

# Pathways for Inclusive Individual Assessments of Children in Criminal Proceedings



VALIDITY



CENTRE FOR LEGAL  
RESOURCES



This report is co-funded  
by the European Union's  
Rights, Equality and  
Citizenship Programme  
(2014-2020)

## **Project**

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 without of parental care, unaccompanied children, and children with mental disabilities. This report synthesises the findings of the CFJ-DCSCP project and sets pathways and recommendations for further work on model standards, practice-oriented guidance, and development of tools for the implementation of an inclusive right to individual assessment in criminal proceedings across the EU.

## **Acknowledgments**

The Validity Foundation would like to would like to thank the Bulgarian Center for Not-for-Profit Law (BCNL), the Centre for Legal Resources (CLR/CRJ) and PRISM Impresa Sociale s.r.l. (PRISM) for their work and dedication to develop innovative guidance and tools for reform of criminal justice systems. We would also like to thank all professionals and children who cooperated in this project, sharing their knowledge and experiences, across the different activities at national and international level. It also would like to acknowledge the following helpful inputs for the development of this report: Steven Allen, Ann Campbell, Paola Grenier, Simona Florescu, Šárka Dusková and Joanna Perry.

## **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.

**Authors of the report (Validity Foundation):** Bruno Monteiro

**Validity Foundation – Mental Disability Advocacy Centre**

Impact Hub, Milestone Institute

**Editors (Validity Foundation):** Steven Allen, Paola Grenier

Wesselényi utca 17

1077 Budapest

Hungary

**Project Title**

Child-Friendly Justice: Developing the concept of social court practices (CFJ-DCSCP)

**Validity Foundation contacts**

**E-mail:** [validity@validity.ngo](mailto:validity@validity.ngo)

**Website:** <https://validity.ngo/>

**Project webpage**

EN: [validity.ngo/projects-2/child-friendly-justice/](https://validity.ngo/projects-2/child-friendly-justice/)

**Project contact**

[bruno@validity.ngo](mailto:bruno@validity.ngo)

**Grant Information**

REC-AG-2019/REC-RCHI-PROF-AG-2019-878552

**Year**

2022

# CONTENTS

- I. Introduction ..... 7
- II. Human-Rights Based Approach to Individual Assessment..... 9
  - Enabling the Right to Effective Participation of Children in Criminal Proceedings ..... 10
  - Right to Individual Assessment..... 13
    - 1. Assessments under International Human Rights Law ..... 13
    - 2. Individual Assessments under other EU Directives..... 14
    - 3. Towards a Human-Rights Based Individual Assessment..... 15
    - 4. Individual Assessment under the Victims’ Rights Directive and Procedural Safeguards Directive ..... 16
    - 5. The Limits of the Victims’ Rights Directive ..... 19
    - 6. The Limits of the Procedural Safeguards Directive..... 20
- III. Pathways towards an inclusive Model for Individual Assessment ..... 22
  - Member States’ efforts to Implement Individual Assessment, Article 22 of the VRD ..... 22
  - Member States’ efforts to Implement Individual Assessment, Article 7 of the Procedural Safeguards Directive ..... 23
  - Pathways for Inclusion in Individual Assessment: Standards and Steps ..... 24
    - 1. Holistic and Comprehensive ..... 25
    - 2. Continuous and Timely ..... 27
    - 3. Multidisciplinary, Collaborative, Impact and Progress-Oriented ..... 28
    - 4. Quality, Proper Resources and Sustainability ..... 30
    - 5. Participatory and Child-Centred ..... 30
- IV. Annex 1: Data Collection Tool..... 33

## Executive summary

The “Child-Friendly Justice: Developing the Concept of Social Court Practices” (CFJ-DCSCP)<sup>1</sup> project focuses on the rights and experiences in criminal proceedings of children in situations of enhanced vulnerability who are victims, suspects or accused of committing a crime, and specifically in respect of children without parental care, children with intellectual and/or psychosocial disabilities and unaccompanied children in Bulgaria, Romania and Italy respectively. Whether they are victims or suspects or accused of committing a crime, all children face numerous barriers that prevent them from effectively participating in criminal proceedings. These barriers are even higher for children in situations of enhanced vulnerability due to:

- 1) Existence of discriminatory and paternalistic attitudes and practices by criminal justice and child protection practitioners, and guardians;
- 2) Lack of appropriate integration between child protection and criminal justice systems;
- 3) Lack of age-, gender-, disability- and culturally-sensitive adaptations to the operation and management of cases in criminal proceedings; and
- 4) Lack of implementation of procedural accommodations to accommodate the diverse personal situations of these groups of children.

At national level, all three countries noted fragmentary and incomplete legal frameworks concerning individual assessments of children in criminal justice processes. This was especially notable in respect of child victims, whereby criminal codes and criminal procedure codes in Bulgaria and Romania lacked any relevant provisions. Only Italy had a form of vulnerability assessment for child victims, albeit that this process was not regulated. In Bulgaria and Romania, interviewees have suggested that, whenever individual assessments were performed, this happened as a result of the drive and commitment of individual well-intended professionals, rather than being embedded within the criminal justice and child protection systems.

All three countries had a form of individual assessment for child suspects or those accused of committing a crime that served primary purposes of promoting social integration and reducing risks of recidivism. The processes were not fully regulated in Bulgaria and Romania in a manner that ensures consistency, inclusion and quality, and there was little evidence that current practices are sufficiently sensitive and responsive to children who experience multiple forms of marginalisation. Italy was the only country with a clearer regulatory and institutional framework, with some evidence suggesting that individual assessments were used both to adapt hearings and to inform diversionary and social reintegration measures.

No specialised tools or professional development schemes were identified within the three project countries that catered to the specific needs and vulnerabilities of children without parental care, children with intellectual and/or psychosocial disabilities, or unaccompanied children. None of the countries individual assessment processes that are capable of identifying and determining the provision of crucial adaptations or procedural accommodations that are necessary to ensure effective participation of children. The principle of multidisciplinary – that is, a process of consistent and effective coordination between a range of legal, social and child protection

<sup>1</sup> The project webpage can be found here: <https://validity.ngo/projects-2/child-friendly-justice/>

professionals – was poorly understood and rarely in evidence, undermining outcomes for children. In Italy, there were a few accounts describing informal cooperation within local networks between anti-trafficking organisations, criminal justice professionals, guardians and reception centres. While promising, these seemed to be the result of good leadership by the prosecutor’s office, rather than a systematic approach at the intersection of criminal justice and child protection fields.

A human-rights based approach places significance on the right to individual assessment of children in contact with criminal justice systems, as set out in the EU Victims’ Rights Directive<sup>2</sup> (VRD) and in the Procedural Safeguards Directive<sup>3</sup> (PSD). The introduction of this mechanism of individualised and child-centred assessment processes can, if properly implemented, serve set two interconnected goals. First, ensuring that criminal justice systems provide full recognition of children’s rights and agency to participate in criminal justice processes in accordance with their evolving capacities. Exclusively protectionist or welfare-based approaches should be avoided, in that they are biased towards the exclusion of children from criminal justice processes, denying them access to justice, recognition and fair trial protections. Second, effective individual assessments can ensure that the best interests of the child are at the forefront of all criminal justice procedures and practices. Despite existing limitations, this report begins to chart a path towards fulfilling these two goals, with a view to to strengthening criminal justice systems across the EU to be more age-, gender-, disability- and culturally-sensitive, in accordance with the letter and spirit of key human rights treaties.

## **Key Findings and Recommendations**

At the EU level, the individual assessment framework is a crucial mechanism to guarantee the rights of child victims, of suspects and of those accused of committing a crime. It could, in principle, be used to enable the determination all necessary adaptations of criminal proceedings for children in general, as well as procedural accommodations and individualised support for children in situations of enhanced vulnerability, with a view to promoting their effective participation. Reflecting on the interactions between international human rights law and EU law in the realms of criminal justice and fundamental rights, the consortium makes the following recommendations:

- **Victims’ Rights Directive**

- Should be amended to enable full participation rights for child victims of crime.
- Article 22 should be revised to reflect a human rights-based based approach to enable the participation of victims of crime. The current approach is more focused on the protection needs and individual characteristics of victims, rather than identifying and addressing systemic barriers to participation that exist in the criminal justice system. As such, individual assessments framed in this manner fail to adequately address

<sup>2</sup> [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.

<sup>3</sup> [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.

the particularly disadvantaged position of victims who experience multiple and intersecting forms of discrimination. Individual assessments should instead be a dialogue between the child victim and criminal justice system, and there is a need for greater clarity to ensure that individual assessment processes can identify measures designed to ensure the child's right to effective participation (such as the provision of procedural and reasonable accommodations, adaptations and access to communication and information in a child-friendly and understandable manner). An individual assessment process should not be used to perform mental capacity assessments to ascertain fitness to stand trial, nor should it be used to exclude children from participating in criminal justice procedures.

- Article 24 should also be amended to ensure that appointment of special representatives, in cases of conflict of interest, are only done by a competent authority after first giving the child an opportunity to share their views on possible candidates, bearing in mind the principle of the evolving capacities of the child.<sup>4</sup>

- **Procedural Safeguards Directive**

- Article 7 should be amended to clearly distinguish between assessment processes that may inform the application of punitive measures against the child,<sup>5</sup> and assessment processes to determine beneficial and participatory measures; Additional safeguards are necessary in the form of legal representation whenever information can be used against the child;
- Article 7 should set out explicitly as one of its goals ensuring the determination of all measures to ensure the right to effective participation (such as age assessments, right to procedural and reasonable accommodations, adaptations and access to communication and information in child-friendly manner);

- **Both VRD and PSD**

- Should be amended to explicitly prescribe a right to adaptations and procedural accommodations. Both Directives have opted for piecemeal implementation by listing specific forms of adaptation and potential accommodations, but not providing the means by which children may access these.
- Should be amended to recognise children's right to present their views and that they should be supported to do so in criminal proceedings.
- Should be amended to appropriately address the diverse situations of children in situations of enhanced vulnerability, including for children without parental care, unaccompanied children and children with disabilities.

<sup>4</sup> Similarly to the PSD for child suspects or those accused of committing a crime.

<sup>5</sup> Such as sentencing and appropriateness of coercive measures.

## I. Introduction

Whether they are victims or suspects or accused of committing a crime, all children face numerous barriers that prevent them from effectively participating in criminal proceedings. These barriers are even higher for children in situations of enhanced vulnerability due to:

- 1) Existence of discriminatory and paternalistic attitudes and practices by criminal justice and child protection practitioners, and guardians;
- 2) Lack of appropriate integration between child protection and criminal justice systems;
- 3) Lack of age-, gender-, disability- and culturally-sensitive adaptations to the operation and management of cases in criminal proceedings; and
- 4) Lack of implementation of procedural accommodations to accommodate the diverse personal situations of these groups of children.

This project has a specific focus on children without parents, unaccompanied children and children with intellectual and/or psychosocial disabilities due to their 1) disproportionate affection by the criminal justice proceedings on the one hand, and 2) specific and complex vulnerability on the other hand. Children with intellectual and/or psychosocial disabilities require specific attention in the training provided to judicial and other legal professionals. Approach of the member states however vary significantly in this respect. The Consortium's experienced the complete lack of training of the relevant authorities in relation to children with these specific challenges. This experience was shared among the lawyers representing children with intellectual and/or psychosocial disabilities in previous EU-funded projects.<sup>6</sup>

A particular challenge in this project has been to develop practical guidance for implementation of the right to individual assessment that is intersectional and responsive to the situation of these three groups of children. The first steps were taken towards this direction through the three nationally-oriented models to strengthen the implementation of the right to individual assessment which are adjusted to one of the three groups of children targeted with this project.<sup>7</sup> There are some limitations on account of two different structural dimensions:

- National dimension: Legislation is fragmented on the right to individual assessment for these different groups of children. There is a lack of integration between child protection and criminal justice systems, a lack of effective transposition and proper implementation of the VRD and PSD across the three countries;
- EU dimension: The VRD and PSD set out minimum standards for the implementation of the right to individual assessment, yet the conceptualisation

<sup>6</sup> See for example Mental Disability Advocacy Centre, [Innovating European Lawyers to Advance the Rights of Children with Disabilities](#), JUST/2014/RCHI/AG/PROF/7362.

<sup>7</sup> Velina Todorova et al., 'Social Court: A Model of Child-Friendly Justice' (2022); Giuseppe Divita & Anthinea Interbartolo, 'Training Model of Child-Friendly Justice Court Practices: Unaccompanied Children' (2022); Dodu Oana et al. 'Model of Child-Friendly Justice Court Practices: Children with Intellectual or Psychosocial Disabilities (2022). All available at: <https://validity.ngo/projects-2/child-friendly-justice/publications-and-resources/>

of such assessments are: 1) not fully sensitive to children in diverse situations, and this is particularly the case in respect of children who come from disadvantaged backgrounds as well as those experiencing multiple and intersecting forms of discrimination; 2) are not fully aligned with the principle of participation of children in criminal proceedings, in accordance with standards under the UN Convention on the Rights of the Child (UNCRC), the UN Convention on the Rights of Persons with Disabilities (UNCRPD), the European Convention on Human Rights (ECHR), and the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

Nevertheless, this report aims to take another step forward by highlighting how different experiences, practices and barriers that children in situations of enhanced vulnerability face, and can further inform EU policy and national implementation of the right to individual assessment.

## **Overview**

First, this report sets out the relevant legal and policy framework on the right to participation and individual assessment in criminal proceedings for both child victims and child suspects or accused of committing a crime under EU and international human rights law. This approach to systems integration between different sources of law assists in the definition of clear goals and standards in the conduct of individual assessments for children, and serves as an analytical and implementation framework for both Directive 2012/29/EU (Victims' Rights Directive) and Directive (EU) 2016/800 (Procedural Safeguards Directive). It advocates a human-rights based approach drawing on the UNCRC, UNCRPD, UNCEDAW and ECHR, and centres the rights of children to participate fully in criminal proceedings, regardless of their role, while protecting them against further harm.

The next section highlights the gaps that both Directives have, and the need for mechanisms that are capable of identifying and responding to the specific requirements of children in situations of enhanced vulnerability. The Consortium calls for more ambitious reform to ensure Member States are fulfilling the rights and needs of children in criminal justice processes, regardless of their age, gender, disability or origin. It will set out recommendations targeted at achieving greater alignment between EU criminal procedural standards and international human rights law.

Third, this report sets out pathways towards more effective implementation of right to individual assessment for the three populations of children targeted on this project. As such, draws on existing promising practices within the three countries, as well as influential work on the right to individual assessment from other EU-funded projects. It will highlight some of the specific barriers as well as the necessary adaptations or procedural accommodations to overcome them for children without parental care, unaccompanied children and/or children with intellectual and/or psychosocial disabilities. It aims to become a source of inspiration and detailing areas for further work to ensure access to justice for all children through inclusive individual assessments.

## II. Human-Rights Based Approach to Individual Assessment

As an analytical framework for the implementation of an inclusive right to individual assessment, this report will use a human rights-based lens. A rights-based approach seeks to analyse inequalities which lie at the heart of discriminatory practices which lead to the exclusion of children in different situations of vulnerability.<sup>8</sup> The use of vulnerability here should not be confused with the concept of “vulnerable person”, which even though at policy level could signal areas where it is necessary to eliminate systemic harmful practices and promote substantive equality, as Mustaniemi-Laakso et al. contend, this label runs the risk of disempowering individuals that belong to the group.<sup>9</sup> A human rights-based approach uses international human rights standards as the basis for developing, planning, implementing and monitoring policy, and puts the focus on developing the capacities of both ‘duty-bearers’ to meet their obligations, and ‘rights-holders’ to claim their rights.”<sup>10</sup> Within the scope of the right to individual assessment, a human-rights based approach:

1. Enables a coherent interpretation of EU law (primary and secondary) with international law, particularly UNCRC, UNCRPD, UNCEDAW and ECHR, in accordance with the principle of human dignity and best interests of the child as their cornerstones. It seeks to address the inequalities which are at the heart of the disadvantages faced by children, and promotes the application of the principle of the best interests of the child throughout.

2. Goes beyond traditional criminal justice approaches whereby the criminal justice system is seen as another form of exercise of State power for the sake of public safety. It centres the focus of the operation of criminal justice system on the individuals of whose rights were or are at-risk of violation. It centres its operation on empowering, supporting and enabling the child to exercise their rights. It moves away from harms-based/needs-based or welfarist conceptions where children’s participation rights tend not to go beyond compensation or specific protection measures. Currently, children’s role to effectively participate in criminal proceedings varies across EU Member States.

3. Empowers child victims and offenders as rights holders and acknowledges their autonomy and accountability in line with their evolving capacities. States are therefore duty-bearers and should adopt all measures to enable children to exercise their procedural and substantive rights throughout criminal proceedings. This rights-based approach recognises children’s dignity and autonomy and States’ duty to promote it, given that children are best placed to “express their own requirements and

<sup>8</sup> United Nations Sustainable Development Group, Universal Values: Principle One: Human Rights-Based Approach (2022) <https://unsdg.un.org/2030-agenda/universal-values/human-rights-based-approach>.

<sup>9</sup> For a debate on this see Hisayo Katsui, Eija M. Ranta, Sisay A. Yeshanew, Godfrey M. Musila, Maija Mustaniemi-Laakso and Alessandra Sarelin, Reducing Inequalities: A Human Rights-based Approach in Finland’s Development Cooperation with Special Focus on Gender and Disability — A Case Study on Ethiopia and Kenya (Åbo Akademi University Institute for Human Rights, 2014) 26.

<sup>10</sup> Ibid.

experiences”.<sup>11</sup> Research conducted by FRA has shown that children in criminal proceedings tend to assess their role and participation as important whenever they assess professionals positively, are treated fairly, and assess the location positively.<sup>12</sup>

Although not coherently operationalised, a human-rights based approach to criminal law reform, which puts participation rights of children at its centre, has support in EU law and both directives. The Victims’ Rights Directive identifies victims as a person who was subject to a violation of their individual rights,<sup>13</sup> thus seeking to make criminal justice victim-centred. The VRD also aims to ensure the participation of all victims of crime in proceedings.<sup>14</sup> The Procedural Safeguards Directive<sup>15</sup> sets out a goal for Member States to ensure child suspects or accused of committing are able to exercise their right to a fair trial.<sup>16</sup>

## Enabling the Right to Effective Participation of Children in Criminal Proceedings

As set out in international human rights law, all children, whether as a victim or suspect, or unaccompanied or without parents or with disabilities have right to be heard and participate in criminal proceedings.<sup>17</sup> This includes for girls, who are disproportionately excluded from justice processes.<sup>18</sup> The UNCRC goes further to specify that children with disabilities have the right to participate both as direct and indirect participants. The European Court of Human Rights (ECtHR) has interpreted the right to fair trial as

<sup>11</sup> UN Committee on the Rights of Persons with Disabilities, General comment No. 7 (2018) on the participation of persons with disabilities, including children with disabilities, through their representative organizations, in the implementation and monitoring of the Convention, para. 24-25.

<sup>12</sup> European Union Agency for Fundamental Rights (FRA), ‘Child-friendly justice Perspectives and experiences of children involved in judicial proceedings as victims, witnesses or parties in nine EU Member States’ (2017) 21, [https://resourcecentre.savethechildren.net/pdf/fra-2017-child-friendly-justice-children-s-perspective\\_en.pdf/](https://resourcecentre.savethechildren.net/pdf/fra-2017-child-friendly-justice-children-s-perspective_en.pdf/)

<sup>13</sup> Recital 9 of VRD. See also FRA, ‘Victims’ rights as standards of criminal justice Justice for victims of violent crime Part I’ (2019) 18 [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2019-justice-for-victims-of-violent-crime-part-1-standards\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-justice-for-victims-of-violent-crime-part-1-standards_en.pdf). This is consistent with case-law of the European Court of Human Rights, which views criminal justice response as an effective remedy, particularly for violent crime, to the wrong that the victim suffered. ECtHR, *Aksoy v. Turkey*, No. 21987/93, 18 December 1996, § 98; see also *Aydın v. Turkey*, No. 23178/94, 25 September 1997 [GC]; *Menteş and Others v. Turkey*, No. 23186/94, 28 November 1997 [GC]. “Accordingly, as regards Article 13 (art. 13), where an individual has an arguable claim that he has been tortured by agents of the State, the notion of an ‘effective remedy’ entails, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible and including effective access for the complainant to the investigatory procedure.”

<sup>14</sup> Article 1 VRD.

<sup>15</sup> See Recital 1 and Article 2 of the PSD.

<sup>16</sup> The Committee of Ministers of the Council of Europe summarise this by establishing “those responsible for acts amounting to serious human rights violations must be held to account for their actions” and “impunity must be fought as a matter of justice for the victims”. The Committee of Ministers define serious human rights violations as acts that “enact criminal law provisions”. Committee of Ministers of the Council of Europe on 30 March 2011 on eradicating impunity for serious human rights violations, <https://rm.coe.int/1680695d6e>.

<sup>17</sup> Article 12 and 40 UNCRC, Article 5, 7, 12 and 13 UNCRC, Article 6 and 13 ECHR, Council of Europe Guidelines on Child-Friendly Justice; Principle 1 and 8 Guidelines on Access to Justice for Persons with Disabilities.

<sup>18</sup> Article 2, 3 and 5 (a) United Nations Convention on the Elimination of Discrimination Against Women.

guaranteeing the right of an accused to participate effectively in criminal proceedings, including for children.<sup>19</sup>

Under international human rights law, States have the obligation to:

- Create supportive environments that encourage women and girls to claim their rights.<sup>20</sup>
- “Examine their laws and policies to ensure that the autonomy, will and preferences of children with disabilities are well understood and respected on an equal basis with other children. States parties should ensure that children with disabilities are equipped with, and enabled to use, any mode of communication, including sign language, Braille, Easy Read, alternative and augmentative modes of communication necessary to facilitate the expression of their views, and that their opinion is given due consideration.”<sup>21</sup>
- Take necessary measures to ensure active involvement of child victims and offenders while respecting evolving capacities through the identification and provision of appropriate support, reasonable and procedural accommodations. “Such support [in judicial proceedings] could take various forms, including recognition of diverse communication methods, allowing video testimony in certain situations, procedural accommodation, the provision of professional sign language interpretation and other assistive methods”.<sup>22</sup> For all children specifically, the UNCRPD “calls for the provision of procedural and age-appropriate accommodations. These accommodations are distinguishable from reasonable accommodation in that procedural accommodations are not limited by disproportionality”.<sup>23</sup>
- Take precise steps to ensure, in practice, that children benefit from the right to understand and be understood, the right to impart and receive information, the right to support, protection and assistance, the right to be accompanied by a person they trust, and the rights to reasonable and procedural accommodations. As it will be explained, depending on what specific rights the individual assessment aims to fulfill, its normative content will differ along with the determination of relevant measures that can be provided.
- Make adjustments in the criminal justice system for children to overcome any barriers that they may face, by way of procedural accommodations or other adaptations. As found in this project, inclusive processes require age-, disability- and gender-sensitive approaches which respond to whether a child is without parental care, is unaccompanied, and/or for children with intellectual and/or psychosocial disabilities.

<sup>19</sup> See European Court of Human Rights (ECtHR, *Stanford v. United Kingdom*, No. no. 73299/01, 11 April 1994 para. 26; *V v. United Kingdom*, No. 24888/94, 16 December 1999, para. 85-86.

<sup>20</sup> United Nations Committee on the Elimination of Discrimination Against Women, [General recommendation on Women’s Access to Justice](#) (2015) para. 51 d).

<sup>21</sup> United Nations Committee on the Rights of Children and United Nations Committee on the Rights of Persons with Disabilities, [Joint Statement: The rights of children with disabilities](#) (2022) para. 5.

<sup>22</sup> United Nations Committee on the Rights of Persons with Disabilities, [General comment No. 1 \(2014\) Article 12: Equal recognition before the law](#), para. 39.

<sup>23</sup> *Ibid.* See also Article 13 of the UNCRPD.

In EU law, a right to participation for child victims can be drawn from a right to express their views freely in accordance with their age and maturity.<sup>24</sup> Additionally, Directive 2012/29/EU on victims of crime, clarifies that “in applying this Directive, children's best interests must be a primary consideration, in accordance with the Charter of Fundamental Rights of the European Union and the United Nations Convention on the Rights of the Child adopted on 20 November 1989”.<sup>25</sup> Child victims should be considered and treated as the full bearers of rights set out in this Directive and should be entitled to exercise those rights in a manner that takes into account their capacity to form their own views”. The VRD recognises that “justice cannot be effectively achieved unless victims can properly explain the circumstances of the crime and provide their evidence in a manner understandable to the competent authorities.”<sup>26</sup>

For children who are suspects or accused of committing a crime, a right to participation is linked to their right to a fair trial and access to justice. PSD stipulates that Member States are to ensure that children have the right to be present and are to take all necessary measures to enable them to participate effectively in the trial, including by giving them the opportunity to be heard and to express their views.<sup>27</sup>

Although there are similarities, the extent to which children enjoy participation rights vary significantly across Member States. Especially in respect of child victims, their role is determined by one or more of the following criteria: “(i) whether the national system provides for a legal status of child victims as a party to criminal proceedings; (ii) whether the victim is under a legal requirement or is requested to participate actively in criminal proceedings, for example as a witness; and/or (iii) whether the victim has a legal entitlement under national law to participate actively in criminal proceedings and is seeking to do so, where the national system does not provide that victims have automatic legal status as a party to criminal proceedings”.<sup>28</sup>

<sup>24</sup> Article 24(1) [Charter of Fundamental Rights of the European Union](#), 2012/C 326/02.

<sup>25</sup> Recital 14 and Article 1 of the VRD.

<sup>26</sup> Recital 34 of the VRD.

<sup>27</sup> Article 16 of the PSD.

<sup>28</sup> Wendy De Bondt & Heleen Lauwereys, [‘Children’s rights and child participation in criminal proceedings’](#) (2020) 20.

## Right to Individual Assessment

Before embarking on an analysis of the right to individual assessment under VRD and PSD, a human-rights based approach requires to take stock as well of guidance of individual assessments under international human rights law. This will also help inform how the two directives may be further improved.

### 1. Assessments under International Human Rights Law

1. United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“the Beijing Rules”). One of the first sources of international law from which the assessment of children suspects or accused of crime and in contact with juvenile justice systems can be traced. The Beijing Rules explains that the “disposition of the competent authorities shall be guided by the following principles: (a) The reaction taken shall always be in proportion not only to the circumstances and gravity of the offence but also to the circumstances and the needs of the child as well as to the needs of the society.”

2. The United Nations Committee on the Rights of the Child has spoken about assessment of maturity, in connection with the right to be heard in proceedings. “By requiring that due weight be given in accordance with age and maturity, article 12 [UN CRC] makes it clear that age alone cannot determine the significance of a child’s views. Children’s levels of understanding are not uniformly linked to their biological age. Research has shown that information, experience, environment, social and cultural expectations, and levels of support all contribute to the development of a child’s capacities to form a view. For this reason, the views of the child have to be assessed on a case-by-case examination.”<sup>29</sup> “Maturity refers to the ability to understand and assess the implications of a particular matter, and must therefore be considered when determining the individual capacity of a child. The impact of the matter on the child must also be taken into consideration. The greater the impact of the outcome on the life of the child, the more relevant the appropriate assessment of the maturity of that child. Consideration needs to be given to the notion of the evolving capacities of the child, and direction and guidance from parents.”<sup>30</sup>

3. The United Nations Committee on the Rights of Persons with Disabilities. Of relevance in criminal proceedings, the Committee discusses two different types of assessments. First an assessment for the determination of reasonable or procedural accommodations. “Both concepts aim at achieving de facto equality, reasonable accommodation is a non-discrimination duty, whereas specific measures imply a preferential treatment of persons with disabilities over others to address historic and/or systematic/systemic exclusion from the benefits of exercising rights”.<sup>31</sup> Although the determination of procedural accommodations is not subject to an assessment of proportionality.<sup>32</sup> Second, they highlight concerns about assessments of ‘mental capacity’ which are discriminatory. These often lead to removal of the right to legal capacity of persons with cognitive or psychosocial disability, “on the basis of the

<sup>29</sup> UN Committee on the Rights of the Child, [General Comment no. 12 \(2009\): The Right of the Child to be Heard](#), para. 29.

<sup>30</sup> Ibid. para. 30-31.

<sup>31</sup> UN Committee on the Rights of persons with Disabilities, [General comment No. 6 \(2018\) on equality and non-discrimination](#), para. 25-26.

<sup>32</sup> Ibid.

diagnosis of an impairment (status approach), or where a person makes a decision that is considered to have negative consequences (outcome approach), or where a person's decision-making skills are considered to be deficient (functional approach)". Rather, the Committee clearly prescribes that States parties must refrain from denying persons with disabilities their legal capacity and must, rather, provide persons with disabilities access to the support necessary to enable them to make decisions that have legal effect.<sup>33</sup> While we cannot speak of the right to legal capacity *per se* for children, it is important to highlight that mental capacity assessments must not justify the exclusion of children from criminal proceedings as well.

4. Council of Europe Guidelines on Child-Friendly Justice (2010). This established standards which detail a need for competent authorities to obtain a comprehensive understanding of the child, as well as an assessment of his/her legal, psychological, social, emotional, physical and cognitive situation".<sup>34</sup>

5. 2020 International Principles and Guidelines on Access to Justice for Persons with Disabilities. Finally, similarly to the United Nations Committee on the Rights of Persons with Disabilities, Principle 8 specifies that all "persons with disabilities have the rights to report complaints and initiate legal proceedings concerning human rights violations and crimes, have their complaints investigated and be afforded effective remedies". For this purposes, there is the need, during investigations, to "ensure that, when working with victims with disabilities, law enforcement officials assess the risk of the former being subjected to further offences, and whether any voluntary protective measures (such as a safe haven) are needed".<sup>35</sup> The guidelines also caution States to ensure that a person's right to legal capacity is not restricted by mental status assessments and functional assessments.<sup>36</sup>

This exposition enables the drawing of preliminary conclusions concerning the appropriate goals that individual assessments of children in contact with criminal justice systems should pursue.

## 2. Individual Assessments under other EU Directives

Directive 2011/36/EU<sup>37</sup> for victims of human trafficking prescribes that "Member States should provide for resources to support victim assistance, support and protection. [...] The practical implementation of such measures should, on the basis of an individual assessment carried out in accordance with national procedures, take into account the circumstances, cultural context and needs of the person concerned."

<sup>33</sup> United Nations Committee on the Rights of Persons with Disabilities, [General comment No. 1 \(2014\) Article 12: Equal recognition before the law](#), para. 47-49.

<sup>34</sup> Committee of Ministers of the Council of Europe, [Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice](#), 17 November 2010 (CoE Guidelines). See principle 5 of the Guidelines.

<sup>35</sup> CoE guidelines, para. K.

<sup>36</sup> Special Rapporteur on the Rights of Persons with Disabilities, [International Principles and Guidelines on Access to Justice for Persons with Disabilities](#) (2020) Principle 1, para. 12 c).

<sup>37</sup> Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on [preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA](#).

Directive 2011/93/EU,<sup>38</sup> for child victims of sexual exploitation, establishes an obligation for Member States to take “the necessary measures to ensure that the specific actions to assist and support child victims in enjoying their rights under this Directive, are undertaken following an individual assessment of the special circumstances of each particular child victim, taking due account of the child’s views, needs and concerns.”<sup>39</sup>

Only with Directives 2012/29/EU and Directive (EU) 2016/800, individual assessment was described as a right for children who are victims, suspects or accused of committing a crime as it will be shown further below.

### 3. Towards a Human-Rights Based Individual Assessment

Both Directives have adopted an individual assessment framework, which seems to be focused on an assessment of a child’s needs. This limited conception fails to adequately treat children as rights-holders and neglects to address barriers within the criminal justice system itself, as well as adjustments required to enhance the effective participation of children in the dispensation of justice.

A comprehensive assessment of the child requires an examination of the child’s individual circumstances and an evaluation of what may form a barrier to their full and effective participation in proceedings. It requires therefore an assessment of the child’s personal “situation” within proceedings. This is to enable criminal justice professionals to understand the disadvantaged position of children in enhanced vulnerable situations and address ableist, ageist, racist, xenophobic and sexist attitudes and systemic barriers in the criminal justice system. The CoE guidelines highlight the need for an assessment of a child’s legal, psychological, social, emotional, physical and cognitive situation.<sup>40</sup> They also state that “children should be treated with care, sensitivity, fairness and respect throughout any procedure or case, with special attention for their personal situation, well-being and specific needs, and with full respect for their physical and psychological integrity.

By aligning the focus of the assessment, criminal justice professionals will be better prepared to recognise different factors that intersect with children’s personal characteristics and circumstances which require overcoming to ensure their participation. The ECtHR, for example, has recognised Roma, children, persons with disabilities and persons from sexual minorities as groups that require specific attention due to prejudice, stigmatisation, social disadvantage and material deprivation.<sup>41</sup>

An assessment of the vulnerable situation is in line with guidance by the UN on the human rights of migrants. “The vulnerable situations that migrants face have often been created for them by others through law, policy and practice. A human rights-based

<sup>38</sup> Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on [combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA](#).

<sup>39</sup> See Article 19 (3) of Directive 2011/93/EU in the context of assistance and support measures.

<sup>40</sup> Coe Guidelines, Para. 16.

<sup>41</sup> See, Lourdes Peroni and Alexandra Timmer, ‘Vulnerable Groups: The Promise of an Emerging Concept in European Human Rights Convention Law’ (2013) 11(4) International Journal of Constitutional Law 1056, 1064–1070. See Maija Mustaniemi-Laakso et al., [The protection of vulnerable individuals in the context of EU policies on border checks, asylum and immigration](#) (2016) 4.

approach to migrants in a vulnerable situation would therefore seek to ensure that responses aim above all to empower migrants, rather than stigmatizing them and denigrating their agency". An assessment of vulnerable situation acknowledges the existence of intersecting external and internal factors that create de facto inequality and may impede participation of children in criminal proceedings.

An individual assessment, which assess barriers in criminal justice system is in line with the complementary human rights model of disability, which identify external factors that prevent persons with disabilities' participation in society.<sup>42</sup> An assessment of the situation to enable the exercise of children's right is also consistent with human-rights based approach, which seeks to empower rights holders by operationalising law and policy by anchoring them to international human rights standards.

#### 4. Individual Assessment under the Victims' Rights Directive and Procedural Safeguards Directive

Article 22 of the Victim's Rights Directive and Article 7 of the PSD establish a right to individual assessment for victims of crime in the criminal justice system in EU Member States. Both Directive sets out substantive and procedural elements for fulfilling this right to individual assessment, with some similarities and differences.

- **Purpose:** Both Directives share a common purpose that an individual assessment shall be used to determine beneficial measures, specifically protection measures and the "needs" of children.<sup>43</sup> This is where the commonalities end, since the right to individual assessment for child victims is narrower in scope in that it is focused on risk-based assessment of secondary victimisation and repeat victimisation, intimidation and retaliation during criminal proceedings. While for child suspects, assessments may concern other needs of the child, particularly training, social integration and education as well as support decision-makers to make any other decision that pursue other legal goals during the course of action in the proceedings, including sentencing (Article 7 (1) and (4)).
- **Steps:** Both Directives set out a two-step process for the assessment. The first step is an assessment of needs, although for child victims there is a specific focus on assessment of "protection needs" while for child suspects this assessment is broader.<sup>44</sup> Child victims in particular are presumed to have "protection needs".<sup>45</sup> The second step in both directives is the determination of what measures are necessary to meet the goals of the assessment and the needs or protection needs of child suspects/accused of committing a crime or victims, respectively.<sup>46</sup>
- **Criteria:** The Directives further set out that the individual assessment should take into account specific personal characteristics and individual circumstances of the child and should be adaptable to the individual case. The nature of the adaptation

<sup>42</sup> See for example Anna Lawson & Angharad E. Beckett, '[The Social and Human Rights Models of Disability: Towards A Complementarity Thesis](#)' (2021).

<sup>43</sup> Article 7 (1) PSD and Article 22 (1) and (4) VRD..

<sup>44</sup> Article 22 (4) VRD and Article 7(1) of PSD.

<sup>45</sup> Article 22 (4) VRD.

<sup>46</sup> Article 23 (1) and 24 VRD and Article 7 (4) and Recital 35 PSD.

varies according to their status in the case and the nature of the crime. For child victims the assessment must adapt according to the harm caused and severity of the crime, while for child suspects it depends on the criminal offence and whether there has been an assessment in the past.<sup>47</sup>

- **Factors:** In both Directives, the child's best interests shall be a primary consideration, although for child suspects this principle is not part of the operating Articles of the assessment, which might cast doubt on the necessity to factor consider it.<sup>48</sup> Other factors listed in the VRD and PSD generally differ. For child victims, personal characteristics of the victim, the type or nature of the crime, the relationship between the victim and the offender and the circumstances of the crime are relevant considerations.<sup>49</sup> For child suspects, the relevant factors listed are much broader, including "child's personality and maturity, the child's economic, social and family background, and any specific vulnerabilities that the child may have".<sup>50</sup> As an example, Recital 36 explains these vulnerabilities could be learning disabilities and communication difficulties.

While the Directives do not go in too much detail, they also set out procedural requirements for the implementation of individual assessments. In particular, they specify that assessments should conform with a child-sensitive approach, and align with the right to privacy, respect their best interest and be multidisciplinary. They also set out some guidance on who should conduct an assessment, when and what should be the qualifications of the persons involved.

- **Child-sensitive approach:** Both Directives impose recognise the need for adaptations to make information understandable to the child.<sup>51</sup> Only the PSD is explicit about a right to information, explaining the need to ensure information is provided in an understandable manner, appropriate to the age, maturity and level of understanding of the child, taking into account communication difficulties they may have.<sup>52</sup>
- **Participation:** Both Directives require individual assessment to be carried out with the close involvement of the child.<sup>53</sup> Unlike the VRD, the PSD is clearer on the need to involve as well in this process the holder of parental responsibility/appropriate adult and/or representative, as applicable and appropriate.
- **Special Representative:** However, the process for nomination of a special representative differs between the VRD and PSD. The VRD leaves the nomination decision to the competent national authority, where it is unclear if a child has a say (Article 24 (b)). On the contrary, the PSD first gives the child the opportunity to

<sup>47</sup> Article 22 (2) and (5) VRD and Article 7 (3) and Recital 37.

<sup>48</sup> Article 1(2) VRD and Recital 8 PSD. See also 24(2) of the Charter of Fundamental Rights of the European Union.

<sup>49</sup> Article 22 (2) VRD.

<sup>50</sup> Article 7 (2) PSD.

<sup>51</sup> See Article 3 and 4 VRD and Article 4 PSD.

<sup>52</sup> Article 4 (1)(b)(i) and Recital 1 and 55 PSD

<sup>53</sup> Article 22 (6) VRD and Article 5, 7(7) and 15 PSD.

nominate an appropriate adult. Only if such nomination is not acceptable to the competent authority, bearing in mind the best interest of the child, a representative of an authority or institution in charge of protection or welfare of children can be nominated to participate in the individual assessment (Article 7(7) and 15). The special representative is different from the role of person of trust, which may also be different from the person who has powers of legal representation or special representative. Multiple persons may fulfill the role of person of trust, including family members, friends, teachers and support persons.

- **Temporal:** Both the VRD and PSD agree that an assessment should be conducted at the earliest possible opportunity,<sup>54</sup> and that these should be updated throughout criminal proceedings when there are significant changes in circumstances.<sup>55</sup> Neither stipulate when exactly the individual assessment should occur. The PSD establishes that it should occur before an indictment, unless it is in the child's best interest for this to be conducted at the beginning of the trial hearing (Article 7 (6)). However, both victims and suspects or those accused of committing a crime have rights that should be exercised prior to the indictment stage. Victims must be able to report a crime. Suspects or accused must be able to understand their rights either upon arrest or as soon as they receive a court summons. Considering the importance of the right to procedural accommodation for the determination of measures to accommodate the participation of children, indictment is likely to be too late to provide any positive outcome.
- **Competence and Coordination:** Both Directives do not define who or what agency is responsible for conducting individual assessments. As guidance for the VRD, DG Justice<sup>56</sup> suggests that this can be done by victim support services, law enforcement authorities, judicial authorities or other bodies. These may differ depending on the stage of the proceedings. The Directive nonetheless advocates for coordination between multiple services and agencies and development of "one-stop shops".<sup>57</sup> The Directive highlights the need for public services to act in a coordinated manner to ensure a proper degree of assistance, support and protection, making clear that multidisciplinary coordination is essential.<sup>58</sup> The PSD on the other hand only mentions it must be carried out by "qualified" personnel, following a multidisciplinary approach. It may involve a specialised professional.<sup>59</sup>

The reference to a multidisciplinary approach, albeit somewhat ambiguous, gives an amount of flexibility for determinations, on a case-by-case basis, as to what expertise and disciplines would be relevant to enable the participation of children who are in situations of enhanced vulnerability. The Directives do not go as far as determining how data should be collected and coordination should be established.

- **Training:** Both directives set out an obligation that "officials likely to come into contact with victims" receive both general and specialist training to a level

<sup>54</sup> See VRD Article 22 (1) and Article 7 (5) PSD.

<sup>55</sup> Article 22(7) VRD and Article 7(8) PSD.

<sup>56</sup> European Commission, [DG JUSTICE GUIDANCE DOCUMENT related to the transposition and implementation of 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](#) (December 2013) 45.

<sup>57</sup> Recital 62 VRD.

<sup>58</sup> Article 26, Recital 52 and 63 VRD.

<sup>59</sup> Article 7(7) and 15 PSD.

appropriate to their contact.<sup>60</sup> This is to ensure that officials are aware of the needs of victims and to enable them to deal with victims in an impartial, respectful and professional manner.<sup>61</sup> The PSD goes further and notes that the person conducting the individual assessment has to be “qualified” and may be accompanied by a specialised professional.<sup>62</sup>

- **Privacy:** Although not explicitly on individual assessment, both Directives generally require Member States to take measures to protect the privacy of the child,<sup>63</sup> but lack further detail. Article 21 sets out an obligation to adopt measures to protect the privacy of the victim, taking into account the child’s personal characteristics.

## 5. The Limits of the Victims’ Rights Directive

The VRD sets out for the first time a detailed legal framework for a right to individual assessment for all victims of crime under Article 22. However, the conceptualisation does not fully align with the UNCRC, UNCRPD, UNCEDAW and ECHR. The narrow scope of the right to individual assessment reduces the potential utility of the process:

- i. Narrow focus on risk-based assessments – Article 22 aims to address the likelihood that a (child) victim may be affected by secondary victimisation, repeat victimisation, intimidation and retaliation. However, the individual assessment process could also be used to perform assessments for determination of age where necessary, the identification of procedural accommodations and broader adaptations to proceedings to ensure participation.
- ii. Limited scope to assessment of “protection needs” – It is not explicit enough to ensure an assessment of communication barriers and necessary forms of support. Furthermore, the concept of “needs” represents a disempowering model, which views children as deserving only of compensation or protection. This is not fully conducive to promoting the participation rights of victims of crime.<sup>64</sup> As is explained further below, a broader assessment of the child’s situation is more likely to meet the support and empowerment demands set out under international human rights law.
- iii. Limited to personal characteristics of the victim and nature of the crime – It neglects an assessment of the position of the offender and a critical reflection of how proceedings should be conducted. As such, it places an exclusive focus on the victim, which may lead to two different outcomes:
  - a. May lead to assessments where a victim is excluded from proceedings due

<sup>60</sup> Article 25 (1) VRD and Article 20 PSD.

<sup>61</sup> Article 25 (1) VRD.

<sup>62</sup> Article 7 PSD.

<sup>63</sup> Article 21 VRD and 14 PSD.

<sup>64</sup> Reminiscent of needs-based model. See for example FRA, [‘Victims’ rights as standards of criminal justice Justice for victims of violent crime Part I’](#) (2019) 18; Albin Dearing, [‘Justice for Victims of Crime Human Dignity as the Foundation of Criminal Justice in Europe’](#) (2017); Albin Dearing & Holly Huxtable, [‘Doing justice for victims of violent crime in the European Union - Reflections on findings from a research project conducted by the European Union Agency for Fundamental Rights’](#) (2020).

to the lack of adjustments that promote safe participation. This is especially concerning for children with disabilities, where historically either no attempts have been made to ensure and support their participation in criminal proceedings, or mental capacity assessments have been used to exclude them.

- b. It replicates the medical model of disability, since the focus of the assessment is on the victim and their disability, and not an evaluation of what in criminal proceedings function as barriers to their participation.<sup>65</sup>

Despite its current limitations, it does set out an innovative process for individual assessment. This process can be further built up and implemented with greater alignment to international law.

## 6. The Limits of the Procedural Safeguards Directive

The Procedural Safeguards Directive also sets out a framework for individual assessment for all children suspected or accused of committing a crime in its Article 7. However, there are some limitations:

- i. Purposes overly general – Considering one of the aims of the directive is to ensure effective exercise of fair trials rights, it is missing from its assessment framework different aspects that may affect the child’s participation or even benefit from enjoyment of this right. The need to determine existence of any barriers to communication (such as language or communication impairments), which are important in respect of unaccompanied children and children with disabilities. The process also does not aim to ensure children can fully benefit of the rights of the directive. Further guidance is also necessary on how individual assessments can adequately address the problem of mislabelling children as suspects, when the child may be in fact a victim in that particular case. Such is the case whereby a child is accused of smuggling when they are in fact a victim of human trafficking, or an incident of violence in an institution may have been caused as a reaction to a criminal act perpetrated by a person inside the institution. By providing additional and specific guidance on these matters, the Directive could promote implementation that is more appropriate to these specific groups of children.
- ii. Not conducive to systematic, quality assessments of the child’s situation nor removal of barriers – The Directive only sets out an obligation to “take into account” the child’s “economic, social and family background”, which may lead to assessments where these factors are neglected and the child’s situation is not fully understood. Furthermore, similar objections to the VRD can be raised, such as: 1) the adoption of a needs-based approach, instead of a rights-based approach, which may lead to overly welfarist considerations taking predominance and undermining participation; 2) neglects a focus of assessment of the system itself and what may become a barrier to the child.
- iii. Potentially incompatible purposes – Same factors could be useful for different

<sup>65</sup> Rados Keravica in International Conference on the Accessibility of Criminal Justice for People with Disabilities (Centre for Legal Resources, 19-20 May 2022).

purposes. Promotion of social integration, such as socio-economic factors could be used both for determination of measures to enable children to participate despite financial barriers. At the same time, it can be used at the sentencing stage to justify harsher sentencing. Directive (EU) 2016/800 should differentiate between assessment processes that inform the imposition of measures that may prejudice the child (such as sentencing and appropriateness of coercive measures), for which additional safeguards may be necessary (legal assistance and representation), and assessment processes that determine beneficial and participatory measures. The Directive should also be explicit about preventing the use of mental capacity assessments to justify any limitation of participation rights of children with disabilities.

### III. Pathways towards an inclusive Model for Individual Assessment

This section aims to provide further context and pathways for further guidance and work on the right to individual assessment. This will contribute towards future work for the creation of an EU-Model for Individual Assessment and practice that is inclusive of all children. More research and guidance is needed to turn the right to individual assessment into a genuinely empowering mechanism that can enhance access to justice for children. Drawing from research and findings from EU-funded project FOCUS,<sup>66</sup> this section synthesises further work that is necessary to implement the right to individual assessment in an inclusive manner and shares helpful practices in this regard.

It will do so by first outlining efforts to implement the VRD and PSD, highlighting positive and negative trends. This informs the subsequent section, which will use as a springboard standards for individual assessment<sup>67</sup> to provide further context on what further work is needed or potential adjustments or accommodations are needed for an inclusive right to individual assessment.

#### Member States' efforts to Implement Individual Assessment, Article 22 of the VRD

Drawing from national findings, it is possible to observe different challenges in the implementation of the Victims' Rights Directive. This section draws both from national reports in the three project countries, as well as findings in the CREW project.<sup>68</sup>

- In Bulgaria, Italy and Romania there are no clearly defined procedures to conduct an individual assessment for child victims in criminal proceedings – Italy has legislated the need to conduct an assessment of vulnerability in criminal proceedings, specifying some criteria which may qualify an individual as vulnerable. However, that assessment is either autonomously conducted through reliance on a “consultant” or “individual expert”, or performed by a prosecutor during questioning, with the support of a psychologist. Broadly, however, in Bulgaria and Romania children’s involvement and treatment takes place in conformity of their perceived role as witnesses and in terms of their perceived capability to provide evidence.
- Individual assessment purposes are not clearly defined in law – Criminal procedural codes in the three project countries only define criteria and legal requirements for the determination of protective measures, this being the second stage of an individual assessment. They do not go so far as defining how information should be collected and the purposes.

<sup>66</sup> Terre des Hommes – Europe, [FOCUS on my needs: Working together for children in criminal proceedings](#) (2020).

<sup>67</sup> Rebecca O'Donnell, [FOCUS Standards: Individual Assessment – A Gateway to a Child Centred Justice](#) (2021).

<sup>68</sup> DCI-Italy, CREW, [Reinforcing the Rights of Children Accused or Under Investigation In Criminal Proceedings](#).

- Individual assessments are not systematically conducted – All three national reports from this project have highlighted limited understanding, and specialised tools, to guarantee the conduct and quality of individual assessments. When formally conducted, they tend to be on the motion of well-intended criminal justice professionals (Bulgaria and Italy) either in a particular court, or region,<sup>69</sup> rather than being a core function of criminal justice and child protection practitioners. Even in Italy, where, in some regions such as Sicily, there are informal practices and networks that work together whenever there is the involvement of an unaccompanied child, this promising practice is not replicated elsewhere.<sup>70</sup>
- There is no specialised training and tools for criminal justice professionals in direct contact with children without parental care, with intellectual and/or psychosocial disabilities, or who are unaccompanied – In Bulgaria, partners found that training on children’s rights is lacking for criminal justice and child protection professionals. In Romania, training participants highlighted the need also for further multidisciplinary training and on adapting communication to the child’s level of understanding and impairments.
- Unclear in what kind of room individual assessments are conducted – All three countries reported existing particular specific rooms to conduct aspects of criminal proceedings involving children. These include ‘blue rooms’, where some have audio-visual equipment, but the experience of professionals on their efficacy vary significantly (Bulgaria and Romania). In Italy, some individual assessments when conducted by psychologists have happened either at an anti-trafficking civil society organisation office, at the professional’s office, or in a hospital. In Italy, during COVID-19, there is some anecdotal evidence suggesting the use of remote tools and applications, such as WhatsApp and Skype to conduct these meetings.
- Unclear how to ensure data protection and privacy – Given the gaps in regulation of individual assessments and protocols across the three countries, there is no clear guidance on how to guarantee the child’s right to privacy.

## **Member States’ efforts to Implement Individual Assessment, Article 7 of the Procedural Safeguards Directive**

Drawing from national findings, it is possible to observe different challenges in the implementation of the Victims’ Rights Directive. This section draws both from the national reports in the three project countries, as well as findings from the CREW project.

- In Bulgaria, Italy and Romania there is legislation in place establishing an individual assessment for social integration in criminal proceedings, but it is fragmented – All three countries have legislation in place for either child protection (Bulgaria), penitentiary services (Romania) or social service units

<sup>69</sup> Ibid.

<sup>70</sup> Ibid.

(Italy) to conduct an assessment of child suspects or those accused of committing a crime and drafting of report to inform the application of diversionary measures, criminal sanctions and/or the adoption of reintegration programmes. However it is unclear to what extent these same provisions can identify broader beneficial measures to enable participation of children and an understanding of their situation. In Bulgaria, interviews suggest reports by the child protection authority are formalistic and without sufficient resources to perform comprehensive assessments. In Italy, despite vague legislation, interviews of social workers in the region of Sicily suggest that assessments are used to support the preparation of hearings and relevant measures that promote the social integration of children.

- Individual assessment purposes and methodology are not clearly defined in law – Criminal procedural codes in the three project countries only define criteria and legal requirements for the drafting of a report. They do not go so far as defining how information should be collected and their purpose. Age assessments are not included in Bulgaria and Romania explicitly, whereas Italy has a comprehensive law regulating age assessments under the Zampa law.<sup>71</sup>
- Individual assessments are not systematically conducted – All three reports highlighted the lack of a common understanding and specialised tools as to how individual assessment should be conducted for child suspects or those accused of committing a crime. Due to a lack of shared tools within institutions and between regions, all three reports share concerns about the quality and inclusiveness of processes, especially where children experience situations of enhanced vulnerability or multiple discrimination.<sup>72</sup>
- There is no specialised training and tools for criminal justice professionals in direct contact with children without, with intellectual and/or psychosocial disabilities, or who are unaccompanied – Similarly to the conclusion on transposition and implementation of the VRD, both in Bulgaria and Romania, criminal justice and child protection participants highlighted the need for regular trainings on children's rights, on how to adapt communication to ensure children can participate in proceedings and on multidisciplinary collaboration.

## **Pathways for Inclusion in Individual Assessment: Standards and Steps**

For further contextualisation and development, this section will use as a springboard the 10 different standards developed in FOCUS project. It aims to set out different inroads for further work and development of especially Standard 2 on Inclusion.

Indeed, Rebecca O'Donnell et al. explain in Standard 2: "The process of undertaking and using individual assessments will be adapted as necessary so that they take into

<sup>71</sup> Law no. 47 of 2017, *Misure Di Protezione Dei Minori Stranieri Non Accompagnati*.

<sup>72</sup> DCI-Italy, CREW, [Reinforcing the Rights of Children Accused or Under Investigation In Criminal Proceedings](#).

account the needs of all children, regardless of their age, nationality, personal circumstances or characteristics.” While the analytical framework adopted goes for assessment of the situation, this section will set out pathways for implementation of this standard and adaptation of the remaining FOCUS Standards.

## 1. Holistic and Comprehensive

An individual assessment process that seeks to enable children to participate in criminal proceedings and exercise their rights.

As Rebecca O’Donnell specified under list of indicators:<sup>73</sup>

- “The scope of the assessment should be sufficient to take into account the child’s situation as a whole;”
- “Similar processes for all children, namely both child victims and child accused/suspects;”
- “Involvement of both criminal justice and child protection/welfare actors”
- An assessment must be planned with adequate time;
- Use of adequate sources of information on the child’s circumstances;

Criminal justice professionals must be sensitive and aware of the particular situation that a child may be in. This will vary widely if a child is in alternative care, is unaccompanied or has a disability, since the barriers they may encounter to exercise their rights will vary significantly. It should be an assessment of not only their personality, individual circumstances and age but also external factors to the child and barriers they may face in criminal proceedings. It should include an assessment of the following barriers:

### 1. All forms of discrimination, prejudice and stigma on the basis of age, gender, country of origin and disability that continue to exclude and marginalise children -

“Discrimination is often hidden, because children, particularly children with disabilities, are not given the appropriate fora to share their experiences in society, to participate and to be heard in all decision-making that affects them.”<sup>74</sup> This includes the need to identify maltreatment and violence by criminal justice professionals, rude behaviour and hate speech due to a child’s personal characteristics; misinterpretation of the behaviour of children with intellectual and/or psychosocial disabilities; misinterpretation of culturally-specific behaviour between the child’s country of origin and the country in which criminal proceedings take place.

### 2. Social Barriers - Perception of children as objects and not rights holders, paternalistic attitudes that do not consider children capable to express their own views, whereby children due to their age are considered less credible, children with disabilities and girls considered to be even less credible than other children, lack of attentive or supportive family or guardians to support participation, lack of preparedness of family members/guardians to facilitate communication, conflict of interests between family or guardians and the child.

<sup>73</sup> Rebecca O’Donnell, [FOCUS Standards: Individual Assessment – A Gateway to a Child Centred Justice](#) (2021) 17.

<sup>74</sup> United Nations Committee on the Rights of Children and United Nations Committee on the Rights of Persons with Disabilities, [Joint Statement: The rights of children with disabilities](#) (2022) para. 2.

3. Economic Barriers – Family and/or child have lack of financial means to pay legal assistance or pay travel or subsistence costs for participation in proceedings, lack of information about legal aid;
4. Communication Barriers - Communication is done in a language or manner not understandable to the child, lack of easy-to-read materials, or provision of information in other alternative formats (Braille, sign language), complex legal jargon both in writing and verbal communication
5. Procedural Barriers – these include inflexible cross-examination processes, adversarial questioning, discriminatory standards related to the evaluation and weighting of child victims, suspects or witnesses, validity of non-verbal testimony, restrictive rules on presence of third parties, open courtrooms, format of decisions and judgments, placement of defendants in a dock.
6. Architectural Barriers - Lack of wheel-chair accessible rooms, existence of stairs or inaccessible paths, rooms too large, imposing and intimidating, room temperature not possible to regulate, privacy not ensured for in meeting rooms or hearings.
7. Systemic Barriers - fear of criminal justice authorities (past trauma or negative experience with authorities), fear of reporting to administrative/civil authorities that may lead to deportation, institutionalisation, removal of parental care, lack of understanding of proceedings.
8. Educational Barriers – proceedings are conducted in a manner that is incompatible with school schedule, lack of means to ensure children can access or remain in inclusive education thereby hampering rehabilitation efforts.

A non-exhaustive list of factors to aid this determination of barriers and necessary measures can be found below. This does not mean in any given case all of these factors will be relevant, but it would be good practice for a decision-maker to be aware of them.

- **Personal characteristics:** Particularly age (proven or presumed), gender (male, female and/or non-binary), disability, ethnicity, country of origin, religion, race, languages spoken, communication (such as user of alternative and augmentative means of communication);
- **Type or nature of the crime:** Violent crime, sexual crimes, human trafficking, domestic violence, property crime, organised crime, gang violence, violence in care, hate crime, migration-related crime.
- **Circumstance of the crime:** Gender and age of the offender, circumstance of the crime (when it was committed, how and participation of more than one perpetrator).
- **Relationship between the offender and the victim:** Whether a stranger, friend/acquaintance, parent or guardian, professional position of power or authority over the victim, partner or former partner.

- **Social and Family factors:** If without parents, single parents, legal guardian, what relationship with holder of parental responsibility, contacts of holder of parental responsibility, refugee status, temporary residence, recipient of personal assistance,
- **Educational factors and hobbies:** education level and how regularly they go to school, hobbies and interests.
- **Legal Factors:** History of victimisation, history of participation in criminal proceedings, history of support received in criminal proceedings, the existence of legal assistance.

## 2. Continuous and Timely

In the FOCUS Standards, under Standard 5, the individual assessment should take place “at the earliest possible time but may need to be updated at different stages of the process. The assessment itself contributes to actions throughout the criminal proceedings and beyond”.<sup>75</sup>

The indicators go further by specifying that an assessment should be “undertaken in and around the first contact the child has with law enforcement or social professionals as a result of the offence”. There should also be a system in a place for the continuous monitoring and updating of individual assessments.<sup>76</sup>

To add to these standards, it has been suggested by Oana Dodu et al.<sup>77</sup> to distinguish between preliminary and comprehensive assessment, from the moment of first contact, for operational purposes:

1. A preliminary assessment – This is the responsibility of gatekeepers of the criminal justice system that establish first contact with the child, when proceedings initiate. In this preliminary assessment, which should be universal, criminal justice professionals should be alert to the individual circumstances of the child and what may form a barrier at the stage that criminal proceedings begin, that may preclude the exercise of their rights. This preliminary assessment should contain the collection of basic personal information, a referral for comprehensive assessment as well as, with the participation of the child and respect of their views, determination of necessary procedural accommodations. This preliminary assessment would be narrower in scope, but should not replace a comprehensive assessment at the earliest possible opportunity. It should be part of, and updated in a comprehensive assessment.
2. A comprehensive assessment - This is the responsibility of appropriately qualified personnel who perform a broader assessment within a multidisciplinary team. While no particular timeframe has been suggested in the directive, practice in Italy suggests that an individual assessment report should be performed and sent to a judge at least three weeks before hearing to enable

<sup>75</sup> Rebecca O’Donnell, [FOCUS Standards: Individual Assessment – A Gateway to a Child Centred Justice](#) (2021) 22.

<sup>76</sup> Ibid.

<sup>77</sup> Dodu Oana et al. ‘Model of Child-Friendly Justice Court Practices: Children with Intellectual or Psychosocial Disabilities (2022) 14-21.

adjustments to be made to the procedure as required. Timeframes will diverge among Member States, but from a management point of view, it must be conducted early enough to enable adoption of any necessary procedural accommodations and ensure the effective exercise of rights in different hearings and procedures.

### 3. Multidisciplinary, Collaborative, Impact and Progress-Oriented

According to FOCUS Standard no. 6, the “child should benefit from an individual assessment conducted by professionals using a multidisciplinary and collaborative approach.”<sup>78</sup> This is to allow a wide range of knowledge, skills and disciplines to contribute to the assessment and enable the assessment of circumstances in a manner that is relevant to the decisions to be made in proceedings. The indicators set out in a non-exhaustive manner who should be part of the team (law enforcement, social, health and child protection professionals, etc.). There should also be protocols and case management meetings and tools that turn into reality this multidisciplinary work.

Research and practice in this project suggests the existence of different approaches in the conduct of individual assessment in practice, often lacking a multidisciplinary approach. There is also divergence dependent on whether the child participates as a victim, or as a suspect or person accused of committing a crime:

3. **Individual assessment lead by a prosecutor or a judge** – This situation occurred generally in criminal proceedings where the child is a victim. Here we can distinguish between two different scenarios:
  1. Prosecutor or investigative judge (investigation stage) responsible for a hearing is assisted by a psychologist. Either through the psychologist or with their support, the prosecutor or a judge performs an assessment for determination of protection measures and others that will enable a child to participate and provide testimony. Interview findings suggest variation in how this is implemented in practice. For example, in Bulgaria it was noted that some judges asked questions through the psychologist, while others stopped them from asking any questions.
  2. Prosecutor, investigative judge or trial judge used their own discretion to request an assessment by an expert. These were the only reported situations where an individual assessment was performed other than by a prosecutor or judge in criminal proceedings, for victims, within the three project countries. The profile of this expert tended to be a psychologist.
4. **Individual assessment led by a child protection or reintegration unit separate from the court** – This situation was especially observed in Bulgaria and Romania whereby whenever a child suspected or accused of committing a crime was prosecuted, child protection services or the penitentiary reintegration unit were responsible for drafting a report. In these cases, the reports tend to pursue the particular goal of informing alternatives to prosecution, criminal

<sup>78</sup> Rebecca O'Donnell, [FOCUS Standards: Individual Assessment – A Gateway to a Child Centred Justice](#) (2021) 23.

sanctions and/or reintegration programmes.

**5. Individual assessment led by a special unit attached to the court –** This situation was observed in Italy in the juvenile court (USSM) and at the International Criminal Court whereby there is a specific unit working directly in the court to support prosecutors and judges to define appropriate measures.

1. USSM – it has a special unit composed of professionals with law, psychologist and social service background who have explicit legal mandate to accompany the child throughout proceedings and propose measures to judges that may lead to social integration of the child. Interviews with social workers showed that reports are prepared based on an interview with the child. For situations which may require more specialised knowledge not readily available at the unit, as for example, to accommodate children with disabilities who are non-verbal, social workers shared a practice of hiring an expert to assist them and the judge. Unaccompanied foreign children interviewed in this project showed appreciation for the kindness, time spent, and information provided by social workers. Furthermore, although not binding, the reports of social workers claim are influential and judges tend to adopt measures highlighted in this report. Some social workers also shared a practice, which may be viewed as promising whereby they request feedback of the child on the content of the report before sharing with the judge.
2. ICC – The International Criminal Court has a Victim and Witness Support Unit who have the mandate to ensure support, assistance and protection for victims of crime by performing vulnerability assessments. Although attached to the Court, this Unit does not work either for the prosecution or the defence. For this reason, findings and measures adopted are only shared with the ruling judge. The advantage of this is that the assessment is not treated as evidence. This unit leads the implementation of support measures and accompanies the victim throughout the proceedings and, alongside the presiding judge, ensures adoption of measures that enable the provision of evidence.

From the point of view of promoting the participation of children in a systematic manner, and determination of procedural accommodations, both USSM and ICC approaches seem to be promising practices. To be sure, the three models<sup>79</sup> took an approach which both optimise existing resources, while also proposing long-term reform for the implementation of the right to individual assessment. Despite the three different categories of children, there has been agreement in Consortium Steering Meetings that coordination and efficient collection of data from multiple sources and participation of multi-stakeholders should be done through a person or institution that would act as focal point for the assessment, maintain contact with the child family and guardians, and coordinate the multiple inputs. However, this is an hypothesis that requires further

<sup>79</sup> Velina Todorova et al., 'Social Court: A Model of Child-Friendly Justice' (2022); Giuseppe Divita & Anthinea Interbartolo, 'Training Model of Child-Friendly Justice Court Practices: Unaccompanied Children' (2022); Dodu Oana et al. 'Model of Child-Friendly Justice Court Practices: Children with Intellectual or Psychosocial Disabilities (2022). All available at: <https://validity.ngo/projects-2/child-friendly-justice/publications-and-resources/>

testing and work to ensure it can become a concrete model for multidisciplinary coordination.

#### 4. Quality, Proper Resources and Sustainability

In FOCUS Standards no. 7 and 8, it is advanced that individual assessment should be undertaken by qualified, trained personnel, and that this should be ensured through proper allocation of resources.<sup>80</sup> This will contribute to regular and sustainable trainings and usage of diverse multidisciplinary tools.

Relevant qualifications can include training on child development, psychology, children's rights, and child communication.

Throughout the project, trainings on how to communicate with children, on multidisciplinary and local cooperation, and on how to conduct individual assessments have been all well received. One recurring feedback has been the need for further trainings with colleagues from multiple disciplines that normally do not work together within the criminal justice and child protection fields.

The following training themes have had the most benefit:

1. Communication with children in a child-friendly, also gender-sensitive and disability-inclusive manner;
2. Equality and non-discrimination;
3. Multidisciplinary cooperation, especially between criminal justice and child protection professionals, and social workers.

A recommendation was shared that these trainings should be regular and continuous, in order to train new professionals and reduce the workload of other professionals.<sup>81</sup>

#### 5. Participatory and Child-Centred

In FOCUS Standards no. 3 and 4, Participatory and Child-centred and child sensitive process,<sup>82</sup> the best interests of the child are properly framed as the primary consideration throughout the process, and the child is provided the information, assistance and support to empower them to exercise their rights. Helpfully, Standard no. 3 further explains that it is important to engage children, listen to them, account for their views and gain their consent. In the present project, a promising practice was identified in Italy whereby some social workers in the juvenile court actively sought the child's feedback on their social report before submitting it to the judge.

Notwithstanding practical guidance shared in the Annex below, there are two notes that should be highlighted regarding right to information and to be accompanied by a person they trust, as well as special representatives.

<sup>80</sup> Rebecca O'Donnell, [FOCUS Standards: Individual Assessment – A Gateway to a Child Centred Justice](#) (2021), 27 – 28.

<sup>81</sup> See PRISM Impresa Sociale s.r.l, [CFJ International LABs 3](#).(20 April 2022).

<sup>82</sup> Rebecca O'Donnell, [FOCUS Standards: Individual Assessment – A Gateway to a Child Centred Justice](#) (2021), 19 – 21.

## Person of trust and Special Representatives

The three groups of children share a commonality whereby there is an intersection between the criminal justice and guardianship system. Whenever a child cannot benefit from the support of their parents, a legal or voluntary guardian is appointed to represent them. However it is not always the case that guardian acts in the child's best interests, especially whenever the case directly involves them. Indeed, for situations of crime within the family, institution, group homes or reception centre, there will commonly be a conflict of interest between the legal guardian and the child.

## Information about Individual assessment

Here we should distinguish information to be provided during an assessment, and information that should be provided in general throughout the proceedings. During an individual assessment, the child should be informed:

1. That individual assessment is a right;
2. What kind of questions will be asked, why, and in what way they can be used during the proceedings; and
3. Where they can lodge a complaint.

In this project, practice varied widely regarding communication methods and issues. In Bulgaria, interviews suggest that information about proceedings and cases are either not provided, or when they are, this rarely happens in a child-friendly way, whether for victims or defendants. In Italy, interviews with unaccompanied children who were defendants confirmed they were informed, as opposed to child victims. It has been reported that court notifications are sent to unaccompanied children only in Italian. In Romania, there is little practice of how to adjust communication to ensure that information about the case and criminal proceedings is understandable for children with intellectual and/or psychosocial disabilities. These practices have been recommended in the models and reports drafted in this project<sup>83</sup> to ensure children receive information about their rights and proceedings in a timely manner and in a way that promotes their participation:

1. Information should be provided in a language the child understands – This means avoiding jargon, in a child's first language, in a form the child can access – such as in a range of alternative formats – and with the support of an interpreter as necessary. Child-friendly materials, included materials that follow easy-to-read principles, should be developed. Communication of information should be gender-sensitive, disability-inclusive and age-appropriate, and without discrimination;
2. Children should be informed directly – It is not sufficient to merely inform a child's parent or guardian. Indeed, interview findings suggest that personal

<sup>83</sup> Velina Todorova et al., 'Social Court: A Model of Child-Friendly Justice' (2022); Giuseppe Divita & Anthinea Interbartolo, 'Training Model of Child-Friendly Justice Court Practices: Unaccompanied Children' (2022); Dodu Oana et al. 'Model of Child-Friendly Justice Court Practices: Children with Intellectual or Psychosocial Disabilities (2022). All available at: <https://validity.ngo/projects-2/child-friendly-justice/publications-and-resources/>

---

involvement and support by a guardian varies widely in each country. Interviews suggest that, for children with disabilities or living in institutions, a legal guardian who is either the mayor or director of an institution tend to have little time or interest to appropriately inform the child and accompanying them in criminal proceedings.

3. Contact person should be allocated – This person should act as a focal point to ensure continuous transmission of information, in a child-friendly manner. This person must be trained on how to communicate with children in diverse situations, be empathetic and kind.

## IV. Annex 1: Data Collection Tool

*This form aims to set out pathways for further research and practical tools that are intersectional for individual assessment process in criminal proceedings. It is based and mostly replicates a best interest comprehensive assessment for complex child protection cases targeting separated and unaccompanied children originally developed by the United Nations High Commissioner for Refugees.<sup>84</sup> It has been adjusted further to the criminal proceedings context. It provides suggestions on how to structure the data collection during an individual assessment that addresses the different vulnerability situations of children with their best interest in mind. Especially for unaccompanied children, children deprived of parental care and children with intellectual and/or psychosocial disabilities.*

However, this data collection tool should only be used upon further testing and the appropriate definition of qualified multidisciplinary teams that would know how to use the information below in a privacy and ethical respecting manner.

Case worker ID:		<b>PRIORITY OF CASE</b>		<input type="checkbox"/> Emergency
Organization ID:				<input type="checkbox"/> High
				<input type="checkbox"/> Medium
				<input type="checkbox"/> Low
<b>GENERAL</b>				
<b>Case #</b>				
<b>BIA Number</b>		<b>Date case was opened</b>		
<b>BIA Status</b>	<input type="checkbox"/> Pending interview <input type="checkbox"/> Pending recommendation <input type="checkbox"/> Pending review <input type="checkbox"/> BIA completed	<b>BIA status change reason</b>		
<b>Main purpose of BIA (details)</b>	<input type="checkbox"/> Child at risk <input type="checkbox"/> Alternative Care <input type="checkbox"/> Family tracing <input type="checkbox"/> Family reunification	<input type="checkbox"/> Resettlement <input type="checkbox"/> Other		
<b>BIA by</b>		<b>Source of referral (when applicable)</b>	<input type="checkbox"/> Police <input type="checkbox"/> Prosecutor <input type="checkbox"/> Lawyer <input type="checkbox"/> Assistance <input type="checkbox"/> Child Protection	<input type="checkbox"/> Judge <input type="checkbox"/> Special representative <input type="checkbox"/> Legal Guardian <input type="checkbox"/> _____
<b>BIO DATA</b>				
<b>1. First Name</b>		<b>2. Middle Name</b>		<b>3. Family Name</b>
<b>4. Date of Birth</b>	DD/MM/YYYY	<b>5. Age (when</b>		<b>6. Current</b>

<sup>84</sup> United Nations High Commissioner for Refugees, [Form Best Interest Assessment Form](#) (2021).

Is age estimated?	<input type="checkbox"/> YES <input type="checkbox"/> NO	case was opened)		age	
7. Gender	<input type="checkbox"/> Female <input type="checkbox"/> Male <input type="checkbox"/> Non-binary	8. Place of Birth		9. Country of Origin	<i>If applicable</i>
10. Ethnicity		11. Religion			
12. Marital status		13. Legal status			
14. Name of registration group focal point		15. Relationship to focal point			
16. Education Level		17. Languages spoken		18. Nationality(ies)	
19. Contact details		20. Phone number		21. Email	
22. Current address					
23. Residing country		24. Country of asylum		<i>If applicable</i>	
Case worker ID:			<b>PRIORITY OF CASE</b>		<input type="checkbox"/> Emergency <input type="checkbox"/> High <input type="checkbox"/> Medium <input type="checkbox"/> Low
Organization ID:					
<b>GENERAL</b>					
Case #					
IA Number			Date case was opened		
IA Status	<input type="checkbox"/> Pending interview <input type="checkbox"/> Pending recommendation <input type="checkbox"/> Pending review <input type="checkbox"/> BIA completed		IA status change reason		
Main purpose of BIA	<input type="checkbox"/> Protection <input type="checkbox"/> Education <input type="checkbox"/> Family tracing <input type="checkbox"/> Legal Aid	<input type="checkbox"/> Procedural Accommodations <input type="checkbox"/> Other	Main purpose of BIA (details)		
BIA by			Source of referral (when applicable)	<input type="checkbox"/> Police <input type="checkbox"/> Prosecutor <input type="checkbox"/> Lawyer <input type="checkbox"/> Assistance <input type="checkbox"/> Child Protection	<input type="checkbox"/> Judge <input type="checkbox"/> Special representative <input type="checkbox"/> Legal Guardian <input type="checkbox"/> Other
Agency Case ID					
Partner Organization					
Partner Organization details					
<b>BIO DATA</b>					
25. First Name		26. Middle Name		27. Family Name	
28. Date of Birth	DD/MM/YYYY	29. Age (when case was opened)		30. Current age	
Is age Estimated?	<input type="checkbox"/> YES <input type="checkbox"/> NO				

31. Gender	<input type="checkbox"/> Female <input type="checkbox"/> Male <input type="checkbox"/> Other	32. Place of Birth		33. Country of Origin	
34. Ethnicity		35. Religion			
36. Marital status		37. Legal status			
38. Name of registration group focal point		39. Relationship to focal point			
40. Education Level		41. Languages spoken		42. Nationalities	
43. Contact details		44. Phone number		45. Email	
46. Current address		47. Date of flight			
48. Date of entry CoA		49. Reasons for flight			
50. Registration country		51. Country of asylum			

#### Parent / Customary Caregiver information<sup>85</sup>

Parent 1	Parent 2	Customary Caregiver
Name	Name	Name
DOB	DOB	DOB
Deceased? <input type="checkbox"/> YES <input type="checkbox"/> NO	Deceased? <input type="checkbox"/> YES <input type="checkbox"/> NO	Deceased? <input type="checkbox"/> YES <input type="checkbox"/> NO
Currently in contact? <input type="checkbox"/> YES <input type="checkbox"/> NO Phone number: Current location – Country: Current location – Address:	Currently in contact? <input type="checkbox"/> YES <input type="checkbox"/> NO Phone number: Current location – Country: Current location – Address:	Currently in contact? <input type="checkbox"/> YES <input type="checkbox"/> NO Phone number: Current location – Country: Current location – Address:
When did you last see your [Parent 1]?		
Where?		
Where do you think your [Parent 1] is now?		
When did you last see your [Parent 2]?		
Where?		
Where do you think your [Parent 2] is now?		
Would you like us to contact your parents?		
When did you last see your [Customary Caregiver]?		
Where?		
Where do you think your [Customary Caregiver] is now?		

<sup>85</sup> This information on family members (mother/father/ siblings-their whereabouts, etc) needs to be collected in case of unaccompanied and separated children

Would you like us to contact your customary caregiver?		
<b>OTHER FAMILY MEMBERS</b>		
Name	Age/Sex	Current whereabouts

<b>SECTION 1: History of family separation and tracing needs</b>
How did you become separated from your family? (Indicate time, place of separation, as well as causes of separation.)
Why did you leave your home country?
When did you arrive in (name of the country of asylum)?
Do you have any relatives or friends in (name of the country of asylum)? If so, provide name, relationship.
Is tracing of family taking place? If yes, by which agency? Is the child being informed about the tracing results? Are there additional needs?

<b>SECTION 2: Care Arrangements and Living Conditions</b>			
<i>Can you tell me about your family (the family you are living with)?</i>			
<b>2a) Care Arrangements</b>			
<b>Who do you currently live with?</b> More than one possible (Complete Part F if child is not accompanied by his parents) <input type="checkbox"/> Immediate family <input type="checkbox"/> Female-headed household <input type="checkbox"/> Elderly Caregiver <input type="checkbox"/> Alone <input type="checkbox"/> Extended family <input type="checkbox"/> Host family <input type="checkbox"/> Other children <input type="checkbox"/> Others:			
<b>How is your relationship with your family/ the people you live with? Do you like to stay here?</b> (If child spouse, ask about treatment from spouse and family)			
<b>In case of no home visit – Ask the child how they would describe the place where you are staying? Otherwise fill in from your own observations.</b>			
<table border="1"> <tr> <td><b>If home visit conducted</b> Date: Interviewer's observation on housing: Number of rooms:</td> <td><b>Which type of accommodation:</b> <input type="checkbox"/> Owned house/apartment</td> <td><b>Housing conditions:</b> <input type="checkbox"/> Overcrowding Dangerous items in household <input type="checkbox"/> Unhygienic</td> </tr> </table>	<b>If home visit conducted</b> Date: Interviewer's observation on housing: Number of rooms:	<b>Which type of accommodation:</b> <input type="checkbox"/> Owned house/apartment	<b>Housing conditions:</b> <input type="checkbox"/> Overcrowding Dangerous items in household <input type="checkbox"/> Unhygienic
<b>If home visit conducted</b> Date: Interviewer's observation on housing: Number of rooms:	<b>Which type of accommodation:</b> <input type="checkbox"/> Owned house/apartment	<b>Housing conditions:</b> <input type="checkbox"/> Overcrowding Dangerous items in household <input type="checkbox"/> Unhygienic	

<i>Number and identity of persons sleeping in same room as the child:</i>	<input type="checkbox"/> Host Family	<input type="checkbox"/> Not suitably equipped for climate <input type="checkbox"/> Other (specify)
	<input type="checkbox"/> Renting house/apartment	
	<input type="checkbox"/> Collective Shelter/Centre	
	<input type="checkbox"/> Tent (ITS or FTS)	
	<input type="checkbox"/> Garage or unfinished building	
	<input type="checkbox"/> Other (specify)	
	<input type="checkbox"/>	

**Other (Shelter or Wash assistance received etc)**

**2b) Family Members living with the child**

Full Name	Relationship to child	Sex (M/F)	Marital status	Date of Birth / Age	Specific needs

**2c) Consultation with parents/ adult caregivers**

**Name:** \_\_\_\_\_ **Date of Birth/Age** \_\_\_\_\_

**Sex:**  Male  Female  Other **Nationality:** \_\_\_\_\_

**Relationship to child:** \_\_\_\_\_ **Religion:** \_\_\_\_\_

**Are you the legal guardian for this child?**  No  Yes if yes, are guardianship documents available?  
 Not legally, but with permission of the parents

**How would you describe your relationship with the child?**

**How is the child getting along with other children? What daily activities are they engaged in?**

**IF SEPARATED OR UNACCOMPANIED ONLY: What information do you have about the child, his/her life and the family separation? Include information about status of father or mother, any contact caregiver has with child's other family members, etc.**

--

**SECTION 3: Health and Safety**

**3a) Safety/Security (Complete Part F if specific concerns arise)**

**Do you feel safe here (in your accommodation, in your neighbourhood, etc) ?**  
If not what are the reasons, list any concerns.

**What were you doing before you came to “country of Asylum” (CoA)? How did you make your way to CoA ?**

**3b) Psychosocial wellbeing**

**Where/to whom do you go to discuss problems or ask for help/assistance?**

- Mother       Father       Friends       Neighbours  
 Other family member (specify) grandfather and grandmother        
Other (specify)       No One

**Do you ever trouble sleeping? Do you have nightmares?**

**Interviewer observation: Does the child appear distressed or have such difficulty functioning in their daily life that they should be assessed by a mental health professional? If yes, describe why?**

**3c) Health/medical access**

**How are you feeling? How is your health?**

**Do you have any problems accessing medical care? (Does the child know where and how to access care) If so, explain why.**

**Interviewer observations: Does the child look healthy and/or have any disabilities?**

**SECTION 4: Daily life**

*Can you tell me a bit about what you do each day?*

**4a) Education**

<p><b>Do you attend school or ever miss school?</b></p> <p><input type="checkbox"/> I always attend school</p> <p><input type="checkbox"/> Don't attend school at all</p> <p><input type="checkbox"/> Once per week</p> <p><input type="checkbox"/> Once per month</p> <p><input type="checkbox"/> Never</p>	<p><b>What grade are you in (in CoA)?</b></p> <p><b>What other education activities do you attend?</b></p>	<p><b>Do you attend remedial classes?</b></p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes (where)</p> <p><b>Did you attend school in your home country? If yes until which grade and for how long.</b></p>
--	--	---

**Do you have any difficulties or problems at school or going to school? If so, what are they?**

**4b) Daily activities**

**Can you tell me a little bit about what you do each day? Do you spend time with friends, other children?**

**Do you currently work?**

Yes if yes, How many hours per day:      How many days per week:  
 No      Type of work:      For how many months:

**Do you earn any money for the work? Is so, how much and what do you use it for.**

**Does your family depend on the money you earn ?**

No  
 Yes if yes, specify

**Interviewer observations:** Does the work constitute Worst Forms of Child Labour (WFCL)(ILO Convention 1999 No. 182 ): slavery or slavery-like practices, recruitment of children into armed forces/groups, prostitution, production of pornography, illicit activities such as drug trafficking, or an immediate risk to the child's health and safety.

No     Yes

**Please explain:**

**Other**

**Is there any other information you would like to share with me today? Is there anything else you would like to talk to me about today?**

**SECTION 5: Conclusions**

**Additional observations and comments of the interviewer. Include any observations on the child and family's resources and strengths.**

**Specific Needs**

<input type="checkbox"/> <b>Child at Risk (CR)</b>	<input type="checkbox"/> <b>Unaccompanied or Separated Child (UC)</b>	<input type="checkbox"/> <b>Legal and Physical (LP)</b>	<input type="checkbox"/> <b>Sexual violence (SV)</b>
<input type="checkbox"/> Child parent (CP) <input type="checkbox"/> Child spouse (CS) <input type="checkbox"/> Child carer (CC) <input type="checkbox"/> Teenage pregnancy (TP) <input type="checkbox"/> Worst forms of child labour (LW) <input type="checkbox"/> CAAFAG (AF) <input type="checkbox"/> Conflict with law (CL)	<input type="checkbox"/> Separated child (SC) <input type="checkbox"/> Unaccompanied child (UC) <input type="checkbox"/> Child-headed household (CH)  <input type="checkbox"/> <b>Family Unity (FU)</b> <input type="checkbox"/> Tracing required (TR) <input type="checkbox"/> Reunification required (FR)	<input type="checkbox"/> No legal documentation (ND) <input type="checkbox"/> Unmet basic needs (BN) <input type="checkbox"/> Violence, abuse or neglect (AN) <input type="checkbox"/> Marginalised (MS)  <input type="checkbox"/> <b>Disability (DS)</b> <input type="checkbox"/> Physical disability (PM) <input type="checkbox"/> Visual impairment (BD) <input type="checkbox"/> Hearing impairment (DF)	<input type="checkbox"/> Survivor in CoO (VO) <input type="checkbox"/> Survivor in CoA (VA) <input type="checkbox"/> FGM (GM) <input type="checkbox"/> Harmful traditional practices (HP) <input type="checkbox"/> Child marriage (forced/early) (FM) <input type="checkbox"/> Survival sex (SS)  <input type="checkbox"/> <b>Serious Medical Condition (SM)</b> <input type="checkbox"/> Chronic illness (CI) <input type="checkbox"/> Critical medical condition (CC) <input type="checkbox"/> Other condition (OT)
<b>The child is at imminent risk of violence?</b> <input type="checkbox"/> No <input type="checkbox"/> Yes		<b>Risk Assessment,</b> <input type="checkbox"/> 24 hours (High Risk) <input type="checkbox"/> three days (Medium Risk) <input type="checkbox"/> 1 week (Low Risk)	

**5a) Recommendations for additional actions**

Indicate the available options and analysis. What is recommended for the child's best interest considering: Views of the child, Safe Environment, Family and close relationships, Development and identity needs

**ACTION PLAN**

**Narrative**

*Please describe the logic of the action plan for the child. Include the child's own goals and the steps to be taken to get there.*

**Actions for the Child**

<b>Actions for family members / other caregivers</b>			
<b>Next Actions/ Follow Up Needed (including development of case plan and time frame for all actions)</b>			
<b>Type of Action</b>	<b>Details</b>	<b>Timeframe</b>	<b>Type</b>
<b>Family tracing</b>			<input type="checkbox"/> Intervention <input type="checkbox"/> Referral
<b>Protection and Safety</b>			<input type="checkbox"/> Intervention <input type="checkbox"/> Referral
<b>Psychosocial</b>			<input type="checkbox"/> Intervention <input type="checkbox"/> Referral
<b>Education</b>			<input type="checkbox"/> Intervention <input type="checkbox"/> Referral
<b>Legal and Documentation</b>			<input type="checkbox"/> Intervention <input type="checkbox"/> Referral
<b>Health and Nutrition</b>			<input type="checkbox"/> Intervention <input type="checkbox"/> Referral
<b>Basic Needs</b>			<input type="checkbox"/> Intervention <input type="checkbox"/> Referral
<b>Other</b>			<input type="checkbox"/> Intervention <input type="checkbox"/> Referral
<b>4b) Review</b>			
<b>Name and Signature of Interviewer:</b>		<b>Name and Signature of Reviewer:</b>	
<b>Date:</b>		<b>Date:</b>	