child does not leave the appointment in confusion.
- Fear of having to divulge experience – for example, voodoo, shame, reprisals. Some children, especially those who may have been trafficked, may be under very strong voodoo/juju and suffer from extreme fear.

Juju (pronounced dzudzu)

- supernatural power attributed to a charm or fetish, especially of a type used by some West African people.

Voodoo (pronounced vudu)

- a black religious cult practiced in the Caribbean and the southern U.S., combining elements of Roman Catholic ritual with traditional African magical and religious rites, characterised by sorcery and spirit possession.

Hoodoo (pronounced hudu)

- a run of bad luck associated with a person or activity.

Anger

The child may have un-discharged anger:

- at adults because of authority;
- at the local authority for not believing their age;
- at parents or primary care givers who may have sold the child and the questioning of why;
- at the decision makers for not believing account.

Trauma

- UNHCR Guidelines on Evaluation and Care of Victims of Trauma and Violence recognises :
Unaccompanied children and children having experienced especially traumatising events, inter alia, to be categories of children at the most risk of developing immediate or long lasting psychological disorders.
- UNHCR found that adolescents are usually the most neglected of all age groups because of the mature adult-like behaviour they adopt under stress – it is important to remember that a child is still a child and your interaction / appointments with them should be conducted accordingly.
- Manifestation: included but not limited to “shut down”, uncontrollable weeping, self-blame, head down, disengagement.
- Important to recognise your own limitations – make a referral to appropriate agency with consent.

Limited instructions

There may be occasions when the child will not be able to give instructions relating to his or her claim at all. In such circumstances the following suggestions may be useful:

- Ask the client to write out their statement in their own language to be translated for read back and clarification.
- Rely on third party sources such as social workers assessments, how and why the child came into care, child protection assessments, medical evidence, educational psychologist

assessment, refugee council panel advisor statement, foster parent and your own statement detailing the difficulties in taking instructions and objective evidence in order to draft detailed representations in support.

- State in statement from client that he or she was not able to speak about xyz at this point in time.
- Some children may feel more able to comfortable in conveying their experiences by drawing – if so this should be encouraged.

How to address potential adverse credibility inferences

Confronting

Confronting does not imply aggression, hostility or disbelief. Confronting a client is employed to mean identifying potential discrepancies, inconsistencies, vagueness and contradictions in your client's account and putting them to you client, without value judgment, to resolve.

Explaining

It is important that the child understands why you feel that there may be inconsistencies etc and how these may impact on the claim. It can assist if you present such matters in terms of how the decision makers may consider the claim and what they may consider to be damaging to the claim.

Time lines

It is common for children to have a different sense of time to that of an adult. 6 months may feel like over a year ago. Thus, if the child cannot say how long ago a particular event happened, try to find a form of reference such as birthdays, school terms etc. In such instances the statement must refer to the child's form of reference.

Not knowing

If the child does not know the answer to a specific question you may have asked, then do not allow the child to guess an answer or make an answer up in the belief that you require one. Stress to the child that it is perfectly acceptable to say that he or she does not know or has forgotten. If so, this is your client's instructions and this is what needs to be put in the statement.

Further resources: [ICJ FAIR PROJECT, 2018, Practical Handbook for Lawyers When Representing a Child Training Materials on Access to Justice for Migrant Children, Module 6, ILPA 2011, 'Working with Refugee Children', CREDO Training Manual 2nd volume online "Credibility Assessment in Asylum Procedures. A multidisciplinary Training Manual, ILPA 2011," Resources Guide for Legal Practitioners Working with Refugee Children', DCI-Belgium, 2017 project 'My Lawyer, My Rights', COE HELP Online Courses: Refugee and Migrant Children,](#)

Child-friendly procedures, [ALTERNATIVE FAMILY CARE \(ALFACA\)'Manual for staff working with reception families and unaccompanied children living in reception families'](#), UNHCR, 2014
'The heart of Matter, Assessing Credibility when Children Apply for Asylum in the European Union', [EASO Training Platform: Module on Interviewing children](#)

BACKGROUND DOCUMENTS

Key international reports, comments and guidelines

- ❖ [Manual for staff working with reception families and unaccompanied children living in reception families](#),
- ❖ [UNHCR, 2014 'The heart of Matter, Assessing Credibility when Children Apply for Asylum in the European Union'](#),
- ❖ [ALTERNATIVE FAMILY CARE \(ALFACA\)'Manual for staff working with reception families and unaccompanied children living in reception families'](#)
- ❖ Bhabha and W.Young, "Not adults in Miniature: Unaccompanied Child Asylum Seekers and the New U.S Guidelines", International Journal of Refugee Law, 11/1 (199), 84-125
- ❖ J. Conger and A. Petersen, Adolescence and youth: Psychological development in a changing world, New York, 1984
- ❖ [Hungarian Helsinki Committee, Credibility Assessment in Asylum Procedures, A Multidisciplinary Training Manual, Volume 2, 2015](#)
- ❖ Kroeber A.L. and Kluckhohn D., Culture, a critical review of concepts and definitions, 1952.
- ❖ UNHCR, ["The Heart of the Matter - Assessing Credibility when Children Apply for Asylum in the EU" \(2014\)](#)
- ❖ Fazel, V. Reed, Panter-Brick, Stein (2012)
- ❖ D. Trickey, A. Siddaway, R. Meiser-Stedman, L. Serpell, & A. Field, "A meta-analysis of risk factors for posttraumatic stress disorder in children and adolescents", Clinical Psychology Review, 32, (2012), 122–138
- ❖ [UNHCR, Handbook for Interpreters in Asylum Procedures](#)
- ❖ ["The Cognitive Interviewing of Children" by the Institute of Forensic Expert Opinion, Krakow](#)
- ❖ [ICJ FAIR PROJECT, 2018, Practical Handbook for Lawyers When Representing a Child Training Materials on Access to Justice for Migrant Children, Module 6](#),
- ❖ [ILPA 2011, 'Working with Refugee Children'](#),
- ❖ [CREDO Training Manual 2nd volume online "Credibility Assessment in Asylum Procedures. A multidisciplinary Training Manual](#),
- ❖ [ILPA 2011,' Resources Guide for Legal Practitioners Working with Refugee Children'](#),

- ❖ DCI-Belgium, 2017 project '[My Lawyer, My Rights](#)',
- ❖ [COE HELP Online Courses](#): Refugee and Migrant Children, Child-friendly procedures,
- ❖ [EASO Training Platform: Module on Interviewing children](#)