

Training Model of Child-Friendly Justice Court Practices:

Unaccompanied Children



CENTRE FOR LEGAL
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VALIDITY



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The “Child-Friendly Justice: Developing the Concept of Social Court Practices” project (CFJ-DCSCP) aims to improve access to justice for children in situations of enhanced vulnerability in the criminal justice system. This will be done by developing and disseminating specialised models of individualised assessment of their needs, barriers, and situation in line with international and European law. To that end, the project includes a research and tool development component to identify existing and ongoing problems, make recommendations and provide practice-oriented guidance for criminal justice professionals involved in individual assessments in criminal proceedings for child victims or children who are suspects or accused of committing a crime that are also in a vulnerable situation. It focuses on children deprived of parental care, unaccompanied children, and children with mental disabilities. This Model sets out standards, practice-oriented guidance, and a tool for the implementation for a model of individual assessment in criminal proceedings, for Italy, which is tailored to the particular vulnerabilities of unaccompanied children.

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Disclaimer

The contents of this report represent the views of the project partners only and are their sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

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I. MODULE N. 1

The need to carry out an individual assessment

Amin's story

Amin is a 15-year-old boy, bright, capable but not very educated; he left his family who could no longer take care of him and crossed half of the African continent to finally reach Europe and find assistance and refuge.

In Italy, he was accepted at a reception center for Unaccompanied migrant children where he lived for three months. One day, together with other young people living in the centre, he took part in what he believed to be more of a protest than a form of kidnapping. He recounts "...I was protesting just to get my pocket money..... I was very worried about my mother, and I wanted the money to buy the card and call her....". Preventing the operators of the facility from leaving the building to obtain a resolution of the problem was a wrong choice. That is evident!

What was his level of awareness at that time? He stated that he never thought he was committing a crime. He also stated that he did not understand what was happening in his life.

Destiny's story

Destiny, a 16-year-old girl, was convinced by a fellow countrywoman to leave her country for Europe where she was promised a job as a hairdresser. After a months-long journey and after being imprisoned and physically and sexually abused, she discovers that she has incurred a debt and that upon arrival in Italy she will have to work as a prostitute herself to repay it.

In Italy, after a period spent on the street, forced to work as a prostitute, she encounters the anti-trafficking agency that offers her to leave the circuit of exploitation and enter a protection programme. Destiny decides to denounce her exploiter and the network that brought her to Italy.

During the interviews with the Prosecutor, she stated that she was afraid of meeting her exploiters again and that she did not know what the outcome of her decision to report it would be.

Destiny stated that she felt protected and understood by the operators of the anti-trafficking body, but she also admitted that she did not understand what she was told about the judicial process.

A model for the individual assessment of unaccompanied migrant children in criminal proceedings

The stories of Amin and Destiny are inspired by real events.

From these stories but, above all, from the elements of the research conducted as part of the Child-Friendly Justice: Developing the concept of social court practices CFJ-DCSCP project, it has revealed that unaccompanied migrant children, vulnerable people without the support of their parents or legal guardian, who become involved in criminal proceedings often find themselves unaware of the actions that led to this but, above all, unaware of the consequences they will have to face.

Recently, in the Palermo district, where this study was conducted, there has been an increase in the number of proceedings involving unaccompanied migrant children. During the research conducted within the CFJ-DCSC project, it emerged that the common types of offences for which they are suspected are violent behavior inside the reception centres: excessive protests for not handing over their pocket money, threats, declaration of false personal data. They are usually solved by judicial pardon or by the irrelevance of the fact. Then there are the cases of probation, which are not numerous.

When unaccompanied migrant children are involved in criminal proceedings, it is necessary to intervene promptly, before they reach adulthood, guaranteeing them not only to be judged by a specialised body, but also to be taken care of by a system that is made to measure for them and that consistently adapts its intervention to meet individual and judicial needs.

The ordinary courts, the offices of the public prosecutor, the Juvenile Court, and the offices of the juvenile prosecutor, the USSM and other agencies and organisations involved in the protection and reintegration of children (interviewed during the research phase), have expressed the need to intensify their efforts in implementation of best practices both to improve the process of individual assessment and the mechanisms of referral and care of unaccompanied migrant children, both victims and offenders.

Methodology

In this model, we will collect the good practices already developed in the field of child protection and of individual assessment, and we will share some tools (some to be further developed) and share recommendations for how the criminal justice system could integrate them.

The first step will be to start from Directive (EU) 2016/800 and Directive (EU) 2012/29/EU. Then we will take into consideration international best practices about individual assessment and the determination of the best interests of an unaccompanied migrant child.

The Best Interest Procedures drawn up by UNHCR and the Interagency guidelines on Child Case Management of the Child Protection Working Group will be taken into consideration.

The Model then describes good practices from which it will be possible to outline a generalised model of individual assessment; examples will be given on how the same model can be used in during different procedural phases of criminal processes.

Finally, practical tools will be provided to help both during the assessment and the taking into custody of the child; the adoption of a specific memorandum of understanding between the various stakeholders involved will also be proposed to favour coordination and networking activities.

Who is going to benefit from the model

This model is mainly addressed to those operators who have direct contact with unaccompanied migrant children before, during, and after criminal proceedings. These may include social workers and USSM staff, lawyers, police, judges, prosecutors, child protection workers, shelter staff, guardians, interpreters/cultural mediators, and anti-trafficking agency staff.

The need for individual assessment

At the beginning we introduced Amin and Destiny and we told their stories.

Amin committed a crime without being aware of it; to this very day, it is unclear to him what is happening in his life and especially what is going to be his future.

Let's ask ourselves some questions:

- . *Can an individual assessment model, based on the concept of the "multidisciplinary approach" (as envisaged by the Convention on the Rights of the Child), have an impact on Amin's life?*
- . *Can the same model improve the system?*

Both questions can be answered in the affirmative.

A model of individual assessment, which draws on good practices already established in other contexts, and implements and integrates them within the penal system, allows the child to receive fair treatment and participate based on increasingly universal standards in terms of applying human rights protections within juvenile justice systems. It should be added that such a model allows the system to optimise its instrumental and non-instrumental resources and, moreover, ensures greater incisiveness and effectiveness in judicial action throughout the various stages of criminal proceedings.

According to the findings of the research developed within the CFJ-DCSCP project, the Italian system has still deficiencies that need to be solved¹:

¹ A. Interbartolo et al, Child-Friendly Justice: Developing the Concept of Social Court Practices Report on Existing Judicial Practices in Italy, 2021, available at: https://validity.ngo/wp-content/uploads/2021/10/D3.1-Report-of-Judicial-Practices-in-Italy_EN.pdf

- the legal framework is incomplete, and Directive EU 2016/800 has not been transposed;
- there is a lack of coordination and referral mechanisms between the stakeholders involved in the individual assessment procedure;
- there is a lack of Standard Operating Procedures on when, by whom, why and how individual assessments should be conducted

What is the purpose of the individual assessment?

The purpose of the individual assessment is to protect against secondary victimisation, promote social reintegration and enable child participation in criminal proceedings in line with the best interests of the child.

In carrying out individual assessment procedures, the following aspects should be addressed specifically:

When working with victims:

- . What is the personal condition, and what vulnerabilities and resources (not only in the material sense) does the child have?
- . What possible solutions can be applied in upholding the procedural and substantive rights of the child?
- . What are the gaps within the System for the Protection of Child that require addressing?

When working with offenders:

- . What needs and situations an unaccompanied migrant child involved in a criminal procedure might encounter.
- . What possible solutions can be applied in the care and reintegration of unaccompanied migrant children.
- . What possible interventions can be envisaged from the point of view of follow-up.

It is also necessary to understand in which areas an individual assessment model can respond to the needs identified, who the other interlocutors are (institutional actors, NGOs, international organisations) and what additional resources would be necessary for greater implementation of individual assessment procedures.

What does it mean to talk about a "multidisciplinary approach" in child protection?

The United Nations Convention on the Rights of the Child is the first binding international instrument to promote the adoption of a "holistic approach" or "multidisciplinary approach" towards the child and expresses a goal of ensuring full protection of the rights of the children, in accordance with their individual needs.

Today, the child is considered as a rights-holder, a person with his/her own rights, needs, opinions, hopes and fears and is understood as both a participant and protagonist of his/her life and future choices. Using a holistic approach means considering the child as a whole and enhancing his/her dignity.

The following articles of the Convention have been identified as general principles and express the spirit of the Convention²:

Art. 2 - "States Parties undertake to respect the rights set forth in the present Convention and to guarantee them to every child within their jurisdiction, without distinction of any kind and without regard to the child's or his or her parents' or legal representatives' race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, financial situation, disability, birth or other circumstances."

Art. 3 - "In all decisions concerning children, whether by public or private institutions of social welfare, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a continuing consideration".

Art. 6 - "States Parties recognize that every child has an inherent right to life and shall ensure as far as possible the survival and development of the child."

Art. 12 - "Children are guaranteed the right to express their views freely in all matters affecting them, given their weight according to their age and level of maturity."

Art. 40 of the Convention defines in greater detail the rights of juveniles suspected or accused of having committed a criminal offence; it calls upon Parties to the Convention to promote the adoption of laws, procedures, the establishment of authorities and institutions specifically intended for juveniles suspected, accused or found guilty of having committed a criminal offence, and in particular identifies minimum procedural guarantees for the juvenile, the minimum age limit for criminal responsibility, as well as promoting procedures involving the implementation of a set of alternatives to institutionalisation and imprisonment.

During proceedings, the child should be treated in a manner that fosters his or her sense of dignity and personal worth, and reinforces his or her respect for human rights and fundamental freedoms.

II. MODULE N. 2

The European legislative context

Both Directive 2012/29/EU and Directive 2016/800/EU respectively regulate the treatment to be given to children involved in criminal proceedings, as victims of crime or perpetrators. Both emphasise the importance in guaranteeing the right to an individual assessment, in accordance with the best interests of the child.

² Convention on the Rights of the Child: <https://www.ohchr.org/EN/professionalinterest/pages/crc.aspx>

While not directly regulating the individual assessment procedure, both outline the minimum standards and guidelines that states should adopt in conducting individual assessments; in this regard, Art. 22 of EU Directive 2012/29/EU and Art. 7 of EU Directive 2016/800 make explicit the need to adopt a multidisciplinary approach. This means that several professionals with appropriate expertise must contribute to the assessment process in order to make it as complete and exhaustive as possible according to the needs of the child (for example, think of the intervention of a psychologist or a neuropsychiatrist to respond to trauma suffered, or a cultural mediator when the child has problems with communication or cultural understanding of the host context).

It must be emphasised that the directives, although drawing guidelines that may have several elements in common in terms of individual assessment, respond to two different needs: on one side, art. 7 of EU Directive 800/16 aims to support the reintegration of the offender and, on the other side, art. 22 of EU Directive 29/12 operates to avoid the secondary victimisation of victims.

1. The EU Directive 2016/800

Art.7 Directive 2016/800, in fully guaranteeing the right to an individual assessment, requires considering the "specific needs of the child with regard to protection, education, training and social reintegration... in particular, the child's personality and maturity, his or her economic, social and family situation, as well as any specific vulnerabilities of the child...". The need to consider the individual characteristics of the child, the circumstances of the case and specific needs, leaves room for those conducting the assessment to make different assessments from time to time. The assessment can be made both in the pre-trial and in the trial phase, and, once made, must be updated.

In this regard, it seems appropriate to cite the subparagraphs indicated in Article 7 of the Directive:³

1. Member States shall ensure that the specific needs of the child with respect to protection, education, training, and social reintegration are considered.
2. To this end, a child suspected or accused in criminal proceedings shall be individually assessed. This individual assessment shall consider the personality and maturity of the child, his or her economic, social, and family situation, as well as any specific vulnerabilities of the child.
3. The scope and level of detail of the individual assessment may vary depending on the circumstances of the case, the measures that may be taken if the child is found guilty of the alleged criminal offence, and whether the child has recently undergone an individual assessment.
4. The purpose of the individual assessment shall be to establish and record, in accordance with the record-keeping procedure of the Member State concerned, information relating to the circumstances and individual characteristics of the child that may be useful to the competent authorities in order to: a) determine the need to adopt any specific measures for the benefit of the child; b) assess the adequacy and

³ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA

effectiveness of any precautionary measures in relation to the child; c) take decisions or courses of action in criminal proceedings, including when pronouncing sentence.

5. The individual assessment shall be conducted at the appropriate first stage of the proceeding and, subject to paragraph 6, prior to charging.

6. In the absence of an individual assessment, an indictment may nevertheless be made if it is in the best interests of the child and that the individual assessment is in any event available at the commencement of hearings in the proceedings before a judge or court.

7. The individual assessment shall be conducted with the direct participation of the juvenile. It shall be conducted by qualified personnel, using as far as possible a multidisciplinary approach and, where appropriate, with the involvement of the holder of parental responsibility or another appropriate adult, as referred to in Articles 5 and 15, and/or a specialized professional.

8. Where the elements underlying the individual assessment change substantially, Member States shall ensure that it is updated during the criminal proceedings.

9. Member States may derogate from the obligation to carry out the individual assessment where such derogation is required by the circumstances of the case, if it is compatible with the best interests of the child.

Article 7 should be read in conjunction with Recital 1 of the Directive, which described that its legal framework should ensure the exercise of the right to fair trial and understanding of the criminal proceedings.

2. The EU Directive 2012/29

Article 22 of Directive 2012/29/EU recognises the right to "individual assessment of victims to identify specific protection needs". The assessment serves to adopt a series of precautions to avoid the risk of secondary or repeated victimisation or at the same time personal retaliation or intimidation or towards the victim's family. It again takes into account the "personal characteristics of the victim, the type or nature of the crime, and the circumstances of the crime." The timeliness of the assessment is crucial for the emergence of cases of risk and for the adoption of precautionary measures suitable for reducing the damage suffered and, in the presence of further circumstances, the assessment must always be updated.

It seems useful, also in this case, to recall the provisions of art. 22 of the Directive:⁴

1. Member States shall ensure that victims are promptly subject to an individual assessment, in accordance with national procedures, to identify their specific protection needs and to determine whether and to what extent they would benefit from special measures during criminal proceedings, as provided for in Articles 23 and 24, as they are particularly exposed to the risk of secondary and repeat victimisation, intimidation and retaliation.

2. The individual assessment shall consider the following elements: a) the personal characteristics of the victim; b) the type or nature of the crime; c) the circumstances of the crime.

⁴ Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings

3. As part of the individual assessment, special attention shall be paid to victims who have suffered considerable harm because of the seriousness of the crime, victims of crimes motivated by prejudice or discrimination that could be related to their personal characteristics, victims who are particularly exposed because of their relationship and dependence on the offender. In this sense, victims of terrorism, organized crime, human trafficking, gender-based violence, violence in close relationships, sexual violence or exploitation or hate crimes, and victims with disabilities shall be given due consideration.
4. For the purposes of this Directive, child victims of crime shall be presumed to have specific protection needs as they are particularly vulnerable to secondary and repeat victimization, intimidation, and retaliation. To determine whether and to what extent they should benefit from the special measures referred to in Articles 23 and 24, child victims of crime shall be subject to an individual assessment as provided for in paragraph 1 of this Article.
5. The scope of the individual assessment may be adjusted according to the severity of the crime and the degree of apparent harm suffered by the victim.
6. The individual assessment shall be carried out with the close participation of the victim and shall consider his or her wishes, including his or her wish, if any, not to avail himself or herself of the special measures in accordance with the provisions of Articles 23 and 24.
7. Where the elements on which the individual assessment is based have changed substantially, Member States shall ensure that it is updated throughout the criminal proceedings.

Article 22 should be read in conjunction with Article 1 of the directive, which stipulated that its legal framework should allow participation in criminal proceedings.

The best interests of the child: the "Best Interest Procedure" applied by UNHCR

Since the entry into force of the Convention on the Rights of the Child in 1989, the principle of "best interests" in relation to children has been adapted and transposed within the legislation of signatory countries but also within other international legal instruments. In May 2021, UNHCR published updated guidelines on the "Best Interests Procedure - BIP".

This version replaces both the 2008 guidelines regarding the determination of the best interests of the child and the manual published in 2011 regarding the implementation of the same guidelines. In addition, this update adds elements developed through the implemented practices of national child welfare systems.

The guidelines are designed to be used, as a priority, in the context of the procedure for the recognition of international protection, either directly by UNHCR or by partners. The same guidelines indicate the possibility of being used and adapted in other procedural contexts where, however, it is necessary to implement a procedure for

determining the best interests of the child, especially about children at risk (including unaccompanied foreign children involved in criminal proceedings).⁵

The Best Interests Determination Procedure is designed to provide quality procedural standards for children at risk who require structured, systematic, and coordinated support. All decisions must be made with a holistic, multidisciplinary approach.

The Guidelines are UNHCR's standards for establishing and implementing the assessment procedure. Procedures should be child-friendly and child-centred.

This procedure for determining the best interests of the child includes comprehensive case management through 6 actions:

1. Identification of vulnerabilities
2. Assessment of best interests
3. Action planning
4. Implementation
5. Follow-up
6. Case closure

There are two key procedural elements to decision-making throughout the various stages of case management: the best interest assessment (BIA) and the best interest determination (BID).

Best Interest Assessment of the Child (BIA). A BIA procedure is an assessment conducted individually concerning a child; it is designed to ensure that the best interest of the child remains the primary consideration. This procedure should be conducted by staff with appropriate training and with the participation of the child throughout the process. It should be possible to begin as soon as the first indicators of that a child is at risk. A BIA should be reviewed and updated regularly until the programme is fully implemented. A BIA should already be in place, for example, before reunification occurs or foster care is found.

Activating a procedure to assess best interests should be considered the first action that plays an essential role in child protection case management.⁶

Child's Best Interest Determination (BID). The BID procedure is a formal process that takes place in accordance with rigorous procedural safeguards, and through it, the best interests of the child are determined, especially in the case of particularly important decisions that affect the child's life. A BID process should allow the child to participate, should be conducted by decision-makers with relevant expertise, and should balance all relevant factors to determine the best option. A BID procedure should be formalised using specific documents that identify the responsibilities of those involved.⁷

⁵ UN High Commissioner for Refugees (UNHCR), 2021 UNHCR Best Interests Procedure Guidelines: Assessing and Determining the Best Interests of the Child, May 2021, available at: <https://www.refworld.org/docid/5c18d7254.html>.

⁶ BIA template available at: <https://www.unhcr.org/handbooks/biptoolbox/forms.html>.

⁷ BID review form available at: <https://www.unhcr.org/handbooks/biptoolbox/forms.html>.

Guidelines for case management and child protection: “Interagency guidelines for case management and child protection” - Child Protection Working Group

In 2012, participants in the Child Protection Working Group, released the "*Interagency guidelines for case management and child protection*". These guidelines were created to reinforce the concept of a coordinated approach to child protection case management. They aim to offer a general framework of principles, considerations and procedures oriented to effective child protection case management in line with the minimum standards for child protection in humanitarian action already provided in CPMS Minimum Standards for Child Protection in Humanitarian Action.⁸

The guidelines were developed primarily to support professionals working in humanitarian fields, but they can also be adapted to develop work in other settings such as the criminal justice system.

What is the meaning of “case management”?

By case management we mean that activity oriented to provide support and answers to the protection needs that a child may encounter in a situation of exposure to risk.

More generally, case management involves that network of individuals who, with different roles, provide services for the child. A further objective of the guidelines is to provide practical tools related to the different phases of case management but, above all, to lay the foundations for structuring of referral processes among the actors involved.

Key elements of case management:⁹

- Should be focused on the individual needs of the child and his/her family while always giving due consideration to the best interests of the child and enhancing the resilience of the child and his/her family.
- It should always ensure the meaningful participation of the child throughout the management of his/her case.
- Should operate in a network system that promotes referral mechanisms.
- Should activate mechanisms for the assumption of responsibility among the various subjects.
- Should include the figure of the case worker who assumes the task of coordinating the various parties involved.

The system operates in a circular fashion with different phases:¹⁰

1. Identification and registration of the child identified as vulnerable.
2. Assessment of the individual needs of the child and his/her family.

⁸ CPMS Minimum Standards for Child Protection in Humanitarian Action developed in 2012 and reviewed in 2019 by the Child Protection Working Group (CPWG).

https://alliancecpha.org/en/system/tdf/library/attachments/cpms_2019_final_en.pdf?file=1&type=node&id=35094,

⁹ "Interagency guidelines for case management and child protection", pp. 10-15, available http://www.cpcnetwork.org/wp-content/uploads/2014/08/CM_guidelines_ENG_.pdf

¹⁰ Ibid.

3. Developing the individual case management strategy by establishing goals and timelines for achievement.
4. Start the management activity with the activation of the individual referral processes to the different actors involved.
5. Carry out follow-up and review activities (in case of need or emergence of new needs, go back to point 2)
6. Case closure

The international institutions and agencies that use the guidelines in the management of juvenile cases adhere to several principles.

Do not cause further harm to the child, which means that at any time during the procedure, all actions that may expose the child to further risk of suffering further harm should be avoided.

Always consider the priority of the best interests of the child, which means bearing in mind that it is not always a matter of choosing the ideal response in the handling of the case, but is likely to involve a considered assessment of the different options.

The principle of non-discrimination against children. This principle is expressed through a series of actions that ensure that the child is not discriminated against because of his/her condition or because of race, gender, disability, etc.

All the professionals that use the guidelines and apply them have a duty to adhere to the standards and principles enunciated above.

Seek informed consent, which should be given by the child, his/her family members, and possibly the guardian, and assumes participation and understanding on the part of the child. A child-friendly approach should be adopted throughout.

Respect for privacy and information sharing, all information should be managed and shared based on a very individualised approach and closely linked to the individual need, giving due regard to confidentiality.

III. MODULE N. 3

The context in Italian legislation

While explicit legislative measures have been adopted to transpose Directive 2012/29/EU, which provided for vulnerability assessments at different stages of ordinary criminal proceedings, no measures have been adopted to transpose Directive 2016/800/EU on procedural safeguards for child suspects or accuseds in criminal

proceedings. Moreover, it must be considered that the condition of unaccompanied migrant child increases the exposure to vulnerability and social exclusion.

In Italy, child victims and children suspected or accused of having committed a crime are involved in different criminal proceedings. Juvenile victims of crime are involved before the Ordinary Court in the ordinary criminal process, which is regulated by the Italian Code of Criminal Procedure and criminal law, with reference to other complementary or special laws. Children suspected or accused of having committed a crime, on the other hand, are involved before the Juvenile Court in the juvenile criminal trial, which is regulated by the Juvenile Criminal Procedure Code (Presidential Decree No. 448 of 1988)¹¹.

Depending on the status of the child, the rights, guarantees, support and protection are recognised differently. For victims of crime, there is a legislative framework of support, assistance, and protection specifically for unaccompanied children that promotes their integration, access to public services, integration, and appointment of guardians. This framework of norms has been enshrined in the so-called “Zampa Law”. In addition, the law regulating support, assistance, and protection of victims of human trafficking, which also covers unaccompanied children (Decree Law No. 212/2015), also applies. The decree includes specific rules for the individual identification and assessment of victims of human trafficking and has led to the creation of referral mechanisms and a specialised network of coordination, and the adoption of a multidisciplinary approach to be implemented between reception centers, Juvenile Courts and criminal authorities that have a specific mandate on human trafficking. These procedures and reporting mechanisms are already activated upon the arrival of the child onto Italian territory.

With the introduction of Decree Law No. 212/2015¹² professionals must assess whether a victim is in a “particular condition of vulnerability”(Article 90). The elements attributable to situations of vulnerability should be identified at first contact with the child, with the assistance of a psychologist (Article 362 CPP comma 1-bis). Even if the article does not consider all the circumstances listed in Directive 2012/29, it takes into consideration a number of subjective and objective elements possibly related to vulnerability: age, infirmity, mental disabilities, the type of crime pursued, and the circumstances of the act pursued, emotional, psychological or economic dependence on the offender. The paragraph lists various offences such as trafficking, labour exploitation, etc.

With regard to child suspects or those accused of committing a crime, as mentioned above, Directive 2016/800 has not been followed, in Italy, by proper transposition, although the “*Codice del processo penale minorile*” D.P.R., 22/09/1988 n° 448¹³ had already provided numerous guarantees to protect the reintegration of the child into society. One among others is the delicate task carried out by the USSM (*Ufficio di*

¹¹ Decreto Del Presidente Della Repubblica 22 Settembre 1988, N. 448 - Approvazione Delle Disposizioni Sul Processo Penale A Carico Di Imputati minorenni (Gu Serie Generale N.250 Del 24-10-1988 - Suppl. Ordinario N. 92)

¹² DECRETO LEGISLATIVO 15 dicembre 2015, n. 212 Attuazione della direttiva 2012/29/UE del Parlamento europeo e del Consiglio, del 25 ottobre 2012, che istituisce norme minime in materia di diritti, assistenza e protezione delle vittime di reato e che sostituisce la decisione quadro 2001/220/GAI. (15G00221) (GU Serie Generale n.3 del 05-01-2016)

¹³ Code of Juvenile Criminal Proceeding - D.P.R., 22/09/1988 n° 448.

Servizio Sociale per i Minorenni), an office that assists the Juvenile Court, as stated in art. 6 of the Decree, responsible for taking charge of the child under investigation, on behalf of the judicial authority, at different stages of the proceedings, dependent on whether the case is pending before a judge of preliminary investigations, a judge of preliminary hearing or a judge of the trial. This office, in synergy with other actors such as operators of shelters and other territorial services, has the role of ascertaining during juvenile criminal proceedings the personal characteristics of the child, the psychophysical maturity and other elements such as those relating to "personal, family, social and environmental conditions and resources of the child in order to ascertain the degree of criminal responsibility, assess the social relevance of the fact as well as to take the appropriate criminal measures and adopt any civil measures" (Article 9 D.P.R. n. 448 of 1988).

Considering this legislative framework, it emerges that the Italian system has developed individual assessment procedures but there is still work to be done to improve individual assessments in criminal proceedings to harmonise them, where possible, especially when it comes to unaccompanied children.

Promising practices

1. Experience in taking care of an unaccompanied child victim of trafficking (the Catania Prosecutor's Office)

Within the Italian criminal justice system, the procedural differentiation given by the existence of the Juvenile Court and the application of Law 448/88, the so-called "juvenile criminal procedure code", should be highlighted. Unaccompanied migrant children who find themselves as victims or witnesses of a crime, as already mentioned, must interact with magistrates (judges and prosecutors) who usually operate in the context of the ordinary court and the public prosecutor's office who usually operate with adults.

However, from the interviews carried out during the research of the CFJ-DCSCP project, some very positive experiences emerged in terms of referral and taking responsibility for victims by the system. Unfortunately, unaccompanied children often find themselves victims of crimes such as exploitation for work and sexual purposes, and human trafficking. In addition to these, there are other forms of even more heinous crimes that require further efforts by the judicial authorities to protect victims.

The Italian system has made considerable progress in the management of cases and in the care of such victims. What we can now call the multi-disciplinary or multi-agency approach has evolved considerably over the years thanks to the dedication, perseverance and commitment of the institutions involved and the organisations experienced in combating and countering these phenomena.

The multi-agency model implemented by the Catania Public Prosecutor's Office, which is particularly committed in fighting against sexual exploitation of young girls, is based precisely on an intervention that involves different actors with different tasks and functions and has been developed with a local protocol that involves different actors:

- Police - investigation activities;

- International organisations - responsible for the anti-trafficking information during disembarkation and pre-identification of victims;
- Voluntary guardian - responsible for the protection of the child;
- Juvenile Court - judicial authority for the protection of child;
- Public Prosecutor's Office - investigating judicial authority;
- Anti-trafficking bodies - responsible for taking charge of victims of trafficking who decide to join the referral program;
- Reception agencies - organisations that manage reception facilities; and
- Ethno-psychiatry Unit - medical unit of the ASP that operates specifically to support unaccompanied child victims of trauma related to the migration path.

The prosecutor's office has the leading role and the responsibility to liaise and coordinate with the other actors involved in the different stages of the proceeding.

A fundamental task is carried out by the international organisations present during disembarkation. Their task is to make a preliminary identification of potential victims (within the juvenile population and beyond). This activity is usually carried out in a very rapid and less organised phase, where, in addition to the presence of NGOs, there is always the presence of police and immigration authorities. This rapid and less structured period during context of disembarkation is certainly not the appropriate setting for the identification of vulnerabilities or interpretation of victimization indicators.

The connection and referral activities between the international organisation, the reception center, the asylum and immigration authorities, the voluntary guardian and the prosecutor's office, make it possible to reach a preliminary identification of victims and the consequent protection of the person concerned.

Victims who decide to report a crime they are placed in specific programs (ex art. 18 TUI 286/98). They are guaranteed to receive adequate services for psychological and social support as well as an integration programme that would allow them to emancipate themselves and therefore not to develop a connection with the perpetrators of the exploitative crime.

Informing the child victim of a crime

*"Treating the child as someone who needs to be informed and counseled but also to understand in order to make choices is a duty of loyalty."*¹⁴

Another fundamental element developed within the practice of the Prosecutor of Catania is related to information provided to the child. Informing the child involved as a victim in a criminal proceeding means to ensure his/her participation (as required by the EU directive).

The prosecutor oversees the investigation and also has the duty to inform the child. The child has the right to know how the procedure will be carried out, what will happen if the offender is arrested, and what the consequences are of any statements he/she may make.

¹⁴ A. Interbartolo, Child-Friendly Justice: Developing the Concept of Social Court Practices Report on Existing Judicial Practices in Italy, 2021, available at: https://validity.ngo/wp-content/uploads/2021/10/D3.1-Report-of-Judicial-Practices-in-Italy_EN.pdf interview with Public Prosecutor.

The exchange of information between the prosecutor and the child does not always take place quickly for obvious reasons of lack of trust and because, in general, victims of crime are afraid to talk. Whenever possible, it is important to avoid conducting this type of meeting too early and, above all, it is essential to arrange several moments of contact with the other stakeholders involved (reception center, social services, psychologist, guardian, etc.) to verify if there are any changes since the first meeting.

Even during the disclosure phase (pre-trial), the role of the network is crucial. The actors involved, the operators of the reception center and the various specialists who work within it (psychologists, social workers) play an indispensable role in making the choices clear to the child and in clarifying what other aspects may influence the decision to collaborate or not.

The figure of the specialised guardian appointed by the Juvenile Court, as a support figure for the child, is of fundamental importance. This figure, already regulated within the law, has undergone a revolution thanks to the regulatory intervention provided by the “Zampa Law”¹⁵. Registers for voluntary guardians have been set up and all members have received adequate training by institutions and major international agencies.

During the information phase, a particularly important role is played by the interpreter. Today, the term **cultural mediator** is used much more frequently. It seems obvious to make a distinction between the two roles, also because, as we have ascertained in years of activity, the communication barrier is not only presented by the language difference, but also by the different cultures. Usually, the prosecutor in charge of the investigations requires the presence of a mediator/interpreter who is of the same gender as the victim and who is preferably of the same ethnic group. The mediator/interpreter's job is to develop an empathic relationship with the victim and facilitate the victim's understanding of what is happening and what will be the next steps. It is also important that the mediator translates what is reported by the child in a faithful manner without changing the content of the questions asked and the answers offered.

From the experience of the Catania Public Prosecutor's Office, it clearly comes out how the network mechanism is the basic construct to be able to carry out activities and initiatives such as individual assessment, referral and taking responsibility for victims. The system operates in synergy avoiding repetitions and exploiting the information already acquired in a circular manner, complying with the main international models and, above all, remaining in line with the EU Directive 2012/29/EU. It also comes out of the need to push forward the good practice achieved and structure it within a model that can have the characteristic of replicability on a larger scale and can also be disseminated.

2. Experience in the care of an unaccompanied migrant child offender (USSM of Palermo)

During the research carried out within the CFJ-DCSC project, a positive experience emerged from the Social Service Office for Child (USSM) of the Juvenile Court of

¹⁵ Legge 7 aprile 2017, n. 47 Disposizioni in materia di misure di protezione dei minori stranieri non accompagnati (17G00062) (GU Serie Generale n.93 del 21-04-2017)

Palermo, which developed a reintegration path in favour of an unaccompanied child involved in criminal proceedings as an offender.

The child found himself involved in a criminal proceeding and thanks to the intervention of social workers working within the USSM, he was able to understand the crime committed, take responsibility, and accept the consequences. During the interview conducted as part of the project, the child repeated several times the positive, supportive and, above all, clarifying role played by the social worker of the USSM who constantly gave him information on the procedure, and counselling on the reintegration programme that he attended as part of his sentence.¹⁶

As already mentioned, the juvenile criminal process is regulated by Presidential Decree n.448 of 1988, the so-called "juvenile criminal procedure code" and therefore the jurisdiction in the trial of juvenile offenders lies exclusively with the Juvenile Court. Initially, (compulsory) age assessments are carried out, where there is uncertainty about evaluations concerning the personality of the child already carried out in other proceedings, to adjust the judgment to the conditions in which the child is. Art. 9 of Presidential Decree 448/88 provides that the public prosecutor and the juvenile judge shall acquire elements regarding the family and environmental conditions and resources, to ascertain the degree of responsibility of the child. For the same purposes, they may obtain information from persons who have had relations with the child, and hear the opinion of experts.

The USSM office is generally appointed by the judge of the Juvenile Court to conduct the individual assessment. USSM social workers conduct individual assessment with the child. There are local forms and guidelines developed internally that have been used to collect relevant information on the child.

Although EU Directive 2016/800 has not been formally transposed into the Italian legislative system, the provisions of the art 9 of decree 448/1988 seem to be partially in line with the provisions of art. 7 of EU Directive 800/16 "*... individualization shall be carried out by specialized personnel who shall proceed to an individualized assessment that considers the personal, social, and family situation of the child and his/her possible vulnerabilities. The same should be carried out as soon as possible during the proceedings and is an element to be evaluated regarding the possible imposition of precautionary measures as well as the type and amount of punishment to be imposed. The individualization cannot disregard the involvement of the child and his effective participation in the process.*"

The vulnerability of the child is determined not only by the age but also by the state of vulnerability, the type of crime committed, and the factual circumstances thereof. A series of subjective and objective elements are considered: whether the child has committed a crime with violence, whether he/she has been a victim of trafficking, and whether the victim is psychologically or economically dependent on the offender. This type of assessment is the responsibility of the judicial authority.

The procedure opens in different ways depending on whether the child is free, or if they are subject to a precautionary measure (arrest and detention). Precautionary

¹⁶ A.Interbartolo et al, Child-Friendly Justice: Developing the Concept of Social Court Practices Report on Existing Judicial Practices in Italy, 2021, available at: https://validity.ngo/wp-content/uploads/2021/10/D3.1-Report-of-Judicial-Practices-in-Italy_EN.pdf - interview with a child involved in a reintegration programme.

measures are also provided for, such as orders to stay at home. Pre-trial detention in prison is considered the most extreme penalty.

The Presidential Decree 448/88 provides that the child must be heard. In most cases, foreign children are represented by the public defender with whom, unfortunately, they often have no contact before the preliminary hearing. On the contrary, the public defender has contact with the child and can explain the importance of the process and the hearings he/she will have to undergo. The guardian must be involved and informed. During the different stages of a proceeding, an interpreter will be appointed by the judge.

Procedures are foreseen to divert the child from the criminal justice system: the sentence of not proceeding due to irrelevance of the evidence, the judicial pardon, and the suspension with probation, where proceedings are suspended and the child is subjected to a period of observation.

Probation is ordered by the social services and applies at the preliminary hearing stage. Art. 28 of Presidential Decree 448/88 refers to suspension of the trial while art. 27 entrusts the president of the GUP (*Giudice Udienza Preliminare*) board with the power to control the progress of the trial. At the end of the period, if the outcome is positive, the offence is declared expunged.

In order to benefit from suspension, a project must be presented by the Juvenile Social Services Office (USSM), in collaboration with the social welfare services of the institutions. The USSM prepares a report of the project while the judge evaluates the adequacy of the probation programme and solicits any modifications. If the juvenile does not successfully pass the probationary period, the trial is resumed.

The lawyer plays a particularly important role, as he or she often indicates to the USSM what the content of the programme might be. In the execution of the programme the USSM is the office with a decisive role on the front line. The lawyer can act as a go-between, verifying that the child complies with the programs described. The educational needs of the child are always protected and are at the basis of the choices made. When suspension with probation is ordered, the rule provides to indicate in the programme the participation in vocational training courses, and mediation with the victim to repair the damage. The USSM prepares periodic and final reports on all the activities of the probationary period.

The juvenile justice system is not a punitive system but a re-educational one; all the professionals involved have specific skills because they must consider that they are dealing with a vulnerable subject as a child.¹⁷

¹⁷ A. Interbartolo et al, Child-Friendly Justice: Developing the Concept of Social Court Practices Report on Existing Judicial Practices in Italy, 2021, available at: https://validity.ngo/wp-content/uploads/2021/10/D3.1-Report-of-Judicial-Practices-in-Italy_EN.pdf - interview with USSM office of Palermo

IV. MODULE N. 4

A model for individual assessments

From the good practices developed by the Prosecutor's Office of Catania and the USSM of Palermo, it is evident that the Italian judicial system, in a fragmented way and with a lack of coordination structures, has realised experimental models regarding the realisation of individual assessments of unaccompanied migrant children.

Starting from best practices means optimising what already exists in the system and making it more useful and usable.

It clearly shows the need to invest in better training for magistrates, prosecutors and USSM staff on what issues arise in connection with children from different cultures, and more specifically with regard to the situation of unaccompanied migrant children. At the same time, it is evident that greater emphasis should be placed on the role of the cultural mediator as a presence within juvenile justice offices.

Recently, thanks to specific measures introduced by the Zampa Law, L. 47/2017, the reception system for unaccompanied migrant children has seen important innovations in management. At times, it is possible to outline what improvements and what perspectives lie in the future. All legislative reforms require a definition, from the point of view of implementation and practical aspects.

It must be pointed out that the complete application of legislation requires agreements, both at central and local level, between various sectors of institutions and civil society organisations; those agreements, if not properly implemented, remain a dead end.

The same law provides for the adoption of memoranda of understanding and other territorial agreements between the various stakeholders in such a way as to concretely regulate the actions, functions, and different aspects of collaboration between all the actors involved.

3. The role of the “*cartella sociale*” (social file) in the information system for children

A crucial role is played by the provision foreseen in art. 9 of law 47/2017¹⁸ on the introduction of the social file and the Juvenile Information System.

The social file is not merely a tool for collecting medical history and data. It seems necessary, moreover, to prepare guidelines and implementation procedures to identify the essential elements of the social file and the subjects in charge of managing the information contained therein, which should not be limited only to personal and social data but contain, where present and in a fully **multidisciplinary fashion**, the observations of the condition of vulnerability of the child (social, psychological, and physical condition).

¹⁸ Article 9, Law n. 47 of 7 April 2017, Rules in the field of protection of unaccompanied migrant children (17G00062) (GU n.93 of 21-04-2017)

It would be appropriate that the social file, with all the necessary implementation of information, can follow the child to allow the sharing of all the news related to the child himself and his/her vulnerabilities.

The social file must be filled in by qualified personnel of the care structure at the end of an interview and should clarify the reasons for the choices made concerning the child, from educational to health care referrals. The social file must be forwarded to the social services of the municipality and to the **Public Prosecutor Office** at the competent Juvenile Court. The social file is a tool available to qualified personnel and it serves to provide continuity in the care of the child, through systematising the transmission and sharing of information.

This is valid both for internal and external use. The purpose is to prepare an integrated assessment of the most suitable path for the child. There is no reason why the information contained in it cannot be used within the judicial system, especially in criminal proceedings in which the child is a victim or a defendant. Having already information on the child about vulnerabilities and potentials would ensure that the child would not be subjected to multiple evaluations and interviews (thus avoiding secondary victimisation and distress related to having to re-experience their trauma) and the judicial system to be able to use information already found in other proceedings. The social file could be part of an individual assessment process and could be considered as a complementary tool that can give relevant information to assess the specific vulnerabilities of the child.

The social file, as described, would allow all the actors involved to document the different phases and interventions carried out within the reception and integration process of unaccompanied children. This type of social file would also allow for the analysis of useful data for the purpose of monitoring and improving the entire system.¹⁹

Key aspects of the social file are:

- . *It is a document that talks about the child, his history, his path and his vulnerabilities and, above all, provides methodological information on how the elements were collected and evaluated.*
- . *It is a tool that focuses on the evaluation of the child's best interests.*
- . *It is a tool that aims at the child's participation in its construction.*
- . *It is a tool that guarantees children's rights, since it summarises the responsibilities of the various actors involved in the assessment and its drafting (particularly important is the protection of sensitive data and privacy).*
- . *It is a tool that can be used by other territorial actors in the network.*

In this way, the social file integrates the construction of a complete and reliable information system that can support unaccompanied foreign children in their integration process, but also facilitate the work of institutions, including judicial institutions, in the management of cases of children who are victims or suspects of crime.

¹⁹ Example of the social file of a project funded by AMIF Programme: https://www.interno.gov.it/sites/default/files/2020-11/14._cartella_personale_minore.pdf

4. Child friendly approach during an interview

In outlining the fundamental aspects of a model for the individual assessment of unaccompanied foreign children involved in criminal proceedings (victims or defendants), it seems appropriate to reflect on the use of some useful aspects before conducting interviews.

The interviewer

Children might have preferences concerning the gender of the professionals who interview them (such as, for example, girls victims of sexual exploitation/human trafficking, or SGBV survivors), some boys might prefer to be interviewed by female professionals since they are perceived to be calmer and kinder, or quite the opposite due to cultural considerations. The basis is to try to have the interviewer as the same gender as the child, but it is more essential to ask the child if he/she feels comfortable with the interviewer or the cultural mediator.

The setting

At any stage of the proceedings, pre-trial or during the trial itself, it is good to consider some aspects that can have an impact on the outcome of the interview.

In some countries in the EU the so-called “Barnahus model” is widespread²⁰. Basically, this is a child friendly and multiagency model developed in northern European countries. This model tries to respond to the needs of children who come into contact with the justice system. In one place (a specialised facility), a multidisciplinary and interagency team made by judges, prosecutors, social workers, psychologists and others cooperate to provide protective services for children and work to ensure child-friendly justice. Their services also include conducting an individual assessment of the situation of child victims or witnesses of violence. A crucial aspect is that the Barnahus model is integrated into the judicial system and allows for the possibility to collect audio-visual recordings of forensic interviews that could be used during proceedings. In this way, it is possible to avoid secondary victimisation and re-traumatisation.

In other countries even though they do not have specific facilities designed for this purpose, the layout and setting of rooms where interviews with children are to take place are usually prepared by the person who is to conduct the interview.

Here are some general criteria for a room or a space that could be used to have interviews with children:

- An adequate colour scheme to allow the child to feel comfortable.
- The room should be child-friendly but not childish. This is especially important when dealing with young people in the age group between 15 and 18 years old.
- To avoid having dangerous objects and, above all, to remove all things that could create distractions.

²⁰ Barnahus model - <https://www.barnahus.eu/en/about-barnahus/>.

- To avoid other people's documents (files and papers) in such a way as not to give the impression that the child is a file among others but instead is a person to care about.

Before starting an interview, it is necessary to arrange the chairs in the most appropriate way considering the profile of the child. If possible, physical barriers between the child and the interviewer should be avoided. It would also be important to sit in such a way that the eyes of the child and his/her interviewer can meet at the same level. In an ideal situation, the interview with the child should be videotaped. This would not only allow the acquisition of useful elements both during the investigation phase and during the trial, but it would also allow the reduction of further interviews that increase the stressful condition of the child.

The video recording is useful in building a more natural relationship during the interview thanks to the fact that it avoids distractions given by the need of the interviewer to verbalise. The interviewer should always sit in front of the child, to maintain eye contact and leave the interpreter or cultural mediator in a lateral position with an equal distance from both interviewer and child (in a position close to the child suggests the idea that the interpreter is there to help answer the child and, in a position too close to the interviewer seems to be a helper of the same). The interpreter or cultural mediator plays a fundamental role during the interview. It should always be pointed out that the interpreter does not decide on the content of the questions and works only as a translator and mediator. Another fundamental role should be played by the child's guardian or representative. He/she should be present during the interview (except in special cases) and should be able to sit next to the child and offer him/her support.

There should be tools in the room to facilitate expression and dialogue (pens, pencils, posters, sheets, games, etc.). Appropriate clothing should always be kept in mind. Often, young unaccompanied migrant children come from areas of conflict or have had negative experiences with military and police forces. It is advisable to avoid wearing uniforms, so as not to generate additional stress and anxiety. It is also important to avoid exposure to religious symbols so that you are neutral and clear about the role.

Preparing the interview

Psychological preparation of the interviewer is a fundamental aspect, and it should be always kept in mind that:

- children are very sensitive and perceive indifference towards them;
- personal attitudes and expectations towards the situation and the child can affect the interview as well as the questions that will be asked during the interview;
- keep outside personal prejudices, to remain objective during the interview;
- remember the unbalanced positions between the interviewer and the child; and
- be aware that feelings can have an impact in the course of the interview;

The main task of the interviewer is to obtain information from the child and that this is done in a child-oriented and sensitive manner. Everything is based on a relationship of trust. Trust is not easy to build, but when it is achieved, the quality and detail of the information is greater and more accurate. The primary objective is to establish a

situation where the child feels that the interviewer can understand him/her and, above all, that he/she is willing to listen to him/her. The first contact with the child is fundamental. Every interviewer, before starting the hearing with a child, should ask himself/herself questions such as:

- . Is communication going well?
- . Where can I find information and tools to adapt my communication?
- . Have I ensured that the child could express him/herself in his/her native language?
- . How can I ensure that the translation is done in language that is appropriate for the child?
- . What do I know about this child?
- . Am I aware of the reality of the child's country of origin, religion, or background?
- . What is the goal that I can realistically achieve?
- . What are my thoughts and expectations about the case?
- . Who will be present during the interview?
- . Is there anything about my personal life that might influence this work?

First impressions are crucial. A high tone of voice must be avoided and also it is important to control non-verbal communication (body language). It's important to be clear about the role, even with the help of the interpreter, and then introduce any other figures present. In this way, the centrality of the child will be promoted.

Using child-friendly language is the key to establishing a good relationship. This does not mean that it must be a childish language. If the child does not understand the language, the use of an interpreter or mediator becomes essential, and the same relationship of trust must be built between them. It is necessary to help the child understand that the mediator is there to support communication and understanding, but that he/she cannot intervene in any way to support or modify the content of the interview. During the preliminary phase of the interview, it is necessary to pay particular attention to any signs that might bring out emotional aspects not previously highlighted. Above all, one must pay close attention to listening. Attention to non-verbal communication also means observing facial expression, the tone of voice, the way of walking, and all other aspects that could interact with aspects of the child's culture.

Getting to know the child

To start getting to know the child, it is necessary to start from the role of the interviewer and the purpose of the hearing. This will help the child understand what is happening. It is also helpful to start by asking about more general aspects of the child's life by showing interest in getting to know the child.

Explaining the scope of the interview

When interviewing a child, it is important to stay connected to the role, but the interviewer must also be able to get down to a less formal level. Introducing oneself by name makes the dialogue more real and allows the child to increase his or her sense of trust. Everything must be adequate with the level of maturity of the child and, clearly, the younger they are, the more difficulties they may have in explaining their roles and

the purpose of the interview. At this stage, the use of drawings or activities through other tools such as games could be of great help.

How to explain the criminal procedure to the child

It all starts from the age of the child; a higher age generally corresponds to a greater degree of awareness and cognitive development. Analysing the specific circumstances of unaccompanied foreign children, this path is not necessarily linear. Other factors influence, such as distance from the country of origin, insecurity due to the absence of parental figures, language difficulties, all of which imply the need to implement specific measures to overcome them. Again, the two figures that intervene in support are the mediator and the guardian. Introducing and explaining the role of both is crucial.

Communication

Having positive communication during an interview with a child is the base to develop trust. Positive communication focuses on respect for the child and includes two phases: active listening and clear dialogue.

Adults often find it difficult to communicate with children, especially when feelings and emotions take over.

It is of crucial importance to avoid questions that contain a “why”. Although apparently simple, the question that contains the “why” tends to push the child to give an answer even if he/she is not aware of it. In these circumstances, it is appropriate to ask a question that contains a “why” in a different way. It is also important to avoid hypothetical and suggestive questions. Hypothetical questions (“*What would you do if you were....?*”) should be avoided in order not to induce the child to construct hypotheses; suggestive questions (“*Don’t you think that it was wrong?*”) should not be asked because they stimulate the child to answer in the way they may believe the interviewer would like.

The interviewer should offer clarifications and explain the steps that will follow the interview and what the different scenarios are. There are cases where, in addition to the normal difficulty in building a dialogue and a relationship of trust, other difficulties arise. What to do, for example, when the child does not speak? This type of problem, which is very common, should be pre-identified and already known to the interviewer. In such cases, using different ways to communicate is useful to establish contact and develop a relationship. In addition to this case, there are other aspects that add complexity, for example, when the child is not able to concentrate on the requested topics, or when he/she feels uncomfortable with the interpreter, or when he/she shows disinterest or worse, behaves aggressively. A difficult situation, in general, occurs when communication is compromised, and the relationship of trust is undermined.

Children in the 14-18 age group are considered mature enough to be able to provide reasoned answers on issues. This is not always true and is not particularly true for unaccompanied foreign children. Different cultural and educational contexts can affect cognitive abilities, and this should be well considered. It is also relevant to encourage the child to narrate in his/her free expression so that the spontaneity of the narrative is not lost. For instance, during an interview, the interviewer should never interrupt a child

who is telling some facts by proposing in-depth or different questions. In these cases, it is necessary to take note and ask for further information or clarification at a later stage. It is always useful to structure the interview on different levels: a level linked to the facts and a level linked more to the emotional sphere. It should be considered that the issue of the credibility of statements is always very delicate, especially with unaccompanied foreign children, always remembering that it is much easier to obtain authentic information when the child feels welcomed and confident in being able to tell his/her story freely. During an interview, it is always useful to introduce the new topic after being sure of having closed the previous one.

Closing phase

At the end of the interview, it would be useful to make a check through the use of a check list to check that all the necessary topics have been covered and if this has been done, one must move on to the conclusion. The European Asylum support office has developed different tools that are to be used in the context of the international protection recognition, to support the work of caseworkers that have interviews with unaccompanied migrant children. Some of these tools can be adapted in the context of judicial activities. The use of specific checklist and monitoring tools is fundamental.²¹ It is always necessary to remember not to leave open issues that have not been discussed in depth. At the end, it is appropriate to thank the child for his/her cooperation. Unaccompanied migrant children should not be considered as a vase that can be left without a lid. Tidying up is necessary in order not to create further trauma and disorder in the lives of people who are already in a vulnerable condition and, even more so, when in one condition or another they meet the justice system.

Country of origin information in the criminal justice system

A typical tool in the refugee recognition procedure is the so-called Country of Origin Information (COI) search. This tool, necessary for the determination of international protection measures, can also be effective in the criminal prosecution phase (pre-trial and trial).

Just think, for example, of the context of victims of sexual exploitation. The scenario where the judge has to deal is not only that of the criminal phenomenon that affects the Italian territory but also its international dimension. The weight and repercussions of the statements made by a victim during investigations or trials do not remain within the borders of the country, but often affect the lives of family members who are exposed to a condition of risk to their own lives. Victims, worried about retaliation affecting the lives of their loved ones, become reluctant to speak out and this represents a limitation for the action taken by the prosecutor and judges.

Or in the context of an unaccompanied foreign child offender who belongs to an organised gang where the child will be reluctant to talk because of the code of organisation. Knowing the context of gangs means being able to interact with the child, during the individual assessment, with one of the most appropriate tools.

²¹ EASO Practical Guide: Personal interview - <https://easo.europa.eu/sites/default/files/public/EASO-Practical-Guide-Personal-Interview-EN.pdf>.

It is therefore necessary to ask questions to verify whether the child belongs to a vulnerable group, what specific risks he/she runs in his/her country of origin and what repercussions this has on the child and consequently on the individual assessment.

Developing and increasing skills and knowledge on the different realities of the countries of origin means facilitating the child in being able to tell and, above all, understanding in a more detailed way what the child will be able to tell. All this could complete the individual assessment procedure.

It seems useful to describe the general criteria for conducting COI research and how to use the information obtained. In very simple terms, we can define COI as information on the situation in the countries of origin of refugees that can be used to determine the need for international protection.

As mentioned above, COI has an informational function that can also be useful in an investigation or criminal procedure. The main elements that can be found through COI research concern the following areas:

- . Human rights and security situation
- . Political situation and the legal and legislative framework
- . Cultural aspects and societal attitudes
- . Humanitarian and economic situation
- . List of security events and incidents

The key element of COI is the source, and it is essential that those conducting the research and publishing the results do not have a vested interest.²² COI is country of origin information and does not contain procedural or legal elements. The purpose of COI research is to provide support to the decision-maker and should be combined with further actions that take place during an individual assessment process. Relying on the content of a COI to identify choices is insufficient. COI research should be used to corroborate certain statements that may be made during an individual assessment procedure.

Listed below are some of the main research tools through the web that are able to offer a variety of information on countries of origin categorised by themes:

- www.ecoi.net - This is the most widely used information portal in Europe and was developed by the Austrian Red Cross. It is considered a very reliable and accurate resource with constant updating. The portal offers extensive focus on human rights issues.
- www.refworld.org - This portal was developed by UNHCR and is the largest information site on refugee countries of origin.
- www.acceddata.com - This is a site run by an independent organisation; it offers information and disaggregated data on conflicts around the world and related security incidents.

²² <https://www.coi-training.net/site/assets/files/1021/researching-country-of-origin-information-2013-edition-accord-coi-training-manual.pdf>.

- www.ispionline.it - The Institute for International Policy Studies is now recognised as one of the most prestigious think tanks dedicated to the study of international dynamics.
- Unaccompanied foreign children who meet the criminal justice system come from countries where the situation in terms of security and guarantee of human rights is rather precarious or compromised. The use of a tool such as the COI, by the prosecutor or the judge or, more generally, by those who conduct part of an assessment, is certainly important to learn about aspects of the child's life that would otherwise be overlooked. A model for the individual assessment of cases of unaccompanied foreign children should also include training of the professionals involved on the use of these tools.

The provision of the role of cultural mediator within the juvenile and community justice system

Law N. 47 of April 7, 2017, the Zampa Law, provided specific provisions on measures for the protection of unaccompanied foreign children and recognises that "unaccompanied foreign children are entitled to rights in the field of child protection on an equal footing with children of Italian or European Union citizenship." This text of the law also indirectly promotes the use of the principles of juvenile-friendly justice, for example, when it recommends that communication with unaccompanied children take place with the help of a cultural mediator,²³ in a language that he or she can understand and in accordance with his or her level of maturity and literacy. All this appears to be in line not only with Directive 800/16 and Directive 22/2012 but also with Directive 64/2010 on the right to interpretation and translation in criminal proceedings. Well, it is necessary to highlight what are the European experiences that have led to the emergence of the figure of the cultural mediator. In Italy and Spain there is the figure of the cultural mediator. This is, for the most part, a transversal competence that interpreters can acquire and is aimed at facilitating mutual understanding and therefore relations between people with different cultural backgrounds that goes beyond mere translation and interpretation.²⁴

In the good practices described above, those carried out by the Public Prosecutor's Office and the anti-trafficking body for the protection of victims, we have been able to understand the centrality of the role of mediators in taking charge and supporting victims. It seems useful to outline the basic features:

The cultural mediator is a specialised figure who operates in the field of interpersonal communication, but above all, can be defined as that bridging figure between different cultures; a qualified and experienced mediator is able to know the culture and language of one or more foreign countries, and, above all, has the tools to build the relationship between people with different cultures and languages. The figure of the cultural mediator is particularly relevant in the field of immigration, where there is often the

²³ L. 7 aprile 2017, n. 47 Disposizioni in materia di misure di protezione dei minori stranieri non accompagnati. (17G00062) (GU Serie Generale n.93 del 21-04-2017).

²⁴ Defence for children - CFJ Toolkit. The project CFJ-IA is funded by the EU under the Erasmus + Programme - http://www.defenceforchildren.it/files/CFJ-Toolkit_A5_IT_201204.pdf.

need to interact with different cultures at different times, but certainly finds particular importance in other sectors including the justice system and especially the juvenile justice system. Courts do not have cultural and linguistic mediators to act as intermediaries between judges and defendants and between office workers. Rather, they rely on lists and registers of interpreters who are called only for language translation during hearings. All this appears to be insufficient when it comes to the individual assessment of a foreign child involved in a criminal proceeding. The opportunity to start thinking about a structured position within the offices, not only of the courts but also of the public prosecutor's office, seems to be the possibility to create a model of individual assessment that considers not only the needs imposed by the law, but also the needs that unaccompanied migrant children, victims, or offenders, bring with them. Cultural mediators must be specifically trained in criminal law proceedings and they need to operate within the system basing their operation on a code of conduct and ethics.

Capacity building tools for the coordination and monitoring of network

While fully respecting the child's right to private and family life, close collaboration among different professionals should be encouraged to obtain comprehensive knowledge of the child and an assessment of his/her legal, psychological, social, emotional, physical, and cognitive characteristics. A common assessment framework should be established for practitioners working with or for juveniles such as attorneys, psychologists, physicians, police, immigration officials, social workers, and mediators. As we have seen, in the assessment and determination of the best interests of the juvenile (BIA and BID) and thus also in the individual assessment during a criminal proceeding, multiple practitioners belonging to different disciplines and different agencies, or organisations are involved.

It seems necessary to ask the following questions:

Is there a mechanism for coordination among the different practitioners involved in these procedures?

Are there further possibilities to harmonise procedures starting with some "capacity building" activities, i.e., improving and enhancing one's capacity?

Both questions can be answered in the affirmative.

A multi-agency or multi-disciplinary system, such as the one described in this model, requires an investment not only in terms of specific training on the issues involved but also requires capacity building activities to be planned on three levels:

An individual level where the individual can invest in training activities aimed at acquiring new tools and skills. The training can be carried out both in traditional ways and through new tools (webinars, etc.) allows the individual to promote himself and his own growth, bringing benefit within its working context. Another useful activity is tutorship or mentoring. In this way, the individual professional working within the network can benefit from guidance and assistance based on the experience of others.

An organisational level where the network seeks to improve its capacity for governance and growth. The functional activities at this level concern the use of experts to improve the working capacity of the network itself, the stipulation of conventions and protocols that can delineate with greater clarity the task and functions of the single actors of the network and the use of technological innovations and new supports in order to improve information management and coordination activities.

A systemic level where the network or multi-agency system carries out activities of promotion and support in the assumption of decisions that can affect change not only from a legislative and political point of view but also from a cultural one. The system can interact with the outside world by influencing public opinion in a way that contributes to the diffusion of knowledge on issues that would otherwise be ignored.

V. Conclusion

According to data in 2nd Report of “unaccompanied children” and juvenile justice in Italy, 74% of children and young adults in charge of Social Service Offices in 2017 were Italian, 6% were from EU countries and 20% were from non-EU countries. The under 18s and young adults in charge of the Social Service Offices in 2017 are 5,253, among which: 18% are unaccompanied children ²⁵.

The response of criminal justice operators for unaccompanied migrant children who come into contact with the justice system grows always needs to be adjusted. This means that justice operators must be adequately trained and equipped to manage the impact. In addition to adaptation and training, it appears necessary for the entire system to invest in the removal of barriers that limit access to restorative justice and community services by unaccompanied children. This would bring a considerable advantage for the victims, who could succeed in recomposing the conflict and see a restitution of the damage suffered (not necessarily understood in civil law terms), for the offenders who, through the assumption of responsibility, would obtain a benefit in terms of reintegration.

The whole system would benefit from a strengthening of restorative justice services such as juvenile criminal mediation, as it would reduce the number of cases to be treated within the courts and you could get a reduction in economic and social costs.

VI. Annexes

Model of social file “modello cartella sociale” provided by the law n. 47/2017
Example of the social file of the AMIF project:
[https://www.interno.gov.it/sites/default/files/2020-11/14. cartella personale childe.pdf](https://www.interno.gov.it/sites/default/files/2020-11/14_cartella_personale_childe.pdf);

[Model of BIA and BID forms provided by UNHCR Best interest determination procedure](#)

BIA template available at: <https://www.unhcr.org/handbooks/biptoolbox/forms.html>;

²⁵ 2nd Report of “unaccompanied children” and juvenile justice in Italy - edited by Isabella Mastropasqua, Maria Stefania Totaro and Giuseppina Barberis

VII. Validation Event of the Italian Model for Individual Assessment

PRISM Impresa Sociale s.r.l. has organised a validation event of the model of individual assessment with the collaboration with the CPIA Nelson Mandela Palermo, on the occasion of a day dedicated to the dialogue based on human rights guarantees and violations in a world going into a sustainable direction. 20 participants attended the event, among which there were young adults and adults. 16 out of 20 were migrants, coming from different countries, some of them were unaccompanied upon their arrival in Italy, while others arrived together with their families. 4 out of 20 were Italians. The event was led by 2 facilitators and different groups of three people were formed. Each group discussed specific aspects of the model.

Different questions were posed in order to understand the groups' points of view on the behaviours of authorities (communication, information and inclusive or discriminatory attitudes), the migrants' involvement in decision making (how they would like to be involved to protect the right to be heard and right participation).

- How they like authorities to behave?
- What support was useful for them when communicating with authorities.
- How important it is for them to be involved in any decision-making process and what practices/measures applied in Italy, by authorities or persons in some position of authority that has made them feel that their views were respected or heard? How to communicate with them to make sure that they were understood?
- Did they encounter any socio-cultural clashes or any situation where they felt misunderstood?
- What were their experiences in the reception centre in decisions concerning them?

Each group had papers with a table, including some the abovementioned questions and a table with four columns related to communication and participation, information and listening, discrimination and guarantees, social inclusion.

What emerged?

Not having the support of the families makes the process of restarting a new life very difficult! Everyday life was in general more difficult!

The communication issues are among the most difficult aspect that make them struggle going through the Italian administrative system. In most of the cases, they felt supported by some educators of the reception centre where they were staying or other people they met in certain offices. *Speaking slowly with patience was helpful. The officers were kind, although there are too many administrative issues to take care of for a few number of officers.*

The best places where to learn the Italian language are the schools, but unfortunately in many cases the reception centres are very far away from the schools, so the distance is often an issue to decide for attending the school. Next to it, for those who work it was very hard to study and work at the same time.

It was a struggle even to understand how to reach certain places, how to get a train/bus to reach the school at the beginning! The educators in some cases were accompanying them. Youngsters used to be shy in asking for help, since they could not be understood.

Some participants had come into contact with the police or with the courts, when an interpreter was needed. All of them were really sensitive to the topics proposed for the reflection and the dialogue. Some of them were more proactive in the conversation, while some other were shy. They were different situations where they had experienced a cultural and social clash, based on religious differences and on race discrimination.

I was discriminated because of being Muslim.

VIII. Online training Tool

The content of this training model can also be found here:

www.prismonline.eu/justice-uam

