

# Core Standards for guardians of separated children in Europe

Goals for guardians and authorities

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# PREFACE

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Every day migrant children arrive in Europe, some of them alone, without parents or relatives. These minors are often traumatised and utterly vulnerable. It is obvious that they must be met with care and respect for their rights.

In general, they have an extremely sad background. Some have fled persecution or war. Many have left their country to avoid being forcefully recruited to militias or other armed groups. Others have run away from poverty and destitution, some are victims of trafficking. Many of them suffer exploitation and abuse. Those who have been separated from their families are obviously at particular risk.

All European states have ratified the Convention on the Rights of the Child which obliges them to give special protection and assistance to children deprived of their family environment. It also requires every child's best interests to be considered as a primary factor in all actions concerning the child. This means that immigration control should never override the best interest of the child.

Migrant minors are first and foremost children, and they have the same rights as other children. For obvious reasons, it is particularly important that states take care to apply durable measures for those who are unaccompanied and separated. A number of options should be considered, including integration in the country of destination, relocation to another country or return and reintegration in the country of origin. A decision should be taken only after a careful assessment of the child's best interest, including their safety and protection in each case.

We have a duty to protect these children. The first step should not therefore be to automatically decide on return, but rather to designate rapidly a guardian who would represent the interest of the child. This is the best protection against any abuse from traffickers, but also from possible negligence by authorities in the host country.

A timely provision of a proper guardianship is fundamental for the concrete application of the best interests of the child and it is central to establishing appropriate action for finding durable and suitable solutions for separated children.

During my missions I have met quite a number of unaccompanied minors who have managed to find their way to Europe, most of them between 15 and 18 years of age. Their problem was less the separation from parents – however difficult – than the threats and grim prospects in the home country.

It is important that such children are met with respect and by personnel who have the necessary training and capacity to understand them and their situation. Guardians should have sufficient powers to perform their functions and act in the best interest of the child, while taking the views of the child into account.

The report *Closing a protection gap* provides core standards that should inspire policies at national and European level in order to improve the protection of separated children in our continent. It also highlights the need for harmonizing the quality of guardianship systems all over Europe and within countries, where huge differences still persist.

The ten Core Standards presented by this report can be an effective tool to strengthen guardians' abilities to improve child's protection, by focusing on key aspects of the process. It also stresses the importance of mainstreaming the child's right to be heard in all policies affecting separated children: the lack of participation of these children in shaping their present and future is indeed an obstacle to a viable and effective implementation of the best interest of the child.

The goals set for guardians and policy makers are ambitious, but not impossible to attain. It is all about applying systematically these standards in all policies on separated children and using them holistically to ensure child's safety, to provide adequate assistance and to promote a sound development of these children.

This report adds on the examples of good practices and international tools, such as the Life projects of the Council of Europe, that are already available to European, national and local authorities with a view of taking duly care of separated children and their needs.

I am confident it will contribute to inspire policies and attitudes to help separated children improve their lives.



*Thomas Hammarberg*



COMMISSIONER FOR HUMAN RIGHTS  
COMMISSAIRE AUX DROITS DE L'HOMME



COUNCIL OF EUROPE  
CONSEIL DE L'EUROPE

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# 1 ACKNOWLEDGEMENT

Participation and collaboration are the key words for the development of the 'Core Standards for guardians of separated children in Europe'. Without the support and valuable meetings we had with (former) separated children, guardians and the members of the national advisory councils, the development of the Core Standards would not have been possible.

We especially would like to thank the EU DAPHNE III programme and national co-funders for their financial support. A step to close the protection gap for separated children in Europe has been taken. The enforcement of the good practices and recommendations from the eight national reports that have been published in December 2010<sup>1</sup> and the implementation of the 'Core Standards for guardians of separated children in Europe' from this international report are essential to further close the protection gap.

In addition the research partners would like to thank the Council of Europe Commissioner for Human Rights, Mr. Hammarberg, for writing the inspiring preface to this international report.

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<sup>1</sup> See for the eight national reports: <http://www.defenceforchildren.nl/p/43/522/mo89-mc97/english>.

## 2 SUMMARY CORE STANDARDS FOR GUARDIANS

### **The role and responsibilities of the guardian:**

**Standard 1:**        **The guardian advocates for all decisions to be taken in the best interests of the child, aimed at the protection and development of the child.**

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

**Standard 2:**        **The guardian ensures the child's participation in every decision which affects the child.**

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

**Standard 3:**        **The guardian protects the safety of the child.**

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

**Standard 4:**        **The guardian acts as an advocate for the rights of the child.**

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

**Standard 5:**        **The guardian is a bridge between and focal point for the child and other actors involved.**

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

**Standard 6:**        **The guardian ensures the timely identification and implementation of a durable solution.**

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

## **The guardian and the separated child:**

### **Standard 7: The guardian treats the child with respect and dignity.**

The guardian demonstrates appropriate behavior, treats the child unprejudiced with respect to the child's identity, privacy and cultural differences, supports the child in developing peer relationships and shows a flexible approach tailored to the individual needs of the child.

### **Standard 8: The guardian forms a relationship with the child built on mutual trust, openness & confidentiality.**

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

### **Standard 9: The guardian is accessible.**

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

## **The qualifications of the guardian:**

### **Standard 10: The guardian is equipped with relevant professional knowledge and competences.**

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

### 3 INTRODUCTION

In this report the term separated child is used, as described in the Statement of Good Practice of the Separated Children in Europe Programme<sup>2</sup>: separated children are under eighteen years of age, outside their country of origin, and separated from both parents, or their previous legal, or customary primary caregiver. Some authorities and organizations use a different terminology: the unaccompanied minor asylum seeker or unaccompanied minor foreigner.

There are approximately 100.000 separated children in Europe.<sup>3</sup> Separated children have the right to a guardian who protects their rights and best interests. Not only do separated children have to live without their parents in a country they don't know but, in some countries, they also run the risk of being detained because of their residence status or run the risk of being exploited by traffickers.<sup>4</sup> Separated children can face risks in their country of origin, during their journey and in the host country. The type of protection and care a separated child receives from a guardian depends upon the country which the separated child has (often randomly) entered and it can differ depending on the fact if a separated child asks for asylum or not.

The current differences in the level of protection separated children receive in European countries is not acceptable. All European countries have ratified the Convention on the Rights of the Child (CRC) and have the obligation to take into account the special needs of separated children. Proper guardianship systems are essential to assist in finding a durable solution for separated children, whether that be integration into the host country, transfer to another country or return to the country of origin.

The aim of this project is to harmonize the protection separated children receive from their guardian by focusing on the qualifications of a guardian. Furthermore the Core Standards should inspire State authorities to adjust the guardianship systems where necessary in order for guardians to fulfil the Core Standards.

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#### MISSION

The mission of this project is to improve the situation and development chances of separated children by means of: *closing a protection gap for separated children in Europe by developing core standards on qualifications of guardians based on the views of separated children in relation to their rights according to the Convention on the Rights of the Child.*

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<sup>2</sup> Separated Children in Europe Programme, *Statement of Good Practice*, 4th Revised Edition, 2009, p. 3. Available at: <http://www.separated-children-europe-programme.org/index.html>.

<sup>3</sup> According to the Separated Children in Europe Programme there are approximately 100.000 separated children in Europe, see: Ruxton, *Separated Children Seeking Asylum in Europe: A Programme for Action*, 2010. Comparing statistics and gathering of data remains a challenge, see: European Migration Network, *Unaccompanied Minors-an EU comparative study*, May 2010, p. 74, available at: [http://www.emn.fi/files/288/o\\_EMN\\_Synthesis\\_Report\\_Unaccompanied\\_Minors\\_Publication\\_\(Septio\)\\_1\\_.pdf](http://www.emn.fi/files/288/o_EMN_Synthesis_Report_Unaccompanied_Minors_Publication_(Septio)_1_.pdf).

<sup>4</sup> See also: United Nations Committee on the Rights of the Child, *General Comment no. 6, on the Treatment of Unaccompanied and Separated Children outside their Country of Origin* (2005), CRC/GC/2005/6, paragraph 3.

In the communication from the European Commission to the European Parliament concerning the Action Plan 2010–2014 for unaccompanied minors the Commission urges Member States to consider: *‘Introducing review mechanisms to monitor the quality of guardianship in order to ensure that the best interests of the child are represented throughout the decision-making process and, in particular, to prevent abuse’*.<sup>5</sup>

This international report with ‘Core Standards for guardians of separated children in Europe’ will provide an instrument to standardize the qualifications of a guardian to take the special needs and rights of separated children into account.

Separated children in Europe should get the guardian they are entitled to irrespective of the EU country they entered. The assumption is that when all guardians have sufficient qualifications and mandates to work in the best interest of the child, the level of protection children receive in the different European countries will harmonize.

**Sub goals of this project are:**

- To empower guardians to work as a watch dog dedicated to defending and promoting the rights of the child.
- Boost a European Community policy and harmonization of guardianship in practice.
- Strengthen the attention to the Convention on the Rights of the Child amongst guardians and policy makers.

**Structure of the report**

This report starts with an explanation on the development of the Core Standards for Guardians of separated children (chapter 4) followed by background information on how to use the Core Standards (chapter 5). The Core Standards for guardians of separated children and indicators are listed together with a frame of reference (chapter 6) and a future perspective for the Core Standards is provided in chapter 7. The legislative and policy framework is provided in Appendix 1.

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<sup>5</sup> See for this communication: <http://www.statewatch.org/news/2010/may/eu-com-action-plan-unaccompanied-minors-com-213-3-10.pdf>. p. 10.

## 4 STANDARD DEVELOPMENT AND IMPLEMENTATION

The Core Standards for guardians of separated children have been developed to inform, guide and influence parties involved in guardianship for separated children, including guardians, social workers and guardianship organizations and State authorities.

The research countries are: Belgium, Denmark, Germany, Ireland, Italy, the Netherlands, Slovenia and Sweden. These countries reflect different guardianship systems in Europe. The Core Standards for guardians of separated children aim to provide a guardianship instrument to all European countries, irrespective of the different guardianship systems in every country.

### Research methodology

The research objective of this qualitative research is to analyze existing research information and legislation and collect the views on guardianship of separated children and guardians in eight EU Member States, analyze them, focus on good practices and recommendations and develop this information into Core Standards for guardians of separated children.

According to the Committee on the Rights of the Child, the right of all children to be heard is one of the fundamental values of the Convention on the Rights of the Child (CRC) and should be considered in the interpretation and implementation of all other rights. Article 12 of the CRC addresses the legal and social status of children, who on one hand lack the full autonomy of adults but, on the other hand are subjects of law and can invoke rights.<sup>6</sup> Often the right to be heard is not reflected in research about separated children. To correspond with the right to participation in article 12 of the CRC the Core Standards for guardians have been developed based on the input in eight national reports from separated children<sup>7</sup>, guardians and other professionals. The national reports focused on the participation of separated children and their rights according to the CRC.<sup>8</sup>

During a meeting with all research partners in Ljubljana (Slovenia) the first draft of the Core Standards for guardians was developed based on the outcomes of the national reports. The partners checked if the input from the (former) separated children and guardians from every national report was included in the draft standards.

All input was incorporated in the draft standards and discussed with the thematic group on guardianship of the Separated Children in Europe Programme (with representatives from fifteen countries) after which some adjustments were made.

During a meeting with the Research Development partners<sup>9</sup> in Leiden the first draft of the international report including the Core Standards for guardians was discussed. National advisory councils were consulted before the publication of the international report.

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6 See: United Nations Committee on the Rights of the Child, General Comment No. 12, *The right of the child to be heard* (2009), CRC/C/GC/12, paragraph 1 and 2.

7 Separated children in the care of the State and those that have reached the age of majority, but who arrived as separated children in Europe participated in this research.

8 The project is inspired by the Quality4Children standards for Out-of-Home Child Care in Europe (<http://www.quality4children.info>). This excellent study provides a useful framework but needed to be specified for separated children.

9 All eight partners carried out the national research in the same way but the Research Development partners have had a bigger role in formulating the Core Standards.

The Core Standards are a result of the interpretation of the most significant messages expressed by separated children and guardians. Their views have been measured against the Convention on the Rights of the Child (CRC), General comment No. 6 (treatment of unaccompanied and separated children outside their country of origin) and General comment No. 12 (the Right of the child to be heard) of the Committee on the Rights of the Child and the Statement of Good Practice of the Separated Children in Europe Programme. The Core Standards for guardians have been inspired by the Quality4Children standards for Out-of-Home Child Care in Europe.<sup>10</sup>

The national reports focused on good practices and recommendations in relation to the guardians in the different countries. Mapping of existing legislation on guardianship and outcomes of past research were included. For the outcomes in specific countries the researchers refer to the eight national reports.<sup>11</sup>

### **Overview Interviewees**

The aim of this qualitative research is to develop Core Standards for guardians by listening to separated children and guardians carefully. During the interviews for the national reports the children and guardians were asked about subjects like: procedures, qualifications of a guardian, the best interest of the child assessment, reception facilities, return, legal knowledge and communication. The researchers asked the separated children what they would do if they were a guardian and they asked the guardians what they would need if they were a separated child. The outcomes of the interviews and the information from the eight national reports are the basis for the Core Standards for guardians of separated children.

The interviews with the separated children and guardians reflected qualitative semi-structured interviews with question lists as a guideline. It was essential for the consultations with the separated children and guardians to have as much ‘open interviews’ as possible. In this way it was possible to include new ideas, suggestions and recommendations from the interviewees in the report and not limit the results to the subjects in the question lists.

### **Separated children**

For this report 127 separated and former separated children were interviewed. The age of the interviewed children ranged from twelve to twenty-three years old. The majority of the interviewed children were between fifteen and seventeen years old. This reflects the age range of the majority of separated children in Europe. The main countries of origin of the interviewed children were: Afghanistan, Iraq, Somalia and Guinea. This corresponds to the main countries of origin of the total amount of separated children in the research countries (*see Table 1. and 2., page 11*).

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<sup>10</sup> See for the Quality4Children standards: <http://www.quality4children.info>.

<sup>11</sup> See for the eight national reports: <http://www.defenceforchildren.nl/p/43/522/mo89-mc97/english>.

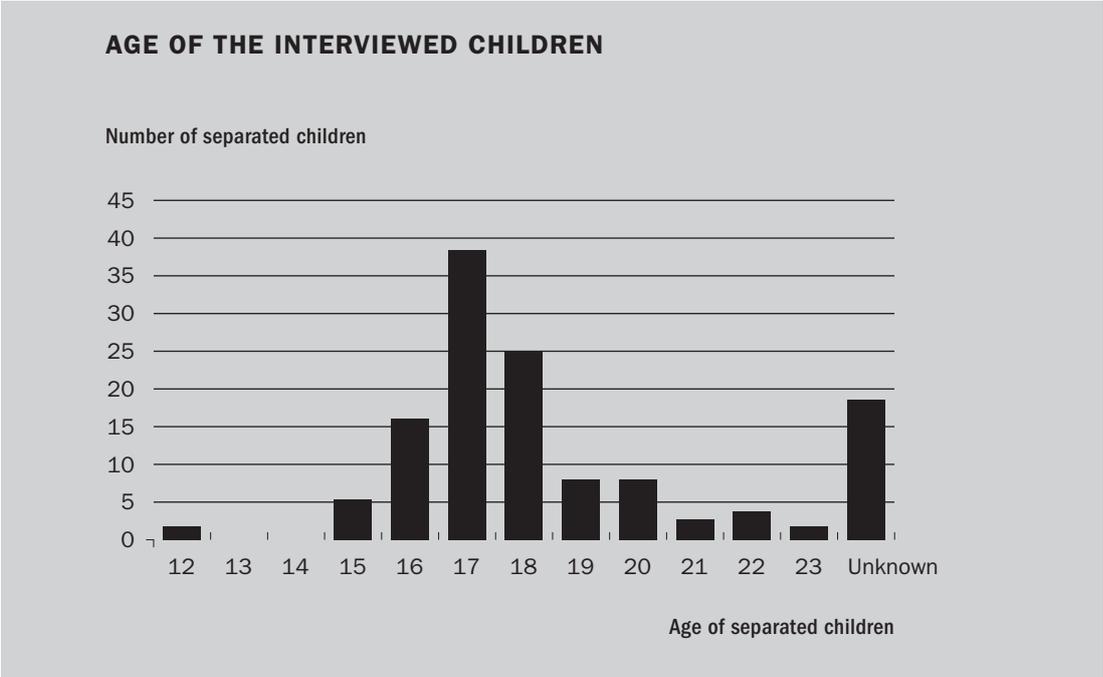


Table 1: age of the interviewed children.<sup>12</sup>

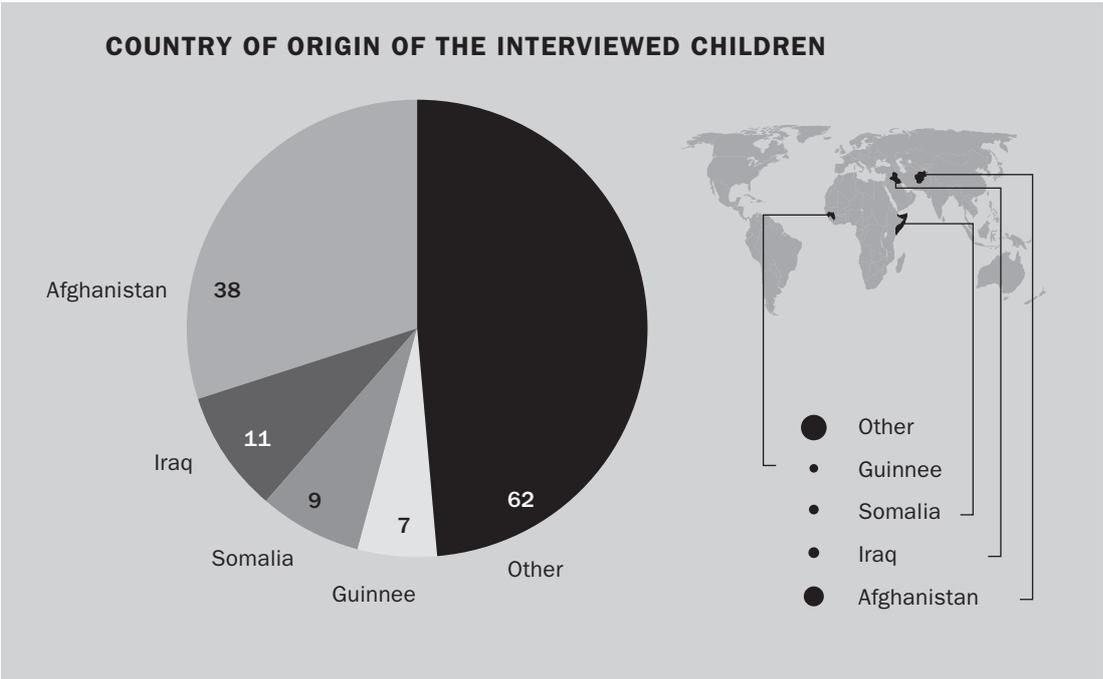


Table 2: countries of origin of the children interviewed.<sup>13</sup>

<sup>12</sup> The nineteen children with an ‘age unknown’ took part in a focus group meeting in Ireland. The majority of these children were former separated children and older than eighteen years.

<sup>13</sup> The other countries of origin are: Angola, Burkina Faso, Burundi, Cameroon, Chechnya, China, Eritrea, Ethiopia, Ghana, Kenya, Kosovo, Mali, Marocco, Nigeria, Pakistan, Rwanda, Sierra Leone, Syria, Togo, Uganda, Ukraine, Vietnam and Zambia.

### **Guardians and other experts**

The researchers interviewed 68 guardians and 39 other experts (for instance; foster parents, lawyers, social workers) involved in the lives of separated children who added information about their views on guardianship.

Interviews	Guardians	Other experts	Total
Total	68	39	107

### **National Advisory Councils**

Besides participation of separated children and guardians, an important source for the national reports and development of the Core Standards were the national advisory councils in the eight research countries.<sup>14</sup> Collaboration between national and international stakeholders and involvement of relevant authorities is essential to enlarge the enforcement of the Core Standards.

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<sup>14</sup> See annex 2 for an overview of the representatives in the national advisory councils.

## 5 HOW TO USE THE CORE STANDARDS

This international report contains the Core Standards for guardians of separated children, indicators and an explanatory frame of reference. The information, good practices and recommendations from the national reports are not repeated in this international report. For information on the specific outcomes in a country the national reports can be consulted.<sup>15</sup> The outcomes of the national reports formed the basis of the Core Standards and this international report. Some quotes from separated children and guardians from the national reports are listed with every Core Standard to contextualize the standards.

The Core Standards and indicators are written from the perspective of separated children and guardians. They reflect the desired situation and are formulated to address guardians. The Core Standards should empower all guardians in Europe to work towards common goals and it should inspire State authorities to offer the guardian the work environment and mandates needed to meet the Core Standards. The first six Core Standards focus on the role and responsibilities of the guardian. Core Standards seven, eight and nine focus on the relationship between the guardian and the separated child. Core Standard ten addresses the professional knowledge and competences of the guardian.

### **Core Standards as inspiration and goal for guardians**

The Core Standards are developed as a tool for guardians in practice. The Core Standards should inspire the guardians in their daily work and they offer a goal to work towards. The researchers recognize the challenges a guardian faces. Due to the current guardianship systems in some countries there are a lot of hurdles to overcome for guardians in order to successfully implement the Core Standards. Guardians with a very high caseload are confronted with multiple dilemmas. They want to be present for the children and provide adequate support but they do not have the capacity due to their caseload. The guardians in these countries should not get frustrated when they cannot fulfil all the Standards immediately. Guardians can incorporate the Core Standards as a guideline for their work irrespective of the guardianship system and legislative framework. The Core Standards can be used as a checklist to monitor their current practice. Where there are Core Standards that are unfulfilled the guardian should feel empowered to advocate for change.

### **Core Standards as inspiration and goal for State authorities and guardianship institutions**

The enjoyment of rights stipulated in the Convention on the Rights of the Child is not limited to children who are citizens of a State party but must be available to all children, including asylum-seeking, refugee and migrant children, irrespective of their nationality, immigration status or statelessness.<sup>16</sup> The positive aspect of protection obligations for separated children also extends to requiring States to take all necessary measures to identify children as being unaccompanied or separated at the earliest possible stage.<sup>17</sup>

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15 See for the eight national reports: <http://www.defenceforchildren.nl/p/43/522/mo89-mc97/english>.

16 See: United Nations Committee on the Rights of the Child, *General Comment no. 6, on the Treatment of Unaccompanied and Separated Children outside their Country of Origin* (2005), CRC/GC/2005/6, paragraph 12.

17 See also: United Nations Committee on the Rights of the Child, *General Comment no. 6, on the Treatment of Unaccompanied and Separated Children outside their Country of Origin* (2005), CRC/GC/2005/6, paragraph 13.

States are required to create the underlying legal framework and to take necessary measures to secure proper representation of an unaccompanied or separated child's best interests.<sup>18</sup>

The Committee on the Rights of the Child expressed its concern in recent concluding observations to States Parties at the fact that guardians are often overburdened and thus cannot adequately exercise their role. The assignment of a guardian should be expedited to assist asylum-seeking children in understanding the procedures and clarify the role of the guardian through the initiated guardianship legislation.<sup>19</sup> The Committee recommends to ensure that all unaccompanied asylum-seeking children are provided with a trained guardian.<sup>20</sup> Training should be provided on asylum matters, the specific needs of children, issues concerning human trafficking and treatment of traumatized children. The Committee recommends States to guarantee, following identification, an analysis of the unaccompanied child's individual circumstances, bearing in mind the best interests of the child, and the child's right to be heard.<sup>21</sup>

The Committee on Migration, Refugees and Population of the Council of Europe outlines in a draft resolution fifteen common principles, which it invites member states to observe and work together to achieve. One of these principles is that:

*'5.5. Every unaccompanied child should be provided immediately with a legal guardian mandated to safeguard the child's best interest. The legal guardian should be independent and should have the necessary expertise in the field of childcare. Every guardian should undergo regular training and be subject to regular and independent review/monitoring'.<sup>22</sup>*

Furthermore the Committee states to:

*'6.4. Adopt and implement **common standards and procedural safeguards on guardianship and legal aid for all unaccompanied children to ensure their interests and protection needs are safeguarded throughout all administrative and judicial procedures'.<sup>23</sup>***

The Core Standards for guardians of separated children listed in this report offer an instrument and inspiration for State authorities to adjust their guardianship systems in order to protect the needs of separated children and their best interests. Furthermore the Core Standards aim to support and inspire guardianship institutions to provide the working environment the guardians need to fulfil the Core Standards.

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<sup>18</sup> In addition the European Network of Guardianship Institutions (ENGI) has highlighted four priorities: **Responsibility and accountability**: each country should mandate an organisation or person with clear-cut responsibility for children who have been separated from their parents; **Mandate and resources**: the responsible organisation needs to have sufficient financial and human resources to fulfil its mandate; **Bottom-up as well as top-down**: EU legislation has stimulated national reforms, but there is a need to make changes and develop practices based on the experiences of those most closely involved in the protection of children; **The child is central**: while costs and politics frequently dominate asylum debates, the needs of this vulnerable group must be the first priority when developing and/or reforming systems of guardianship. See for more information: [www.engi.eu](http://www.engi.eu).

<sup>19</sup> United Nations Committee on the Rights of the Child, *Concluding observations Norway*, CRC/C/NOR/CO/4, 29 January 2010.

<sup>20</sup> United Nations Committee on the Rights of the Child, *Concluding observations Denmark*, CRC/C/DNK/CO/4, 7 April 2011.

<sup>21</sup> United Nations Committee on the Rights of the Child, *Concluding observations Spain*, CRC/C/ESP/CO/3-4, 3 November 2010.

<sup>22</sup> Committee on Migration, Refugees and Population, Parliamentary Assembly Council of Europe, *Unaccompanied children in Europe: issues of arrival, stay and return*, 21 March 2011, Doc. 12539, p. 2.

<sup>23</sup> Committee on Migration, Refugees and Population, Parliamentary Assembly Council of Europe, *Unaccompanied children in Europe: issues of arrival, stay and return*, 21 March 2011, Doc. 12539, p. 4.

Based on the information received from separated children and guardians in the eight national research reports and desk research for this international report, the project partners call upon the State authorities to ensure that:

1. Every separated child should have a guardian upon his/her arrival in the host country.
2. The opinion of the child should be taken into account before the appointment of a guardian.
3. Guardians should be appointed before an age assessment is carried out or a pre-phase guardianship system should be in place.
4. A legal basis for guardianship should exist.
5. All separated children should be entitled to the same level of protection, it should not make any difference what age the child has, if the child seeks asylum or not, is documented or not, is an EU citizen or not (non-discrimination principle).
6. Every separated child should have a lawyer in addition to a guardian. This lawyer supports the child and guardian in taking decisions about legal affairs.
7. External monitoring of the guardian should be in place, children should be enabled to contribute to this monitoring and special attention should be given to signals of abuse by the guardian.
8. Guardians should be at least compensated for the costs they make to fulfil their duties.
9. The caseload of guardians should be reasonable and maximum levels of caseloads should be set.
10. The guardians should be enabled to act independently from authorities who take decisions in order to promote the best interests of the child. Guardians should not be allowed to have different roles that can cause a conflict of interest.
11. The guardianship system and practice (including training) should be harmonized throughout the entire country.
12. Procedures affecting separated children should be treated with priority.
13. It should be promoted that a team of guardians consists of people with different cultural backgrounds.
14. Avoid as much as possible changes in guardians and moving of the children.
15. No separated child should be detained on migration grounds.
16. There should be an exchange of information between States and guardians about returnees and agreements should be made with local authorities and partners.
17. Family reunification in the country of origin or other European State should only be practiced when it is safe and with the help of an organization that is working in the best interests of the child.
18. If support from a guardian or Youth Care is provided for nationals above eighteen years old it should be available to separated children too.

## **6 CORE STANDARDS FOR GUARDIANS: INDICATORS AND FRAME OF REFERENCE**

The Core Standards for guardians of separated children are written from the perspective of separated children and guardians and reflect the desired situation. The standards and indicators are formulated to address guardians who can use the Core Standards as a guideline for their work. The first six Core Standards focus on the role and responsibilities of the guardian. Core Standards seven, eight and nine focus on the relationship between the guardian and the separated child. Core Standard ten addresses the professional knowledge and competences of the guardian.

More information and explanation with every standard is provided including indicators and quotes from the national reports illustrating the perspective of separated children and guardians. References are made to the Convention on the Rights of the Child (CRC), General comment No. 6 (GC 6. treatment of unaccompanied and separated children outside their country of origin) and General comment No. 12 (GC 12. the Right of the child to be heard) of the Committee on the Rights of the Child, and the Statement of Good Practice (SGP) of the Separated Children in Europe Programme and the Quality4Children standards for Out-of-Home Child Care in Europe (Q4C).

It is the task of the guardians to put the Core Standards into practice but it is also the task of all parties involved in the life of the child to respect the responsibilities of the guardian and to support the guardian with the implementation of the Core Standards.

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**STANDARD 1**

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

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*Indicators:*

The guardian:

- A) Makes an assessment on the best interests of the child, for example before decisions are taken about:
  - Legal procedures,
  - The choice of a lawyer,
  - Housing accommodation and placement,
  - Education,
  - (Health)care,
  - Leisure activities,
  - Other support.
- B) Makes sure that an assessment on the best interest of the child is based on the views and opinions of the child and on individual circumstances.
- C) Involves all relevant actors in the determination of the best interest of the child in decisions impacting upon the child to ensure a multidisciplinary approach.
- D) Avoids having a conflict of interest concerning the child and works independently from other actors who make decisions about the welfare and status of the child.
- E) Adjusts the assessment of the best interests of the child regularly, while taking at a minimum into account:
  - The child's personal background and past experience in the country of origin and journey,
  - His/her development,
  - Family situation,
  - Duration of stay in the host country,
  - Phase of residence procedure or immigration status.

**Separated children and guardians**

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*"It is the interest of this particular human being that you have to be able to bring to the floor. You have to understand the interests and needs of this human being." Guardian, Denmark.*

*"What the best interests of the child are definitely differs from case to case and is therefore impossible to generalize. When a guardian comes into contact with the child and gets to know him and acquires certain information, only then, based on the child's past, present and in accordance with the possibilities that a child has in Slovenia, the guardian can see what would be the best for a child. [...] Yet the problem is that the system in Slovenia in most of the cases does not allow the pursuit of the best interests of the child." Guardian, Slovenia.*

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The best interest of the child needs to be examined on an individual basis, taking into account the specific features of each case. As advocated by the United Nations High Commissioner for Refugees (UNHCR) there is a difference between the best interest of the child assessment and a best interest of the child determination. A best interest assessment is an assessment made with regard to individual children to ensure that actions give a primary consideration to the child's best interests, with the required expertise and entails the participation of the child. It involves the day-to-day decisions in the life of a child. A best interest of the child determination focuses on the important decisions affecting the life of a child. It is a formal process that should facilitate adequate child participation

without discrimination, involve decision-makers with relevant areas of expertise, and balance all relevant factors in order to assess the best option.<sup>24</sup>

The best interest of the child is the primary consideration for a guardian, above all others like national, institutional and policy concerns. From the interviews with the separated children and guardians the researchers learned that guardians mostly assess the best interests of the child according to their experience as a guardian. Separated children did not always find that their views were taken into account in the decision making process. Few guardians apply and use methodological tools to determine the best interest of the child. Some guardians mention that they consulted with colleagues when they had doubts about the best interests of the child. The migration authorities do not always take the views of the guardian in relation to the best interests of the child seriously. This is a challenge guardians of separated children have to face more often than guardians of national children in need of Youth Care. Guardians should act as a watchdog and ask critical questions to the authorities on how different decisions reflect the best interests of the child. Separated children mentioned that guardians were not always present during age assessment procedures or interviews with migration authorities. Some children missed to have their guardian present. The best interest of the child determination has to be a cooperation between the guardian, the child and others working or living with the child. This requires clear communication between the different actors. Guardians should endeavour to always be present during the determination of the best interest of the child and assist the child in the exercise of his or her rights.

See also Core Standard 4 on the role of the guardian as an advocate for the rights of the child.

## References

- CRC: 3, 5, 6, 12, 18, 20, 24, 27, 28, 29, 31  
GC 6: 19, 20, 22, 24, 25, 30, 31, 33, 35, 40, 41, 44, 46, 47, 53, 69, 72, 82, 90, 92, 93  
GC 12: 3, 12, 16, 26, 37, 44, 70, 71, 74, 84, 92, 98, 100, 107, 115  
SGP: B1, B4, B11, D3.1, D9.1  
Q4C: 1-3

## Convention on the Rights of the Child and General Comments

The Committee on the Rights of the Child has repeatedly stressed that the ‘best interest of the child’ principle should be applied to the context in question. The rights in the Convention on the Rights of the Child (CRC) should be considered as a whole and a holistic approach is required. The principles of non-discrimination, maximum survival and development, and respect for the views of the child must all be relevant to determining what the best interest of a child is in a particular situation.<sup>25</sup> Assessments or Determinations of best interest must embrace both short- and long-term consideration.<sup>26</sup> The wording of the best interest as ‘a primary consideration’ indicates that the best interest of the child will not always be the single, overriding factor to be considered. There may be competing or conflicting human rights interests. This is a conflict guardians of separated children face in daily practice. Authorities often put the public interests of a restrictive migration policy before the best interest of the child. However according to article 3 paragraph 2 of the CRC the State Parties must take into account the rights and duties of legal guardians. Non-rights-based arguments such as those relating to general migration control, cannot override best interests considerations (General Comment No. 6, paragraph 86). According to article 18 of the CRC legal guardians have the primary responsibility for the upbringing and development of the child.

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<sup>24</sup> See for more information, UNHCR, *Guidelines on Determining the Best Interest of the Child* (2008), available at: <http://www.unhcr.org>.

<sup>25</sup> Hodgkin, R. & Newell, P., *Implementation handbook for the Convention on the Rights of the Child*, UNICEF, Geneva, 2007, p. 38.

<sup>26</sup> See for more information on the best interest assessment (short-term) and best interest determination (long-term), the UNHCR Guidelines on determining the best interest of the child (2008), available at: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=49103ece2>.

The best interests of the child is their fundamental concern. Guardians should therefore advocate that children's interests have been explored and taken into account as a primary consideration.<sup>27</sup>

In General Comment No. 6 the Committee on the Rights of the Child provides more guidance on the obligations deriving from the Convention in relation to separated children. Paragraph 20 states that a determination of the best interest of the child requires a clear and comprehensive assessment of the child's identity, including nationality, upbringing, ethnic, cultural and linguistic background, particular vulnerabilities and protection needs. The assessment should be carried out in a friendly and safe atmosphere by qualified professionals. The guardian should be consulted and informed regarding all actions taken in relation to the child and the guardian should have the authority to be present in all planning and decision-making processes (General Comment No. 6, paragraph 33).

General Comment No. 12 adds that guardians need to explain the extent of the consideration given to the views of the child and the consequences for the child (paragraph 33) and must be aware that they represent exclusively the interest of the child and not the interest of other persons (paragraph 37). There can be no correct application of article 3 of the CRC (best interest of the child) if the components of article 12 (right to be heard) are not respected (paragraph 74).

### **Statement of Good Practice**

According to the Statement of Good Practice (SGP) in all actions concerning the child, the best interests of the child must be the primary consideration (paragraph B1). Separated children should always be enabled and encouraged to voice their views (paragraph B4). It is also of great importance that the decisions taken regarding the separated child are taken with the best interest and the welfare of the child in mind considering their long-term needs (paragraph B11). It is the responsibility of the guardian to ensure that all decisions have the child's best interests as a primary consideration (paragraph D3.1). Separated children, regardless of age, must never be denied prompt access to a process for determining their best interests (paragraph D9.1).

### **Quality4Children standards**

Core Standard 1 and Quality4Children standard 1 reflect that the child's safety and best interests are the highest priority. A multidisciplinary approach is required. Core Standard 1 indicates that the guardian should make sure that an assessment of the best interests of the child is based on the views and opinions of the child and on individual circumstances. This corresponds to Quality4Children standard 2: the child is empowered to participate in the decision-making process. Quality4Children standard 3 emphasizes that the decision-making process involves two questions: which solution meets the best interest of the child and what is the best possible placement for the child. These are also questions a guardian of a separated child needs to answer.

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<sup>27</sup> Hodgkin, R. & Newell, P., *Implementation handbook for the Convention on the Rights of the Child*, UNICEF, Geneva, 2007, p. 38.

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## STANDARD 2

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

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### Indicators:

The guardian:

- A) Provides the child with all relevant information concerning his/her rights and information needed for his/her participation in a language the child understands and in a child friendly way, repeats this information as often as necessary and checks if the child understands and recalls the information.
- B) Listens carefully to the child and takes his/her views into account in the most appropriate way in accordance with his/her age, development and evolving capacities.
- C) Informs the child of the outcome of the decision making process and explains how his/her views were considered.
- D) Manages expectations of the participation of the child.
- E) Makes sure that action or development plans are based on the views of the child and shared with the child.
- F) Ensures that appointments are made with the informed consent of the child.
- G) Informs the child about complaint procedures concerning the guardianship and is open to feedback from the child.
- H) Uses creative tools, like visual materials, where necessary to ensure participation.

### Separated children and guardians

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*"No one listens to me. Not the Social Services, not the guardian. No one. They do not believe the child. They treat you like an adult person. The Social Service did not listen. Sometimes they help you, it depends on who works there, all are not the same."* Separated child, Sweden.

*"In areas relating to the everyday life of a child, his involvement into school, wishes what he would like to do in his leisure time, what is important to him in sense of his future time..in this I find it very important that the child's opinion is heard and that we consider it."* Guardian, Slovenia.

*"When you are a minor, you usually don't get enough explanation. And you probably have a lot of questions to ask, but because you haven't built that big trust with the social worker, because he's not or she's not working with only you (because there are so many people). So you are just another person, another element in the crowd. So you actually have that fear of asking questions."* Former Separated child, Ireland.

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One of the main protection gaps derived from the national reports is the lack of participation of separated children. The children state that they do not receive enough information about their residence procedure, action plans and possibilities to complain about their guardian. Because information is a prerequisite to be able to participate, this has a great effect on the separated children. Guardians mention that they do provide the information but they lack child friendly materials. There is evidence highlighting that good methodologies of guardianship institutions are not sufficiently implemented in practice yet.

There is a gap between the information that is provided to the separated child and the information that he or she can recall. Separated children stated that a possible explanation is the huge amount of information provided to the children and actors involved with the child. Therefore it is essential that guardians do not only provide separated children with information but also ensure that the child understands and recalls the information. Children who were asked their opinion on this matter mentioned that they were not informed to which extent their views were taken seriously in the decision making process. Overall there are warning signs from the eight national reports that this Core Standard for guardians of separated children needs improvement in each country involved in this research.

## References

CRC: 12, 13, 17  
GC 6 24, 25, 29, 37, 40  
GC 12: 11, 12, 13, 16, 21, 22, 25, 26, 28–30, 32–34, 38, 41, 44–47, 71, 79, 80–82, 84, 85, 92, 97, 98, 104, 105, 115, 123, 124, 134  
SGP: B4, B5, B6, C3.3, D3.1  
Q4C: 2, 6, 11

## Convention on the Rights of the Child and General Comments

Article 12 of the CRC emphasizes that States Parties need to assure that the child who is capable of forming his or her own views has the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. The right to be heard and express views, is linked to article 13 and 17 of the CRC on the right to information. This right to information is essential, because it is the precondition of the child's clarified decisions.

In General Comment No. 6 the Committee on the Rights of the Child states that it is imperative that children are provided with all relevant information concerning, for example, their entitlements, services available, the asylum process, family tracing and the situation in the country of origin. As participation is dependent on reliable communication, where necessary, interpreters should be made available at all stages of the procedure (paragraph 25). With respect to guardianship the opinions of the children should be taken into consideration (paragraph 37).

The right of the child to be heard should be considered in the interpretation and implementation of all other rights. General Comment No. 12 focuses entirely on the right of the child to be heard. The Committee on the Rights of the Child stresses the need for information-sharing and dialogue between children and adults based on mutual respect, and in which children can learn how their views and those of adults are taken into account and shape the outcome of such processes (paragraph 3). Expressing views is however a choice for the child, not an obligation (paragraph 16). Non-verbal forms of communication should be included (paragraph 21). Particular attention needs to be paid to the provision and delivery of child-friendly information (paragraph 34). The child has the right to access one's own file (paragraph 38). To guarantee that the views of the child are not only heard as a formality, but are taken seriously, the child has to be informed of the outcome and how his or her views were considered (paragraph 44). The child must have access to appeals and complaints procedures (paragraph 47). The more the child knows, has experienced and understands, the more the legal guardian has to transform direction and guidance into reminders and advice and later on to an exchange on equal footing (paragraph 84).

### **Statement of Good Practice**

The Statement of Good Practice of the Separated Children in Europe Programme states in paragraph B4. that separated children are entitled to be heard directly or via their legal representative or guardian in any legal procedure. Separated children should always be enabled and encouraged to voice their views, concerns and complaints regarding their care and guardianship, education, health services, legal representation and durable and secure solutions. The guardian must provide information such as rights and entitlements, the asylum procedure and other status processes the child is dealing with and information about family tracing and the situation in the country of origin in a language that the child fully understands. The information should also be provided in a child appropriate way so the child can participate in his/her procedure and can recall the information that is given to him or her (paragraph B5.). When a separated child has been a victim of trafficking it is important that the information about the details of all procedures and subsequent consequences are explained to the separated child in a language he or she understands (paragraph C3.3.). It is the responsibility of the guardian to ensure the views and opinions of the separated child are considered in all decisions that will affect the child (paragraph D3.1).

### **Quality4Children standards**

Core Standard 2 for guardians of separated children and Quality4Children standard 2 both reflect the role of the guardian/caregiver to empower and support the child in the decision making process and showing interest in his/her needs. The child should adequately be informed about his/her situation, encouraged to express his/her views and to participate in this process according to his/her level of understanding. The care process should be guided by an individual care plan (Q4C standard 6). Quality4Children standard 11 emphasizes that the child should be empowered to actively participate in making decisions that directly affect his/her life. The child should be recognised as the expert of his/her own life. The child should be informed, listened to and taken seriously, and his/her resilience should be recognised as a strong potential. The child should be encouraged to express feelings and experiences.

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## STANDARD 3

The guardian protects the safety of the child.

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*Indicators:*

The guardian:

- A) Gives the highest possible priority to the child's safety and ensures that his/her own conduct does not put the child at risk.
- B) Makes sure the child knows he/she is welcome to voice anything concerning his/her safety or any danger that he/she feels.
- C) Keeps all information about and from the child confidential unless it is necessary to break confidentiality to keep the child or another child safe and informs the child, when possible, about a confidentiality breach.
- D) Can identify the signals of child abuse and trafficking, acts upon signals of any harm or danger to the child and reports those signals to the relevant child protection authorities.
- E) Is aware of the additional pressure, dangers and risks presented by those who facilitated the child's journey.
- F) Ensures that if a child is a victim of violence, abuse or trafficking the child gets appropriate treatment.
- G) Always reports the disappearance of a child.
- H) Is open about being monitored on his/her own behaviour.

### Separated children and guardians

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*"Now I feel safe. I am now staying in an apartment with other guys and I am fine. But when I was in the first reception centre I felt like I was detained. There was no space and no fresh air. I could not sleep and I protested a lot. Then I have come here and I have met my guardian, the educators and social workers working here and now I feel safe and supported."*  
Separated child, Italy.

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The level of safety separated children experience often depends on the quality of relationships with adults, the location where the children are staying and it depends on the fact if a child is in possession of a residence permit. Children in foster families feel safer than children in large scale housing facilities or detention centres. The children without a residence permit are often afraid of the police. Some guardians did not feel they had enough knowledge about the signals of abuse or trafficking and did not know how to act. There were guardians who did have the knowledge but did not always act upon it. Furthermore it was stated by guardians that it is important that clear information is given to the child on the fact that he or she can still be in contact with the guardian after disappearance from a reception centre or problems with justice. It is imperative that the guardian does not put the child at risk or abuses his/her power. The guardian should be open to internal and external monitoring.

### References

CRC: 2 (2), 3 (3), 6, 16, 19, 20, 22, 32-39  
GC 6: 3, 23, 24, 26, 27, 29, 35, 39, 50-55, 66, 67, 74, 77-78, 82, 84, 92  
GC 12: 63, 64, 79, 117, 118-120, 134 (h)  
SGP: B2, B7, C3.2, D3.1  
Q4C: 1, 12, 13

## **Convention on the Rights of the Child and General Comments**

The core article for the protection against any form of violence is article 19 of the CRC. This article stresses the need for States Parties to take all appropriate measures to protect the child against violence while in the care of a legal guardian. Paragraph 2 of article 19 of the CRC adds that protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child. This article should empower guardians to advocate for the necessary support to protect the child. This could for instance include, advocating for a lower caseload when the guardian is not able to provide sufficient protection to the child. In addition article 20 of the CRC lays down the right to special protection and assistance for a child who is temporarily or permanently deprived of his or her family environment. The child's right to be protected from all forms of exploitation and inhuman or degrading treatment is listed from article 32 to article 39 CRC.

The need to protect the safety of the child is stipulated in General Comment No. 6 (paragraph 3) in which it is stated that there are a number of protection gaps in the treatment of separated children. They face greater risks and are often discriminated against and denied access to food, shelter, housing, health services and education. To the maximum extent possible the child should be protected from violence and exploitation (paragraph 23). States parties must protect the confidentiality of information received from a separated child, consistent with the obligation to protect the child's rights, including the right to privacy (paragraph 29). To prevent abuse, review mechanisms shall be introduced and implemented to monitor the quality of guardianship (paragraph 35). It is important for guardians that they advocate that the child is not returned to the country of origin, unless it is in their best interests and appropriate measures for their protection have been taken, when the child is at risk of being re-trafficked (paragraph 53). Paragraph 78 stresses the importance of the right to protection under all norms of the Convention as long as the child remains within the States' territories, irrespective of the fact if a child is granted refugee protection or complementary forms of protection. The survival of the child is of paramount importance and a precondition for the enjoyment of any other rights (paragraph 82).

In General Comment No. 12. the Committee on the Rights of the Child urges to provide the space for children to freely express their views and give these views due weight in all aspects of prevention, reporting and monitoring violence against them (paragraph 119). All children's institutions should establish access to report in confidence and safety (paragraph 120). Children must be aware of their right to be protected from harm and know where to go for help if needed (paragraph 134 h).

## **Statement of Good Practice**

The Statement of Good Practice emphasizes that denial of a child's rights and child abuse are never acceptable (paragraph B2). Confidentiality should only be comprised, on a need to know basis, when it is necessary to protect the child, or another person, from serious harm (paragraph B7). The guardian must give priority to the protection of trafficked children (paragraph C3.2). In order to protect the child's safety, the guardian has the responsibility to ensure suitable care and accommodation that is appropriate for the separated child (paragraph D3.1).

## **Quality4Children standards**

Core Standard 3 and Quality4Children standard 1 reflect that the child's safety and best interests are the highest priority. From the eight national reports the researchers learned that the feeling of safety often was linked to the reception facility where the separated children were housed. Quality4Children standard 12 reflects the need for appropriate living conditions: the living standards and infrastructure should satisfy the child's needs in respect to comfort, security, healthy living conditions as well as uninhibited access to education and to the community. Quality4Children standard 13 adds that the caregiver should ensure that a child with special needs receives professional treatment if necessary.

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## STANDARD 4

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

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*Indicators:*

The guardian:

- A) Is an assertive, committed and brave watchdog, dedicated to defending the rights of the child.
- B) Is not afraid of taking different points of view from the authorities and acts independently, solely based on the best interests of the child.
- C) Opposes decisions which are not taken in the best interests of the child and pursues fair procedures concerning the child.
- D) Shows emotional strength to deal with wearing situations, frustrations and hostility or pressure through third parties.
- E) Is present during the determination of the best interest of the child at important decisions.

### Separated children and guardians

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*"The guardian stands up for me, if there is any issue or something, they would be there straight away."* Separated child, Ireland.

*"I feel that it is the duty of the representative to be a spokesman for the young people. You feel obligated to very thoroughly understand the legislative issues and it is important to study these legislative issues."*  
Guardian, Denmark.

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Some of the indicators listed at Core Standard 4 resemble the indicators of Core Standard 1 (the guardian advocates that all decisions are taken in the best interest of the child). Core Standard 4 however emphasizes the need of the guardian to be a watch dog when it comes to the rights of the child. A separated child mentioned that it is important that the guardian advocates on behalf of the child because the guardian can see 'inside' the child, whilst the lawyers and authorities cannot. Guardians should be able to speak on behalf of the child. Good communication with authorities is essential and not being afraid to oppose decisions, which are not taken in the best interest of the child. Some guardians mentioned that they did not have the mandate to be present during the determination of the best interest of the child or during meetings where important decisions were made. In that case the guardian should advocate to be present during these meetings. Core Standard 4 highlights that the guardian should feel empowered to act as a watchdog and advocate in relation to the rights of the child.

See also Core Standard 1 on the role of the guardian to advocate that all decisions are taken in the best interest of the child.

### References

CRC: 3, 5, 18 (1 and 2)  
GC 6: 33, 38  
GC 12: 37  
SGP: D3.1, D4.1, D11.2  
Q4C: -

### **Convention on the Rights of the Child and General Comments**

Article 5 of the CRC points out that the States Parties should respect the legal guardian to assist the child in the exercise of his or her rights. The legal guardian has the primary responsibility for the upbringing and development of the child. Guardians should receive appropriate assistance in the performance of their child-rearing responsibilities (article 18 paragraph 2 of the CRC).

General Comment No. 6 states that the guardian should ensure that the interests of the child are safeguarded and that the child's legal, social, health, psychological, material and educational needs are appropriately covered. The rights and best interests of separated children should be safeguarded and promoted by organizations working on behalf of them (paragraph 38).

The guardian must be aware that he or she represents exclusively the interests of the child and not the interest of other persons, institutions or bodies. Codes of conduct should be developed for representatives who are appointed to represent the child's views (General Comment No. 12, paragraph 37).

### **Statement of Good Practice**

According to the Statement of Good Practice it is the responsibility of the guardian to advocate on the separated child's behalf (paragraph D3.1). It is important that substantive interviews with the separated child and immigration authorities are always carried out in the presence of a guardian or a legal counsel (paragraph D4.1). Separated children must be accompanied by their guardian at each interview (paragraph D11.2).

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## STANDARD 5

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

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*Indicators:*

The guardian:

- A) Keeps in contact with and is the focal point for:
  - The lawyer,
  - Reception and social workers (mentors),
  - (Psycho)social and medical care givers,
  - Migration authorities,
  - School teachers,
  - Foster parents,
  - Social Services,
  - (Extended) family members in the host country and/or the country of origin,
  - Other relevant actors.
- B) Informs the child about his/her rights and obligations in relation to the other actors.
- C) Assists in establishing links with the child's community and developing key one on one relationships that gives the child a sense of belonging to a family or group.
- D) Ensures that he/she is informed about decisions which have an impact on the child and is present at key meetings and interviews where decisions are made.

### Separated children and guardians

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*"The 'helper's conference' takes place every six months. We talk for example about school, health, leisure time.. They ask questions but most of the time we just talk."* Separated child, Germany.

*"I have no problems with separate authorities. They work very well all on their own. The problem is that they do not seem to talk to each other. And you never know who to turn to in order to talk about an individual child, because there is no one keeping track of anything."* Guardian, Sweden.

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Guardians are the bridge between and focal point for the child and all actors involved in the life of the child. In countries where no guardian is appointed a focal point is missing and children do not know who is responsible and who they need to ask certain questions to. Guardians who act as a case manager find it an interesting and valuable part of their work. Fine-tuning of tasks between the different actors and communication are essential. The cooperation and defining of tasks, roles and responsibilities between guardians and mentors or social workers is of specific importance. The guardian monitors and supports the work of other actors involved (lawyers, social workers etc.) and the guardian is the final person responsible for ensuring that every decision is made in the best interests of the child. Separated children mentioned that they found it very important that the guardian was a link between them and the local people in the host country.

## References

CRC:	3, 5, 14 (2), 18 (2), 27 (2)
GC 6:	33–38, 72
GC 12:	91, 92
SGP:	D3.1
Q4C:	1

### **Convention on the Rights of the Child and General Comments**

The role of the guardian as a case manager is not explicitly mentioned in the CRC but the guardian is mentioned as the central figure in the life of the child. In article 5 of the CRC, for instance, it is stated that States Parties shall respect the responsibilities, rights and duties of (...) legal guardians in a manner consistent with the evolving capacities of the child.

In General Comment No. 6 the Committee on the Rights of the child states that whenever action concerning the separated child is taken, the guardian should be informed and consulted. It is necessary for the guardian to have the authority to be present at all procedures concerning the child and have the expertise in the field of childcare. A guardian has to act as a link between the separated child and his or her care-providers (paragraph 33–38).

General Comment No. 12 reiterates that the rights and responsibilities of legal guardians need to be recognized (paragraph 91–92).

### **Statement of Good Practice**

According to the Statement of Good Practice the determination of a separated child's best interests must be a multidisciplinary exercise involving relevant actors and undertaken by specialists and experts who work with children (paragraph B1). It is the responsibility of the guardian to ensure that the separated child has suitable legal representation that assist the child in procedures that will address protection claims and durable solutions. The guardian should also ensure transparency and cooperation between the child and the various organizations who may provide them with services (paragraph D3.1).

### **Quality4Children standards**

This Core Standard corresponds to Quality4Children standard 1: the child's safety and best interests are the highest priority. The responsible person must involve all relevant parties who can contribute to clarifying the child's situation and help find a solution. This person listens to all parties involved, treats them with equal respect and presents the child's options honestly.

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**STANDARD 6**

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

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*Indicators:*

The guardian:

- A) Challenges others to prove their proposed solutions and implementation plan take the best interests of the child as a primary consideration, while taking at least the following into account:
- The child's family situation,
  - The situation in the country of origin,
  - The adequacy of concrete care arrangements to ensure a safe and secure environment,
  - The safety and risks the child is exposed to,
  - The level of integration in the host country,
  - The mental and physical health of the child,
  - The possibilities of development in the various options.
- B) Supports the reunification of the child with his/her family when this is in the best interests of the child taking into account any danger related to the exile grounds for the child or his/her family.
- The guardian has personal contact with family members and organizations in the country of origin after consent of the child, and checks their abilities to take care of the child in a safe and appropriate way,
  - The guardian considers the signals of trafficking related to the role of family members.
- C) Supports the integration of the child in the host country when this is in the best interests of the child, giving particular consideration to:
- Language,
  - Social contacts,
  - Education and employment.
- D) Supports a safe return to the home country when this is in the best interests of the child.
- Depending upon the wishes of the child the guardian accompanies the returning child or he/she arranges somebody else to do this.
  - The guardian oversees the preparation and monitoring of a life project/reintegration plan before and after the return.
  - The guardian tries to be informed about the well being of the child after he/she is returned to the home country.
- E) Prepares the child for all predictable changes which will occur after he/she turns eighteen.

### **Separated children and guardians**

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*"I never talk to my guardian about Angola. Maybe he should know a little bit more about the country because he needs to understand where I come from and what is going on there. I also think guardians should sometimes need to join children who need to return. After all the child is his responsibility." Separated child, the Netherlands.*

*"If they now say that there is an excellent orphanage in Kabul, I would like to know something about it, because I doubt it. I would like to actually know and be there to make sure that the handing over happens in a correct manner. If you live in an orphanage and get out when you are eighteen, you have no chance to get a good life in these countries because it is all run by clans." Guardian, Denmark.*

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*“The guardian should be able to assist some children after they turn eighteen. Not only the children who do not have a residence permit yet. There are also children who have a residence permit but they cannot even cook for themselves or take care of themselves. It should be possible for a guardian to spend some hours helping these youngsters.”*

Separated child, the Netherlands.

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A durable solution for the separated child can roughly be subcategorized by three options; integration in the host country, return to the country of origin or third country resettlement or transfer. Staying in the host country as an undocumented person is (by most people) not seen as a durable and safe solution for the separated child. Separated children mention that they are not sufficiently involved in the decision making process on a durable solution and are not prepared for the changes when they turn eighteen. Guardians stated that they often found it difficult to take part in the decision making process in relation to a durable solution. They often do not have the power to make decisions about the durable solution for the specific child. However guardians and separated children stated that the guardian should have a role when it comes to the durable solution. They should try to make a shadow-assessment and challenge others to prove that the durable solution is in the best interest of the child.

In relation to return as an option for a durable solution the separated children mention the importance of safety guarantees. The children feel their guardian has little information on the situation in their country of origin and safety is not guaranteed. The children stress the need of guardians to gain more knowledge on the situation in the country of origin but also to get in contact with networks of children in the country of origin (because they experience the ‘real situation’). Some children mention that they would have liked to return years ago but they could not be reunited with family members. During the years that followed the children integrated in the host country and did not want to return anymore. This emphasizes the need for timely procedures. Guardians also state that they want to learn more about the country of origin and find it difficult to discuss return with separated children. Because no monitoring system is in place to check how separated children who did return to their country of origin or who have been reunited with family members are doing, guardians find it difficult to convince separated children that it can be a durable solution to return to the country of origin.

Other parties can propose a different durable solution than the guardian. It is the task of the guardian to challenge these parties to prove that their proposed solution takes the best interest of the child as a primary consideration. It appeared that volunteer guardians more often supported a separated child after they turned eighteen. For other guardians this was not seen as a possibility because the financing of the guardianship would stop at the moment the child turned eighteen.

## References

CRC: 3, 6, 10, 16, 18, 19, 20, 22, 24, 27, 28, 34-38  
GC 6: 18-22, 26-28, 31, 40, 51-53, 66, 69, 74-94  
GC 12: 12, 32, 45, 47, 67, 70, 71, 124  
SGP: B11, D3, D7, D13.3, D14, D15  
Q4C: 3, 6-8, 14-18

## **Convention on the Rights of the Child and General Comments**

Multiple articles of the CRC focus directly or indirectly on the identification and implementation of a durable solution for the child. The Committee on the Rights of the Child calls for the individualization of solutions based on the actual situation of the child, including his/her personal, family and social situation.<sup>28</sup> The Committee recognizes that there are obstacles towards individualization of solutions, such as lack of time, however the Committee notes that one important obstacle is often the pattern of thought, the lack of creativity, the lack of will to change old habits and customs and gaps in training or in the knowledge of existing resources.<sup>29</sup>

In General Comment No. 6 the need for an individual rather than a collective assessment is emphasized as well (paragraph 18). A child shall not return to a country where there are substantial grounds for believing that there is a real risk of irreparable harm to the child (paragraph 27). Due regard ought to be taken to the continuity in a child's upbringing and to the ethnic, religious, cultural and linguistic background and the opinions of children in relation to care arrangements (paragraph 40). The ultimate aim in addressing the fate of separated children is to identify a durable solution that addresses all their protection needs, takes into account the child's views and, wherever possible, leads to overcoming the situation of a child being separated. Efforts to find durable solutions should be initiated and implemented without undue delay (paragraph 79). Family reunification, return and other forms of durable solutions are discussed from paragraph 80–94.

In relation to the durable solution it is essential that the separated child has the possibility to participate in the decision making process. General Comment No. 12 stipulates that the decision maker has to inform the child of the outcome of the process and needs to explain how his or her views were considered (paragraph 45). In immigration and asylum proceedings it is imperative that the right to express one's own views is fully implemented. Asylum seeking children may need effective family tracing and relevant information about the situation in the country of origin to determine their best interests (paragraph 124).

## **Statement of Good Practice**

For all separated children there must be a procedure to determine the child's best interests, which will serve as a primary consideration in identifying the protection needs and durable solution for each child. Decisions that are taken regarding the separated child must take into account, to the greatest extent possible, the long-term best interests and welfare of the child (paragraph B11). Solutions should also be concrete, secure and sustainable. The guardian has the responsibility to contribute to a durable solution for the separated child (paragraph D3.1). Guardians should be appointed until a durable solution has been identified and implemented. This may extend beyond the child's eighteenth birthday. A separated child should only be returned to their country of origin when that is considered to be in their best interests (paragraph D3.1). Tracing of parents and family needs to be undertaken as soon as possible, but this must only be done where it will not danger the child, or members of the child's family (paragraph D7). If family reunification should take place a careful assessment of the suitability of the family member to provide care for the child must be carried out (paragraph D13.3). Temporary residency is not a durable solution and children who turn eighteen should not receive lesser treatment than national children leaving care and should be offered an after-care programme (paragraph D14.7). Mechanisms must be established to effectively monitor the ongoing wellbeing of the child after return (paragraph D15.5).

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<sup>28</sup> Hodgkin, R. & Newell, P., *Implementation handbook for the Convention on the Rights of the Child*, UNICEF, Geneva, 2007, p. 279.

<sup>29</sup> Hodgkin, R. & Newell, P., *Implementation handbook for the Convention on the Rights of the Child*, UNICEF, Geneva, 2007, p. 279.

**Quality4Children standards**

Core Standard 6 for guardians corresponds to Quality4Children standard 3 which states that a professional decision-making process should ensure the best possible care for the child: which solution meets the best interests of the child and what is the best possible placement for the child? The process is guided by an individual care plan (Quality4Children standard 7).

The child should be supported to maintain contact with family members when this is safe. This corresponds to Quality4Children standard 8: the child maintains contact with family members if this is in the best interests of the child.

The need of the guardian to prepare the separated child for all predictable changes which will occur after turning eighteen corresponds to Quality4Children standards 15 to 18. The child should be empowered to participate in the leaving care process and the care organization should continue offering support and the opportunity to maintain contact when the young adult reaches the age of majority.

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## STANDARD 7

The guardian treats the child with respect and dignity.

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*Indicators:*

The guardian:

- A) Treats the child with an unprejudiced, open attitude.
- B) Listens to the child's views and concerns and takes them seriously.
- C) Demonstrates the appropriate behaviour and attitude he/she expects from the child too.
- D) Shows interest in the child's life by asking questions without being too obtrusive.
- E) Is sensible to cultural and/or religious differences.
- F) Respects the child's right to privacy and informs the child about the possibility to see other professionals on his/her own.
- G) Supports the child in maintaining and/or creating his/her identity and self-esteem.
- H) Shows a flexible approach tailored to individual needs of the child.
- I) Does not breach the right of the child to maintain his/her physical and mental integrity.

### Separated children and guardians

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*"It's hard to be alone, you know. I think a good guardian is someone who understands and feels you who does not only think about you as a refugee, who came from another country, who is not from here. The guardian is someone who really looks at you as a person who needs help, who needs to be protected."* Separated child, Slovenia.

*"I went a lot to the theatre with one of my boys. He didn't understand the language being spoken but he didn't need to in order to experience the dancing. It can be hard to have a conversation but you can go out and have an experience together."* Guardian, Denmark.

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From the interviews with the separated children the researchers learned that it was very important to listen to the child carefully. It is necessary to talk to the child privately. Some children mentioned that their foster parents were always present during the conversations with the guardian and therefore they could not speak freely. The children highly appreciated the guardian when he or she phoned the child or talked to the child without a specific reason (just to ask how the child was doing). Children mentioned that migration authorities always look at them with suspicion and they needed their guardian for support. An unprejudiced attitude was perceived as very important to feel respected by the guardian. Some children mentioned that they felt discriminated against in the host country. As also stated at Core Standard 3 it is imperative that the guardian does not put the child at risk or abuses his/her power and does not breach the right of the child to maintain his/her physical and mental integrity.

### References

CRC: 7, 8, 12, 13, 14, 16, 30  
GC 6: 18, 29, 42  
GC 12: 3, 23, 81, 101, 115, 134  
SGP: B8, D3, D.8.1.2.  
Q4C: 10, 14

### **Convention on the Rights of the Child and General Comments**

The importance to treat the child with respect and dignity is emphasized in the preamble of the CRC. States parties should fully prepare the child to live an individual life in society, in the spirit of peace, dignity, tolerance, freedom, equality and solidarity. For the full and harmonious development of his or her personality, the child should grow up in an atmosphere of happiness, love and understanding. The child has the right to respect of his or her identity (article 8 of the CRC), freedom of expression, thought, conscience, religion and privacy (article 12–16 of the CRC). The child has the right to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language (article 30 of the CRC).

General Comment No. 6 adds that measures should be taken to address possible misperceptions and stigmatization of separated children within society (paragraph 18). The children have the right to maintain their cultural identity and values, including their native language (paragraph 42).

Information-sharing and dialogue between children and adults must be based on mutual respect, through which children can learn how their views and those of adults are taken into account and shape the outcome of such processes (General Comment No. 12, paragraph 3). An environment must be ensured in which the child feels respected and secure when freely expressing his or her opinions (paragraph 23). The right to privacy is linked to the access that children should have to confidential medical counselling and advice without consent of the guardian (paragraph 101). Children's preferences and capacities should be taken into account in relation to play, recreation, physical and cultural activities (paragraph 115). Furthermore children's views have to be treated with respect and they should be provided with opportunities to initiate ideas and activities (paragraph 134 sub c).

### **Statement of Good Practice**

In paragraph B8 the Statement of Good Practice emphasizes that separated children must be supported in maintaining their mother tongue and links with their culture and religion (see also paragraph D8.1.2).

### **Quality4Children standards**

This Core Standard corresponds to Quality4Children standard 10: The caregiver's relationship with the child is based on understanding and respect. The caregiver pays individual attention to the child and makes a conscious effort to understand him/her. The caregiver always communicates openly, honestly and respectfully with the child and supports the child in developing self-esteem (Quality4Children standard 14).

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## STANDARD 8

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

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### *Indicators:*

The guardian:

- A) Knows the child personally.
- B) Keeps all information about and from the child confidential unless it is necessary to break confidentiality to keep the child or another child safe and informs the child, when possible, about a confidentiality breach.
- C) Does not judge the child's reasons for exile or allow this to effect his/her relationship with the child.
- D) Is always honest with the child and keeps his/her promises.
- E) Gives clear information about his role and limitations in a way that the child understands and can recall.
- F) Demonstrates to the child that he/she really cares for the child – that he/she works from the heart – and that he/she feels responsible for the child.
- G) Makes clear to the child that a child who disappears is always welcome to contact the guardian.
- H) Pays attention to verbal, nonverbal and emotional communication.
- I) Is empathic towards the child and gives moral and emotional support.

### **Separated children and guardians**

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*“If I would be a guardian I would want them to think about me as a friend. If they wish to tell me something they are not afraid of me. Or if they tell me something, I don't immediately say ‘no, that will never happen’. I want them to be able to tell everything.”* Separated child, Sweden.

*“The role of the guardian is clearly a role which implies an emotional involvement. At the very beginning of experience I was worried about that, but finally I have found out it is life that gives us ‘rules’ and I have realized that it is very important for children to have some focal points, even from an emotional point of view.”* Guardian, Italy.

*“You should, first of all, reassure them. Maybe organize an activity where they can feel at ease. They need the time to be able to talk among each other and with the persons who want to help. Afterwards you can start talking about their rights and the tasks of a guardian. But they have to be at ease. You know, young people like me feel often alone and abandoned. If you do not reassure them and you just list their rights they won't care. It is not easy for us to know who we can trust.”*  
Former separated child, Belgium.

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Based on the input from separated children the researchers have chosen to develop two standards. One Core Standard for guardians in relation to the treatment of the child with respect and dignity and one for the relationship with the child based on trust, openness and confidentiality. Separated children stated that there is a difference when it comes to these standards. Some children do respect their guardian but they do not trust their guardian. Guardians need to be aware of this difference from the view of the child and work on both Core Standards.

Separated children found the personal relationship with a guardian to be very important. Separated children who had a volunteer guardian stated more often that they had a personal bond with the guardian. There is a role for States to make sure that guardians are able to spend time with the children in order to establish a relationship of trust.

When a guardian has a caseload of two hundred children it is impossible to get to know the children personally and build a trusting relationship. In this case the responsibility of the guardian should be to confront the responsible system and advocate for a lower caseload in order to fulfil the Core Standards for guardians.

‘Keeping promises’ was one of the qualifications separated children often mentioned as highly important for their guardian. Not all separated children saw their guardian as a trusted person but sometimes they had a mentor or foster family that they could trust. Guardians reportedly had greater difficulty in forming trusting relationships with highly traumatised children, street children and children with learning difficulties and mental health problems. Children choose who to trust and who not to trust. However there are signals from the national reports that children trusted their guardian more when they spent more time with the children and had been accessible for the child in times of need. It is important that the guardian ensures the separated child has a person to confide in and that the separated child feels that he/she can talk to the guardian confidentially. This is important in order for the guardian to have a clear picture about the situation of the child and to build on a durable solution together with the child. Some guardians also mentioned that it was important, in all procedures and contact with the child, not to lose sight of the fact that separated children need love and respect just as other children.

## References

CRC: 3, 5, 12, 13, 14, 18 (1 and 2), 19, 20  
GC 6: 29, 30  
GC 12: 21, 134  
SGP: B7, C3.2, D8.1.2  
Q4C: 10

## Convention on the Rights of the Child and General Comments

The relationship of trust, openness and confidentiality is only indirectly referred to in articles of the CRC. It is, for instance, a consequence of the right of the child to receive appropriate direction and guidance consistent with the evolving capacities of the child (article 5 CRC).

General Comment No. 6 includes that States parties must protect the confidentiality of information received in relation to a separated child (paragraph 29 and 30).

The need to include non-verbal forms of communication is expressed in General Comment No. 12 (paragraph 21).

## Statement of Good Practice

The Statement of Good Practice states that confidentiality should only be compromised, on a need to know basis, when it is necessary to protect the child, or another person, from serious harm (paragraph B7). Specifically trafficked children will need time to build trusting relationships with professional staff and to feel safe and secure (paragraph C3.2).

## Quality4Children standards

This Core Standard corresponds to Quality4Children standard 10: The caregiver pays individual attention to the child and makes a conscious effort to build up trust and to understand him/her. The caregiver always communicates openly, honestly and respectfully with the child.

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## STANDARD 9      The guardian is accessible.

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### *Indicators:*

The guardian:

- A) Sees the child as soon as possible after his/her appointment in a face to face talk.
- B) Pays visits to the child on a frequent basis.
- C) Can be reached easily by the child by phone or E-mail.
- D) Communicates in a way which fits the age and development of the child.
- E) Should make use of interpreters when necessary.
- F) The guardian lives near enough to the child to be able to respond quickly to difficulties.
- G) Informs the child where and when they can meet.
- H) Contacts the child from time to time to keep in touch also when there is no specific need to do so.

### **Separated children and guardians**

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*"I meet children whenever it is necessary. Having a store, they can also easily reach me. All children have my mobile number and I have theirs. I am also in contact with children who already turned eighteen."* Guardian, Italy.

*"It varies very much how often we see each other. But maybe two times a month, sometimes once a month. But we often talk on the phone. I think that we call each other maybe once a day or once every other day. I ask her how she's feeling and she asks me. You know, who I've been hanging out with, what I've had to eat and all that."* Separated child, Denmark.

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The separated children brought up the importance of the accessibility of the guardians. Often guardians were not present during important procedures, like the age assessment procedure or migration interviews. The accessibility of guardians varied extremely amongst the different researched countries. Volunteer guardians who had the responsibility for one child often had more frequent contact with the child. It is important that guardians are supported to be accessible for the child. There was one example of a volunteer guardian who lived hundreds of kilometres away from the child. When the child had problems the guardian needed to pay for a ticket to fly to the child. This is an unwanted situation. Guardians need to be compensated to visit the child and they need to be accessible in urgent times of need. When a guardian does not fulfil this Core Standard he or she needs to advocate for change in the best interest of the child. The children stressed it was important that the guardian contacted them just to ask how they were doing. Furthermore they wanted to be able to talk to their guardian without others (for example foster parents) present in the room and they wanted to be able to contact the guardian when necessary. Therefore they need the direct contact information of guardians. Some guardians gave their mobile number and/or email address to the separated child whilst others did not. This differs amongst countries and amongst guardians in one country. All guardians should ensure that the child can contact the guardian directly and easily.

### **References**

- CRC: 5, 18 (2), 20
- GC 6: 21, 24, 25, 33-39, 69, 72
- GC 12: 134 (e)
- SGP: B6
- Q4C: 1

### **Convention on the Rights of the Child and General Comments**

The accessibility of the guardian is linked to the respect that States parties need to have for the responsibilities, rights and duties of legal guardians (article 5 CRC) and the obligation for States parties to render appropriate assistance to legal guardians (article 18 paragraph 2 CRC). Separated children are entitled to special protection and assistance (article 20 CRC) and an accessible guardian is a prerequisite for this right.

General Comment no. 6 states that a guardian should be appointed as soon as the separated child is identified (paragraph 21 and 24). When necessary, interpreters should be made available at all stages of the procedure (paragraph 25). The guardian should be present during all interviews in relation to refugee status assessment (paragraph 72).

Consideration needs to be given to the fact that children will need differing levels of support and forms of involvement according to their age and evolving capacities (General Comment No. 12, paragraph 134 sub 3).

### **Statement of Good Practice**

The use of suitably trained interpreters, when necessary, is described in paragraph B6. of the Statement of Good Practice and the need to be present during interviews is incorporated in paragraph D11.2.

### **Quality4Children standards**

Quality4Children standard 1 also emphasizes that the responsible person for the child should always be available.

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**STANDARD 10** The guardian is equipped with relevant professional knowledge and competences.

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*Indicators:*

The guardian:

- A) Has working knowledge about:
  - Children's rights,
  - Migration and asylum law,
  - Child developmental psychology,
  - Trauma,
  - Trafficking,
  - Intercultural communication,
  - Child abuse and protection,
  - Social welfare,
  - The situation and life in the home country of the child.
- B) Knows his/her personal and professional limits and is open to improve his/her knowledge, methodology and attitude.
- C) Is proactive in identifying learning and development needs and requests training when necessary.
- D) Manages his/her caseload to give due attention to all the children he/she works with.
- E) Is well organized, keeps records and is accountable.
- F) Can manage costs and available resources.
- G) Works according to a set methodology.
- H) Seeks support and counselling whenever necessary and exchanges experiences with his/her colleagues on a regular basis.
- I) Is open to supervision and monitoring.
- J) Reflects on his/her actions, role and motivation.

### **Separated children and guardians**

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*"I would have liked to learn more about the cultural background of separated children."* Guardian, the Netherlands.

*"I would have liked to get a debriefing of a psychologist. I wish at times that I had more knowledge and was more aware of things; how to discover certain things, what to do in specific situations when the children answer in a special way, how to handle children who do very dangerous stuff to themselves. It should be part of the assignment that we have to go to meetings or education, and it should be obligatory as well, that we are updated. It should be for all guardians and it would benefit the children as well."* Guardian, Sweden.

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In many researched countries there were no rules or agreements in relation to professional background, responsibilities of guardians in practice and education or training before a guardian could start to work with a separated child. Sometimes an introduction course was provided and in other cases guardians needed to follow training courses regularly. Because the educational background of guardians differs amongst and within countries it occurs that guardians have different priorities in their work. A social worker would focus on the social aspects of the tasks, whilst a lawyer would focus on the legal aspects of the job. This caused a protection gap for separated children because the protection they receive from guardians differed tremendously. The Core Standard lists the knowledge required mentioned by the guardians. The guardians can advocate to receive training

on these issues to comply with the Core Standards for guardians and guardians can search for information on these issues themselves.

## References

CRC: 3 (3), 18 (2), 19, 20  
GC 6: 33, 95-97  
GC12: 7, 34, 36, 49, 134 (g), 135  
SGP: B10, D3.3  
Q4C: 9

## Convention on the Rights of the Child and General Comments

The right for guardians to be trained is indirectly referred to in the CRC. Article 3 paragraph 3 of the CRC for instance highlights that States Parties need to ensure that institutions responsible for the care or protection of children shall conform with the standards established by competent authorities. To conform to these standards guardians need to be equipped with the relevant professional knowledge and competences. Article 18 paragraph 2 of the CRC adds, that legal guardians should receive appropriate assistance to perform their child-rearing responsibilities. Improving the knowledge of guardians via training and education is part of this assistance.

General Comment No. 6 mentions that a guardian should have the necessary expertise in the field of childcare (paragraph 33). Paragraph 95 names the importance of a specialized training of the legal guardian dealing with separated children. Several key-elements necessary for appropriate training are: knowledge on the principles and provisions of the Convention, knowledge of the country of origin of the separated child, appropriate interview techniques, knowledge on child development and psychology, and cultural sensitivity and intercultural communication (paragraph 96).

General Comment No. 12 adds that a child cannot be heard effectively without appropriately trained staff (paragraph 34). All professionals should be trained on article 12 CRC (the right to be heard) and its application in practice (paragraph 49). Children themselves can be involved as trainers and facilitators on how to promote effective participation (paragraph 134 sub g).

## Statement of Good Practice

According to the Statement of Good Practice all those working with separated children must receive appropriate training on the rights and needs of children, cultural factors and the development of the appropriate skills for communicating with them (paragraph B10). Guardians will require specialist skills in working with separated children in order to carry out their role effectively. They must receive on-going training and professional support and must not hold positions which could lead to a potential conflict of interest with the best interest of the child (paragraph D3.3).

## Quality4Children standards

Core Standard 10 corresponds to Quality4Children standard 9. Both standards reflect the need for qualified personnel, ongoing training and monitoring.

## 7 FUTURE PERSPECTIVE

With the publication of this international report on the Core Standards for guardians a first step has been taken to close the protection gap for separated children in Europe. The researchers are aware that a lot of work needs to be done before the standards can be fully implemented in practice and the protection gap for separated children in Europe is closed.

To achieve the mission of this project to ‘Close the protection gap for separated children in Europe’ the two following objectives were identified:

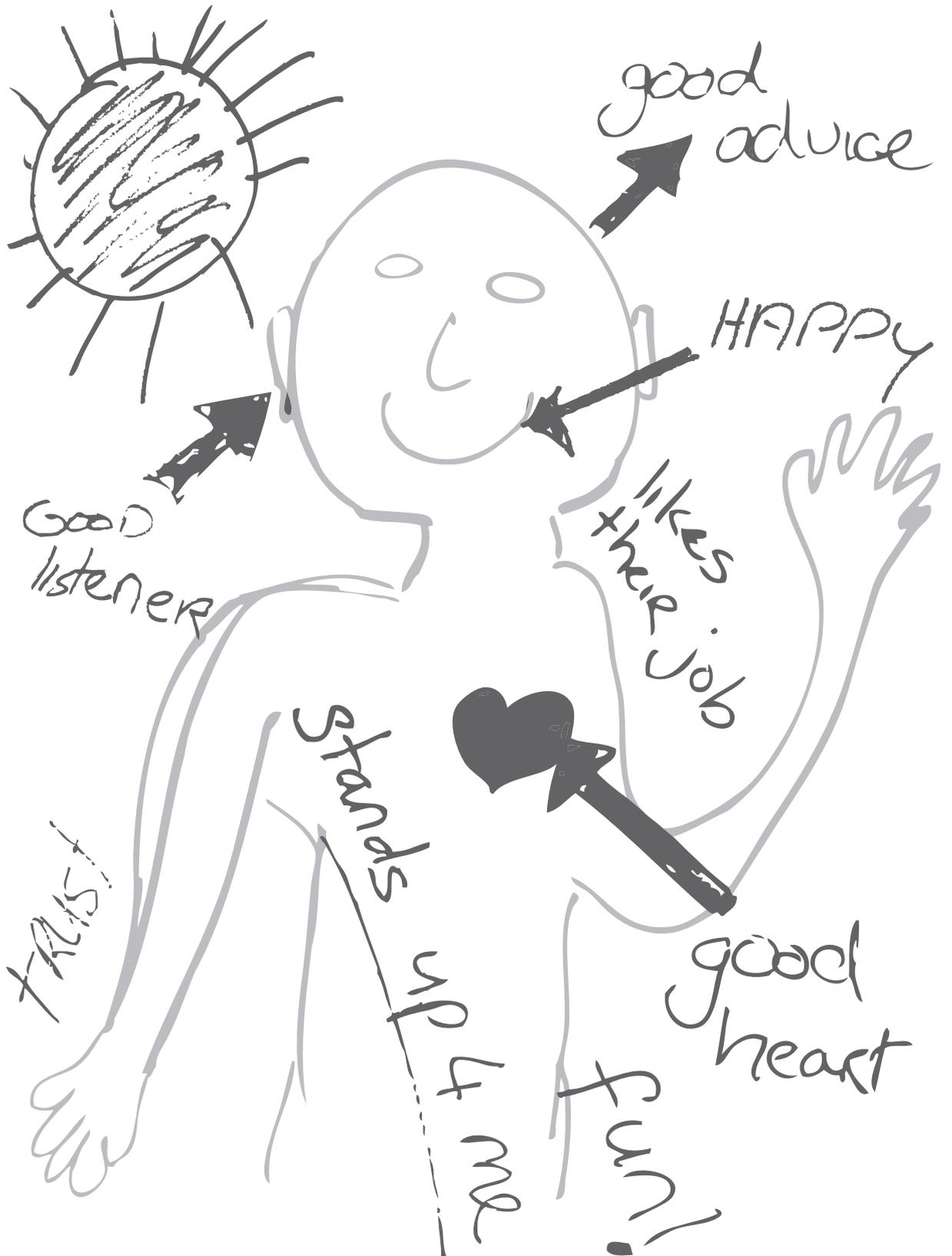
- To promote the Core Standards and their approach and philosophy at national and European level.
- To advocate for the adoption of the Core Standards for guardians of separated children at national and European level.

To promote the implementation of the Core Standards for guardians in practice a practical training will be organized for guardians in every research country.

Furthermore the research partners will:

- Communicate the standards as much as possible in consultations, presentations and conferences.
- Seek for collaboration with as much relevant actors as possible on national and international level.
- Investigate the possibilities for additional projects to support the implementation of the Core Standards for guardians in Europe.







# ANNEX 1.

## LEGISLATIVE AND POLICY FRAMEWORK

### Introduction

Several researches and practices illustrate that guardianship systems differ extremely within the European Union.<sup>30</sup> Guardians can be volunteers, freelancers or paid professionals appointed by a government agency and/or by a Non Governmental Organization. In some countries specialized guardianship institutions and legislation apply to separated children, in other countries guardians work in the same Youth Care framework as for national children. Responsibilities, tasks and qualifications can vary per guardian and their caseload can vary from one child up to two hundred children.<sup>31</sup> Furthermore the mandate of the guardian to decide in the best interest of the child differs amongst the researched countries.

The type of protection and care a separated child receives from a guardian therefore depends upon the country which the separated child has (often randomly) entered. Next to the discrepancies between countries there is often a different level of protection on regional level and a discrepancy between legislation and practice. The current differences in the level of protection separated children receive in European countries and within a country is not acceptable. The aim of this project is to close the protection gap for separated children in Europe by developing Core Standards for guardians based on the views of separated children in relation to their rights according to the Convention on the Rights of the Child.

In this chapter a (non-exhaustive) legislative framework of international legislation, soft law and researches are discussed. For an overview of the national legislation in relation to guardianship the researchers refer to the eight national reports.<sup>32</sup>

### Convention on the Rights of the Child (1989)

The Convention on the Rights of the Child (CRC) is the key legal instrument to protect all children in the context of migration. The Convention applies to every child, regardless of his or her nationality or immigration status.<sup>33</sup> The Convention has been adopted on 20 November 1989 and was ratified by every EU member state.<sup>34</sup> Several rights in the CRC are of particular importance for separated children and guardianship. These articles will be discussed in this legislative framework.

The four general principles of the Convention on the Rights of the Child (CRC) are: the right to non-discrimination (article 2 CRC), the right to life and development (article 6 CRC), the right to be heard (article 12 CRC) and the primary consideration of the child's best interests (article 3 CRC). In article 3 CRC the legal guardian is mentioned in the Convention for the first time.

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30 See for example the study of the European Network of Guardianship Institutions (ENGI) at: [www.engi.eu](http://www.engi.eu), the European Migration Network, *Unaccompanied Minors – an EU comparative study*, May 2010, p. 36 and France Terre d'Asile, *the Reception and care of unaccompanied minors in eight countries of the European Union*, October 2010, p. 21.

31 In Germany for example a full-time guardian in Berlin, Frankfurt and Giessen is in charge of about 100 pupils or more. The voluntary guardians that have been interviewed have one to three pupils. In Italy a guardian in Rome can easily have a caseload between 100 to 200 pupils. There is no maximum caseload for an employed guardian in Italy. In the Netherlands and Belgium the average caseload of an employed guardian is about 25 pupils. In Slovenia and Sweden the caseload of a guardian differs between two to eleven pupils. The caseload of a guardian (social worker) in Ireland is twelve to seventeen pupils.

32 The eight national reports are available at: <http://www.defenceforchildren.nl/p/43/522/mo89-mc97/adults-%28eng%29>.

33 See also the Study of the Office of the United Nations High Commissioner for Human Rights on challenges and best practices in the implementation of the international framework for the protection of the rights of the child in the context of migration, 5 July 2010 (United Nations General Assembly: A/HRC/15/29).

34 The Convention on the Rights of the Child is not adopted by the United States and Somalia. All EU member States have adopted the Convention. The Committee on the Rights of the Child (CRC) supervises the implementation of the Convention on the Rights of the Child (and its two optional protocols).

### **ARTICLE 3:**

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

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, **taking into account the rights and duties of his or her parents, legal guardians**, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children **shall conform with the standards established by competent authorities**, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.”

Article 3 paragraph 2 of the CRC stipulates that States Parties need to respect the rights and duties of legal guardians to ensure the protection and care for the child. This best interest of the child principle is of special importance in all legal decision making procedures concerning children.<sup>35</sup> The Core Standards for guardians of separated children are an implementation of this article.

Article 3 paragraph 3 of the CRC emphasizes that standards must be established for institutions, services and facilities for children and the State must ensure that the standards are complied with through appropriate monitoring.

The following article that points out that the States Parties should respect the legal guardians to assist the child in the exercise of his or her rights is article 5 of the CRC:

### **ARTICLE 5:**

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

### **ARTICLE 18 adds:**

1. “States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, **legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.**”

2. “For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render **appropriate assistance to parents and legal guardians** in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

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<sup>35</sup> See also: M.E. Kalverboer, A.E. Zijlstra & E.J. Knorth, *The Developmental Consequences for Asylum-seeking Children Living With the Prospect for Five Years or More of Enforced Return to their Home Country*, European Journal of Migration and Law 11(1), p. 41–61.

Reading article 18 of the CRC in conjunction with article 3 and 5 of the CRC, makes clear that the primary concern of legal guardians is the responsibility to ensure the best interest of the child, in all actions concerning the child, and that States should respect this responsibility.<sup>36</sup>

States have to ensure that guardians are able to provide special protection and assistance to children who are temporarily or permanently deprived of their family environment. This includes separated children.

**ARTICLE 20:**

1. “A **child temporarily or permanently deprived of his or her family environment**, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.”

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

3. “Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background.”

Article 20 phrases that States have to ‘ensure alternative care’. States Parties have the obligation to provide special protection and assistance to separated children according to article 20 of the CRC.<sup>37</sup> The appointment of a legal guardian is part of providing alternative care.

**ARTICLE 22:**

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

2. “For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations **to protect and assist such a child** and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, **the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason**, as set forth in the present Convention.”

Article 22 of the CRC emphasizes that States parties need to ensure that a separated child seeking refugee status should receive appropriate protection and humanitarian assistance in the enjoyment of his/her rights and should be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment.

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<sup>36</sup> Hodgkin, R. & Newell, P., *Implementation handbook for the Convention on the Rights of the Child*, UNICEF: 2007, p. 231.

<sup>37</sup> United Nations Committee on the Rights of the Child, *General Comment no. 6, on the Treatment of Unaccompanied and Separated Children outside their Country of Origin* (2005), CRC/GC/2005/6, paragraph 39.

### **General Comment No. 6 (2005)**

This Comment<sup>38</sup> has been developed to improve the situation of separated children who find themselves outside of their country of origin by providing clear guidance to States on the obligations deriving from the Convention with regard to separated children. The Committee on the Rights of the Child identifies protection gaps in the treatment of separated children, including greater risks of sexual exploitation and abuse, detention, discrimination and denial of access to food, shelter, housing, health services, education and in some situations no access to guardianship systems.<sup>39</sup> The General Comment stipulates the importance of a best interest of the child determination, the appointment of a competent guardian and the participation of the separated child. The need for review mechanisms to monitor the quality of the exercise of guardianship is recognized.<sup>40</sup> In chapter six references are made to specific paragraphs of General Comment No. 6 with every Core Standard for guardians of separated children in Europe.

### **General Comment No. 12 (2009)**

Because there was a need for a better understanding of what article 12 CRC (the right to be heard) entails and how to fully implement it for every child, General Comment No. 12 was developed.<sup>41</sup> The Committee on the Rights of the Child stresses that expressing views is a choice of a child, not an obligation. States have to ensure that the child receives all necessary information and advice.<sup>42</sup> The right to information is essential, because it is the precondition of the child's clarified decisions.<sup>43</sup> The important role of the guardian in relation to the right to be heard is stressed frequently in this General Comment. In chapter six references are made to specific paragraphs of General Comment No. 12 with every Core Standard for guardians of separated children in Europe.

### **Council of Europe Convention on Action against trafficking of Human Beings (2005)**

The Council of Europe Convention on Action against trafficking of Human Beings includes some articles which explicitly mention children.<sup>44</sup> By creating a safe environment States need to take specific measures to decrease the vulnerability for children in relation to trafficking. When a possible victim of trafficking is detected the guardians must act on behalf and in the best interests of the child. The guardian needs to take the necessary steps to ensure that the identity and nationality of the child is determined and must do everything in his or her power to trace family members when this is in the best interest of the child. Victims need to be supported in their physical, psychological and social recovery. In case of return to the country of origin, States parties need to guarantee the right to education and adequate care and shelter. Children should not be send back to their country of origin when, after a risk and safety assessment, there are signs that the return is not in the best interest of the child.

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38 United Nations Committee on the Rights of the Child, *General Comment no. 6, on the Treatment of Unaccompanied and Separated Children outside their Country of Origin* (2005), CRC/GC/2005/ paragraph 3.

39 *Idem*, paragraph 3.

40 *Idem*, paragraph 19, 21 and 35.

41 United Nations Committee on the Rights of the Child, *General Comment No. 12, The right of the child to be heard* (2009), CRC/C/GC/12, paragraph 4.

42 *Idem*, paragraph 16.

43 *Idem*, paragraph 25.

44 This Convention is ratified by 34 countries, see for more information: <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=197&CM=1&DF=&CL=ENG>. See for articles which explicitly mention children: article 5, 10, 11, 12, 14, 28, and 30.

### **Council of Europe Life projects for unaccompanied migrant minors (2007)**

The Committee of Ministers adopted on 12 July 2007 a recommendation to contribute to finding lasting solutions for and with unaccompanied migrant minors that will help them to build life projects guaranteeing them a better future.<sup>45</sup> Life projects are individual tools undertaken by the unaccompanied migrant minor and the competent authorities. They define the minor's future prospects, promote the best interest of the child without discrimination and provide a long-term response to the needs of both the minor and the parties concerned.<sup>46</sup>

A life project should take into account the specific situation of each child.

In particular the following elements:

- i. The minor's personal profile: age, gender, identity, legal status, culture of origin, level of education, mental development and maturity, possible traumas suffered, health, vocational experience and skills.
- ii. The minor's migration itinerary: factors influencing his or her departure, circumstances of the journey, duration of residence and living arrangements in countries of transit and in Europe.
- iii. The minor's family environment and particularly the nature of his or her family relations.
- iv. The minor's expectations, wishes and perceptions.
- v. The situation in the country of origin: the political, legislative, socio-economic, educative and cultural context, the human rights situation (taking account of ethnic, religious and sex discrimination and other potential dangers), the availability of appropriate care and support, including reception.
- vi. The special guarantees afforded to unaccompanied minors seeking asylum, in particular regarding non-refoulement and the identification of durable solutions.
- vii. The situation in the host country: the political, legislative and socio-cultural context.

The need for a life project and the participation of the separated child in relation to a durable solution is incorporated in multiple Core Standards for guardians of separated children in Europe.

### **Green paper on the future Common European Asylum System (2007)**

The *EU Green Paper* states that unaccompanied children are a more vulnerable category of asylum seekers. Ways need to be found to enhance national capacities to address the special needs of those vulnerable asylum seekers by reaching out to professionals in the working field<sup>47</sup>. The special needs of unaccompanied children exist in adequate medical and psychological assistance and counseling, appropriate interview techniques and more detailed rules regarding to what should be relevant to the assessment of claims based on gender- and child-specific persecution.<sup>48</sup>

*"This could involve specific EU-wide training programs for such professionals, the establishment at EU-level of mechanisms for the dissemination of best practices at operational level or even the establishment of common standards regarding the qualifications and skills required and, possibly, of a monitoring mechanism aimed at ensuring high standards of quality in services provided to more vulnerable people."*<sup>49</sup>

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45 Recommendation CM/Rec(2007)9 of the Committee of Ministers to member states on life projects for unaccompanied migrant minors, on the 12th of July 2007, p. 7.

46 *Idem*, p. 8.

47 Commission of the European Communities, *Green paper on the future Common European Asylum System*, COM(2007) 301, paragraph 2.4.1.

48 *Idem*.

49 *Idem*.

The Core Standards for guardians of separated children in Europe could serve as a monitoring mechanism aimed at ensuring high standards of quality.

### **Stockholm Programme (2009)**

The Stockholm Programme provides the framework for EU police and customs cooperation, rescue services, criminal and civil law cooperation, asylum, migration and visa policy for the period of five years, starting in 2010.<sup>50</sup> One of its encompassed areas is Migration and Asylum.

Through the Stockholm Programme<sup>51</sup> the Council of Europe calls upon the Commission to identify measures in order to protect and promote the rights of the child. Children in particularly vulnerable situations, including separated children, are given special attention. In the upcoming years priority will be given to the international reception and protection of separated children.

### **EU Action Plan (2010)**

In the context of the Stockholm Programme the European Commission has drawn the EU Action Plan. This plan is drawn to increase the protection of unaccompanied minors entering the EU, encompassing common standards for guardianship and legal representation.<sup>52</sup> According to the EU Action Plan, unaccompanied minors should always be placed in appropriate accommodation and should be treated in a manner that is compatible with their best interests.<sup>53</sup> Several paragraphs in relation to guardianship are adopted in the EU Action Plan:

*“Member states are invited to: (...) – consider introducing review mechanisms to **monitor the quality of guardianship** in order to ensure that the best interests of the child are represented throughout the decision-making process and, in particular, to prevent abuse.”<sup>54</sup>*

*“The Commission will use available funds effectively, to **support European networks of guardians**, to exchange best practices and develop guidelines, common curricula and training, etc.”<sup>55</sup>*

*“(...) **guardianship is provided** for asylum seekers and assistance in the return process differ, the need for continuity of assistance in asylum and return procedures must be taken into account.”<sup>56</sup>*

In case the separated child has to return to the country of origin, the return has to be conducted in a safe, child-appropriate and gender-sensitive manner to ensure that the child returns in full respect of international standards and that he or she will be accepted in the home environment. In order to ensure that no major problems arise in case the separated child returns to a country, it is of great importance to monitor the reintegration in that country.<sup>57</sup>

The Core Standards for guardians of Separated Children listed in this international report offer a review mechanism to monitor the quality of guardianship.

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<sup>50</sup> Council of the European Union, *Stockholm Programme – An open and secure European Union and third countries*, document 17024/09, Brussels, December 2009.

<sup>51</sup> Idem.

<sup>52</sup> European Commission, *Communication from the commission to the European Parliament and the Council, EU Action Plan on Unaccompanied Minors*, COM(2010)213 final, Brussels, May 2010.

<sup>53</sup> Idem, p. 9.

<sup>54</sup> Idem, p. 10.

<sup>55</sup> Idem, p. 11.

<sup>56</sup> Idem, p. 12.

<sup>57</sup> Idem.

## European Union: Directives in relation to guardians

The importance of appointing a representative for separated children has been recognized in multiple Directives. These Directives are mentioned briefly.

### Directive 2003/9/EC (Reception Directive)

This Directive<sup>58</sup> lays down minimum standards for the reception of asylum seekers. The Directive demands that Member States shall ensure that applicants for asylum are provided with information of organizations of persons that provide specific legal assistance and that this information is in writing, and, as far as possible, in a language that the applicants may reasonably be supposed to understand.<sup>59</sup>

Article 18 of the Directive states about minors:

*“The best interests of the child shall be a primary consideration for Member States when implementing the provisions of this Directive that involve minors.”*<sup>60</sup>

With regard to minors States have to ensure that the children have access to rehabilitation services for minors and that appropriate mental health care is provided when needed. Article 19 states:

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

This broad definition of ‘necessary representation’ offers a lot of room for interpretation. All European countries will qualify from this perspective even though the level of protection of separated children differs.

The Directive points out that the professionalism of people working with minors is very important. These people should be trained in an appropriate way. They should also be bound by the confidentiality principle as defined in national law.<sup>61</sup>

### 2004/83/EC (Qualification Directive)

This Directive lays down the minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.<sup>62</sup> According to article 30 paragraph 1 of this Directive, the States shall as soon as possible take the necessary measures to ensure the representation of unaccompanied minors by legal guardians, or other organization responsible for the well-being of these minors or any other appropriate representative based on legislation or Court order.<sup>63</sup>

Just as the definition of ‘necessary representation’ in the Reception Directive, the definition of ‘representation of unaccompanied minors’ is very broad. The current protection gaps separated children in Europe face, highlights that these broad definitions do not offer sufficient protection.

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58 Council Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers, article 19 paragraph 1.

59 Idem, article 5 paragraph 1.

60 Idem, article 18 paragraph 1.

61 Idem.

62 Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

63 Idem, article 30 paragraph 1.

### **2011/36/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, strengthens the attention to the role of the guardian in relation to unaccompanied victims of trafficking in human beings. It is recognized that unaccompanied children need specific assistance and support due to their situation of particular vulnerability. The necessary measures should be taken to ensure that, where appropriate, a guardian and/or representative is appointed in order to safeguard the minor's best interests.<sup>64</sup> The directive also emphasizes that a decision on the future of each unaccompanied child victim should be taken within the shortest possible period of time with a view to finding durable solutions based on an individual assessment of the best interests of the child, which should be a primary consideration.

As stated before the definition 'guardian and/or representative' offers too much room for interpretation in the different EU Member States.

### **Other Directives**

Also in other Directives of the EU<sup>65</sup> the importance of appointing a representative for separated children has been recognized. The Directives state that a representative should be appointed as soon as possible and needs of the separated child should be properly foreseen according to this appointment. The Returns Directive defines that a decision on return cannot be taken before granting a separated child assistance by suitable bodies other than the authorities enforcing return.<sup>66</sup> Member States should take into account the specific circumstances of the individual child's case, such as length of stay, children attending school, and the existence of other family and social links.<sup>67</sup> In case a separated child returns to the country of origin, the authorities of the Member State should be satisfied that the child returns to a member of his or her family, a nominated guardian or reception facilities in the State of return.<sup>68</sup>

### **Statement of Good Practice (2009)**

The Statement of Good Practice of the Separated Children in Europe Programme offers an overview of the policies and practices required to implement and protect the rights of separated children in Europe.<sup>69</sup> The important role of the guardian is emphasized in multiple paragraphs of the Statement of Good Practice. The Core Standards for guardians of separated children have been developed in line with the Statement of Good Practice. In the frame of reference (chapter six) of the Core Standards for guardians references are made to the specific paragraphs of the Statement of Good Practice that relate to the standard.

### **Quality4Children standards for Out-of-Home Child Care**

An inspiration for the development of the Core Standards for guardians have been the Quality4Children standards for Out-of-Home Child Care.<sup>70</sup> The Quality4Children standards have been developed in order to improve the (youth) care situation for hundreds of thousands of young people. This study provided a useful framework but needed to be specified for separated children.

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64 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, article 14, paragraph 2 and article 16 paragraph 3.

65 Council Directive 2001/55/EC, on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof and Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status and Council Directive 2008/115/EC of the European Parliament and of the European Council on common standards and procedures in Member States for returning illegally staying third-country nationals.

66 Council Directive 2008/115/EC of the European Parliament and of the European Council on common standards and procedures in Member States for returning illegally staying third-country nationals.

67 *Idem*, article 7.2.

68 *Idem*, article 10.2.

69 See for the Statement of Good Practice: [http://www.separated-children-europe-programme.org/separated\\_children/good\\_practice/index.html](http://www.separated-children-europe-programme.org/separated_children/good_practice/index.html).

70 See for the Quality4Children standards: <http://www.quality4children.info>.

Their voices had not been heard yet. The Core Standards have been developed as much as possible in line with the Quality4Children standards. In the frame of reference (chapter six) of the Core Standards for guardians references are made to the Quality4Children standards.

### **UNHCR Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum (1997)**

In these guidelines the basic principle is the 'best interest of the child'.<sup>71</sup> Several guidelines are provided in relation to the appointment of a guardian, health care, detention and education. As stated by the UNHCR in paragraph 5.7 of the guidelines a guardian is appointed as soon as possible after identifying the unaccompanied child. He or she has to guarantee the entitlement of the child to special care and protection.

### **UNHCR Guidelines on Determining the Best Interests of the Child (2008)**

In order to ensure the optimal implementation of the best interests principle in actions affecting individual children, UNHCR describes two procedures that may be applied, depending on the circumstances: 1) the best interests assessment or 2) the best interests determination (BID).<sup>72</sup>

A best interests assessment is an assessment made by staff taking action with regard to individual children to ensure that such action gives a primary consideration to the child's best interests, except when a BID procedure is required. The assessment can be done alone or in consultation with others by staff with the required expertise and entails the participation of the child. A BID describes the formal process with strict procedural safeguards designed to determine the child's best interests for particularly important decisions affecting the child. It should facilitate adequate child participation without discrimination, involve decision-makers with relevant areas of expertise, and balance all relevant factors in order to assess the best option.

### **UN Guidelines for the Alternative Care of Children (2010)**

These guidelines apply to the alternative formal care for all persons under the age of eighteen years, unless majority is gained earlier.<sup>73</sup> It is applicable for all children, including separated children.<sup>74</sup> The guidelines are intended to enhance the implementation of the CRC and of other international instruments regarding the protection and well-being of separated children.<sup>75</sup>

According to paragraph 101 of the guideline a 'competent entity' should be provided to separated children:

*"In situations where the child's parents are absent or are incapable of making day-to-day decisions in the best interest of the child, (...), a designated or **competent entity should be vested with the legal right and responsibility to make such decisions in the place of parents, in full consultation with the child.** States should ensure that a mechanism is in place for designating such an individual or entity."*<sup>76</sup>

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71 UNCHR, Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum, 1997.

72 The UNHCR Guidelines on Determining the Best Interest of the Child (2008) are available at: <http://www.unhcr.org>.

73 UN Guidelines for the Alternative Care of Children, sixty fourth session, 24th of February 2010, paragraph 27.

74 Idem, paragraph 29 (a) (ii).

75 Idem, paragraph 29 (a) (ii).

76 Idem, paragraph 101.

In the UN Alternative Care guidelines it is stated that persons exercising the legal responsibility should be reputable individuals. The main qualifications this representative should have according to the guidelines are stated in **paragraph 103**:

1. Relevant knowledge of children's issues;
2. Ability to work directly with children;
3. Understanding of any special and cultural needs of the children to be entrusted to them (legal representatives).<sup>77</sup>

The guidelines discuss amongst others the training and qualifications of the guardian or other entity. In **paragraph 115** it states:

*“Training should be provided to all carers on the rights of children without parental care and on the specific vulnerability of children, in particularly difficult situations, such as emergency placements or placements outside their area of habitual residence. Cultural, social, gender and religious sensitization should also be assured. States should also provide adequate resources and channels for the recognition of these professionals in order to favor the implementation of these provisions.”<sup>78</sup>*

The training elements and qualifications of the representative of a separated child are also incorporated in the Core Standards for guardians of separated children in Europe.

### **Other researches**

As concluded in the *EMN synthesis report*<sup>79</sup> the role of the guardian from the initial stages of entry of a separated child appears to be crucial in determining the most appropriate course of action to take, based on the best interests of the child. As soon as a separated child is identified a guardian or adviser should be appointed, and the guardianship should be maintained until the child reaches majority or has left the territory permanently.<sup>80</sup>

According to an IOM survey and conference report<sup>81</sup> guardians are responsible for taking all necessary measures concerning the tracing of parents and the return of the child, when possible and in the best interest of the child; at least when there is an independent system of guardianship in the member state.

A report by the European Union Agency for Fundamental Rights on separated, asylum-seeking children mentions the variation of the frequency and quality of contact between guardians and children.<sup>82</sup> Some children that were interviewed for the report expressed that they wished to meet their guardians more often to establish a more personal relationship with their guardian.<sup>83</sup>

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77 Resolution adopted by the General Assembly of the United Nations, 64/142 Guidelines for the Alternative Care of Children, 24th of February 2010, p. 16.

78 *Idem*, p. 15.

79 EMN, Policies on Reception, return and Integration arrangements for, and numbers of, Unaccompanied Minors – an EU comparative study, May 2010, p. 54.

80 EMN, Policies on Reception, return and Integration arrangements for, and numbers of, Unaccompanied Minors – an EU comparative study, May 2010, p. 54 and Position Paper (2010) of the Commissioner for Human Rights, *Positions on the Rights of Minor Migrants in an irregular situation*, June 2010.

81 IOM, Counseling, return and reintegration of (ex) unaccompanied minor migrants project, IOM office, 2009.

82 European Union Agency for Fundamental Rights FRA, Separated, asylum-seeking children in European Union Member States, Summary Report, April 2010, p. 34.

83 *Idem*.

## ANNEX 2: NATIONAL ADVISORY COUNCILS

### Belgium:

Reception centre “Minor Ndako”, jurist specialized in working with minors with vulnerable profiles	Teun Degans
Guardian, jurist and former director experienced with separated children with a “drifters “ profile	Anne Graindorge
Specialized lawyer for separated children	Géraldine Lenelle
Employee-guardian of Caritas International	David Lowyck
Independent guardian and former director of an organization of guardians	Hubert Mariage
Social worker in the reception centre (Orientation and Observation centre) of the Fedasil (Federal Agency for the reception of asylum seekers)	Marie-Emmanuelle Moreau
Service Droit des Jeunes and Defence for Children International - Belgium	Benoît van Keirsbilck
Jurist of the CBAR (refugee protection service) and former coordinator of the Platform “minors in exile”	Charlotte van Zeebroeck

### Denmark:

Department of Asylum of the Danish Red Cross	Mrs. Karen-Inger Thorsen
Volunteer Unit. The Danish Refugee Council	Mrs. Rie Græsberg
Senior researcher of the SFI	Mrs. Kathrine Vitus

### Germany:

Akinda c/o Xenion e.V.	Claudia Schippel
B-UMF, consultant on the project ‘Quality management of services directed at separated children in Germany’	Thomas Berthold
Jugendamt Main Taunus Kreis: social services at the Youth Welfare Office	Irmela Wiesinger
FH Münster: execution of a comprehensive empirical study on guardianship in Germany	Prof. Dr. Peter Hansbauer
Diakonie Wuppertal	Katrin Löffelhardt
Munich: entered Germany as separated child	Hassan Ali Djan

**Ireland:**

UNICEF - Ireland	Barney Shiels
Crosscare (Migrant Project - care team for separated children in Hostel accommodation)	Gordon Hill
Barnardos	Itayi Viriri & Catherine Joyce
International Organisation for Migration	Brid Mc Loughlin
Irish Red Cross	Jennifer Wilson
University College Cork (Department of Applied Social Studies)	Dr. Shirley Martin
The Health Service Executive - Principal Social Worker for the Dublin Social Work Team for Separated Children	Thomas Dunning
Children's Rights Alliance	Maria Corbett
UNHCR	Peter Fitzmaurice

**Italy:**

Official of the Data Protection Authority, previously working with the Unaccompanied Children Committee at the Ministry of Welfare and Labour	Stefania Congia
University of Bologna (professor of Human Rights)	Gustavo Gozzi
Social Services of Guardianship Services: municipality of Bologna	Annalisa Faccini
INDiMi (National Institute for Children's Rights) and Italian Representative to the UN Committee on the Rights of the Child	Luigi Citarella
Public Guardian for Children (Region Veneto)	Lucio Strumendo
UNICEF - Italy	Laura Baldassarre
Ombudsman for Civil Rights (region of Emilia Romagna)	Daniele Lugli
ASGI (Association for Juridical Studies on Migration)	Elena Rozzi
Defence for Children - Italy and consultant	Pippo Costella

**The Netherlands:**

Stichting NIDOS (the Dutch Guardianship institution)	mr. Elsbeth Faber
Raad voor de Kinderbescherming (Child Protection Council)	mr. dr. Goos Cardol
University of Groningen (Department of Orthopedagogics)	mr. dr. Margrite Kalverboer
UNICEF - the Netherlands	mr. Karin Kloosterboer
St. Alexander (Dutch partner in the Quality4Children project)	drs. Adimka Uzozie

**Slovenia:**

The Peace Institute, Institute for Contemporary Social and Political Studies	Katarina Vučko
Legal-Informational Centre for Non-Governmental Organisations – PIC	Anja Gašperlin
The Human Rights Ombudsman of the Republic of Slovenia	Lan Vošnjak
IOM Ljubljana	Dean Šušmelj
The Ministry of the Interior, Directorate for migration and integration	Sonja Gole-Ašanin
UNICEF Slovenia	Alja Otavnik
Slovene Philanthropy	Aida Hadžiahmetović
Ministry of the Interior, Directorate for migration and integration, International Protection Division – Asylum Home	Katarina Štrukelj

**Sweden:**

Advocacy and Membership, Save the Children Sweden	Jessica Storm
Region East, Save the Children Sweden	Barbro Alm
Region South, Save the Children Sweden	Maja Salsbäck
Region West, Save the Children Sweden	Linus Torgeby
Lessebo Municipality, Director for Work and Integration, as well as UngBo (group accommodation centre for separated children)	Katarina Olander

## ANNEX 3: CONVENTION ON THE RIGHTS OF THE CHILD

### Convention on the Rights of the Child

Adopted and opened for signature, ratification and accession by General Assembly

resolution 44/25 of 20 November 1989

Entry into force 2 September 1990, in accordance with article 49

### Preamble

The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth”,

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules); and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict, Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child, Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

## **PART I**

### **Article 1**

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

### **Article 2**

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

### **Article 3**

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

### **Article 4**

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

### **Article 5**

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

### **Article 6**

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

## **Article 7**

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

## **Article 8**

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

## **Article 9**

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.
2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.
3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.
4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

## **Article 10**

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.
2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (*ordre public*), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

## **Article 11**

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.
2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

#### **Article 12**

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

#### **Article 13**

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.
2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - (a) For respect of the rights or reputations of others; or
  - (b) For the protection of national security or of public order (ordre public), or of public health or morals.

#### **Article 14**

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

#### **Article 15**

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.
2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

#### **Article 16**

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honour and reputation.
2. The child has the right to the protection of the law against such interference or attacks.

#### **Article 17**

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

To this end, States Parties shall:

- (a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;
- (b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;
- (c) Encourage the production and dissemination of children's books;
- (d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;

- (e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

#### **Article 18**

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.
2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.
3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

#### **Article 19**

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

#### **Article 20**

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
2. States Parties shall in accordance with their national laws ensure alternative care for such a child.
3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

#### **Article 21**

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

- (a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;
- (b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;
- (c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
- (d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;
- (e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

#### **Article 22**

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.
2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

#### **Article 23**

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.
2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.
3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development
4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

#### **Article 24**

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.
2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:
  - (a) To diminish infant and child mortality;
  - (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
  - (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
  - (d) To ensure appropriate pre-natal and post-natal health care for mothers;

- (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;
  - (f) To develop preventive health care, guidance for parents and family planning education and services.
3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.
  4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

**Article 25**

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

**Article 26**

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.
2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

**Article 27**

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.
3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.
4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

**Article 28**

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
  - (a) Make primary education compulsory and available free to all;
  - (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
  - (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
  - (d) Make educational and vocational information and guidance available and accessible to all children;

- (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.
- 2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.
- 3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

#### **Article 29**

- 1. States Parties agree that the education of the child shall be directed to:
  - (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
  - (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
  - (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
  - (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
  - (e) The development of respect for the natural environment.
- 2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

#### **Article 30**

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

#### **Article 31**

- 1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.
- 2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

#### **Article 32**

- 1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.
- 2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:
  - (a) Provide for a minimum age or minimum ages for admission to employment;
  - (b) Provide for appropriate regulation of the hours and conditions of employment;
  - (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

### **Article 33**

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

### **Article 34**

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

### **Article 35**

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

### **Article 36**

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

### **Article 37**

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

### **Article 38**

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.
3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.
4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

### Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

### Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.
2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:
  - (a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;
  - (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:
    - (i) To be presumed innocent until proven guilty according to law;
    - (ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;
    - (iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;
    - (iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
    - (v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;
    - (vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;
    - (vii) To have his or her privacy fully respected at all stages of the proceedings.
3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:
  - (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;
  - (b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.
4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

### Article 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

- (a) The law of a State party; or
- (b) International law in force for that State.

## **PART II**

### **Article 42**

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

### **Article 43**

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.
2. The Committee shall consist of eighteen experts of high moral standing and recognized competence in the field covered by this Convention.<sup>1/</sup> The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.
3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.
4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.
5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.
6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.
7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.
8. The Committee shall establish its own rules of procedure.
9. The Committee shall elect its officers for a period of two years.
10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.
11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.
12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

### **Article 44**

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights
  - (a) Within two years of the entry into force of the Convention for the State Party concerned;
  - (b) Thereafter every five years.

2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfillment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.
3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.
4. The Committee may request from States Parties further information relevant to the implementation of the Convention.
5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.
6. States Parties shall make their reports widely available to the public in their own countries.

#### **Article 45**

In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

- (a) The specialized agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;
- (b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;
- (c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;
- (d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

### **PART III**

#### **Article 46**

The present Convention shall be open for signature by all States.

#### **Article 47**

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

#### **Article 48**

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

#### **Article 49**

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

#### **Article 50**

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.
2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.
3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

#### **Article 51**

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.
2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.
3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General

#### **Article 52**

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

#### **Article 53**

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

#### **Article 54**

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations. In witness thereof the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.



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### Core Standards for guardians of separated children in Europe:

- Standard 1**            The guardian advocates for all decisions to be taken in the best interests of the child, aimed at the protection and development of the child.
- Standard 2**            The guardian ensures the child's participation in every decision which affects the child.
- Standard 3**            The guardian protects the safety of the child.
- Standard 4**            The guardian acts as an advocate for the rights of the child.
- Standard 5**            The guardian is a bridge between and focal point for the child and other actors involved.
- Standard 6**            The guardian ensures the timely identification and implementation of a durable solution.
- Standard 7**            The guardian treats the child with respect and dignity.
- Standard 8**            The guardian forms a relationship with the child built on mutual trust, openness & confidentiality.
- Standard 9**            The guardian is accessible.
- Standard 10**           The guardian is equipped with relevant professional knowledge and competences.

