

How to Communicate and Work with Children Subject to Alternatives to Detention

Training Materials on Alternatives to Detention for Migrant Children



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for Migrant Children

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This training module is part of a series of educational material addressed to protecting the rights of migrant children subjected or potentially subjected to measures as alternatives to detention. It provides a practical resource to accompany training module III on the right to be heard. Its objective is to assist police officers, state authorities, interpreters, guardians, social workers, judges, lawyers, volunteers and others in how to best to communicate with children and what ethical issues might be at stake.

I. General Principles

Migrant children are first and foremost children

When practitioners (including representatives of state authorities, lawyers, social workers or guardians) communicate with migrant and refugee children, they should consider them first and foremost as children, meaning that all rights of the child under international law must be ensured, irrespective of their migration status.¹ These include the right to be heard under Article 12 of the Convention on the Rights of the Child (CRC) (see Training Module III and section 3 on the “participation model” below).

Best interests of the child

Child-friendly information and communication is an essential component of a “best-interests of the child” approach that should always be followed in child-related procedures. In all actions concerning children, including migrant children, the principle of the best interests of the child must be a primary consideration (Article 3 CRC). The best interest of the child is an overarching component of the substantive human rights of the child, and a fundamental interpretative legal principle.² It must be based on an assessment of all elements of a child’s interests in a specific situation.

Child-friendly communication and active participation

Child-friendly communication necessarily has impact on the capacity of children to actively participate in the procedures affecting them, including procedures on alternatives to detention in the immigration context. Assessment and determination of the child’s best interests requires the participation of the child. **The child’s views must be taken into consideration in determining their best interests.** Their views must be given due weight.³

Adapting communication to the individual situation

The provision of child-friendly information requires that information **be adapted to a child’s age, maturity, language, gender and culture.**⁴ The individual situation of the child must be taken into account and communication has to be adjusted based on the child’s personal circumstances. In order to ensure a communication is child-friendly, practitioners must fully assess the factual situation and adopt an approach free of pre-judgements. **The age and maturity of the child, in light of evolving capacities, should be taken into account to define both the content of information and the verbal or non-verbal ways in which it is communicated.**⁵

II. Setting the aims of the communication

The methods and content of a child-friendly communication have to be identified against the background of the best interests of the child. All actors involved in the communication should also be aware of the main goals to be reached within a procedure involving a migrant child, including procedures related to the application of alternatives to detention.

When authorities are deciding on the application of detention or other care arrangements / alternatives to detention, they should:

- consider that detention is never in the best interests of the child;
- the choice of measures to be applied in lieu of detention measures should be similarly informed by the principle of best interests.

¹ [Joint general comment No. 3 \(2017\) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 \(2017\) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration](#), CMW/C/GC/3-CRC/C/GC/22, 16 November 2017.

² UN Committee on the Rights of the Child, General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (art.3, para.1 of the CRC), UN Doc. CRC/C/GC/14, (29 May 2013).

³ CRC General Comment No. 12 (2009) on the Right of the Child to be Heard, [CRC/C/GC/12, para 44](#).

⁴ Council of Europe Committee of Ministers Guidelines on child-friendly justice, adopted on 17 November 2010, Guideline 2.

⁵ CRC General Comment No. 24 on Children’s rights in juvenile justice, [CRC/C/GC/24](#), para 18. Council of Europe, How to Convey Child Friendly Information to Children in Migration, 2018, p. 12, available at: <https://rm.coe.int/how-to-convey-child-friendly-information-to-children-in-migration-a-ha/1680902f91>.

During the assessment, **a number of elements should be taken into account:**

a) The **identity and age** of the child (particularly with regard to unaccompanied children)

EASO, Practical Guide on Age Assessment, 2018:

“Prior to the examination of the application for international protection, the child must receive all the relevant information in a child-friendly manner and in a language which he or she is able to understand. The child’s understanding of the information must be ensured before proceeding with the assessment. Such information should be provided free of charge and the questions of the applicant or the guardian/ representative should be attended to. It is crucial to ensure the applicant understands the process, the objective and the consequences (e.g. he or she can explain it with his or her own words). Some applicants might not dare to ask questions due to their age, cultural background or psychological state. The use of child-friendly materials or materials adjusted to the specific needs of the person may be of assistance in helping the applicant to understand the process; however, in practice, the skills and empathic and supportive attitude of the person providing the information are of utmost importance for a successful outcome. Information must be provided systematically during the process and evidence of this provision of information should be documented (when it was provided, by whom, etc.). The information should cover at least the following content:

- there are doubts regarding the age and the reasons for these doubts;
- the possibility that the age may be estimated by an age assessment which may include a medical examination if the applicant provides consent;
- information on the method and on the process (what the methods being used are, why these specific methods are preferred, the accuracy and intrusiveness of the method, the impact that the specific method may have, etc.);
- doubts and concerns must be addressed, the systematic provision of information and a good understanding of the process and its purposes are essential to ease the consent gathering;
- the rights and obligations attached to the process (consequences must not be too detrimental otherwise they would bias the consent of the applicant);
- the right to refusal to undergo medical examination and its consequences;
- the possibility to challenge the results of the age assessment;
- the next steps to follow”.⁶

b) **Health conditions** and/or physical or psychological vulnerability or illness that would pose a serious risk to health or well being if a person would be detained. **Vulnerabilities might not be immediately visible**, so the background and history of the child should be assessed through sensitive and respectful questions.

c) Social history of the child, reasons for migration and **risks in case of return**, in order to assess the risk of violation of the principle of non refoulement and the grounds for applying for asylum.

UNHCR, Guidelines and Procedures in dealing with Unaccompanied Children Seeking Asylum, 1997:

Initial interviews. Initial interviews of unaccompanied children to collect biodata and social history information should be done immediately after arrival and in an age-appropriate manner. The information should be updated periodically. This is essential for subsequent action to determine the status of the child and to promote durable solutions. Apart from the child’s general bio-data, it is desirable that the following additional information be recorded:

- a) Family information (in the country of origin and elsewhere)
- b) Information on non-family members important to the child
- c) Circumstances when the child was found/identified
- d) Information concerning the child’s separation from the family
- e) Information about the child’s life before and since the separation
- f) Child’s physical condition health and past medical history
- g) Educational background (formal and informal)
- h) Present care arrangements
- i) Child’s wishes and plans for the future
- j) Preliminary assessment of the child’s mental and emotional development and maturity
- k) Age assessment

⁶ The European Asylum Support Office (EASO) is an EU agency that supports the EU in the Common European Asylum System field. The focus of this publication is to provide guidance to EU Member States on the consideration of the best interests of the child when assessing the need for the age examination but also when devising and undertaking an age assessment using a holistic and multidisciplinary approach, with particular attention to the needs and circumstances of the person.

UNHCR, General Guidelines on How to Interview Children Seeking Asylum, 1995 [...]

- Children who are old enough to understand what is meant by refugee status determination should be informed about the procedure. This includes advising them of where they stand in the process and what decisions have been taken.
- As uncertainty can lead to unnecessary anxiety and worry, keeping the refugee child accurately informed is important not only to help him or her dispel rumours, but also to assist the minor to understand the consequences of the process and form realistic expectations
- If an unaccompanied minor arrives as part of a large-scale influx in respect of which a prima facie group determination of refugee status has been made, each child in the group should automatically receive refugee status
- The importance of giving truthful information and being as accurate as possible needs to be stressed to the child applicant, and it should also be emphasized that there is no 'right' or 'wrong' answer to the questions being asked [...]
- Use simpler language and spend more time establishing rapport with the child and developing a trusting relationship. The child should be encouraged to ask questions throughout the interview. [...]
- The interviewer must be prepared to recognize when the child's limits have been reached. Take a break or postpone an interview if there are persistent signs of anxiety
- The interview should be concluded with a discussion about more normal present-day events which restore a sense of security. The child will need time after the interview to restore his or her coping abilities (e.g. interviews should not be conducted before the child is likely to be going to bed, and preferably they should not be held during school hours)

d) Indicators that the child is a **victim of trafficking**.

CoE, *How to Convey Child-friendly Information to Children in Migration. A Handbook for Frontline Professionals*, 2018, p.33:

Victims of trafficking in human beings

A child victim of trafficking may act in an unexpected way because they fear their traffickers. This may make them appear less vulnerable when you first meet them.

Take into account the impact of the child's situation on the information you should provide and the impact on the reception of the information (they might not take your advice because they are a victim of trafficking in human beings).

Consider what information can be useful if they are thinking of escaping in the future (tell them what trafficking is, what protection is available, etc.) to empower them to escape their position in the future.

Illustrate by talking about a fictional situation or an indirect situation; use indirect speech and questions to help the child feel less victimised.

e) Serious risks of violation of obligations under international human rights law, including under the ECHR, the ICCPR, the Convention against Torture and/or the CRC or other human rights treaty obligations, that would make it appropriate to **file an application to the ECtHR for interim measures under Rule 39** of the European Court or an application to the UN Human Rights Committee or the Committee on Rights of the Child or another UN treaty body for interim measures.

The interview must be conducted **by professionally qualified and specialised officers**, who have an appropriate knowledge of psychological, emotional and physical behaviours of children. **Border guards and police officers must always be accompanied by qualified officers.**

Together with the collection of all relevant information, the communication should also aim to **inform children about their rights**.⁷ These should include, among others the right to apply for asylum and procedural rights, **including the child's right to be heard and to express their own views during the proceedings**.⁸

The elements listed above **must be taken into account immediately on the arrival of the child at the border, as well as during the subsequent procedures**. Children should have access to information, legal assistance, trained interpreters and counsellors upon arrival. In case of the presence of the listed elements (age, personal history including reasons for recognising a form of protection, health conditions, vulnerabilities, indicators of trafficking) that have not been addressed on arrival, the practitioners who interact with the child in the subsequent procedures (guardian, lawyer, judge, administrative officers) must be aware of these elements, and raise them adequately.

⁷ Council of Europe, *How to Convey Child Friendly Information to Children in Migration, A handbook for frontline professionals*, 2018.

⁸ Convention on the Rights of the Child (CRC), Article 12; EU Charter, Article 24(1).

Children in detention / subjected to coercive measures

While administrative detention for child migrants should never be applied because of its incompatibility with the best interests of the child principle, in practice authorities and professionals might be involved in communication with children in detention or when their parents are subjected to coercive alternative measures.

In such cases, it should be kept in mind that:

- the child has not committed any criminal offense and **they should not be identified as criminal or treated with criminal consequences. The person must be informed of the reasons of detention/coercive measures in place (article 5.1 ECHR)**
- the child **has the right to be assisted** by their legal guardian and by a lawyer
- if they are an unaccompanied child, they have the right to be maintained in a safe space, with no contact with unrelated and unfamiliar adults
- if they are accompanied, the child has the right to remain with their (extended) family in a space reserved to families
- the child **has the right to make a complaint** against the measure and to apply for a less coercive measure (article 5.4 ECHR)

III. How to communicate with a child: practical tips and examples

The practical tips listed below represent a useful tool to address the aims of communication with a migrant child in a procedure related to detention or alternatives to detention.

The model is based on four elements - audience, voice, space and influence - that reflect the participation model developed by Ireland's National strategy on Child participation in decision making as a way of conceptualizing the right to be heard under Article 12 of the UN CRC.



This model provides a way of conceptualising Article 12 of the UNCRC which is intended to focus educational decision-makers on the distinct, albeit interrelated, elements of the provision. The four elements have a rational chronological order:

- **SPACE:** Children must be given safe, inclusive opportunities to form and express their view
- **VOICE:** Children must be facilitated to express their view
- **AUDIENCE:** The view must be listened to.
- **INFLUENCE:** The view must be acted upon, as appropriate.



Figure 2 Lundy's Voice Model Checklist for Participation as included in Ireland's National Strategy on Children and Young People's Participation in Decision-Making 2015-2020⁶

The "participation model" requires that children be provided a safe environment in which they can be heard and express their view and ensure that their opinions and experiences are taken seriously in consideration of any decision or action by public authorities.

3.1. Ensure the presence of a reliable interpreter

Children must be afforded the **opportunity to communicate in a language they understand and speak easily**. All the information should be translated and all interviews must take place in the presence of an interpreter.⁹

CoE, *How to Convey Child-friendly Information to Children in Migration. A Handbook for Frontline Professionals*, 2018, p.19:

Practical Tips to Build Trust with Interpreters:

1. check that the child and the interpreter understand each other.
2. start by explaining who you are and what the interpreter's job is.
3. make sure the child understands that the interpreter should not judge them or tell other members of their community the details of your conversation.
4. give the child a choice about the gender of the interpreter.

- In all communications with migrant children **it is crucial to ensure that an interpreter or a cultural mediator who speaks the child's primary language is present**, even in cases when the child is able to communicate in the language of the country of arrival. The interviews related to age assessment and the application of a coercive measure can be a major source of stress for the child: **being able to communicate in their mother tongue helps to make**

⁹ Coram Children's Legal Centre, London. Unlocking Children's Rights: Strengthening the capacity of professionals in the EU to fulfil the rights of vulnerable children" materials available at: <https://www.ucc.ie/en/childlawclinic/ourwork/fullstory-715703-en.html>.

children more comfortable and less frightened, particularly in cases where they have to reconstruct traumatic experiences.

3.2 Be mindful of the role of a cultural mediator

A cultural mediator can play an important role, because the barriers are often not merely linguistic but cultural ones. Cultural mediators can be extremely important in overcoming communication barriers, as it might be difficult for the migrant child to understand specific aspects of the procedure if they are not familiar with the cultural background of the country of arrival and reception. At the same time, the interviewer might need to adopt the point of view of the child and to overcome cultural preconceptions of the country of arrival and this is possible only through cultural mediation.

A mediator is also crucial in order for the minor to fully understand their rights and how to exercise them (while not being able to substitute a lawyer, and legal assistance must in any case be made available). For instance, it is necessary to consider the extent to which the child's cultural context will affect their ability to engage with the concept of legal advice and the concept of advice that is free at the point of delivery (including the extent to which a child may believe that free advice is likely to be of poor quality).¹⁰

3.3. Make necessary adjustments based on the gender of the child

During any communication with children, all actors must ensure that the child receives gender-appropriate information. The communication might be based on different methods based on the gender of the person and the child's role - for instance within their family or community - might change based on their gender. Professionals may find that they need to communicate using different methods with girls and boys according to their age and culture and the content of the information.¹¹

3.4. Characteristics of the interviewers

The interviewers should be aware of their conduct, approach and way of questioning during the judicial and nonjudicial proceedings. The interviewer should aim **to develop a relationship with the child that builds on trust and respect**. It is important that the child understands the role of each speaker, including who may be a police or border officer, judge, lawyer, guardian; and that the roles are not confused.

Relation with the child and trust building Examples of good practices (ECRE)

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

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

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

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

¹⁰ CoE, *How to Convey Child-friendly Information to Children in Migration. A Handbook for Frontline Professionals*, 2018, p.101.

¹¹ CoE, *How to Convey Child-friendly Information to Children in Migration. A Handbook for Frontline Professionals*, 2018, p.20.

Helpful characteristics in an interviewer¹³

- > Taking the time to develop a relationship with the child;
- > Listening to the child and engaging in dialogue;
- > Respecting the child's individuality, being aware of their age and cultural background;
- > Being aware that some children may view a lawyer as an adult who can protect them rather than simply as a lawyer;
- > Being aware that in the case of neglect or abuse, some children may be more concerned with their lawyer protecting them from future neglect or abuse than with having them keep this information confidential;
- > Having a kind, reassuring and friendly tone;
- > Recognizing that children will not be able to present testimony with the same precision as adults;
- > Paying due attention to non-verbal communication;
- > Not insisting on the child necessarily giving specific information if they show discomfort, but trying to understand their situation by asking them to describe their feelings

Unhelpful characteristics in an interviewer/attorney:

- > Being continuously absent or rushed;
- > Maintaining a manner that is unfriendly and uncaring and does not promote trust;
- > Using a narrow interview technique that does not contextualize a child's experience take into account other considerations affecting the child;

Listening: methods to use to show we are listening

- > **Non-verbal:** nodding, facial expression, eye contact, overall body language
- > **Verbal:** positive sounds, tone of voice, open and closed questions, paraphrasing, summarising, reflecting back

3.5. Alternative communication methods and creative communication toolkits

Alternative and creative communication methods should be used, where appropriate, with experienced professionals' support.

Examples of Alternative communication methods

- > Signs and Symbols
- > Makaton signs and symbols (internationally recognised hand signs) www.makaton.org
- > Picture Communication Systems: www.pecs-unitedkingdom.com

Creative communication tool-kits

- > Children may be asked to choose role plays, such as people, buttons or stones to represent themselves, family members, pets, professionals. The child may be asked who is important to them using, how near or far they want people and other children to be, to re-enact past or current events .
- > Children may often communicate through play materials matters that they cannot or do not want to express verbally. Children might draw family and school pictures, make models, or make "feelings masks";
- > Puppets and/or a soft toy can be used to talk to a small child about what they think or feel. Children may also use these themselves to re-enact events or explain current feelings.
- > Play objects can also help to distract a child and make the child feel at ease;
- > Stories, rhymes and poems: children can either use paper or pens to create their own stories. They may write poems, rhymes about their sentiments. They may be given story books on specific subjects when explaining things to young children, about war, migration, death, foster-care and other matters;
- > Visual aids: cards with pictures of home, school, special events (birthday, holidays) happy, sad, angry faces to express feelings;
- > IT equipment: children and young people can use tablets and computers to create their own information to present to professionals about issues that affect them.

¹³ The characteristics are drawn from the study of Chaplan, Janet A., March 1996. "Youth Perspectives on Lawyers' Ethics: A Report on Seven Interviews." *Fordham Law Review* 64(1763). The author of the study is a member of the American Bar Association Section of Litigation Task Force on Children, and has previously served as a law guardian at Lawyers For Children, Inc. In this study she explored the participation of disempowered clients in justice processes in light of legal ethics and as part of the study conducted a number of interviews with children that can give a concrete picture of how they perceived their contact with their lawyer.

3.6. Child-friendly communication: language and methods

When interviewing children, specific practical methods of questioning should be followed, in order to make the child comfortable and to reduce the stress of the situation. Interviewers should be aware of the choice of words and of the way of asking questions.

- > Explain that **it is fine for the child to say 'I don't know' or 'I don't remember'** rather than feeling obliged to come up with an answer;
- > Allow children **to have time to respond** without showing urgency;
- > **Use simple language**, avoid technical terms and jargon that children are unlikely to understand and change language according to the age and maturity of the child;
- > Ask **one question at a time** and avoid multiple clauses within sentences;
- > Avoid multiple questions within questions, leading questions, and double negatives;
- > **Do not repeat the same question over and over again**, as it could confuse the child and make them think they are making mistakes;
- > Do not use aggressive, confrontational or degrading language;
- > Avoid using questions that involve comparative judgements as children may find these difficult or have different perceptions (i.e. big, small, fast, slow);
- > Be sensitive to language that the child may find difficult to say (i.e. sexual language, or language about body parts);
- > Be cautious around sensitive topics, e.g. traumatic experiences, information about their parents;
- > Do not make assumptions: if an assumption comes to mind, ask the child to confirm your idea and understanding of the situation;
- > Monitor the child's participation and **suggest additional breaks if the child is distressed or tired**;
- > Recognise that it may be necessary to speak 'through' a supporter, such as a guardian, parent, relative or close friend.

A. Communication and questioning: example of a good practice¹⁴

- Interviewed: 12 years old Indian boy
- Interviewer: Officer of the Administrative Authority in charge of adopting a decision on the international protection application
- Present during the interview: Punjabi interpreter, his guardian and his lawyer
- The interview started at 8.50 AM and ended at 10.15 AM

Q: Good morning, I'd like to start by verifying that the communication is fine. Now, we are talking in Punjabi. Can you confirm this is the language you prefer to speak during the interview?

A: Yes, I do

Q: Can you confirm you understand the interpreter well and you feel comfortable with her? Otherwise, are there accent and lexicon diversities that could be a problem in understanding?

A: We understand perfectly each other

[It is given to the applicant a brief and simplified notice, conformed to his personal profile and maturity level]

Q: Have you understood what I've explained to you?

A: Yes, I do

Q: Do you want to ask me some questions before we start our conversation?

A: No

Q: If you have some question later, please tell me

A: Ok

Q: Now, I'll ask some questions to get to know you a bit better...questions about where you lived, your family, school or anything like those to get initial information on your personal situation before your departure from India. So, let's start! Could you please tell me precisely where you were born?

A: [...]

Q: Have you always lived in the same place?

A: Yes, I do

Q: Could you please tell me how your house was?

A: Inside my house, there was me, my father, my sister...

Q: And your mummy?

A: No. She was working in [...]

Q: Could you please describe your house in [unintelligible] to me ?

A: There were 2 floors and we lived upstairs, in a three room home. We had a kitchen, a living room and one room to sleep all together. [...]

Q: What was your father's job?

A: He sold fruit and other things.

¹⁴ The transcript of the interview is an extract of an interview conducted by the administrative authority competent for examining asylum claims of one of the Member States participating in CADRE project. Thus, the example is taken from a real case.

Q: Did he own a shop?
A: Sometimes he also painted houses.
Q: And your mum?
A: She worked for a bank before and then she changed job, but I don't know which one
[...]
Q: Talking about school, could you please speak to me about it?
A: It's name was [...], it was a catholic school and I attended the fourth year of primary school
Q: Were teachers priests or nuns?
A: Yes, they were
Q: Were they good and nice?
A: Not so much
Q: Why did you answer in this way?
A: Because when I made mistakes they used to beat me up
Q: In which way?
A: They used a stick
Q: Did this happen often?
A: Yes
Q: Are your brother and sister older or younger than you?
A: Older- My sister is almost 17 year old, my brother 14.
[...]
Q: So, you and your parents are catholic, aren't you?
A: Yes, we do
Q: Do you remember why your family decided to leave India?
A: We have a debt. Sometimes somebody came to ask for money. But we hadn't, since in India they don't pay so much
Q: So, there was a person coming to disturb you?
A: Not just one. Many; [...]
Q: You told me about the adventurous journey that brought you here. Now, I want to ask some questions about your life in India. First of all, tell me, did you have a better relationship with your mother or your father?
A: My mother..
Q: A little bit less with your father?
A: So so
Q: Why?
A: My dad got drunk and if we made some mistakes he beat us up. Mum defended us
Q: This has always happened? Did something happen and he became angry?
A: When we were little children this didn't happen
Q: Do you know if something made him angry?
A: I don't know
Q: How were things between your mother and your father? Did they get on well?
A: Not so much
Q: Why? Do you want to explain it better to us?
A: Because my mother had a male friend to work for and my father and a female friend, but she didn't do anything
[...]
Q: This question may seem to you quite strange: if you imagine going back to India, what do you think it would be? Would you like it?
A: There's nobody now
Q: If it would be possible to go back with all your family, would you like it?
A: No. We still have to return money. We still have a debt
Q: Are you afraid of these people?
A: Yes, I am.
Q: Would you like to meet your father again?
A: I cannot go back to India
Q: And what if this happens in France, for example?
A: I'd like to stay with all my family
[...]
Some of the elements that make the above interview a good example and in line with the tips

provided here are:

- > Short and simple questions, appropriate for the child's age
- > Demonstration of interest for child's participation and contribution
- > Lack of insistence on details that could disturb the child
- > Attention on child's emotions and reactions during the interview
- > Interview's brevity (just one hour and 25 minutes, including breaks)

B. Communication and questioning: example of bad practice¹⁵

- Interviewed: 18 years old Gambian boy whose procedure started when he was a child. He became 18 a few months before the interview and submitted political asylum request while a child, so he should have been treated like a child, since the delay in international protection procedure did not depend on him.
- Interviewer: Officer of the Administrative Authority in charge of adopting a decision on the international protection application
- Present during the interview: Poular interpreter, his guardian and his lawyer.
- The interview took place in two days. On the first day, it started at 10 AM and ended at 6.40 PM. **On the second day it started at 10.30 AM and ended at 1.50 PM. On the whole, it lasted more or less 11 hours, considering one hour and 30 minutes for breaks.**

"[...]

Q: Now I'll ask some questions to better understand where you lived, about your family, job and anything else and to get initial information on your personal situation before you decide to leave your country. Where were you born?

A: In Farafenni, near to Senegalese border

Q: Have you always lived there?

A: Yes I do-

Q: So your place of origin is the Gambia. Do you have Gambian citizenship?

A: Yes since I was born there and I grew up there. Maybe I had a birth certificate, but I've never seen it

Q: Are there other countries where you could have citizenship or do you have a particular relationship with some other countries because of familiar or personal reasons?

A: My parents were both from Guinea.

Q: Did you attend school in Gambia?

A: Yes, I went to school for 8 years.

Q: Did you work in Gambia?

A: No, I never did

Q: Tell me about your family

A: I don't remember many things about my parents, since they died when I was a little child. I lived with my sister and with my uncle (my mother's brother). Before, my sister and I lived with my mother, but then she died and we moved to our uncle's house. My sister (she was older than me) told me that my father was the first to die, and only after a short time was my mother. I don't remember either when we moved to our uncle's house, but my sister told me that he married when I was 4 or 5 years old, and we were already there. My sister decided we have to move to him after my mother's death. I am not married and I have no children.

Q: Have you kept in contact with your relatives in Gambia?

A: Most of them are in Guinea. I've never been there and I've never met them. I don't listen to anybody, except for a few friends living in Gambia, by cell phone. My sister died in Libya, where we arrived together. Since I left my country, I've never spoken to my uncle again.

Q: Are you from a specific ethnic group, tribe, clan or caste?

A: I'm Peul

Q: Apart from Pular, do you speak other languages?

A: Wolof, better than Poular. I also understand a little bit of Mandinka and of English. I'm learning Italian. I understand you well when you speak to me.

Q: Do you have a religion?

A: I'm Muslim.

Q: Now I'll ask you to speak freely about the reasons why you left your country. I'll try not to interrupt you, except this will be necessary to understand your story better. Why did you leave your country?

A: After my mother's death, me and my sister moved to my uncle's house. At first, we had a good relationship and we all got on well. Problems started when he married, because his wife has two children of hers. Me and these children had, more or less, the same age, but I had better results at school than them. Their mother was really disappointed about it and she got angry with me. [...] She used to tell my sister that she didn't take care enough of my mother when she was sick, just to offend her. My uncle beat me up only to teach me something, while his wife did it often and without any reason. There was a place in Senagel, near our village, called [...], where my sister went to work to collect enough money to leave the country. When I was 9 or 10 years old, my uncle's wife burned me with a pot full of hot water. That day it was cold outside and I boiled water to take a shower; if their sons did the same, she didn't say anything, but that day it was me and she got very angry and she spilled the hot water on me. I was still and didn't move, for fear and the shock. I cried. She didn't touch me again. Neighbours that came and took me to the hospital. I spent some days there. My sister was always with me, my uncle came to visit, but his wife didn't. My uncle knew his wife was the one that did this, but

¹⁵ The transcript of the interview is an extract of an interview conducted by the administrative authority competent for examining asylum claims of one of the Member States participating in CADRE project. Thus, the example is taken from a real case.

he didn't say anything to her. He told me to be patient. When I was released from the hospital, money collected by my sister was not yet enough to leave the country, so we stayed in Gambia until the end of 2016, when I was 15 years old. I didn't talk to my uncle about our project. My sister made the decision to go [...]. We left Gambia and moved to Kaolack, Senegal. Here we bought a ticket to Bamako, Mali [...]. Then we moved to Niamey, Niger, and from there to Agadez [...]. The day we left Agadez there were three pick ups and each carried 33 persons. The journey through the desert lasted two weeks – hot days and cold nights. Our water tasted of fuel because we kept it inside petrol tanks. Each night, drivers took women with them and also my sister was taken. While we slept, we didn't take off the shoes, since it was so cold that if they had cut off your fingers you wouldn't have felt any pain. [...] We arrived in Gatron, Libya, and then we passed through Beniwalid before arriving in Sabrata. Me and my sister were separated: I was taken to Sabrata camp 1, my sister in Sabrata camp 2. Me and my sister arrived in Sabrata in February 2017 and I spent some months there, because it was not simple to embark soon. I did it on July 2, 2017 and I arrived in Reggio Calabria.

Interview was interrupted at 3.20 PM and started again at 4.05 PM

- Q: You described to me the reasons why you left your country. Now I'd like you to tell me which kind of problem you'd face if you would go back.
- A: I'm afraid to be subjected to the same kind of abuses of the past, because both my uncle and his wife used to beat me up. She threw hot water on me and if I go back maybe I could suffer from worse damages.
- Q: Are there other reasons conditioning your decision to leave?
- A: I worked hard to integrate myself here, by doing courses, learning the language and I don't want to abandon everything. I met my guardian more than one year ago and she helped me so much. I don't want to leave everything to return to the same mess as before.
- Q: Now, let's talk about your parents's origins, since you said they were both from Guinea. What can you add to this?
- A: What I know it's what my sister told me. And if I add something more I would lie, since they both died when I was very young.
- Q: What have you been told about them and their migration story? I mean, what about their arrival in Gambia, why they moved from Guinea...
- A: I don't know why they moved from Guinea to Gambia. I just know they were not born in Gambia but in Guinea. At this moment there are many other peul like me living in Gambia, coming from Guinea like my parents. There were some friends of mine that used to kid me by saying that I was not from Gambia nor from Guinea.
- Q: This Commission knows that Gambian Citizenship can be obtained if you have at least one Gambian parent. We need to know on which basis you declare to be a Gambian citizen. Have you ever been told your parents got Gambian citizenship (for naturalization or in other way)?
- A: It's true that my parents were from Guinea and that I was born and I grew up in Gambia. Maybe what you are saying to me it's true and I'm not a Gambian citizen, but I don't know if I've ever had a Gambian birth certificate. I've never seen it. Maybe I've never had it.
- Q: Do you know if your parents had a Gambian passport or other Gambian documents?
- A: I don't know. I only know my uncle did business between Gambia and Guinea.
- Q: Did somebody tell you that your parents were Gambian citizens?
- A: I don't know, apart the fact that my father lived for so long in Gambia.
- Q: How do you know that?
- A: My sister told me.
- Q: What did your sister tell you precisely?
- A: She told me that my father lived for years in Gambia and that he arrived there before my mother.
- Q: Anything else?
- A: He made my mother come to Gambia and then they stayed there.
- Q: Do you think you can get a copy of your Gambian documents for the Commission, even later, for example, your birth certificate?
- A: No, because I don't know whom to ask for it. In Gambia I only have some friends and my uncle, who didn't even know about my decision to leave the country. I haven't heard from him since then. If my friends could get them, maybe I could give you, otherwise I really don't know how I could manage it.
- Q: Do you think you can get your parents' documents, even not immediately?
- A: How could I get them? If I had contact with some relatives in Gambia maybe I could.
- Q: Do you have relatives in Guinea?
- A: I've never been there and I've never met them. How could they send me my parents' documents?
- Q: Now, I would like to focus on your familiar relationships. Let's start from your sister. Tell me what you remember about her
- A: She was 4 or 5 years older than me. She was also a little girl when my mother died. She was the one to collect money to let us leave Gambia and she died in Sabrata, but before we arrived

- she was very tired because, in the desert, drivers stopped, made us go down from the pick-ups, and took with them just the women.
- Q: I understand. But I would like you to describe to me what was it like when you lived together at home...
- A: She also went to school. We never argued. She was the one that took care of me
- Q: How many years have you lived together in the same house?
- A: From when I was a little child until the arrival in Sabrata.
- Q: How many years, more or less?
- A: Around 16. We lived together before my mother's death and we separated in Sabrata.
- Q: Are you able to tell me something more since you spent 16 years together? If you don't mind, describe her to me physically or give me any other information
- A: Her name was Kadiatou, she was 4 or 5 years older than me; I'm not able to say how our relationship was before my mother's death because I was too young. But after my mother's death she took care of me like she was my mother. And because of the problems we had in my uncle's house, she found a job. She went to school for a while, but then she interrupted her studies to take care of our mother when she became sick. She decided to collect money to escape together after the hot water episode, and we succeeded at the end of 2016.
- Q: Is there anything else you want to tell me about your sister, since "she took care of me like she was my mother"?
- A: She was the one that educated me
- Q: What was your mother's disease? Would you like to tell me what you know or what you have been told about this?
- A: I don't know what was the disease's name, but only that this disease took her away
- [...]
- Q: Let's talk about your uncle. Tell me who was this person and which kind of relationship you had with him
- A: Until he married, there were no problems. When he married, his wife brought two sons of the same age. I also heard that later they had one child together. He had business between Gambia and Guinea and sometimes he spent periods in Guinea for job reasons before going back to Gambia. I'm not able to say anything else about him since I don't know him well.
- Q: Would you describe him to me physically?
- A: His name was Thierno, he is tall and his skin is lighter than mine. Before he married we got on well and he punished me just to educate me. Serious problems started after he married because he was afraid of his wife
- Q: Would you tell me more about his personality?
- A: Personally, he didn't have problems with me. When he caused me difficulties it was his wife's fault. Anyway he was an open minded person. His wife wanted to stay only with him and her sons and nobody else.
- Q: How long did you live with your uncle, in his house?
- A: After my mother's death and until we left in 2016
- Q: How many years, more or less?
- A: A little more than 10, but I don't remember precisely when we moved to him.
- Q: Are you able to tell me something more since you spent 10 years together, for example other physical details?
- A: It's true it was a long time together, but he was often out for job reasons and I was so young. I don't know him as well as my sister.
- [...]
- Q: Let's talk about your uncle's wife. Tell me all you remember about her
- A: They married when I was 4 or 5 years old and she already had her children. The only things she did were beating me up and punishing me
- Q: What kind of relationship did you have with this woman?
- A: She was upset because I was smarter than her sons at school. She continued punishing me until the hot water episode. From that moment on I imagined I could have suffered for worse damages if I continued stay there
- Q: Describe to me carefully how this woman behaved with you
- A: She offended me telling I was stupid. She beat me up. I was a little child and I enjoyed playing football, but every time I wanted to play with my friends she forced me to do housework. In the same way, while I was doing my homeworks, she interrupted me asking to do something else.
- [...]
- Q: Would you describe her to me physically, but not only?
- A: She had bad behavior and disturbed me a lot. I cannot say anything more than that she was the one that caused me such suffering.
- Q: How long did you live with this woman?
- A: From 4/5 year old until I left, in 2016.
- Q: After all these years together, you are only able to tell me these few things?
- A: She was so strong and I don't want to say anything more about a person that caused me so much pain [...]"

In this interview there are many problematic aspects, warning of the absence of child-friendly communication:

- > extreme duration: more than 11 hours totally and almost eight just the first day, with only one break
- > **interviewer's insistence in asking the same questions over and over again** (on citizenship, for example), even if the boy claims he does not know the answer
- > interviewer's focus on some specific topics, **without explaining to the person the reason of their relevance**
- > insistence on details that disturb the boy
- > absence of empathy shown to the boy about the most painful parts of his story (abuses, sister's death, etc)
- > **no attention to the child's emotions and reactions during the interview**
- > questions often too long and complicated
- > no demonstration of interest for boy's participation and contribution
- > no consideration about the fact that many events happened when the boy was just a little child
- > no consideration about the impact of trauma and abuses on boy's memory and on his ability to illustrate in details his story
- > use of overly formalistic and bureaucratic language, perceived by the child as aggressive and degrading

3.7. Factors for child-friendly environment

It is critical that the communication takes place in an environment where a child is able to feel comfortable and secure.¹⁶

The presence of a guardian (for unaccompanied children) and of relatives must be granted when the child so requests. If the child is alone, **before the interview starts they should be informed of their right to be accompanied by the guardian/parent/relative** and their decision should be respected.

Before the communication takes place, the child should be provided with essential **information explaining the procedure**. This might take the form of written materials, for example in the form of a leaflet. However, attention should be paid to the circumstances of the case: **if the person is illiterate, a written brochure will not be sufficient** and it should be translated orally to the child or in format they can understand. Information might as well be accompanied by graphic supports and images.

In respect of **children with disabilities**, the right to be provided "procedural and age-appropriate accommodations is also explicitly provided for by the Convention on the Rights of Persons with Disabilities in its Article 13 as the right to access to justice. Accommodation should be made for children with disabilities, which may include physical access to buildings, support for children with psychosocial disabilities, assistance with communication and the reading of documents, or other procedural adjustments.¹⁷

Before the procedure/interview starts, the child **should be given the chance to ask questions**.

Physical environment

- > The room is well-ventilated and comfortable
- > The room has colourful drawings and posters
- > Seats are the appropriate size
- > The child is allowed to sit with the person they wish to
- > The environment is safe
- > The room is private
- > There are as few people around as possible during the conversation
- > Food and refreshments are provided

Support and involvement

- > Ask the child if they prefer their parents to be with them during the conversation (if they are an accompanied child);

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

¹⁷ CRC Committee, General Comment No. 24 on children's rights in the child justice system, UN Doc. CRC/C/GC/24 (2019), para. 40.

- > Ask the child if they prefer their guardian to be with them during the conversation (if they are an unaccompanied child);
- > Pay attention the child has a supportive adult helping them, if they ask for it and they agree that the person is present;
- > Adults are dressed in smart casual clothing

Logistics

- > Child is informed about the meeting, and location
- > The child is given transportation to the meeting
- > The meeting takes place during appropriate hours, preferably without losing school lessons;
- > The meeting takes place with ample breaks ;
- > Waiting is minimised;
- > The child's contact with hostile others is strictly limited or prevented¹⁸

3.8. Respect for confidentiality

During all communication the child needs to understand what use will be made of the information they provide to the authorities. As a general rule, the information acquired must be kept confidential. The rule of confidentiality is crucial to ensure the development of a trusting relationship with the child.

Access to justice for children, Report of the United Nations High Commissioner for Human Rights, UN DOC A/HRC/25/35, 16 December 2013. [...]

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

- > the information acquired during the interviews will not be shared with other people outside the proceeding. Asking all actors involved in the communication to commit with the child to keep confidential the information acquired can be a good practice to allow the child to feel comfortable and more confident;
- > the environment should ensure the necessary privacy, particularly when the communication takes place in institutional settings;
- > the decisions and orders concerning the child should be communicated directly to them and, in addition, to the child's guardian (for unaccompanied children) and parents/relatives. The communication should not be made primarily to the personnel of reception/detention facilities.

3.9. Specific tips for lawyers and judges on information and communication with a migrant child involved in judicial and administrative proceeding (initial steps)

- >> Prepare children by providing them with accessible information about:
 - o Their role in the hearing, including their rights at each stage, the support they can be given, how they can participate, and how their views will be considered;
 - o The practical arrangements such as when the hearing will take place, and where, how long it will last, who will be there, what protection the child will be provided with, and when and how decisions will be made;
- >> Ensure that the child can be heard effectively in the hearing by the introduction of legal rights which are properly implemented, and creating child-friendly, safe and accessible courts;
- >> Assess the capacity of the child by consideration of whether the child is able to form a view of the issues being addressed and, if so, what weight must be attached to those views. There should be a presumption in favour of the child's capacity;
- >> Provide feedback to the child so that she or he knows exactly what decisions have been made and why;
- >> Provide mechanisms for the child to make a complaint, or seek a remedy or redress if her or his right to be heard has not been properly implemented.¹⁹

¹⁸ Angela O'Connell, Child Law Clinic, School of Law, University College Cork, Ireland, Training FAIR project Bulgaria January 21-22 2017. Emma Hurley, PhD Candidate, School of Applied Psychology, University College Cork, Ireland (Developmental psychology – teen development materials).

¹⁹ UNICEF, Save the children, Every child's right to be heard, A resource guide on the UN Committee on the Rights of the child General Comment No. 12, 2011, p. 62. https://www.unicef.org/french/adolescence/files/Every_Childs_Right_to_be_Heard.pdf

Courtroom orientation

The courtroom is typically an unfamiliar place for children. Many family and juvenile court experts recommend allowing children to visit an empty courtroom prior to their scheduled hearing. To the extent that resources permit, **court administrators should be receptive to requests by legal representatives or custodians for unaccompanied migrant children to visit our courts prior to the initial hearing.** Additionally, they should be open to other ways to familiarize unaccompanied migrant children with court operations.²⁰

Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice (Adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies)

D. Child friendly justice during judicial proceedings

(...) 4. Avoiding undue delay

50. In all proceedings involving children, the urgency principle should be applied to provide a speedy response and protect the best interests of the child, while respecting the rule of law.
51. In family law cases (for example parentage, custody, parental abduction), courts should exercise exceptional diligence to avoid any risk of adverse consequences on the family relations.
52. When necessary, judicial authorities should consider the possibility of taking provisional decisions or making preliminary judgments to be monitored for a certain period of time in order to be reviewed later.
53. In accordance with the law, judicial authorities should have the possibility to take decisions which are immediately enforceable in cases where this would be in the best interests of the child.

5. Organisation of the proceedings, child-friendly environment and child-friendly language

54. In all proceedings, children should be treated with respect for their age, their special needs, their maturity and level of understanding, and bearing in mind any communication difficulties they may have. Cases involving children should be dealt with in non-intimidating and child-sensitive settings.
55. Before proceedings begin, children should be familiarised with the layout of the court or other facilities and the roles and identities of the officials involved.
56. Language appropriate to children's age and level of understanding should be used.
57. When children are heard or interviewed in judicial and non-judicial proceedings and during other interventions, judges and other professionals should interact with them with respect and sensitivity.
58. Children should be allowed to be accompanied by their parents or, where appropriate, an adult of their choice, unless a reasoned decision has been made to the contrary in respect of that person.
59. Interview methods, such as video or audio-recording or pre-trial hearings in camera, should be used and considered as admissible evidence.
60. Children should be protected, as far as possible, against images or information that could be harmful to their welfare. In deciding on disclosure of possibly harmful images or information to the child, the judge should seek advice from other professionals, such as psychologists and social workers.
61. Court sessions involving children should be adapted to the child's pace and attention span: regular breaks should be planned and hearings should not last too long. To facilitate the participation of children to their full cognitive capacity and to support their emotional stability, disruption and distractions during court sessions should be kept to a minimum.
62. As far as appropriate and possible, interviewing and waiting rooms should be arranged for children in a child-friendly environment.

²⁰ Ibid.

63. As far as possible, specialist courts (or court chambers), procedures and institutions should be established for children in conflict with the law. This could include the establishment of specialised units within the police, the judiciary, the court system and the prosecutor's office.

6. Evidence / statements by children

64. Interviews of and the gathering of statements from children should, as far as possible, be carried out by trained professionals. Every effort should be made for children to give evidence in the most favourable settings and under the most suitable conditions, having regard to their age, maturity and level of understanding and any communication difficulties they may have.

65. Audiovisual statements from children who are victims or witnesses should be encouraged, while respecting the right of other parties to contest the content of such statements.

66. When more than one interview is necessary, they should preferably be carried out by the same person, in order to ensure coherence of approach in the best interests of the child.

67. The number of interviews should be as limited as possible and their length should be adapted to the child's age and attention span.

68. Direct contact, confrontation or interaction between a child victim or witness with alleged perpetrators should, as far as possible, be avoided unless at the request of the child victim.

69. Children should have the opportunity to give evidence in criminal cases without the presence of the alleged perpetrator.

70. The existence of less strict rules on giving evidence such as absence of the requirement for oath or other similar declarations, or other child-friendly procedural measures, should not in itself diminish the value given to a child's testimony or evidence.

71. Interview protocols that take into account different stages of the child's development should be designed and implemented to underpin the validity of children's evidence. These should avoid leading questions and thereby enhance reliability.

72. With regard to the best interests and well-being of children, it should be possible for a judge to allow a child not to testify.

73. A child's statements and evidence should never be presumed invalid or untrustworthy by reason only of the child's age.

74. The possibility of taking statements of child victims and witnesses in specially designed child-friendly facilities and a child-friendly environment should be examined.

E. Child-friendly justice after judicial proceedings

75. The child's lawyer, guardian *ad litem* or legal representative should communicate and explain the given decision or judgment to the child in a language adapted to the child's level of understanding and should give the necessary information on possible measures that could be taken, such as appeal or independent complaint mechanisms.

76. National authorities should take all necessary steps to facilitate the execution of judicial decisions/rulings involving and affecting children without delay.

77. When a decision has not been enforced, children should be informed, possibly through their lawyer, guardian *ad litem* or legal representative, of available remedies either through non-judicial mechanisms or access to justice.

78. Implementation of judgments by force should be a measure of last resort in family cases when children are involved.

79. After judgments in highly conflictual proceedings, guidance and support should be offered, ideally free of charge, to children and their families by specialised services.

80. Particular health care and appropriate social and therapeutic intervention programmes or measures for victims of neglect, violence, abuse or other crimes should be provided, ideally free of charge, and children and their caregivers should be promptly and adequately informed of the availability of such services.

81. The child's lawyer, guardian or legal representative should have a mandate to take all necessary steps to claim for damages during or after criminal proceedings in which the child was a victim. Where appropriate, the costs could be covered by the state and recovered from the perpetrator.
82. Measures and sanctions for children in conflict with the law should always be constructive and individualised responses to the committed acts, bearing in mind the principle of proportionality, the child's age, physical and mental well-being and development and the circumstances of the case. The right to education, vocational training, employment, rehabilitation and reintegration should be guaranteed.
83. In order to promote the reintegration within society, and in accordance with the national law, criminal records of children should be non-disclosable outside the justice system on reaching the age of majority. Exceptions for the disclosure of such information can be permitted in cases of serious offences, *inter alia* for reasons of public safety or when employment with children is concerned.

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April 2022 (for an updated list, please visit www.icj.org/commission)

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