

## VI. Lawyers toolkit / Practical handbook for lawyers when representing a child

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#### 1. Key principles

(based on UNICEF Save the children resource guide)

##### Key principles of child friendly justice<sup>1</sup>

- Best interests of the child

The best interests of the child should be duly taken into account during all phases of the communication procedure. In order to ensure the protection of the best interests of the child, the traditional communication procedures must give way to flexibility and additional resources in order to accommodate the differing levels of maturity and vulnerabilities of a child.

- Child Participation

As recalled in Article 2 of the OPCRC, the best interests of the child principle is intimately tied to article 12 of the Convention, the child's right to be heard, the child's participation, and the evolving capacities and maturity of the child. Therefore, the formulation of the procedure should allow for and encourage the inclusion of the child and their involvement during the procedure, as long as their protection is guaranteed.

In order to promote child participation throughout the communications procedure, correspondence with a child victim must be accessible and comprehensible to the child. This means using language appropriate for the child's age and/or for the person(s) assisting or representing the child and ensuring that it is delivered in a manner that is accessible to the child.

- Child Protection

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<sup>1</sup> WORKING WITH CHILDREN: ETHICAL ISSUES AND STANDARDS OF PRACTICE, Vera Institute of Justice / Unaccompanied Children Program, Updated January 2015

Children must be aware of their right to be protected from harm and know where to go for help if needed. It is also necessary that children feel free to speak up about child protection concerns affecting them or other children<sup>2</sup>

- Mutual respect
- The importance of participation
  - The child keeps being informed
  - Preparation for hearings and interviews in order to keep the child participation (legal advisors to meet the child at least once, but rather several times before the hearing or interview – as suggested by best practice examples, above)
- The right of children to express their views freely

## 2. Treatment of children during proceedings

### **Access to justice for children, Report of the United Nations High Commissioner for Human Rights, 16 December 2013,**

49. The hearing of a child is a difficult process and can even be traumatic, in particular for child victims of sexual crimes. Therefore, article 12 of the Convention on the Rights of the Child requires States to ensure a safe, child-sensitive environment in which the child feels respected, as well as conditions that take into account a child's individual situation. During proceedings, the privacy and confidentiality of children must be protected and their safety ensured.

50. Many States have reported on a wide variety of special protection measures for hearings and questioning of children, as well as interrogation of children. Measures taken include (a) the establishment of child-sensitive premises for the hearing of a child; (b) the conduct of hearings solely in the presence of a parent, guardian or any other person who takes care of the child, except where this does not correspond to the child's interest, or other specially trained professionals, such as psychological experts; (c) measures to ensure privacy for children, such as the restriction of public access to courts and the prohibition to disclose certain information; (d) audio-visual recording of the interview of the child and questioning outside the courtroom, as well as one-stop shops which bring together services under one roof to collect forensic evidence, provide legal advice, health care and other support. These measures are taken to prevent re-victimization of the child, to gather necessary evidence, to support healing and reintegration, and to prevent impunity.

51. In order to ensure that children can effectively participate throughout the whole process, it is also important that decisions are explained to children in a way that they can understand. As emphasized by the Committee on the Rights of the Child, information and feedback about the weight given to their views should be made available to them.

## 3. Protection measures

### **Economic and Social Council resolution 2005/20 of 22 July 2005: The Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime**

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<sup>2</sup> [http://www.ipu.org/pdf/publications/childprotection\\_en.pdf](http://www.ipu.org/pdf/publications/childprotection_en.pdf)

### **III. Principles**

8. As stated in international instruments and in particular the Convention on the Rights of the Child as reflected in the work of the Committee on the Rights of the Child, and in order to ensure justice for child victims and witnesses of crime, professionals and others responsible for the well-being of those children must respect the following cross-cutting principles:

- (a) Dignity. Every child is a unique and valuable human being and as such his or her individual dignity, special needs, interests and privacy should be respected and protected;
- (b) Non-discrimination. Every child has the right to be treated fairly and equally, regardless of his or her or the parent's or legal guardian's race, ethnicity, colour, gender, language, religion, political or other opinion, national, ethnic or social origin, property, disability and birth or other status;
- (c) Best interests of the child. While the rights of accused and convicted offenders should be safeguarded, every child has the right to have his or her best interests given primary consideration. This includes the right to protection and to a chance for harmonious development:
  - (i) Protection. Every child has the right to life and survival and to be shielded from any form of hardship, abuse or neglect, including physical, psychological, mental and emotional abuse and neglect;
  - (ii) Harmonious development. Every child has the right to a chance for harmonious development and to a standard of living adequate for physical, mental, spiritual, moral and social growth.
- In the case of a child who has been traumatized, every step should be taken to enable the child to enjoy healthy development;
- (d) Right to participation. Every child has, subject to national procedural law, the right to express his or her views, opinions and beliefs freely, in his or her own words, and to contribute especially to the decisions affecting his or her life, including those taken in any judicial processes, and to have those views taken into consideration according to his or her abilities, age, intellectual maturity and evolving capacity.
- (...)

### **XI. The right to be protected from hardship during the justice process**

29. Professionals should take measures to prevent hardship during the detection, investigation and prosecution process in order to ensure that the best interests and dignity of child victims and witnesses are respected.

30. Professionals should approach child victims and witnesses with sensitivity, so that they:

- (a) Provide support for child victims and witnesses, including accompanying the child throughout his or her involvement in the justice process, when it is in his or her best interests;
- (b) Provide certainty about the process, including providing child victims and witnesses with clear expectations as to what to expect in the process, with as much certainty as possible. The child's participation in hearings and trials should be planned ahead of time and every effort should be made to ensure continuity in the relationships between children and the professionals in contact with them throughout the process;
- (c) Ensure that trials take place as soon as practical, unless delays are in the child's best interest. Investigation of crimes involving child victims and witnesses should also be expedited and there should be procedures, laws or court rules that provide for cases involving child victims and witnesses to be expedited;
- (d) Use child-sensitive procedures, including interview rooms designed for children, interdisciplinary services for child victims integrated in the same location, modified court environments that take child witnesses into consideration, recesses during a child's testimony, hearings scheduled at times of day appropriate to the age and maturity of the child, an appropriate notification system to ensure the child goes to court only when necessary and other appropriate measures to facilitate the child's testimony.

31. Professionals should also implement measures:

- (a) To limit the number of interviews: special procedures for collection of evidence from child victims and witnesses should be implemented in order to reduce the number of interviews, statements, hearings and, specifically, unnecessary contact with the justice process, such as through use of video recording;

- (b) To ensure that child victims and witnesses are protected, if compatible with the legal system and with due respect for the rights of the defence, from being cross-examined by the alleged perpetrator: as necessary, child victims and witnesses should be interviewed, and examined in court, out of sight of the alleged perpetrator, and separate courthouse waiting rooms and private interview areas should be provided;
- (c) To ensure that child victims and witnesses are questioned in a child-sensitive manner and allow for the exercise of supervision by judges, facilitate testimony and reduce potential intimidation, for example by using testimonial aids or appointing psychological experts.

#### **4. Communication with a child client**

- Child-centered communication techniques
- **tips, dos and don'ts**
- Special social, psychological attention should be provided specially for unaccompanied migrant minors as they lack of adult role models to rely on

##### **Helpful characteristics in an interviewer/attorney:**<sup>3</sup>

- Taking the time to develop a relationship with the client;
- Listening to the client and engaging in dialogue;
- Respecting the client's individuality;
- Awareness that some child clients may view an attorney as an adult who can protect them rather than simply as a lawyer; and
- Awareness that in the case of neglect or abuse, some youth may be more concerned with their attorneys protecting them from future neglect or abuse than with having them keep this information confidential.

##### **Unhelpful characteristics in an interviewer/attorney:**

- Being continuously absent or rushed;
- Maintaining a manner that is unfriendly and uncaring and does not promote trust; and
- Using a narrow interview technique that does not take into account larger issues affecting the child.

##### **Attorneys and judges should**<sup>4</sup>:

- •□□ Be mindful of the interpreter;
- •□□ Be aware of the time, as stress and fatigue can impact the child's ability to participate;
- Explain to the child that it is all right if they don't know the answer to a question;
- Employ child-sensitive questioning, with careful attention to language and tone;

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<sup>3</sup> Based on a study ...

<sup>4</sup> US Department of Justice, Office of the Chief Immigration Judge. 2004. "Interim Operating Policies and Procedures Memorandum 04-07: Guidelines for Immigration Court Cases Involving Unaccompanied Alien Children," in *Child Clients are Different: Best Practices for Representing Unaccompanied Minors*. American Bar Association (ABA) Center for Continuing Legal Education (CLE). (Retrieved July 16, 2012) (<http://tinyurl.com/9x4mo86>).

- Recognize that children will not be able to present testimony with the same precision as adults; and
- Ensure that there are as few people in the court as possible.

**Courtroom orientation** The courtroom is usually an unfamiliar place for children. Many family and juvenile court experts recommend allowing children to visit an empty courtroom prior to their scheduled hearing. Under the supervision of court personnel, the children should be permitted to explore the courtroom, sit in all the locations (including, especially, the judge's bench and the witness stand), and to practice answering simple questions in preparation for testimony. To the extent that resources permit, court administrators should be receptive to requests by legal representatives or custodians for unaccompanied alien children to visit our courts prior to the initial hearing. Additionally, they should be open to other ways to familiarize unaccompanied alien children with court operations.

### **Involvement of the lawyer and child participation**

#### **Good practices**

In Spain, an NGO legal advisor noted that he **adapts the length of the meeting and their content to the mood and situation of the child**. He tries to arrange **several meetings** if it is necessary to build trust and provide information. Other NGO legal advisors noted that they try to adapt the meetings to the maturity of the child.

A legal advisor interviewed in the UK noted that a good legal advisor would try to **meet the child up to five times to finalise a statement**, allowing time to build a rapport and **establish trust** with the child. Legal advisors stated they try to **limit meetings to two hours** for children. It was also mentioned that it is considered good practice for a barrister to meet the child and discuss the case with them in preparation for an appeal's hearing. Yet this does not happen often in practice.

In Linz, Austria, a first meeting is usually held with the child around two weeks after their arrival in the youth care facility where the task of the legal advisor and the asylum procedure are discussed. The **main goal of the first meeting is to establish a rapport with the child and build trust**. The children are provided the contact details of their legal advisors and encouraged to contact the advisors at any time, within office hours. Appointments are arranged flexibly, sometimes for the following day if necessary. Similarly, in Vienna, unaccompanied children can request additional meetings with their legal advisor to prepare for the interview with the Asylum Agency. Legal advisors interviewed all stated that they adapt the meetings and their method of communication to the individual child they are representing.

One legal advisor specialised in unaccompanied children cases, in Belgium, mentioned that in an asylum procedure she would meet the child **four to six times** if the case goes to the appeal stage but she would also arrange extra meetings if necessary in relation to an age assessment, new information or in case of changes to the situation of the child.

#### **ROLE PLAYS CASE SCENARIOS**

##### 1. Ethical standards

## **2. Conflicts – for discussion – scenarios**

- a. Conflicts between the duty of representation and the best interest of the child
- b. Conflicts between child/parent/guardian
- c. Best interests – e.g. if a decision favorable for the child will lead to separation from parents

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## **D. Child friendly justice during judicial proceedings<sup>5</sup>**

### **1. Access to court and to the judicial process**

34. As bearers of rights, children should have recourse to remedies to effectively exercise their rights or act upon violations of their rights. The domestic law should facilitate where appropriate the possibility of access to court for children who have sufficient understanding of their rights as well as of the use of remedies to protect these rights, based on adequately given legal advice.

35. Any obstacles to access to court, such as the cost of the proceedings or the lack of legal counsel, should be removed.

36. In cases of certain specific crimes committed against children, or certain aspects of civil or family law, access to court should be granted for a period of time after the child has reached the age of majority where necessary. Member states are encouraged to review their statutes of limitation.

### **2. Legal counsel and representation**

37. Children should have the right to their own legal counsel and representation, in their own name, in proceedings where there is, or could be, a conflict of interest between the child and the parents or other involved parties.

38. Children should have access to free legal aid, under the same or more lenient conditions as adults.

39. Lawyers representing children should be trained in and knowledgeable on children's rights and related issues, receive ongoing and in-depth training and be capable of communicating with children at their level of understanding.

40. Children should be considered as fully-fledged clients with their own rights and lawyers representing children should bring forward the opinion of the child.

41. Lawyers should provide the child with all necessary information and explanations concerning the possible consequences of the child's views and/or opinions.

42. In cases where there are conflicting interests between parents and children, the competent authority should appoint either a guardian *ad litem* or another independent representative to represent the views and interests of the child.

43. Adequate representation and the right to be represented independently from the parents should be guaranteed, especially in proceedings where the parents, members of the family or caregivers are the alleged offenders.

### **3. Right to be heard and to express views**

44. Judges should respect the right of children to be heard in all matters that affect them or at least to be heard when they are deemed to have a sufficient understanding of the matters in question. Means used for this purpose should be adapted to the child's level of understanding and ability to communicate and take into account the circumstances of the case. Children should be consulted on the manner in which they wish to be heard.

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<sup>5</sup> Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice (Adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies), [http://www.coe.int/t/dghl/cooperation/ccie/meetings/plenary/Lignes\\_dir\\_justice\\_adapt%C3%A9auxenfants\\_en.asp](http://www.coe.int/t/dghl/cooperation/ccie/meetings/plenary/Lignes_dir_justice_adapt%C3%A9auxenfants_en.asp)

45. Due weight should be given to the child's views and opinion in accordance with his or her age and maturity.
46. The right to be heard is a right of the child, not a duty on the child.
47. A child should not be precluded from being heard solely on the basis of age. Whenever a child takes the initiative to be heard in a case that affects him or her, the judge should not, unless it is in the child's best interests, refuse to hear the child and should listen to his or her views and opinion on matters concerning him or her in the case.
48. Children should be provided with all necessary information on how effectively to use the right to be heard. However, it should be explained to them that their right to be heard and to have their views taken into consideration may not necessarily determine the final decision.
49. Judgments and court rulings affecting children should be duly reasoned and explained to them in language that children can understand, particularly those decisions in which the child's views and opinions have not been followed.
- 4. Avoiding undue delay**
50. In all proceedings involving children, the urgency principle should be applied to provide a speedy response and protect the best interests of the child, while respecting the rule of law.
51. In family law cases (for example parentage, custody, parental abduction), courts should exercise exceptional diligence to avoid any risk of adverse consequences on the family relations.
52. When necessary, judicial authorities should consider the possibility of taking provisional decisions or making preliminary judgments to be monitored for a certain period of time in order to be reviewed later.
53. In accordance with the law, judicial authorities should have the possibility to take decisions which are immediately enforceable in cases where this would be in the best interests of the child.
- 5. Organisation of the proceedings, child-friendly environment and child-friendly language**
54. In all proceedings, children should be treated with respect for their age, their special needs, their maturity and level of understanding, and bearing in mind any communication difficulties they may have. Cases involving children should be dealt with in non-intimidating and child-sensitive settings.
55. Before proceedings begin, children should be familiarised with the layout of the court or other facilities and the roles and identities of the officials involved.
56. Language appropriate to children's age and level of understanding should be used.
57. When children are heard or interviewed in judicial and non-judicial proceedings and during other interventions, judges and other professionals should interact with them with respect and sensitivity.
58. Children should be allowed to be accompanied by their parents or, where appropriate, an adult of their choice, unless a reasoned decision has been made to the contrary in respect of that person.
59. Interview methods, such as video or audio-recording or pre-trial hearings in camera, should be used and considered as admissible evidence.
60. Children should be protected, as far as possible, against images or information that could be harmful to their welfare. In deciding on disclosure of possibly harmful images or information to the child, the judge should seek advice from other professionals, such as psychologists and social workers.
61. Court sessions involving children should be adapted to the child's pace and attention span: regular breaks should be planned and hearings should not last too long. To facilitate the participation of children to their full cognitive capacity and to support their emotional stability, disruption and distractions during court sessions should be kept to a minimum.

62. As far as appropriate and possible, interviewing and waiting rooms should be arranged for children in a child-friendly environment.
63. As far as possible, specialist courts (or court chambers), procedures and institutions should be established for children in conflict with the law. This could include the establishment of specialised units within the police, the judiciary, the court system and the prosecutor's office.
- 6. Evidence / statements by children**
64. Interviews of and the gathering of statements from children should, as far as possible, be carried out by trained professionals. Every effort should be made for children to give evidence in the most favourable settings and under the most suitable conditions, having regard to their age, maturity and level of understanding and any communication difficulties they may have.
65. Audiovisual statements from children who are victims or witnesses should be encouraged, while respecting the right of other parties to contest the content of such statements.
66. When more than one interview is necessary, they should preferably be carried out by the same person, in order to ensure coherence of approach in the best interests of the child.
67. The number of interviews should be as limited as possible and their length should be adapted to the child's age and attention span.
68. Direct contact, confrontation or interaction between a child victim or witness with alleged perpetrators should, as far as possible, be avoided unless at the request of the child victim.
69. Children should have the opportunity to give evidence in criminal cases without the presence of the alleged perpetrator.
70. The existence of less strict rules on giving evidence such as absence of the requirement for oath or other similar declarations, or other child-friendly procedural measures, should not in itself diminish the value given to a child's testimony or evidence.
71. Interview protocols that take into account different stages of the child's development should be designed and implemented to underpin the validity of children's evidence. These should avoid leading questions and thereby enhance reliability.
72. With regard to the best interests and well-being of children, it should be possible for a judge to allow a child not to testify.
73. A child's statements and evidence should never be presumed invalid or untrustworthy by reason only of the child's age.
74. The possibility of taking statements of child victims and witnesses in specially designed child-friendly facilities and a child-friendly environment should be examined.
- E. Child-friendly justice after judicial proceedings**
75. The child's lawyer, guardian *ad litem* or legal representative should communicate and explain the given decision or judgment to the child in a language adapted to the child's level of understanding and should give the necessary information on possible measures that could be taken, such as appeal or independent complaint mechanisms.
76. National authorities should take all necessary steps to facilitate the execution of judicial decisions/rulings involving and affecting children without delay.
77. When a decision has not been enforced, children should be informed, possibly through their lawyer, guardian *ad litem* or legal representative, of available remedies either through non-judicial mechanisms or access to justice.
78. Implementation of judgments by force should be a measure of last resort in family cases when children are involved.
79. After judgments in highly conflictual proceedings, guidance and support should be offered, ideally free of charge, to children and their families by specialised services.
80. Particular health care and appropriate social and therapeutic intervention programmes or measures for victims of neglect, violence, abuse or other crimes should be provided, ideally free of charge, and children and their caregivers should be promptly and adequately

informed of the availability of such services.

81. The child's lawyer, guardian or legal representative should have a mandate to take all necessary steps to claim for damages during or after criminal proceedings in which the child was a victim. Where appropriate, the costs could be covered by the state and recovered from the perpetrator.

82. Measures and sanctions for children in conflict with the law should always be constructive and individualised responses to the committed acts, bearing in mind the principle of proportionality, the child's age, physical and mental well-being and development and the circumstances of the case. The right to education, vocational training, employment, rehabilitation and reintegration should be guaranteed.

83. In order to promote the reintegration within society, and in accordance with the national law, criminal records of children should be non-disclosable outside the justice system on reaching the age of majority. Exceptions for the disclosure of such information can be permitted in cases of serious offences, *inter alia* for reasons of public safety or when employment with children is concerned.

**Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice** (*Adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies*),  
[http://www.coe.int/t/dghl/cooperation/ccje/meetings/plenary/Lignes\\_dir\\_justice\\_adapt%C3%A9auxenfants\\_en.asp](http://www.coe.int/t/dghl/cooperation/ccje/meetings/plenary/Lignes_dir_justice_adapt%C3%A9auxenfants_en.asp)

SOURCES:

- UN Common Approach to Justice for Children  
[http://www.unicef.org/protection/RoL\\_Guidance\\_Note\\_UN\\_Approach\\_Justice\\_for\\_Children\\_FINAL.pdf](http://www.unicef.org/protection/RoL_Guidance_Note_UN_Approach_Justice_for_Children_FINAL.pdf)
- Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime  
<http://www.un.org/en/ecosoc/docs/2005/resolution%202005-20.pdf>
- <https://www.stthomas.edu/media/interprofessionalcenter/WorkingWithChildrenEthicsUpdatedJanuary2015.pdf>
- Law Society guidance for practitioners (Ireland)
- Coram Children's Legal Centre led project 'Unlocking Children's Rights: EU training for professionals working with vulnerable children'
- Access to justice for children, Report of the United Nations High Commissioner for Human Rights, 16 December 2013
- WORKING WITH CHILDREN: ETHICAL ISSUES AND STANDARDS OF PRACTICE, Vera Institute of Justice / Unaccompanied Children Program, Updated January 2015
- Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice:  
<http://www.coe.int/t/dghl/standardsetting/cdcj/CDCJ%20Recommendations/GuidelinesChild-FriendlyJusticeE.pdf>
- CRIN: Rights, Remedies and Representation: A global report on access to justice for children  
<https://www.crin.org/en/library/publications/rights-remedies-and-representation-global-report-access-justice-children>
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**Status of ratifications:**

**International legal instruments**

	IT	DE	ES	BG	EL	MT	IR
European Convention on the Legal Status of Migrant Workers	X		X				
revised European Social charter	X			X	X	X	X
OP-CRC-3							
OP-CESCR							
European Convention on the exercise of children's rights	X	X	X		X	X	

...							

### Applicable EU law

	IT	DE	ES	BG	EL	MT	IR
Family reunification Directive	x	x	x	x	x	x	
Return Directive	x	x	x	x	x	x	
...							

Time allocated: 4 hours (?)

Time		Tool	
	Introduction CRC Art 12 and GC 12	PPT	
	Main principles - mutual respect - participation	Questionnaire with Q on participation (T or F), work in pairs	
	Obligations relating to judicial and administrative proceedings	PPT Discussion	
	Case law	PPT Discussion	
break			
	Role play speak with a child	One participant is a child, second is a lawyer interviewing her/him – sheets with descriptions of scenarios for both of them	
		Follow up discussion on how the child felt, what techniques/support would the lawyer need	
	Tips and dos and don'ts summary and presentation	PPT	
15 min	Wrap up and Evaluation	Evaluation forms, discussion	