

# COUNTRY INFORMATION AND DESK RESEARCH

Closing a protection gap 2.0:

Implementing the Core Standards for guardians of separated children in Europe in practice, feeding into policy and legislative instruments on guardianship.

Country Assessment: Portugal

Dora Estoura

November 2014



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**Conselho Português para os Refugiados**



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## INTRODUCTION

Since 1991 the Portuguese Refugees Council supports asylum seekers and refugees and until 2012 managed the only Reception Centre for Refugees in Portugal.

October 2012 brought a new challenge, public and third sector funds allowed a new infrastructure: the first Reception Centre for Refugee Children.

Supporting separated children seeking asylum in this new facility was a responsibility that the Portuguese Refugees Council gave a great concern.

To join the project “Closing a protection gap 2.0: Implementing the Core Standards for guardians of separated children in Europe in practice, feeding into policy and legislative instruments on guardianship” was seen as an opportunity to insure that the standards regarding the way the Portuguese Refugee Council exercise guardianship were in conformity with the standards established on the first version of this project as well as learn more about the Portuguese legal and functional framework regarding the child protection system.

## CHAPTER I

### 1. BACKGROUND

In December 2009 the first ‘Closing a protection gap for separated children in Europe’ project started, financed by the EU Daphne III Programme, as a response to the differences in the level of protection separated children<sup>1</sup> receive in European countries. There are approximately 100.000 separated children in Europe<sup>2</sup>.

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<sup>1</sup> In this country assessment the term separated child is used, as described in the Statement of Good Practice of the Separated Children in Europe Programme: separated children are under eighteen years of age, outside their country of origin, and separated from both parents, or their previous legal, or customary primary caregiver. Some authorities and organizations use a different terminology: the unaccompanied minor asylum seeker or unaccompanied minor foreigner.

<sup>2</sup> In 2011 over 12.000 unaccompanied children seeking asylum entered the EU (Data from the Action Plan on Unaccompanied Minors (2010-2014), European Commission, COM(2010) 213).

The number of children on the move is most probably even higher, because not all children apply for asylum, see: Ruxton, 2003 Separated Children and EU Asylum and Immigration Policy. According to the Separated Children in Europe Programme there are approximately 100.000 separated children in Europe, see: Ruxton, 2000 Separated Children Seeking Asylum in Europe: A Programme for Action. Comparing statistics and gathering of data remains a challenge, see: European Migration Network, Unaccompanied Minors-an EU comparative study, May 2010, p. 74, available at:

[http://www.emn.fi/files/288/o\\_EMN\\_Synthesis\\_Report\\_Unaccompanied\\_Minors\\_Publication\\_\(Septio\)\\_1\\_.pdf](http://www.emn.fi/files/288/o_EMN_Synthesis_Report_Unaccompanied_Minors_Publication_(Septio)_1_.pdf)

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

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

The first 'Closing a protection gap for separated children in Europe' project aimed to harmonize the protection separated children receive from their guardian by focusing on the qualifications of the guardian. The mission of this project was to improve the situation for separated children by means of: closing a protection gap for separated children in Europe by developing core standards on qualifications of guardians based on the views of separated children in relation to their rights according to the Convention on the Rights of the Child. Separated children in Europe should get the guardian they are entitled to irrespective of which EU country they entered. The assumption is that when all guardians have sufficient qualifications and mandates to work in the best interest of the

child, the level of protection children receive in the different European countries will harmonize.

From December 2009 until December 2011, the project partners developed the Core Standards for guardians of separated children in Europe based on interviews and workshops with 127 separated and former separated children, 68 guardians and 39 other experts (for instance; foster parents, lawyers, social workers).

The views have been measured against the Convention on the Rights of the Child (CRC), General comment No. 6 (treatment of unaccompanied and separated children outside their country of origin) and General comment No. 12 (the Right of the child to be heard) of the Committee on the Rights of the Child and the Statement of Good Practice of the Separated Children in Europe Programme<sup>4</sup>. The Core Standards for guardians have been inspired by the Quality4Children standards for Out-of-Home Child Care in Europe<sup>5</sup>. 54 members of the national advisory councils in the eight research countries were consulted and shared their expertise.

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

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

<sup>4</sup> *Available at: <http://www.separated-children-europe-programme.org/>.*

<sup>5</sup> *Available at: <http://www.separated-children-europe-programme.org/>.*

## 2. CORE STANDARDS AS INSPIRATION AND GOAL FOR GUARDIANS

The Core Standards are a tool for guardians in practice. The Core Standards aim to inspire the guardians in their daily work and they offer a goal to work towards. The project partners, however, recognize the challenges a guardian faces. Due to the current guardianship systems in some countries there are a lot of hurdles to overcome for guardians in order to successfully implement the Core Standards. Guardians with a very high caseload are also confronted with multiple dilemmas. The guardians in these countries should not get frustrated when they cannot fulfill all the Standards immediately. Guardians can incorporate the Core Standards as a guideline for their work irrespective of the guardianship system and legislative framework. The Core Standards can be used as a checklist to monitor their current practice. Where there are Core Standards that are unfulfilled the guardian should feel empowered to advocate for change.

## 3. CORE STANDARDS AS INSPIRATION AND GOAL FOR STATE AUTHORITIES AND GUARDIANSHIP INSTITUTIONS

The enjoyment of rights stipulated in the CRC is not limited to children who are citizens of a State party but must be available to all children, including asylum-seeking, refugee and migrant children, irrespective of their nationality, immigration status or statelessness<sup>6</sup>. The positive aspect of protection obligations for separated children also extends to requiring States to take all necessary measures to identify children as being unaccompanied or separated at the earliest possible stage<sup>7</sup>.

## 4. CLOSING A PROTECTION GAP 2.0: TAKING THE NEXT STEPS

“The report Closing a protection gap provides core standards that should inspire policies at national and European level in order to improve the protection of separated children in our continent. It also highlights the need for harmonizing the quality of guardianship systems all over Europe and within countries, where huge differences still persist. The goals set for guardians and policy makers are ambitious, but not impossible to attain. It is all about applying systematically these standards in all policies on separated children and using them holistically”. From the preface of the report ‘Core Standards for guardians of separated children in Europe: Goals for guardians and authorities’ by the Council of Europe Commissioner for Human Rights, Thomas Hammarberg.

“Now we are going to promote the standards for guardians everywhere when it comes to separated children. However, more needs to be done. There have to be European rules on the qualifications of guardians”. Member of the European Parliament at the launch of the Core Standards for guardians of separated children in Europe, November 2011 in Brussels.

These quotes highlight the support and the need to increase the awareness, implementation and extend the scope of the Core Standards for guardians of separated children in Europe developed in the project ‘Closing a protection gap for separated children in Europe’.

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

<sup>7</sup> See also: *United Nations Committee on the Rights of the Child, General Comment no. 6, on the Treatment of Unaccompanied and Separated Children outside their Country of Origin (2005), CRC/GC/2005/6, paragraph 13.*

From December 2012 until December 2014 nine project partners<sup>8</sup> will work on the project ‘Closing a protection gap 2.0: Implementing the Core Standards for guardians of separated children in Europe in practice, feeding into policy and legislative instruments on guardianship’.

The objective of this large-scale and ground breaking follow up project is to take the next important steps to further close the protection gap by working with the Core Standards in practice and taking the work further on towards policy and legislative initiatives at the national and the European level. The overall aim of this endeavour is to provide the strongly needed framework for responsibilities of guardianship systems in order for all separated children in Europe to get the protection to which they are entitled.

The specific objectives of the project are:

1. Raising awareness of the Core Standards, tailor them to the situation in every EU country participating in the project and empower guardians;
2. The national implementation of the Core Standards in practice and advocate for provisions in national legislation;
3. The development of a European initiative/instrument for harmonisation of appropriate guardianship inspired by the Core Standards;
4. Enlarging the scope of the Core Standards for guardians of separated children in Europe in nine other EU countries.

In the **country assessments** the nine project partners analyze the implementation of the Core Standards for guardians of separated children in the various countries based on the input from workshops with separated children and guardians and a desk research of the existing laws, policies and methodologies. Promising practices as well as challenges will be discussed in every country assessment. The objective of the country assessment is to get a status quo picture in relation to every Core Standard.

An important source for the country assessments are the outcomes from the workshops with separated children and guardians. For the workshops a former separated child acted as an advisor. Because the former separated child is not dependent on his or her guardian anymore he or she can speak freely and provide essential suggestions to the implementation of the Core Standards in practice. Defence for Children- the Netherlands worked with Foundation Alexander (an organization specialized in the participation of children) to draft a programme for the workshop with separated children that could be used as a guideline by all project partners. Every project partner involved at least five separated children who still have a guardian. Their participation is essential for the sustainability of the Core Standards. The children were actively involved and asked to give their opinion on the implementation of the Core Standards, as well as think about tools guardians could use (for instance child friendly information on their rights) and to provide suggestions to implement the Core Standards.

During a training session for guardians (which focused on Core Standards 1 to 6 because they specify the responsibilities of the guardian), the project partners worked together with the guardians on practical tools and ideas for the implementation of the Core Standards in practice.

During a project partners meeting in Nicosia in Cyprus from the 26th until the 28th of June 2013 the preliminary results of the country assessments were discussed and guidelines to continue the work on national level were established.

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<sup>8</sup> *The project partners are: Defence for Children-ECPAT the Netherlands (coordinator), Asylkoordination Österreich, Bureau d'accueil et de défense des jeunes (service droit des jeunes), HFC "Hope For Children" UNCRC Policy Center, Bundesfachverband Unbegleitete Minderjährige Flüchtlinge e.v., Irish Refugee Council Ltd., Defence for Children International Italia, Conselho Português para os Refugiados, Slovenska filantropija.*

## 5. MORE TO COME

The country assessments are the basis for the development of a toolkit for practitioners to work on the implementation of the Core Standards for guardians in practice. National and European changes in policy and legislation will be advocated during (expert) meetings. Consultations with Members of the European Parliament, the Council of Europe and (international) stakeholders will lead to a draft European initiative/instrument. To enlarge the scope of the project new partners are included in this follow up project and nine organizations from other countries will be trained. All information about the project will be made available on the project website.

## 6. NATIONAL METHODOLOGY

A desk research was important but listening the separated children and guardians from other organizations was crucial to gather their inputs.

Since the researcher of this project is also separated children seeking asylum guardian, instead of one workshop, two workshops were organized in order to guarantee they could speak freely.

Due to this double task, to research and be their guardian, the workshop with guardians could not be done within the Portuguese Refugee Council. The solution found was a workshop with guardians from Casa das Cores, an organization operating on the National Child Care System and with similar construction process as the Reception Centre for Refugee Children.

All information from the workshops with the separated children, former separated children, guardians and the desk research of the policy and legislation was incorporated in the country assessment.



## 1. COUNTRY INFORMATION - GENERAL OVERVIEW

## 1.1. Definitions, Actors and Stakeholders

## Definitions

- o **Child or Juvenile:** a person under 18 or less than 21 years old that requests the continuation of the protection started before the age of 18 (Act 147/99, 1st September, article 5, paragraph a);<sup>9</sup>
- o **Unaccompanied Minor:** any third-country nationals or stateless persons below the age of 18 who enter national territory unaccompanied by an adult responsible for them, whether by law or by custom, for as long as they are not effectively taken into the care of such a person, or that have been abandoned after they have entered the national territory (article 2, paragraph 1 m) of Act 27/2008, 30th June amended by Act 26/2014 5th May (Asylum Act);
- o **Separated Children:** “Separated children are under 18 years of age who are outside their country of origin and separated from both parents, or their previous legal/customary primary caregiver”.<sup>10</sup>
- o **Guardianship:** the relationship established between a child or juvenile and the person who will continually assume the essential functions of someone who has parental responsibilities (Act 147/99, 1st September, article 5, paragraph b)
- o **Entities:** singular or public collective person, social or private cooperatives with legitimacy to intervene in the protection of at-risk children and juveniles and the promotion of their rights (Act 147/99, 1st September, article 5, paragraph d).

The protection of unaccompanied and separated minors in Portugal involves several and different actors:

- o **Public Defenders Office / “Ministério Público”:** promotes and defends the rights of children at risk, (namely the best interest of the child), supervises the local Commissions for the Protection of Children and Juveniles (CPCJ), and represents the child (Act 147/99, 1st September, article 72). By recommendation of the Public Defender, if necessary, the process is referred to the Family and Juvenile Court and changes are made regarding the child’s protection measures. The child can also contact this entity directly to express his/her needs or/and wishes.
- o **Family and Juvenile Courts / “Tribunal de Família e de Menores”:** judicially promote and ensure rights protecting at-risk children and juveniles. The Family and Juvenile Court (by consensus between Judge and Public Defender) is responsible for the adoption of judicial promotion and protection measures, after hearing all the interested parties, paying special attention to the minor’s will. If the minor does not communicate in Portuguese, a translator will be nominated.

<sup>9</sup> *Jurisprudence regarding the prorogation until 21 years: Judgment Relação de Lisboa, 09-03-2004, Proc. 812/2004-1*

(<http://www.dgsi.pt/jtrl.nsf/33182fc732316039802565fa00497eec/83287fe989a5e12180256f4000426546?OpenDocument>) and *Judgment Relação de Lisboa, 23-05-2006, Proc. 3050/2006-7*

(<http://www.dgsi.pt/jtrl.nsf/33182fc732316039802565fa00497eec/e9740bd32d81f90a802571a000432013?OpenDocument>)

<sup>10</sup> <http://www.scepnetwork.org/p/1/68/separated-children>

- o **Commissions for the Protection of Children and Juveniles / “Comissão de Proteção de Crianças e Jovens (CPCJ)”<sup>11</sup>**: under the Ministry of Solidarity and Social Security and composed by multidisciplinary teams, these commissions, at a municipal level, promote child and juvenile rights, and ensure their right to safety, health, training, education, and proper development. They are non-judicial entities with functional autonomy, monitored by the “Public Defenders Office” / “Ministério Público”. A National Commission for the Protection of Children and Juveniles supervises and provides training to all the local CPCJ.
- o **Social Security Institute under the Ministry of Solidarity and Social Security**: through local representatives (social workers/psychologists from ECJ – Equipa de Criança e Jovens or EMAT- Equipa Multidisciplinar de Apoio aos Tribunais) can advise the Family and Juvenile Court through visits, meetings, presentation of reports, life project and promotion agreements proposals <sup>12</sup> , or even providing social support to unaccompanied minors by decision of the Family and Juvenile Court.

The life project and promotion agreement proposals are presented at the Family and Juvenile Court after discussion with the minor and the guardian <sup>13</sup> . The Social Security Institute may discuss protocols with other entities to act on their behalf; In Lisbon, for example, a team of psychologists and social workers (EATTL -Equipa de Apoio Técnico aos Tribunais de Lisboa) from the social service organization “Santa Casa da Misericórdia de Lisboa” provides advice the Family and Juvenile Courts.

Social Security Institute has also a team to centrally manage all the vacancies at reception centres in Portugal. For cases not involving asylum-seeking and separated refugee children, this team establishes contact with the care facilities on behalf of the CPCJ or the Family and Juvenile Courts to accommodate a child at risk.

The adoption list is also nationally centralized by Social Security.

Three other entities also intervene in proceedings related to Separated Children Seeking Asylum (SCSA):

- o **The Portuguese Immigration Service (SEF)** <sup>14</sup> is responsible for overseeing the asylum procedure. SEF is part of Ministry of the Interior, and deals with immigration and asylum matters.  
At border points, asylum seekers first contact SEF border officers, who refer them to the SEF Asylum and Refugees Department.

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<sup>11</sup> [www.cnpcjr.pt](http://www.cnpcjr.pt)

<sup>12</sup> *Life Project is an individual tool to define a plan for minor’s future (i.e. natural life environment or reception measures,...). In order to accomplish the life project a promotion agreement must be approved by the court and signed by minor and guardian, establishing each one responsibilities in the process.*

<sup>13</sup> *There are cases in which the Family and Juvenile Court does not consult Social Security; in such cases, it is the guardian, after consultation and agreement with the minor that proposes a life project, so the Court can approve it.*

<sup>14</sup> [www.sef.pt](http://www.sef.pt)

The referred Department “Gabinete de Asilo e Refugiados” of SEF is the body responsible for the registration and examination at the admission (at borders and in national territory) and eligibility stages of all asylum applications in Portugal, as well as Dublin III Regulation procedure<sup>15</sup>. At first stage, the National Director of SEF decides on the admission of each asylum claim. In the second phase, the decision to grant or deny refugee status or subsidiary protection is made by the Minister of the Interior after recommendation by the SEF National Director.

- o **The Portuguese Refugee Council / “Conselho Português para os Refugiados” (CPR)**<sup>16</sup> is a non-governmental organisation that plays a fundamental role in the area of asylum and refugees and, in particular, in providing assistance to asylum seekers and refugees in Portugal, including separated children.

It is the only organization providing social and free legal support upon arrival to asylum seekers (adults and minors). The adults are accommodated at the CPR Reception Centre for Refugees.

This organisation accomplishes legal guardianship, assists the minors throughout their asylum procedure, defends their interests, ensures they are housed in appropriate centres (namely, the Reception Centre for Refugee Children located in Lisbon), ensures the rights guaranteed by law, and monitors the application of relevant legal provisions.

During the asylum procedure and the processing of claims, CPR can issue legal opinions and provide Country of Origin Information to national authorities.

SEF refers SCSA to CPR and informs the Public Defender’s Office, so they can follow up the child’s situation and start guardianship process. Since CPR is mandated by UNHCR to act his behalf in Portugal<sup>17</sup>, and therefor recognized under the Asylum Act, so far it has been practice in Portugal that, in the best interests of the child and namely to prevent detention at border points, that SEF accepts the asylum claim from the separated child (e.g., upon arrival at the airport), then referring him/her to the CPR’s Reception Centre.

CPR is the guardian of the separated children accommodated at CPR’s Reception Centre.

Before the existence of the specialized Centre for minors<sup>18</sup>, SCSA were accommodated at the CPR adult’s Center. Since is a Temporary Center the estimated permanence period is 6 months but when found adequate by all the parts (CPCJ/Court, minor and CPR) it can be extended.

If a SCSA/refugee after 6 month at the CPR’s Reception Centre need a different support, the Centralized Team from the Social Security Institute will act to insure a vacancy for the SCSA on another organization from the Child Care System.<sup>19</sup>

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<sup>15</sup> *Special procedure for determination of the responsible State for the analyses of international protection application (Procedimento especial de determinação do Estado responsável pela análise do pedido de proteção internacional) - Act 27/2008, 30th June amended by Act 26/2014 5th May (Asylum Act), chapter IV, articles 36 to 40.*

<sup>16</sup> [www.cpr.pt](http://www.cpr.pt)

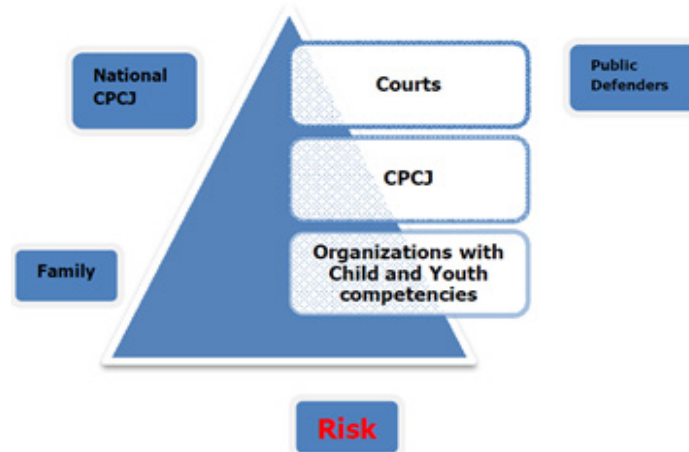
<sup>17</sup> *According to article 13 and 28 of the Asylum Act CPR is informed by the Portuguese authorities about the asylum applications; granted access to asylum seekers, regardless their location and has the right to supervise the procedure and present observations to SEF, according to the article 35 of the Geneva Convention.*

<sup>18</sup> *Opened in october 2012.*

<sup>19</sup> *From 2012 until 2013 there were no cases of SCSA referred to Social Security Institute Centralized Team. This situation occurred namely because after the 6 month permanence the majority of SCSA reached adulthood and decided to proceed without CPCJ or Court intervention/protection. In 2014, in light of the particular cases at the CPR’s Reception Centre recently some of them were referred by CPCJ/Court to Social Security Institute Centralized Team and in the near future they will be supported by other organizations from the Child Care System. The new appointed organization will be the SCSA guardian but CPR can continue to support the minor and his/her guardian in issues concerning the asylum procedure.*

- o **Administrative Tribunals (Fiscal and Administrative Courts) / “Tribunais Administrativos e Fiscais”** where the appeals against negative decisions (non-admission, rejection, transfer decisions under Dublin III Regulation) can be lodged.

The following figure shows the Portuguese Child Care System.



## 1.2 Legal context and criteria

Separated children seeking asylum (SCSA) are protected in Portugal by two acts:

- Act 147/99, 1st September, on Rights and Protection of Children and Juveniles at Risk – Child Care Act/ “Lei de Proteção de Crianças e Jovens em Perigo”.
- This act applies to all the children and juveniles at risk living or being in Portugal (article 2) <sup>20</sup>.
- Act 27/2008, 30th June, amended by Act 26/2014, 5th May, Asylum Act.

These acts establish two separate processes and procedures (one for minors at risk, the other specifically designed for asylum seekers); neither affecting the other, except in the following cases:

- The presentation of an asylum application by an unaccompanied minor implicates the start of the protection measures procedure under the Children and Juveniles at Risk Act: When an unaccompanied minor arrives in Portugal and applies for asylum, authorities immediately inform CPR in order to receive this minor in the CPR’s Reception Centre specifically designed to provide reception to UASC asylum seekers in Portugal. SEF also informs the Family and Juvenile Court that has the competence to determine the promotion of necessary measures for protection of the unaccompanied minor, ensuring that his/her needs are addressed.

**Note:** to avoid delays in the protection of the SCSA, the asylum procedure is not suspended while the promotion and protection measures are being taken / representative is designated.

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<sup>20</sup> *Furisprudence: Judgment da Relação do Porto, 27-02-2007, Proc. 0720409, The Portuguese Courts are international competent to apply promotion and protection measures to foreigner children (<http://www.dgsi.pt/jtrp.nsf/c3fb530030e1c61802568d9005cd5bb/13617a195511da3080257296005193ba?OpenDocument>).*

- If, during the asylum procedure, the applicant is considered not to be under-aged under an official age assessment, protection as a minor at risk ends, due to the fact that the premise of minority is no longer observed. Age assessment is not a standard procedure; SEF can request the age assessment during the asylum process (paragraphs 6, 7 and 8 of article 79 of Asylum Act). The Family and Juvenile Court may order the age assessment.

It is relevant to emphasize that a non-admission or a rejection decision regarding the asylum application does not affect the protection as a minor at risk. Therefore, regardless of their legal status, all SCSA are cared for (namely by staying at the CPR Reception Centre for the period of time established by the Family and Juvenile Court or CPCJ). It is common that separated children awaiting an admission decision, children who have already received refugee status, and children whose proceedings are in appeal at Administrative Court live together.

Admission process to the CPR's Reception Centre is quite simple, requiring only that the minor previously registered as an asylum seeker or after arrival under the national resettlement program in Portugal is referred by SEF.

At this point it is important to refer to the **Guiding Principles of Intervention according to article 4 of the Child Care Act (Act 147/99)**:

- **Best Interest of the Child:** the intervention should prioritize the interests and rights of the Child or Juvenile; recognizing the BIC principle as one of the guiding principles in undertaking interventions to promote the rights and protection of children at risk. According to this principle, the intervention should primarily serve the interests and rights of children and young people, without prejudice to the consideration due to other legitimate interests in the plurality of interests in the particular case;
- **Privacy:** the intervention should demonstrate respect for intimacy, right to image, and respect of her/his private life;
- **Early intervention:** intervention should happen as soon as the situation of risk is known;
- **Minimum intervention:** it should be developed by the organizations whose action is indispensable for the effective promotion of child and juvenile rights and protection (ecological model);
- **Proportionality and actuality:** the intervention should be necessary and adequate to address the situation of danger, and interference with the minor and his/her family should occur only to the extent necessary to accomplish the purpose of the intervention;
- **Parental responsibility:** intervention should occur in a way that permits parents to assume their duties toward the minor;
- **Family prevalence:** intervention should facilitate the minor's integration in his/her family or, alternatively, adoption;
- **Information obligation:** the child or juvenile, the parents, legal representative or guardian have the right to be informed of their rights, the reasons for the intervention, and the procedure of the intervention;
- **Hearing and participation requirement:** the child or juvenile, as well as the parents, have the right to be heard and to participate both in the definition of measures to promote the child/juvenile's rights and protection and in the execution of those measures.
- **Subsidiarity:** the intervention should be consecutively taken by the organizations competent in childhood and youth matters, first by CPCJ, then by the Courts. Depending on the situation, both may not be necessary.

Also it is important to clarify some concepts established in the Child Care Act<sup>21</sup> , namely:

- **Child or juvenile at risk:** characterizes a child or juvenile in one of the following situations:
  - Abandoned or living on his own
  - Suffering physical, psychological, or sexual abuse;
  - Is not receiving proper care for his/her age and individual situation;
  - Has been forced into activities or labor excessive or inappropriate to his/her age, dignity, and individual situation, or harmful to her/his development;
  - Has been subjected, directly or indirectly, to behaviors or customs that seriously affect their security or emotional balance;
  - Has assumed dangerous behaviors or practices activities or customs that affect the training or development of the child or juvenile in the absence of action by the parents, legal representative, or guardian to remove him/her from that situation.

(UASC asylum seekers might be recognized as being at risk by fulfilling one or more of the above criteria);

- **Guardianship:** the relationship established between a child or juvenile and the person that assumes, continuously, the essential parenting functions from those who ordinarily have parenting responsibilities.
- **Consent:** permission expressed by the parents, legal representative, or guardian, on which the CPCJ intervention depends.
- **Rights promotion and protection measures:** measure adopted by Courts or CPCJ to protect children and juveniles at risk, namely:
  - a) Support with parents (“apoio junto dos pais”);
  - b) Support with other relatives (“apoio junto de outro familiar”);
  - c) Entrustment to a reliable person (“confiança a pessoa idónea”);
  - d) Support for autonomy of life (“apoio para autonomia de vida”);
  - e) Family care (“acolhimento familiar”);
  - f) Reception in Institution (“acolhimento em instituição”): the measure most frequently applied to scsa in Portugal, due to lack of effective alternatives, such as foster or family care;
  - g) Adoption (“adoção”) by a selected person or entrustment to the care of an institution pending future adoption (Act 31/2003, August 22nd);

Measures to promote the rights and protection of the child or juvenile can be executed by Courts and CPCJ temporarily in the natural life environment (measures a, b, c, and d) or in alternate accommodation (e and f). A definitive measure like (g), however, can only be executed by the Courts.

Measures to promote the rights and protection of the child or juvenile applied by Courts or CPCJ include a promotion and protection agreement, defined as follows:

- Promotion and protection agreement: written commitment between Courts or CPCJ, the parents, legal representative or guardian, and the child or juvenile older than age 12, establishing a plan containing rights promotion and protective measures.

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<sup>21</sup> *Child Care Act, Article 3*

- a) If related to natural life environment measures, the agreement includes:
  - Food, hygiene and health care (with medical appointments and psycho-pedagogical orientation) and the comfort to be provided
  - Identification of the party responsible for the child or juvenile.
  - Plan for education, professional training, work, and/or occupation of free time.
  - Provision for economic support, including how it is provisioned, providing organization, and duration.
  
- b) If related to reception measures, the agreement includes:
  - The type of accommodation and the type of family or home.
  - The rights and duties of each party, namely, the frequency of visits and the corresponding monetary amount provided for the needs of the child or juvenile (family accommodation).
  - Frequency and contents of reports to the administrative and judicial organizations, as well as the identification of the person or organization that must provide such reports.

The BIC principle is also articulated in the Asylum Act (Act 27/2008, 30th June amended by Act 26/2014, 5th May) in article 78 that points out that the Asylum Act should be implemented in view of the BIC. Articles 78 and 79 of the Asylum Act refer to minors and unaccompanied minors asylum seekers, in view of their vulnerable situation.

According to the Asylum Act, “the best interests of the minors shall be taken into consideration in the enforcement of the present Law” (article 78, paragraph 1)

Asylum Act states under paragraph 2 of the same article, “for the purposes of the preceding number, the best interests of the minors are namely considered to be:

- a) Their placement together with their suitable parents or, in their absence, successively, together with adult family members, in foster care, at centres specialized in accommodation for minors or at places that have conditions for that purpose;
- b) Revoked through amendment
- c) Revoked through amendment
- d) The non-separation of siblings;
- e) Life stability, with changes of residence limited to a minimum.”
- f) Wellness and social development of the minor, given his or her origins;
- g) Aspects related to safety and security, particularly if there is the risk of being a victim of human trafficking;
- h) The minor’s opinion, according to his or her age and maturity.

There are no special provisions in the Asylum Act regarding asylum procedure for separated children. That being said, during the determination interview of the separated children, the legal representative might be present, though, according to article 49, paragraph 7 of the Asylum Act, their presence is not compulsory and will not hinder the act.

A recent amendment of the Asylum Act (Act 26/2014, 5th May) recognized new competences to CPCJ, namely the possibility to submit applications for international protection on behalf of unaccompanied minors as established in Article 79, paragraph 13 “Commissions for the protection of children and young people at risk, with responsibilities in protecting and safeguarding unaccompanied minors, that wait for a decision on repatriation on an unaccompanied minor, may submit an application for international protection on behalf of the unaccompanied minor, if, as a result of the assessment of the respective personal situation, they consider the minor might need that protection”.

According to CPR's knowledge so far this possibility has not been used.

Other legislation complements the Child Care Act, namely:

- Labor and Social Solidarity Ministry Dispatch 8393/2007, 10th May 2007, determined the creation of a Plan DOM – Desafios, Oportunidades e Mudanças (Challenges, Opportunities and Changes), in order to implement on a national level qualification measures at the child and juveniles care institutions, incentivizing a continuous improving of the promotion of rights and protection of the children and juveniles, in order to reduce their permanence at such facilities. This Plan originated a national centralized system, from the Social Security Institute, to manage vacancies at child and juvenile care institutions.
- Solidarity and Social Security Ministry Dispatch 9016/2012, 4h July, as an evolution of the Plan DOM, determined the creation of Plan SERE + (Sensibilizar, Envolver, Renovar, Esperança, MAIS – Warn, Involve, Renew, Hope, PLUS) with the “main objective to implement specialization measures of the long term reception centres net, promoting a continuous improvement of the promotion of rights and protection of the children and juveniles institutionalized (...), of their education towards citizenship, sense of identity, of autonomy and insurance results on their deinstitutionalization” (article 1).

### 1.3 Guardianship

Guardianship organizations per se do not exist in Portugal. However, regular childhood and youthcare organizations can and usually do have guardianship of the minor under its care.

Under the Civil Law there is the possibility to request the Family and Juvenile Courts for the appointment of a legal guardian to a minor when there is not the possibility of parental care (article 1921 and following of the Civil Code).

This procedure however does not provide the same guarantees as the procedure under special law (the above referred Act 147/99, 1st September) of promotion and protection measures. Guardianship can last only until the minor reaches the age of 18 and is not recognized by law as an urgent procedure, which in practice implies that the appointment will take place after several months.

Therefore, and as seen, to SCSA is applied the special law under Act 147/99, 1st September of promotion and protection measures.

In principle, adults or emancipated persons can be nominated as guardians, so long as they are not excluded by law. Among these, preference is given to the parents, other relatives, persons who have taken care of or are currently taking care of the minor, or persons who have otherwise shown affection for the minor (usually long-term neighbors or friends, but these are nominated only after several visits, interviews, and meetings with the Social Security advising team, the Public Defender's Office, and the Family and Minors Court's Judge).

In the case the parents are dead or incapacitated the guardian can be nominated through a will, authenticated document, or the Family and Juvenile Courts. The courts must hold hearings for minors over 14 years old regarding the nomination and are responsible for supervising and cooperating with the guardian.<sup>22</sup>

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<sup>22</sup> <https://www.pgdporto.pt/proc-web/faq.jsf?ctxId=14&subCtxId=19&faqId=1071&show=&offset=>



With specific respect to separated children, article 79 of Asylum Act establishes the following regarding guardianship:

1. Minors who are applicants, or beneficiaries of international protection, must be represented by an entity or by a non-governmental organization or by any other form of representation permitted by law, notwithstanding protective measures applicable under family law (guardianship of minors); the minor should be informed of the above.
2. The Portuguese Immigration Service is responsible for communicating the application, submitted by minors or incapable citizens, to the competent court, for the purpose of representation, so that the minor or incapable citizen may exercise his or her rights and fulfil the obligations provided for in the law.

It should be emphasized that the Asylum Act refers only to “representation” (“representação”), never to “guardianship” or “legal guardian”. Legal representation of minors has been consistently attributed to CPR, the only NGO that provides support exclusively to asylum seekers and refugees in Portugal. This representation is linked to the fact that the minor is at risk<sup>23</sup> and has presented an asylum request.

The promotion and protection measure of reception in institution as mentioned above consists of “placing the child or youth at care of an entity that has installations and equipment available to receive them permanently and staff assuring the adequate assistance towards their needs and provide them conditions to allow for their education, well-being and full development” (article 49 of Act 147/99).

This measure is achieved through a “promotion and protection agreement” (article 55 of Act 147/99) signed by all interested parties; the agreement is provisional (article 37 of the same law) and is reviewed every six months. There is the possibility of prolonging this measure until the minor reaches 21 years of age (after care).

According to national practice, the director of centres who accommodate minors at risk are usually nominated the minors’ guardian.

In Portugal there is only one centre specific for SCSA. This centre belongs to the Portuguese Council for Refugees, so the guardian of those children is the person responsible for the centre.

When the guardianship is held by an institution the guardian must guarantee the following rights to the separated child (article 58, Act 147/99, September 1st):

“Rights of the child and juvenile accommodated in institution

The child and juvenile at an institution have, especially, the following rights:

- a) Maintain regularly and in private personal contacts with family or persons with whom he/she has a special affective relationship, except in case of limitations imposed by judicial decision or by the protection commission.
- b) Receive an education that assures the full development of his/her personality and potential, guaranteeing health care, school and professional training and the participation in cultural, sports and recreational activities.
- c) Provide with privacy and autonomy environment in his/her personal life adequate to age and situation;
- d) Receive pocket money;
- e) Inviolability of correspondence;
- f) Not to be transferred of the institution, except when that decision is of interest;
- g) Contact, with guarantee of confidentiality, the protection commission, the Public Defender Office, the judge and his/her lawyer.”

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<sup>23</sup> Child Care Act, Article 5

#### 1.4. CPR's Reception Centre for SCSA

The reception centres normally direct their activities according to the minor's life project, improving each minor's skills regarding their future autonomy or their family's future reintegration or reunification. The CPR's Reception Centre adds to the mentioned services and activities more than two decades of experience with asylum seekers and refugee populations, legal support on the asylum procedure, language training courses and specific activities to promote understanding and knowledge about the host country and each SCSA's culture.

In order to do so, the guardian, in this case a social worker, after the SCSA reception, applies an instrument created specifically for this population, a graphic self-diagnostic that allows persons from different ages, backgrounds and literacies to express their feelings and hopes. Based on it, an individual intervention plan is defined by the child and the guardian, with each one's responsibilities / tasks and their correspondent timetable.

This way, SCSAs are allowed to enter into the protection system with support upon arrival to learn about the host country's language, habits and procedures, respecting each child's identity, culture and religion. The daily routines are established taking into consideration the minor's characteristics, opinion and life projects. As an example, during the week they can assist the cooker to prepare the Portuguese meals (according to their health specifications, habits (vegetarian / vegan, ...) religion (without pork if Muslim or without cow if Hindu,...) and on weekends the SCSA elected among them prepares his/her traditional meal for all of them. The Portuguese language courses and the culture visits are essential for them to be able to communicate and to start to know the host country but joint activities with the host population has allowed SCSAs to more easily and rapidly integrate and to show their traditions as well.

After a six months' permanence at the CPR's Reception Centre for Refugee Children (Centro de Acolhimento para Crianças Refugiadas - CACR), it is determined by the Family Court or CPCJ if the child should continue in CACR<sup>24</sup>, be entrusted to a reliable person, should be supported for autonomy of life or should be transferred to a long term reception centre for minors.

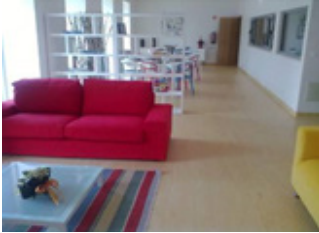
In other reception centres the minors must be granted the individual support needed also in compliance with the Child Care Act, ensured by the CPCJ / Court supervision and Court advisory team assessment.

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<sup>24</sup> It's an exception but taken into consideration the BIC it is possible, as well as after care if CPCJ or the Court rules it.

In 2014, in light of the particular cases <sup>25</sup> at the CPR's Reception Centre, for the first time, some SCSA were referred by CPCJ/Court to Social Security Institute Centralized Team and in the near future they will be supported by other organizations from the Child Care System. The director/ president of the new appointed organization will be the SCSA guardian but the contact between the SCSA and the previous guardian (in this case CPR) doesn't have to stop in order to avoid additional emotional stress <sup>26</sup> .

Still CPR should provide information to the new guardian regarding asylum, the Asylum Act and its implications on the daily life of the SCSA. Furthermore, due to CPR's role on Asylum Act continues to support the child in articulation with the other reception centre/guardian, namely concerning asylum procedure. This practice, based on the initial contacts regarding future SCSA transfers, has been considered, by the relevant actors as a good protecting strategy for the children.



#### (CPR's CACR – Reception Centre for Refugee Children)

Since the National Child Care System have organizations with a protocol with the Social Security Institute and CPR has not, their Centralized Team can not <sup>27</sup> refer any child at risk to CPR, only SEF can make referrals to CPR. However, Centralized Team supervises and visit CACR and advises CPR staff concerning each SCSA case.

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<sup>25</sup> Lack of autonomy skills or/and early age.

<sup>26</sup> Maintining the contact with the previous guardian is a common practice when all parts wishes it.

<sup>27</sup> CPR applied for a protocol with Social Security Institute but due to lack of funds it has been denied by Social Security Institute.

## 2. BENCHMARKING OF THE CORE STANDARDS FOR GUARDIANS OF SEPARATED CHILDREN AGAINST THE NATIONAL CONTEXT

Listening to the separated children was, crucial to understand their point of view and experience regarding guardianship.

Since CPR was SCSA only guardian, assessing their guardianship with them was a delicate task and resulted confusing for the SCSA.

In June 2013, a workshop was organized with 6 SCSA<sup>28</sup> better characterized below, still under the care of CPR, at the reception centre.

### Separated Children first workshop group photo



These were the results of their reflection when they completed (in French and English) the sentence “If I were a guardian...”:

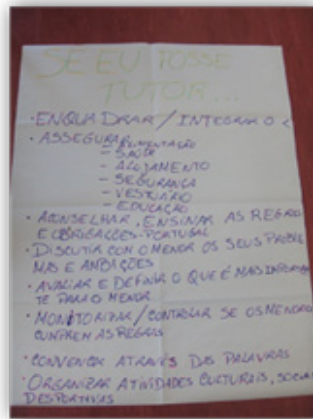
Since these children’s guardian conducted the workshop, there was some confusion on their minds about the role that guardian was playing so a second workshop was organized on November 23th, 2013, with a new group (15 SCSA)<sup>29</sup> and a different person conducting the workshop.

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<sup>28</sup> Annex

<sup>29</sup> Annex

### Separated Children workshop results photo



### Separated Children second workshop group photos



### Separated Children second workshop results



In this second workshop separated children expressed themselves about the way the norms were implemented in the Reception Centre.

Generally speaking they felt satisfied but they considered that their dignity was not being respected because instead of providing a monthly transport card to go to the Mosque they started to receive transport tickets.

In conclusion SCSA used the workshop to manifest some discontent about concrete material support and the fact they did not mention anything else regarding the norms compliance, was interpreted by CPR as the norms were complied with.

The 2013 CASA report <sup>30</sup> (CASA – Annual Characterization of the reception situation of children and juvenile) referred 10.951 children and juvenile were characterized:

- 2.506 were no longer at the reception system, from which
- 797 entered at the reception system during the same year
- 1.709 entered at the reception system during the previous years;
- 8.445 were at the reception system, from which
- 2.253 entered at the reception system during 2013
- 6.192 were at the reception system before 2013

Only 22 of these 10.951 children and juvenile were SCSA.

Considering the fact that no other organizations besides CPR provide the initial support to the above described population, it was not possible for CPR to compare experiences with other, similar organizations.

According to Child Care Act, however, and as seen any of the other existent child care organizations, as well as foster families, etc., can take care/be guardian of asylum-seeking /refugee separated children.

Having this in mind, CPR organized a workshop with 3 members of a Reception Centre for Separated Children, “Casa das Cores” <sup>31</sup>, that has some similarities with CPR: both had their Centres built with almost the same partnership (private and public), both belong to the same category of “Temporary Reception Centre” (the intervention should be for a maximum of 6 months), and both are in the same geographical area. “Casa das Cores” works with both national and migrant separated children and has experience in the procedures of Child Care Act.

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<sup>30</sup> [http://www4.seg-social.pt/documents/10152/13326/Relatorio\\_CASA\\_2013](http://www4.seg-social.pt/documents/10152/13326/Relatorio_CASA_2013), p. 15

<sup>31</sup> [www.casadascores.pt](http://www.casadascores.pt)

## Guardian workshop group and results photos



Their outputs are reflected ahead regarding each standard.

The workshop for guardians was concluded with a question:

“What should be in a tool kit to implement the core standards or to improve your daily work?”

These were the answers:

- An operational guide
  - ✓ Standards and their explanation
  - ✓ Indicators
  - ✓ Basic tools (template form to ensure the standards application; template book to register the intervention with the child, template self-evaluation form)
- Initial training about the guide
- The ability to share experiences and supervision between pairs to discuss problems and having a guideline for specific circumstances, not just isolated acts, and to build “best practices in the defense of the supreme interest of the child”
- Evaluation
- International meetings.

## 2.1 STANDARD 1



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

*Indicators:*

The guardian:

A) Makes an assessment on the best interests of the child, for example before decisions are taken about:

- Legal procedures,
- The choice of a lawyer,
- Housing accommodation and placement,
- Education,
- (Health)care,
- Leisure activities.

B) Other support.

Makes sure that an assessment on the best interest of the child is based on the views and opinions of the child and on individual circumstances.

C) Involves all relevant actors in the determination of the best interest of the child in decisions impacting upon the child to ensure a multi-disciplinary approach.

D) Avoids having a conflict of interest concerning the child and works independently from other actors who make decisions about the welfare and status of the child.

E) Adjusts the assessment of the best interests of the child regularly, while taking at a minimum into account:

- The child's personal background and past experience in the country of origin and journey,
- His/her development,
- Family situation,
- Duration of stay in the host country,
- Phase of residence procedure or immigration status.

According to the **Child Care Act Guiding Principles of Intervention** (Act 147/99, article 4)

- Best Interest of the Child: the intervention should prioritize the interests and rights of the Child or Juvenile;

- Information obligation: the child or juvenile, the parents, legal representative or guardian have the right to be informed of their rights, the reasons for the intervention, and the procedure of the intervention;

- Hearing and participation requirement: the child or juvenile, as well as the parents, have the right to be heard and to participate both in the definition of measures to promote the child/juvenile's rights and protection and in the execution of those measures.

At the separated children workshop the children stated that the guardian must “*discuss with the child their problems and ambitions*” and “*evaluate what is more important for the minor*”.

The Child Care Act, article 4, determines that the intervention to promote the rights and protection on the child should obey the “superior interest and rights of the child”. Since the guardian is one of the interveners, she/he must also follow this paramount guideline.



The life project is determined by CPCJ / Court after hearing SCSA, guardian and advisory team and with the agreement of all.

After the SCSA reception in CPR's Reception Centre throughout a graphic self-diagnostic<sup>32</sup> the child express his/her feelings and hopes and together with his/her guardian define individual intervention plan.

In addition to the daily conversations with the child, the articulation with Social Security advisory team, EATTL and the CPR multidisciplinary team as well as the graphic self-diagnostic and individual intervention plan monthly revisions are instruments to assess and ensure the SCSA Best Interest.

As mentioned previously CPR is SCSA legal guardian, assist them throughout their asylum procedure, defends their interests, ensures they are housed in appropriate centres (namely, the Reception Centre for Refugee Children located in Lisbon), ensures the rights guaranteed by law, and monitors the application of relevant legal provisions.

During the asylum procedure and the processing of claims, CPR can issue legal opinions and provide Country of Origin Information to national authorities.

SEF refers SCSA to CPR and informs the Public Defender's Office, so they can follow up the child's situation and start guardianship process. Since CPR is mandated by UNHCR to act his behalf in Portugal<sup>33</sup>, and therefore recognized under the Asylum Act, so far it has been practice in Portugal that, in the best interests of the child and namely to prevent detention at border points, that SEF accepts the asylum claim from the separated child (e.g., upon arrival at the airport), then referring him/her to the CPR's Reception Centre.

The **guardians** at the workshop detailed:

- *"We work daily the life of the child as an all (holistic view), valuing what is more important and constructive for her/his development"*
- *"It's important to hear the child and know what they are thinking and who they can foresee in their future."*
- *"All the decisions are taken as a team, technical and educational, in a consensus, in order to safeguard the child's well-being."*
- *"The diagnostic of the [child's] needs should be continuously revised."*
- *"Referral to other services necessary for a good development of the child."*
- *"Working in conjunction with several local and national organizations regarding the definition of a life project."*

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<sup>32</sup> *Graphic Self-Diagnostic consists in two Cartesian referentials: one for the intrinsic elements (about the child itself) and another for the extrinsic elements (housing, education, ...). The child has a numeric and symbolic scale (different smiles) in each referential. The child identifies with a dot how he/she is feeling regarding each particular subject. When the dots are connected a web is designed. The way the web evolves helps the SCSA and the guardian to have immediate outputs. The interview with the guardian allows the child to express and explain each feeling / dot. It is that explanation and the informations provided by the guardian that allows the individual intervention plan definition.*

<sup>33</sup> *According to article 13 and 28 of the Asylum Act CPR is informed by the Portuguese authorities about the asylum applications; granted access to asylum seekers, regardless their location and has the right to supervise the procedure and present observations to SEF, according to the article 35 of the Geneva Convention.*

Among the *separated children's* considerations were that the guardian must “ensure feeding, health care, security, lodgment, clothes and education”, “integrate the child, to counsel, to teach them the rules and obligations in Portugal” and “control if the minor is respecting the rules”.

The guardians stated that, “In our daily life, we intervene under the premise of the best interest of the child, through the implementation of daily routines and rules of conduct; access to health care, vigilance and supervision of the child’s daily life, articulation with schools and authorities.

## 2.2 STANDARD 2



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

### *Indicators:*

The guardian:

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

The Child Care Act, Article 10, establishes that the Child Care institutions and CPCJ intervention “depend of the non-opposition of the child over 12 years old” and that “the opposition of the child under the age of 12 is considered relevant according to her/his capacity to understand the meaning of the intervention”. When such opposition happens, a judicial intervention is required (article 11).

Article 84 determines that “the child has the right to be heard individually or accompanied by the parents or legal representatives at her/his choice, or by an official or person in her/his trust.”

In article 58 of the same Act, the child has the right to “contact, with guarantee of confidentiality, the CPCJ, the Public Defender, the judge and her/his lawyer.” It is the guardian’s responsibility to facilitate the child’s contacts in accordance with this right.

Further, “The judge summons for a conference, in view of a future promotion and protection agreement, the Public Defenders, the parents, the legal representative or has the guardianship, the child over 12 years old and the persons or representatives of entities considerer relevant.” (Article 112 – negotiated decision). When an agreement is not possible a judicial debate is necessary (article 114).

While the guardian can offer recommendations to the Court based on her/his point of view and experience with the child, he/she must follow the Court's determinations, such that only day-to-day life decisions to fulfil the Court's rulings lie on the guardian's shoulders.

When asked to the **SCSA** what they should do if they were guardians (first workshop), they answer:

- "I have to integrate the child, to counsel, to teach them the rules and obligations in Portugal"
- "I have to discuss with the child their problems and ambitions"
- "I have to evaluate what is more important for the minor"
- "I have to ensure feeding, health care, security, lodging, clothes and education"
- "I have to control if the minor is respecting the rules"
- "I should convince the child through words/advice"
- "I would organize cultural, sport and social activities so the child can know the country, other persons, make new friends".

In **CPR – Reception Centre for Refugee Children** after the SCSA graphic self-diagnostic, in order to design the individual intervention plan with the child, the guardian has to provide immediate information such as rights / duties, services available, depending on the subjects approached by the child so they know what to expect, when, how, where and by whom. The self-diagnostic and the individual intervention plan are reviewed monthly and guardian and child have to describe to each other their actions, difficulties, joys and results and define if needed a new intervention plan.

Regarding participation, feedback from the separated child workshop urged that the guardian should "integrate the child, to counsel, to teach them the rules and obligations in Portugal", "to discuss with the child their problems and ambitions", and "convince the child through words / advices".

The guardians declared at the workshop:

- "The child is heard and informed about all the steps/decisions taken concerning her/him, through formal and informal conversations, individual psychological follow ups and through the personal and social competencies program.
- "we fulfil the law regarding the right to the child participation, decoding the legal language and aiding them to elaborate letters to the Court, even when they aren't aged enough we stimulate them to participate on the promotion and protection process, helping them to express their wishes to the court"
- "the minors can consult their file and each document is explained to them"

## 2.3 STANDARD 3



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### The guardian protects the safety of the child.

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*Indicators:*

The guardian:

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

The Child Care Act specifies that all actors must protect the safety of the child and that any intervention should be the minimum necessary for an "effective promotion of rights and protection of the child at risk" (article 4).

The measures to promote the rights of and protect the child have the aim "to remove the child from danger; to determine the conditions that allow for the protection of the child and promotion of their safety, health, training, education, well-being and full development; to guarantee a physical and psychological recuperation of children who are victims of exploitation or abuse" (article 34 of Act 147/99).

Is CPR common practice to work together with different authorities / entities involving the SCSA effective safety and protection, when there are signs of danger, when child disappear or when they need specific care.

## 2.4 STANDARD 4



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

*Indicators:*

The guardian:

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

The guardians at the workshop have reported that they “ensure the access to education and health care services”, “the right of the child to be with their family (of origin or not)”, “the right to their individuality, to their religion, sexual orientation, culture”, “the right to have their legal document valid”, “to express and access the legal mechanisms”. We create individual “personal and social competences programs to empower the children.” “The capacitation on the child is important in all the contexts, to make them see that beyond the duties they also have rights”. “It isn’t easy to defend the Child rights on different involving contexts, these children are sometimes easy targets and from victims they are easily labeled as abusers. It’s difficult to overcome those labels and to make other professionals to see them from another angle is sometimes hard”. At this point the guardian specified that this sometime happens at schools, where the child’s aggressive behavior is regarded without considering her/his past.

The guardian must “ensure [the child’s] feeding, health care, security, lodging, clothes and education”, “organize cultural, sport and social activities so the child becomes acquainted with the country and other persons, and makes new friends.”

It is CPR’s experience that pejorative remarks are often made in different services (schools, health care services,...) out of ignorance. The need to advocate, inform, and create awareness is a recurrent one; only after attending to that need do positive changes occur.

## 2.5 STANDARD 5



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

### *Indicators:*

The guardian:

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

According to the Child Care Act, the Public Defender is the person responsible for the BIC by systematically hearing all parties, supervising their actions, and demanding new actions if necessary, but all the guardians and their technical and educational teams accompany the minor daily and advocate on the child's behalf.

In addition to the fact that unaccompanied children considered the guardian as the person who has "to integrate the child", the guardians also see themselves as "mediators between the child and the public organizations, families, etc., having the child at the centre of their systemic model".

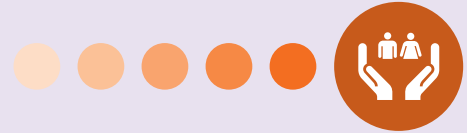
Since CPR is mandated by UNHCR to act his behalf in Portugal<sup>34</sup>, and therefor recognized under the Asylum Act, CPR can intervene not only according to the Child Care Act but also on the asylum procedure.

Article 4 of the Child Care Act states that the intervention should be early, minimal, proportional and current, and performed successively by entities with Child and Youth competency (i.e., by CPCJ and, in last instance, by the courts). While guardians can identify and propose to these entities some durable solutions, the guardian cannot establish or implement them on his own, but can be a part of its implementation. For instance, the Court determines that the long-term solution is to reunite the child's family in the country of origin, the guardian will take care of the proper arrangements to execute it.

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<sup>34</sup> According to article 13 and 28 of the Asylum Act CPR is informed by the Portuguese authorities about the asylum applications; granted access to asylum seekers, regardless their location and has the right to supervise the procedure and present observations to SEF, according to the article 35 of the Geneva Convention.

## 2.6 STANDARD 6



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

### *Indicators:*

The guardian:

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

Often durable solutions are referred to as life projects, such as adoption, foster care, family reunification, return to country of origin, etc.

At the workshop, guardians stated that, while they help “defining the life project that best suits the specific needs of each child..., its implementation depends on external organs, namely the Court, CPCJ and Social Security advisory team, which doesn't operate in a timely manner”. At this stage they were referring to the fact that they still have children under their care after the 6-month period. They also stated that, “when the child leaves the reception centre, the guardian no longer has the legal legitimacy to intervene /follow up/ supervise the child's well-being”.

According to paragraph 14, of article 79 of Asylum Act “The Portuguese Immigration Service, is with other authorities involved in the procedure and the Portuguese Ministry of Foreign Affairs, and with the purpose of protecting the unaccompanied minors best interests, shall endeavor all efforts to trace the members of his or her family as soon as possible».

In practice, CPR consult separated children and when they wish it refer all family tracing requests to the International Committee of Red Cross representative in Lisbon, with the purpose of protecting their best interests and the principle of the unity of the family.

## 2.7 STANDARD 7



### The guardian treats the child with respect and dignity.

#### Indicators:

The guardian:

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

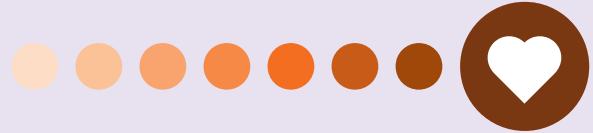
**Guardians** at the workshop held that “all actions undertaken by the guardians are based on respect for the child, treating her/him in a dignified manner, as an individual who has rights that should be protected.”

In the Reception Centre for Refugee Children as described formerly in the daily routines aim an environment of mutual respect where the child feels his/her dignity and individuality is respected.

When **scsa** stated at the second workshop they considered that their dignity was not being respected because instead of providing a monthly transport card to go to the Mosque they started to receive transport tickets to do so, in spite of their knowledge about dignity, this was a clear indicator of their discontent not about the way they were treated but about a concrete material support.



## 2.8 STANDARD 8



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

*Indicators:*

The guardian:

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

The guardian cannot practice prejudicial acts and must look out for the minor's interests. For that he/she can manage the minor patrimony only with the Court's authorization as well as the minor incomes to ensure the minor's subsistence and education.<sup>35</sup>

Regarding confidentiality, article 79 of the Asylum Act states the following:

11 – "In cases where the life or physical integrity of the minor or close relative is at risk, particularly if they are in the country of origin, the collection, processing and circulation of information regarding those people, is undertaken on a confidential basis so as to avoid jeopardizing their safety.

Also article 79, paragraph 12 of the Asylum Act, determines: "Staff involved in the examination of applications of international protection, encompassing unaccompanied minors, must have adequate training to meet the specific needs of minors and is subject to a duty of confidentiality with respect to information obtained in the course of their duties".

Additionally, at the guardian's workshop, they mentioned the relationship starts at the "reception process when the space and the teams are introduced (who is who and who does what) and by the way they are integrated with the other children at the centre." There are reference educators (each one for one or two children) who should promote an individualized environment with the child regarding education, hygiene, routines, rules, birthdays, ..." The child's daily contacts at the CPR Reception Centre will be the technical and educational teams, but the child is aware that her/his educator is the person who can decide. This way, even though both teams convene to reach a decision, the face for those decisions is the educator, and all the other faces are available for confidence. These two teams see themselves as guardians even though the legal representative / guardian is the director of the reception centre. In this sense, they can be interpreted as "multidisciplinary executive guardians".

<sup>35</sup> <https://www.pgdporto.pt/proc-web/faq.jsf?ctxId=14&subCtxId=19&faqId=1072&show=&offset=>

## 2.9 STANDARD 9



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### The guardian is accessible.

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*Indicators:*

The guardian:

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

Following the closing argumentation of the previous standard, the two existing teams at the reception centres work in shifts, ensuring 24h/day support. Continuous support is one of the premises of the Social Security Institute's "Quality Manual for Reception Centres"; without this, the Centre would not retain its license and remain open.

The guardians declared that "a multidisciplinary team checks all the child's processes" by being present all the time and communicating in different ways (personally, by phone, etc.)

Another premise of the previously mentioned Quality Manual is the determination of the composition of the staff (profession, number, etc.) according to the centre's capacity/occupancy. This Manual also defines how the space must be structured (e.g., the bedroom must have a certain space (m<sup>2</sup>) for each child, all the facilities must be adapted for disabled children, etc).

## 2.10 STANDARD 10



The guardian is equipped with relevant professional knowledge and competences.

### *Indicators:*

The guardian:

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

The guardian's methodology is not established by any law or regulation. The caseload and remuneration of guardians is also not established by any law or regulation.

In practice, if the guardian is the director of a reception centre, his/her case load includes all the minors at the centre (as many as 8-12 minors, depending on the centre's capacity).

There is usually a protocol between reception centres and Social Security Institute to fund the centre's activities, but not the specific activities of the guardian. This protocol funds salaries of all the staff; utilities; and the minors' food, clothing, health care, education, training, sport, and cultural activities, etc.

At the workshop, the guardians declared that they receive support from a "multidisciplinary team: social worker, psychologist, rehabilitation and insertion technician, social educators, animators,...", that they promote "training and technical competencies for all the staff beyond what is obligated by law" (i.e., in excess of the standard specified in the Child Care or Asylum Acts and as part of the Work Code valid for everybody employed in Portugal, employers must guarantee 35 hours of certified training per year to each of their employees).

The guardians also stated that they are “monitored by the Social Security Institute advisory team, CPCJ and by the Court”. Besides all of these, they have “external supervision, different persons for each of the teams” and proudly mention “it’s an option from our organization”.

Regarding monitoring of the guardians:

Act 147/99, Article 59

“Monitoring of the execution measures

1. The Protection Commissions execute the measures in view of the promotion and protection agreement.
2. The execution of the measure granted on the judicial process is directed and supervised by the court that decided upon its application.
3. In terms of the previous number the court will designate the entity considered to be more adequate to monitor the implementation of the measure”

When CPCJ or Family and Minors Courts monitor the execution of measures they will assess each intervener’s performance, guardians included (whether an individual or a childhood or juvenile care organization).

These Courts have an assessment team (social workers / psychologists), usually from the Social Security Institute, that meets with the minor and the guardian, prepares a report, and advises the Court within the period established by the Court. In extreme cases, when the guardian is not fulfilling his responsibilities and endangering the Best Interest of the Child assessment may result in proposal to change guardian.

Courts also conduct periodic hearings with the minor and the guardian to discuss the minor’s situation. Depending on the stage of the process, these hearings may occur every 3 to 6 months or, if everything is going well with the child and guardian, twice per year.

If the guardian does not fulfil his/her duties or is unable to continue as guardian, he/she will be relieved of the guardian role by CPCJ or Court.

CPR staff often receives specific training, regarding asylum, child care, human trafficking.

## CONCLUSION

Since SCSA had only CPR as their guardian up until 2013, in order to maintain objectivity and be impartial, CPR had a singular and complex task: Be a guardian and Assess Guardianship.

If analyzed semantically, in the Portuguese literature and legislation the expression “Best Interest of the Child” normally acquires the form of “the Supreme Interest of the Child”.

Supremacy means that all the persons, guardian or not, are implicated to ensure this interest and that no other interest is more important than the child's.

In informal conversations with guardians from other organizations, they declare that the National Child Care Act and National Child Care System (NCCS) are well designed; however, when asked, “Does the Portuguese Child Care System work well?” The general answer was, “No, there are insufficient long-term solutions (some children stay in a temporary reception centre for 2 or 3 years when they should stay for a maximum of 6 months and they stay even longer at the long term reception centres due to a few concrete alternative options like fostering), and the case load of hundreds of cases to follow up by CPCJ or by each person of the Family and Juvenile Court advisory team (from Social Security Institute) can jeopardized the quality of their service.”

During the guardian's workshop evaluation, the guardians from “Casa das Cores” were initially excited by the prospect of being involved in the reflection on core standards to be applied across the EU; they ultimately found, however, that the core standards were “too obvious and not new to them”. They declared that they were obligated to follow them daily and that it did not make any sense to do less than that.

They ended by emphasizing that only the explanation of the different realities all over Europe made them understand how well the NCCS works after all because all separated children are receiving proper care 24 hours a day by multidisciplinary teams that complement each other in order to ensure the Child Best Interest and throughout individual social and educative individual plans fulfil his/her Life project. They also established the importance of these core standards and the application of those standards in a broad manner.

The NCCS was not designed particularly for Separated Children but to all children at risk.

If so far CPR – CACR has been the first and in most cases the only guardian of SCSA, starting in 2014 other institutions from the NCCS will be their guardians and more could be analyzed.

Keeping in mind CPR's mission to defend Human Rights and, in particularly in CACR, Child Rights and their Best Interest, CPR has the conviction that the Portuguese legal frame is very progressive and in compliance with this project Core Standards.

A part from the 24x7 multidisciplinary teams from the Reception Centres, the CPCJ and Court supervision, the follow up of the Court Advisory Team (ECJ, EMAT or EATTL), the support from the Social Security Institute Centralized Team as well as the minor's right to contact directly the CPCJ or the Court are guarantees of the NCCS.

Although the average permanence period in CACR is less than four months, the reality in others centres from the National Child Care System are quite different and remains unsolved the long term permanence's.

## ANNEX

### I Characterization of the separated children at the first workshop

#	Gender	Age	Legal Status	Country of Origin
1	F	16	Refugee (resettled)	Guinea Conakry
4	M	16	Asylum seeker waiting for appeal to the Administrative Court	Guinea Conakry
1	M	17	Beneficiary of Humanitarian Protection	Ivory Coast

### II Characterization of the separated children at the second workshop

#	Gender	Age	Legal Status	Country of Origin
2	M	16	Asylum seeker waiting for the admission decision	Guinea Conakry
4	M	16	Asylum seeker admitted (temporary permit)	Guinea Conakry
2	M	17	Asylum seeker waiting for the admission decision	Guinea Conakry
4	M	17	Asylum seeker admitted (temporary permit)	Guinea Conakry
1	M	16	Asylum seeker waiting for the admission decision	Mali
1	M	17	Asylum seeker admitted (temporary permit)	Mali
1	M	16	Asylum seeker waiting for appeal to the Administrative Court	Guinea Conakry

**“A guardian is someone who takes care of you from a distance.”**  
a separated child

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

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