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EU Pact on Migration and Asylum - Ireland's National Implementation Plan

Submission to the Department of Justice, Home Affairs and Migration

ombudsman
do leanaí
for children

Contents

Introduction 2

International and European children's rights standards 2

Overarching concerns 4

Implementation of the best interests of the child and respect for the views of the child 4

Implementation of children's rights during screening and biometric data collection 9

Safeguarding the rights of children in the border procedure 12

Recognition in child care legislation 16

Designation of an independent representative/guardian 17

Vulnerability Assessment 20

Age assessment 22

Free legal counselling 27

Implementation of an independent monitoring mechanism 29

Introduction

The Ombudsman for Children's Office (OCO) is an independent statutory body, which was established in 2004 under the Ombudsman for Children Act 2002 (2002 Act). Under the 2002 Act, as amended, the OCO has two core statutory functions:

- to promote the rights and welfare of children up to 18 years of age; and
- to examine and investigate complaints made by or for children about the administrative actions of public bodies, schools and voluntary hospitals that have, or may have, adversely affected a child.

The implementation of the EU Pact on Migration and Asylum (the Pact) will directly affect migrant children arriving in Ireland, whether they are seeking asylum or are migrating for other reasons. It is crucial that the implementation of the Pact takes due account of European and international children's rights standards Ireland has an obligation to uphold. We welcome the development of Ireland's National Implementation Plan (the NIP) meant to operationalise the Pact's legal instruments.

We have prepared these Observations pursuant to section 7(1)(a) of the 2002 Act, which provides for the Ombudsman for Children to advise the Minister on the development and coordination of policy relating to children, and section 7(4) of the 2002 Act, which provides for the Ombudsman for Children to advise on any matter concerning the rights and welfare of children.

The purpose of these Observations is to highlight some issues of concern to our Office regarding the implementation of the Pact in relation to migrant children arriving in Ireland, and to contribute to the strengthening of the NIP's cross-cutting Building Block 9 on safeguards and rights from a children's rights perspective.

International and European children's rights standards

Under EU law, EU MS and EU institutions are bound by children's rights. The rights of the child are enshrined in the European Union's primary law. Article 3 of the Treaty on the European Union (TEU) includes the protection of the rights of the child among the Union's

general obligations. Thus, the protection of children's rights should inform all aspects of the EU legal order, from law-making to the interpretation and implementation of secondary legal instruments. This means that the EU directives and regulations that form an integral part of the EU Pact must be interpreted and implemented in line with children's rights standards.

Another source of primary law, the Charter of Fundamental Rights of the EU (the CFREU) establishes in Article 24 entitled 'Rights of the Child' children's right to protection and care, their right to express their views and their right to have their best interests taken as a primary consideration in all actions and decisions taken by public or private institutions. The Explanations relating to the Charter mention explicitly that Article 24 is based on the UN Convention on the Rights of the Child (the UNCRC), which has been ratified by all MS. As such, the MS should interpret and implement Article 24 in line with the Convention and guided by the authoritative guidance provided by the UN Committee on the Rights of the Child (the Committee).

In General Comment No. 14, the Committee reminds us that the concept of the child's best interests is aimed at ensuring both the full and effective enjoyment of all the rights recognised in the Convention and the holistic development of the child. We welcome the fact that the Pact's legal instruments include provisions on the right of children to have their best interests taken into account as a primary consideration (Article 3 of the UNCRC), and on their right to have their views respected (Article 12 of the UNCRC) in accordance with the Convention, at different stages of the asylum and migration procedures. While this is positive, it is even more relevant that the Pact's legal instruments explicitly refer to the need for MS to ensure that children's rights are applied in line with the Convention. This means that in the national implementation of the Pact, MS including Ireland are bound by the obligations arising from the Convention as a whole and are required to implement all children's rights therein accordingly.

For example the Reception Conditions Directive requires MS to:

- ensure that Article 37 of the UNCRC is applied (Recital 31);
- ensure that representatives for unaccompanied children are appointed as early as possible, in line with the UNCRC (Recital 42);

- ensure in all circumstances access to healthcare and a standard of living for applicants in line with the UNCRC (Recital 47).

The Eurodac Regulation in Article 14 requires MS to take biometric data of children in full respect of the best interests of the child and the safeguards laid down in the Convention. While the Screening Regulation does not explicitly refer to the Convention, it provides in Article 3 that MS shall fully comply with the CFREU and relevant international law, which includes the Convention. MS are also required to take into account "relevant authoritative guidance by the UN treaty body on the UN Convention of the Rights of the Child and relevant caselaw", as is exemplified in Recital 40 of the Reception Conditions Directive.

Additionally, Charter rights that are included in the European Convention on Human Rights (ECHR) – and its protocols – must be interpreted in the same way as the equivalent rights in the ECHR, according to Article 52(3) of the CFREU. This means that the case law of the European Court of Human Rights (ECtHR) must be duly taken into account when determining the meaning and content of rights set forth in both the Charter and the ECHR.

Recommendation

The NIP should set out explicitly how the State intends to apply the legal instruments affecting children in line with Ireland's obligations under the CFREU, the UNCRC and the ECHR.

Overarching concerns

Implementation of the best interests of the child and respect for the views of the child

The EU Pact requires that the primacy of the best interests of the child be taken into consideration when applying most of its legal instruments, including the Screening Regulation (Article 13), the Asylum Procedure Regulation (Article 22), the Reception

Conditions Directive (Article 26), the Eurodac Regulation (Article 14), the Qualification Regulation (Article 20(5)), the Asylum Return Border Procedure Regulation (Recital 5), the Asylum and Migration Management Regulation (Article 23(1)), and the Crisis and Force Majeure Regulation (Recital 8).

This is welcome, but not enough by itself. An adequate implementation of these provisions will be key for an effective protection of children's rights. It is crucial that those responsible for implementing these provisions have a common understanding of what the assessment and determination of the best interests of the child involves at different stages of the migration and asylum processes. As recommended by the European Commission, MS must establish clear and early procedures for individual best interests assessments as part of their implementation of the Pact, and ensure that all relevant proceedings and reception systems are adapted to take into account children's age, needs and vulnerabilities as a priority, in accordance with Union and international law.[1] In its operational checklist for the implementation of the Pact, the European Commission requires MS to review/develop processes/procedures/SOPs to carry out the assessment of the best interests of the child and ensure it is prioritised in all procedures and in reception.[2]

While the Reception Conditions Directive[3] and the Asylum and Migration Management Regulation[4] set out specific factors that should be *particularly* considered when assessing the best interests of the child, and are therefore non-exhaustive, there are many other factors that need to be considered as a matter of routine when correctly applying the best interests principle in line with the UNCRC.[5] We note that in spite of the inclusion of the list of factors in some of the Pact's legal instruments, no practical guidance is provided under EU law on how to assess and determine a child's best interests.

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[1] European Commission (2024), *Recommendation on developing and strengthening integrated child protection systems in the best interest of the child*, C(2024)2680 final, para. 55.

[2] European Commission (2024), *Commission Staff Working Document: Operational Checklist and List of Commission Implementing and Delegated Acts to be adopted for the Implementation of the Pact on Migration and Asylum*, SWD(2024) 251 final, p. 22.

[3] Article 26 of the Reception Conditions Directive.

[4] Article 23(4) of the Asylum and Migration Management Regulation.

[5] UN Committee on the Rights of the Child (2013), *General comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration*, CRC/C/GC/14, para. 50.

As mentioned by the Committee, the concept of the child's best interests is complex and its content must be determined on a case-by-case basis. It is through the interpretation and implementation of article 3, paragraph 1 of the UNCRC, in line with the other provisions of the UNCRC, that those responsible for assessing and determining a child's best interests will be able to clarify the concept and make concrete use thereof.[6]

The Committee adds that with regard to implementation measures, ensuring that the best interests of the child are a primary consideration in legislation and policy development as well as in delivery at all levels of Government demands a continuous process of child rights impact assessment (CRIA) to predict the impact of any proposed law, policy or budgetary allocation on children and the enjoyment of their rights, and child rights impact evaluation (CRIE) to evaluate the actual impact of implementation.[7] The use of CRIA and CRIE in law, policies and budgetary allocations that affect children in migration contexts has also been recommended by the UN Special Rapporteur on the human rights of migrants.[8]

Recommendations

The NIP must ensure that the national regulatory framework for the implementation of the Pact provide guidance to all relevant authorities on the operationalisation of the principle of the best interests of the child for migrant children and develop mechanisms aimed at monitoring its proper implementation in practice.

The NIP must ensure that children's rights training is provided to all those responsible for assessing and determining the best interests of the child in line with the UNCRC and the authoritative guidance provided by the Committee in relevant General Comments.

[6] Ibid, para. 32.
[7] Ibid, para. 35, and UN Committee on the Rights of the Child (2003), *General comment No. 5 (2003) on general measures of implementation of the Convention on the Rights of the Child*, para. 45.
[8] UN General Assembly (2024), *Report of the Special Rapporteur on the human rights of migrants, Gehad Madi: Children are children first and foremost: protecting child rights in migration contexts*, A/79/213, para. 58(c).

As part of the work underway to prepare for the implementation of the Pact starting in mid-2026 , conduct a CRIA of the Pact's legal framework on children and the enjoyment of their rights.

The NIP and the national regulatory framework should provide for a continuous process of CRIE to evaluate the impact of measures taken on children's rights and to identify the measures necessary to mitigate any adverse impacts on children's rights.

In relation to the respect for the views of the child, some of the references to this right in the Pact's legal instruments are made in the two following situations:
when assessing and determining the best interests of the child, MS must take into account "the views of the minor in accordance with his/her age and maturity"; and
when a representative is designated to an unaccompanied child, they must take into account the child's views about their needs.

The assessment of a child's best interests must include respect for the child's right to express his/her views freely and due weight given to said views in all matters affecting the child. This is clearly set out in the Committee's General Comment No. 12, which also highlights the inextricable links between articles 3, paragraph 1, and 12 of the UNCRC.[9]

Children and young people have a right to participate in decisions that affect their lives. Article 24 of the CFREU and Article 12 of the UNCRC require MS to ensure that the voices of children and young people are heard and that their opinions are given due weight in matters that affect them. Under the National Policy Framework for Children and Young People 2023-2028, all Government Departments committed to embed the voice of children and young people in decision-making and the development of policy, legislation and

[9] UN Committee on the Rights of the Child (2009), *General Comment No. 12 (2009): The right of the child to be heard*, CRC/C/GC/12.

research.[10] As the reforms brought about by the EU Pact will directly affect children, the Department should consult with children.[11]

All those responsible for ascertaining the views of the child at the different stages of the migration and asylum processes, whether as part of a best interests assessment, or as a substantive right in itself should take into consideration the authoritative guidance provided by the Committee in General Comment No.12 to ensure adequate implementation of this right.

Recommendations

Ensure that the national regulatory framework for the implementation of the Pact is informed by the authoritative guidance of the Committee on the right of the child to be heard.

Provide training to all those responsible for ascertaining the views of the child during the migration and asylum processes in line with the UNCRC and the Committee's authoritative guidance on Article 12 of the UNCRC.

Undertake in cooperation with the Department of Children and Disability a consultation with children, particularly children with relevant experience on the main changes the Pact will introduce in Ireland from June 2026.

[10] Department of Children, Equality, Disability, Integration and Youth, *Young Ireland – National Policy Framework for Children and Young People* 2023-2028, p.25.
[11] Ombudsman for Children's Office, *Good Practice Guidance on Children's Participation in Decision-Making*, this guidance provides useful advice in this respect.

Implementation of children's rights during screening and biometric data collection

Ireland did not opt-in the Screening Regulation but it has committed to legislate nationally to align itself with Pact measures. Ireland's legislative measures to align with the Screening Regulation should include the standards applicable to children set out in that Regulation. It is positive that the Screening Regulation provides for an *earlier identification of vulnerabilities* mandatory for everyone,[12] in addition to a preliminary health check.[13] It is also relevant that the Regulation requires that national child protection authorities and national authorities in charge of detecting and identifying victims of trafficking in human beings or equivalent mechanisms be involved in these checks, where appropriate.[14] The Regulation states that a preliminary vulnerability check should be carried out with a view to identifying persons with indications of being vulnerable,[15] and that this should be without prejudice to further assessment in ensuing procedures following the completion of the screening.[16] This is particularly important when it comes to children, including unaccompanied children, who are recognised in the Screening Regulation *as being individuals with vulnerabilities*.[17]

According to the Screening Regulation, specialised personnel of the screening authorities trained for that purpose will carry out the *preliminary* vulnerability check, with national child protection authorities being required to participate in those checks, where appropriate.[18] The Regulation adds in Article 12(3) that for the purpose of that vulnerability check, the screening authorities may be assisted by NGOs and, where relevant, by qualified medical personnel. Where there are indications of vulnerabilities or special reception or procedural needs, in the case of children, the Regulation requires supports to be given in a child-friendly and age-appropriate manner by personnel trained and qualified to deal with children, and in cooperation with national child protection authorities. [19] This preliminary

[12] Article 8(5)(b) of the Screening Regulation.
[13] Article 8(5)(a) of the Screening Regulation.
[14] Article 8(9) of the Screening Regulation.
[15] Recital 37 of the Screening Regulation.
[16] Ibid.
[17] Recital 38 of the Screening Regulation.
[18] Article 8(9) of the Screening Regulation.
[19] Article 12(4) of the Screening Regulation.

vulnerability check “may form part “of the vulnerability assessment laid down in the Reception Conditions Directive.

Recommendations

The NIP and the national regulatory framework to implement the Pact:

- ***must, at a minimum, apply the guarantees for children set out in the Screening Regulation***
- ***must recognise that all children and, in particular unaccompanied children, are individuals with inherent vulnerabilities as stipulated in EU law.***
- ***must ensure that the screening authorities include staff adequately trained to identify child protection and welfare risks, including trafficking and exploitation.***
- ***must be clear about who has the responsibility to undertake the preliminary vulnerability check and ensure that while this preliminary check may form part of the vulnerability assessment laid down in the Reception Conditions Directive, it does not replace it.***

Article 13 of the Screening Regulation requires the screening authorities to ensure that during screening, the best interests of the child shall always be a primary consideration. We reiterate that training and guidance on children’s rights and on how to assess and determine the best interests of the child in line with the Convention must be provided to all those responsible for screening children as well as to those appointed as representatives, or persons trained to safeguard the best interests of unaccompanied children.

According to the Screening Regulation, each representative/person trained to safeguard the best interests of unaccompanied children should be in charge of a “proportionate and limited number” of unaccompanied children and no more than 30 at one time.[20] This sounds

[20] Article 13(5) of the Screening Regulation.

excessive if we consider that this representative/person trained to safeguard the best interests of unaccompanied children may be the same person designated under Article 27 of the Reception Conditions Directive, under Article 23 of the Asylum Procedure Regulation, under Article 14 of the Eurodac Regulation and under Article 23 of the Asylum and Migration Management Regulation. The NIP may opt for a lower number of unaccompanied children to be allocated to a representative/person trained to safeguard the best interests of unaccompanied children, with a view to ensure that they adequately and effectively protect of these children's rights.

The collection of children's biometric data takes place as part of the screening process.[21] While the Eurodac Regulation requires that officials taking children's biometric data be adequately trained, and that full respect for the safeguards laid down in the UNCRC be observed, it allows for "a proportionate degree of coercion" to be used as a last resort against children as young as 6 years of age to ensure their compliance with that obligation, which is concerning.[22] Several United Nations bodies, the EU Fundamental Rights Agency (FRA) and international human rights bodies and organisations have stated that coercion should never be used against children for the purpose of obtaining biometric data.[23]
In this regard, we note that under Article 13(3) of the Eurodac Regulation, MS are given discretion in relation to which administrative measures shall be laid down in national law to ensure compliance with the obligation to provide biometric data (term used is "may include"), which means that Ireland does not have an obligation under EU law to include in the NIP the use of means of coercion on children as a measure of last resort. Protection Act 2018. In addition, the Data Protection Commission should be consulted during the process of preparing any legislative measure in this regard.

[21] Article 8(5)(d) of the Screening Regulation.
[22] Article 14 of the Eurodac Regulation.
[23] EU Fundamental Rights Agency (2015), *Fundamental rights implications of the obligation to provide fingerprints for Eurodac*, p. 2 and p. 9; UNICEF, Joint Statement: Coercion of children to obtain fingerprints and facial images is never acceptable, 2 March 2018; UN General Assembly (2024), *Report of the Special Rapporteur on the human rights of migrants, Gehad Madi: Children are children first and foremost: protecting child rights in migration contexts*, A/79/213, para. 58(i).

Recommendations

As part of the National Implementation Plan and in preparation of the national regulatory framework to implement the Pact:

Conduct a DPIA of article 14 of the Eurodac Regulation to evaluate the risks and impact of its application on children's data protection rights.

Consult the Data Protection Commission during the process of the preparation of any legislative measure that relates to a special category of personal data as required by the Data Protection Act 2018.

Safeguarding the rights of children in the border procedure

Although the European Parliament obtained guarantees that families with children "would not be a priority for uptake" into the border procedure,[24] they are not exempt from it. Following the screening, the Asylum Procedure Regulation provides that, where applicants have not yet been authorised to enter the MS's territory, a MS may examine their application in a border procedure.[25] The application of the border procedure is mandatory[26] when:

- an applicant "is considered to have intentionally misled the authorities" by presenting false information or documents or by withholding relevant information or documents, particularly with respect to his or her identity or nationality, that could have had a negative impact on the decision or there are "clear grounds" to consider that the applicant has, in bad faith, destroyed or disposed of an identity or travel document in order to prevent the establishment of his or her identity or nationality;[27]
- there are "reasonable grounds" to consider the applicant a danger to the national security or public order of the MS or the applicant had been forcibly

[24] European Parliament, MEPs endorse common asylum procedures and border returns, 10/04/2024.
[25] Article 43(1) of the Asylum Procedure Regulation.
[26] Article 45 of the Asylum Procedure Regulation.
[27] Article 42(1)(c) of the Asylum Procedure Regulation.

expelled for serious reasons of national security or public order under national law;[28]

- the applicant is of a nationality or, in the case of stateless persons, a former habitual resident of a third country for which "the proportion of decisions by the determining authority granting international protection is, according to the latest available yearly Union-wide average Eurostat data, 20 % or lower," unless the determining authority assesses that a significant change has occurred in the third country concerned.[29]

In relation to the first point, clear and detailed guidance should be provided to the authorities making these determinations to ensure that the interpretation of these provisions is not made lightly or to the detriment of applicants' fundamental rights. More often than not, people fleeing war, violence and persecution do not have documents, not because they are trying to mislead the authorities, nor because they are acting in bad faith, but simply because their countries are at war, or there is civil unrest, they are being persecuted, or they have been robbed during their journey to safety.[30] The Asylum Procedure Regulation itself states in particular that unaccompanied children are likely to lack identification or other documents.[31] In relation to the second point, guidance needs to be provided as well in relation to what constitutes "reasonable grounds" to ensure respect for fundamental rights. In relation to the third point, we must stress that regardless of a nationality's recognition rate being higher or lower, each case merits careful and individual consideration, and each applicant has the right to have their application assessed in its own right, merit and in light of their specific circumstances, which vary from case to case. Under the UNCRC any child who is seeking refugee status has the right to receive appropriate protection and humanitarian assistance from the State (Article 22 of the UNCRC), without discrimination of any kind and irrespective of the child's national origin (Article 2 of the UNCRC).

[28] Article 42(1)(f) of the Asylum Procedure Regulation.
[29] Article 42(1)(j) of the Asylum Procedure Regulation.
[30] Irish Refugee Council, *Get The Facts: Irish Context, Why do some people seeking protection arrive without a passport?* (23 February 2025).
[31] Recital 36 of the Asylum Procedure Regulation.

The Asylum Procedure Regulation provides that, where the border procedure is applied to children and their family members, priority shall be given to the examination of their applications.[32] While this is positive, it is extremely concerning that applicants, including families with children *may be* detained to decide, in the context of a border procedure, on their right to enter the territory under the Reception Conditions Directive.[33]
While the Reception Conditions Directive provides that children, as a rule, shall not be detained,[34] and introduces some safeguards in this regard (only in exceptional circumstances, where strictly necessary, as a measure of last resort, and for the shortest period of time), it does allow for the immigration detention of children (accompanied and unaccompanied) under Article 13. We note that, while MS have the obligation under EU law to lay down in national law the grounds for detention,[35] they have discretion to decide whether children may be subject to it or not in their national regulatory framework implementing the Pact. We also note in this regard that Article 4 of the Reception Conditions Directive, allows MS to introduce or retain more favourable provisions as regards reception conditions for applicants as well as for family members.

In this regard, in May 2024, the Committee and other UN Special Procedures have called upon EU MS to ban immigration detention of children, specifically in the context of the Pact.[36] They stressed that, "migrant children should never be detained and should not be deprived of liberty for migration-related reasons, including due to their or their parents' immigration status. Detention of migrant and asylum-seeking children because of their or their parents' migration status is never in the best interests of a child and always a violation of children's rights."[37] The UN Special Rapporteur on the human rights of migrants also recommended in 2024 that States should prohibit immigration detention of children and families in law, policy and practice.[38] In relation to unaccompanied children, the Committee

[32] Article 44(3) of the Asylum Procedure Regulation.
[33] Article 10 of the Reception Conditions Directive.
[34] Recital 40 and Article 13 of the Reception Conditions Directive.
[35] Article 10(4) of the Reception Conditions Directive.
[36] The UN Committee on the Rights of the Child and other treaty body monitoring mechanisms and UN special procedures have called upon States to prohibit child immigration detention, specifically in the context of the EU Migration Pact in May 2024, available at: Child immigration detention must be prohibited following adoption of EU migration and asylum pact, UN experts say | OHCHR
[37] Ibid.
[38] UN General Assembly (2024), *Report of the Special Rapporteur on the human rights of migrants, Gehad Madi: Children are children first and foremost: protecting child rights in migration contexts*, A/79/213, para. 58(l).

emphasises that unaccompanied or separated children face greater risks of detention and that, in application of Article 37 of the Convention and the principle of the best interests of the child, they should not, as a general rule, be detained.[39] Detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status, or lack thereof.

The Directive provides that children should not be separated from their parents or care-givers, and that the principle of family unity should generally lead to the use of adequate alternatives to detention for families with children, in accommodation suitable for them, which is positive.[40] In this context, Member States are required by the Directive to "take into account the New York Declaration for Refugees and Migrants of 19 September 2016, relevant authoritative guidance by the United Nations' treaty body on the 1989 United Nations Convention on the Rights of the Child and relevant case-law."[41]

Recommendations

Ireland should use its discretion and include in the NIP the explicit prohibition of immigration-detention of children (accompanied or unaccompanied) in any circumstances, as called for by the Committee and other UN Special Procedures.

The NIP must ensure that adequate alternatives to detention shall, as a rule, be used for families with children in accordance with the principle of family unity as required by EU law.

The NIP must ensure that the asylum border procedure is implemented in such a way that it does not result in de facto detention and provides for the freedom of movement of families with children whose applications are being examined while they reside in designated locations.

[39] UN Committee on the Rights of the Child (2005), General Comment No.6 (2005) on the Treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6, para. 3 and 61.
[40] Recital 40, The Reception Conditions Directive.
[41] Ibid.

Recognition in child care legislation

When children are unaccompanied, they are entitled to special protection and assistance by the State in the form of alternative care and accommodation in accordance with Article 20 and 22 of the UNCRC and the UN Guidelines for the Alternative Care of Children. Like all children, unaccompanied and separated children must be able to enjoy their rights without discrimination of any kind. A child's status as an unaccompanied child and separated child, as an asylum seeker or migrant, or the way in which they travelled to Ireland, do not take away their entitlement to their rights under the UNCRC. This includes the need for Ireland to take special measures to ensure effective equal opportunities for these children, and to eliminate situations of persistent inequality faced by them in light of their vulnerability, and their specific circumstances and needs. Practically, taking special measures to realise the rights of these children means that, where necessary, the government needs to implement additional targeted measures. The Committee has stated that such measures include the enactment of legislation addressing the particular treatment of unaccompanied and separated children and to build capacities necessary to realise this treatment.

It is positive that unaccompanied children are visible in the EU Pact legal framework and that, from as early as the screening stage, they are identified as individuals with vulnerabilities in need of special care and protection. While Tusla is responsible for the care of unaccompanied and separated children, there is no national legal or policy framework setting out Tusla's responsibilities in relation to them. It is also concerning that unaccompanied children are invisible in the Child Care Act 1991, meaning that decision-making on how it applies to them rests, on a discretionary basis, with Tusla. The only legal provision linking unaccompanied children to childcare legislation in Ireland is Section 14 of the International Protection Act 2015 (2015 Act). There is no additional legislation, which stipulates the nature of the care to be provided to them or their rights. We note that Tusla's Interim CEO stated during an Oireachtas debate that there is a "need for legislative changes or policy direction on the provision of care and accommodation for separated and unaccompanied children, the need for a review of the transition to adult services and the right to aftercare services."

The NIP presents an opportunity for Ireland to review its national regulatory framework and give explicit recognition to the rights of unaccompanied children, including in child care legislation as is required by EU law and the UNCRC. The Oireachtas Joint Committee on Children, Equality, Disability, Integration and Youth has also recommended in its Report on the pre-legislative scrutiny of the General Scheme of the Child Care (Amendment) Bill 2023 that the General Scheme should include specific provisions for protecting unaccompanied children.

Recommendations

The NIP must ensure that the ongoing review of the Child Care Act 1991 takes into consideration EU law by making explicit provision in the revised Act for the rights and specific needs of unaccompanied children.

In relation to unaccompanied children, the review of the national regulatory framework to implement the EU Pact must take into consideration the Committee's authoritative guidance provided in General Comment No. 6 on the Treatment of Unaccompanied and Separated Children Outside Their Country of Origin.

Designation of an independent representative/guardian

Under the Screening Regulation (which Ireland committed to replicate), MS have the obligation to, as soon as possible, ensure that a representative[42] accompanies and assists the unaccompanied child during screening with a view to safeguard the child's best interests and rights. The representative must act independently and cannot be a person responsible for any elements of the screening or receive orders from the screening authorities.[43] This must be taken into consideration when determining in the NIP who will be responsible for

[42] Or a person trained to safeguard the best interests and general wellbeing of the minor, where a representative has not been appointed. Article 13 of the Screening Regulation.
[43] Article 13(4) of the Screening Regulation.

the preliminary vulnerability check,[44] and who are those to be appointed as representatives, especially because the Screening Regulation seems to indicate that national child protection authorities should be closely involved in the screening, including in the preliminary checks.[45] We note that the role of the representative or the person trained to safeguard the best interests and general wellbeing of the minor, is not limited to the screening stage,[46] and that this person should be supporting and safeguarding the rights of the unaccompanied child throughout the international protection application process.[47] According to EU law, as soon as international protection is granted, the unaccompanied child must be appointed a guardian, who can be the same person designated as a representative.[48] EU law clearly states that organisations or natural persons whose interests conflict or "could potentially conflict" with those of the unaccompanied minor shall not be appointed as representative or as guardian.[49]

In its General Comment No. 6, the Committee advises that the appointment of a competent guardian as expeditiously as possible, serves as a key procedural safeguard to ensure respect for the best interests of an unaccompanied or separated child. Therefore, such a child should only be referred to asylum or other immigration procedures after the appointment of a guardian. The Committee clarifies that the guardian should have the necessary expertise in the field of childcare, so as to ensure that the interests of the child are safeguarded and that the child's legal, social, health, psychological, material and educational needs are appropriately covered by, inter alia, the guardian acting as a link between the child and existing specialist agencies/individuals who provide the continuum of care required by the child. It also adds that agencies or individuals whose interests could potentially be in conflict with those of the child's should not be eligible for guardianship.[50]

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[44] Article 12 of the Screening Regulation.
[45] Recital 25 and Article 8(9) of the Screening Regulation.
[46] Recital 25 of the Screening Regulation.
[47] Article 27(4) of the Reception Conditions Directive, and Article 23 (1)(2) of the Asylum procedure Regulation. The Qualification Regulation provides in Recital 16 that with a view to safeguarding the best interests of the child and the minor's general well-being, and in order to encourage continuity in assistance and representation for unaccompanied minors, MS should ensure that the same natural person remains responsible for an unaccompanied minor, including during the asylum procedure and following the granting of international protection.
[48] Article 33 of the Qualification Regulation.
[49] Article 23(9) of the Asylum Procedure Regulation, Article 27(2) of the Reception Conditions Directive, and Article 33(1) of the Qualification Regulation.
[50] UN Committee on the Rights of the Child (2005), *General Comment No. 6 (2005) on the Treatment of unaccompanied and separated children outside their country of origin*, CRC/GC/2005/6, paras. 20 and 33.

In Ireland, we do not have in place a guardianship model for unaccompanied children, and the role of representative has been fulfilled so far by Tusla's social workers. This is not optimal given the potential conflict of interests. Social workers are employees of Tusla and, as such, are subject to their authority, management and instructions.

In the 'Report of the Challenges Facing Unaccompanied and Separated Children Seeking International Protection'[51] (April 2024), resulting from a series of stakeholder engagements organised by Tusla and facilitated by the Children's Rights Alliance in 2023/2024, it has been proposed that a professional and properly qualified guardianship model, independent from Tusla, be introduced. This model would be based on the FRA's international best practice and distinct from the Guardian ad Litem service. The OCO supports this proposal because being designated a guardian constitutes a key procedural safeguard to ensure respect for the best interests and rights of unaccompanied children. It should also be noted that the obligation to appoint a guardian to secure the protection and assistance of unaccompanied children may be classified as part of the State's positive obligations under Article 3 of the ECHR.[52]

Recommendation

The NIP should introduce a professional and properly qualified representative/guardian model independent from Tusla with clear information regarding their role.

The representative/guardian should be trained in child friendly practice, and his/her role should include providing information regarding access to legal advice and support in a child friendly way and with the support of interpreter services.

[51] This report has been submitted by Tusla to the Department of Children, Equality, Disability, Integration and Youth (DCEDIY) for consideration in 2024.
[52] ECtHR, *Mayeka Mitunga v Belgium*, and ECtHR, *Rahimi v Greece*.

Vulnerability Assessment

It is welcome that unaccompanied children are exempt from the asylum border procedure (except when there are reasonable grounds to consider that they are a danger to national security or public order).[53] The Reception Conditions Directive recognises that unaccompanied children have special reception needs[54] and requires MS to assess those special reception needs as early as possible and no later than 30 days after an application for international protection is made.[55]

In its 2023 Concluding Observations, the Committee on the Rights of the Child recommended that vulnerability assessments should be conducted for all unaccompanied children in a child-friendly manner by trained professionals, within 30 days of their arrival. During the Stakeholder Engagement meetings mentioned above (2023/2024), Tusla stated that they are not mandated to conduct vulnerability assessments. They argue that under the 'Procedural Guidance and Assessment Framework for the determination of eligibility for services for separated children seeking international protection'[56] (Procedural Guidance), Tusla is only responsible for undertaking an 'Intake and Eligibility Assessment' the purpose of which, according to the Procedural Guidance, is to establish if an unaccompanied child is a child in need of care and protection, and therefore requiring services from the separated children's team.

As pointed out by the Committee in its General Comment No. 6,[57] and as recognised by the Pact legal framework, unaccompanied children are by definition in a particularly vulnerable situation and have specific care and protection needs. These children are outside of their country of origin, have, to varying degrees, experienced loss, trauma, disruption, violence, and are particularly vulnerable to exploitation and abuse. Many such children, in particular those who are refugees, have further experienced pervasive violence and the stress

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[53] Article 53(1) of the Reception Conditions Directive.
[54] Article 24(b) of the Reception Conditions Directive.
[55] Article 25(1) of the Reception Conditions Directive.
[56] This policy document is not publicly available on Tulsa's website.
[57] UN Committee on the Rights of the Child (2005), *General Comment No. 6 (2005) on the Treatment of unaccompanied and separated children outside their country of origin*, CRC/GC/2005/6.

associated with a country afflicted by war, which may have created deep-rooted feelings of helplessness and undermined a child's trust in others.[58]

The EU Pact legal instruments incorporate the right of all unaccompanied children to have their best interests considered as a primary consideration. The determination of what is in the best interests of an unaccompanied child (Art. 3 UNCRC, Art. 24 of CFREU) requires an assessment of particular vulnerabilities, including health, physical, psychosocial, material and other protection needs, including those deriving from trauma, trafficking or domestic violence.[59]

EU law requires MS to assess the vulnerability of unaccompanied children at different stages, including during screening and after an application for international protection is made. Clarity must be provided in the NIP in relation to who assesses what, when and why to ensure that Ireland complies with children's rights standards and EU law.

Recommendations

The NIP should provide a common understanding of what constitutes 'vulnerability' and a 'vulnerability assessment.'

The NIP must clarify who has the role and responsibility to undertake vulnerability assessments and review the national regulatory framework in this regard accordingly.

Article 20(3) of the UNCRC and the Committee's General Comment No. 6 note that there are a wide range of options for care and accommodation arrangements for unaccompanied children. The Committee advises that when selecting from these options, the particular vulnerabilities of unaccompanied children, not only having lost connection with their family environment, but further finding themselves outside of their country of origin, as well as

[58] Ibid, para 47.
[59] Ibid.

their child age and gender, should be taken into account.[60] Article 27(9) of the Reception Conditions Directive requires MS to place unaccompanied children with adult relatives, a foster family, in accommodation centres with special provisions for minors and in other accommodation suitable for minors, which we welcome. However, it also allows for the placement of those aged 16 or over in accommodation centres for adult applicants (if this is considered in their best interests), which is extremely concerning and in stark opposition to what is provided for unaccompanied children who may be detained.[61] The same standard should apply in relation to the accommodation of all unaccompanied children below the age of 18. We note that, as this derogation is optional, Ireland is not legally required to implement it and we would strongly recommend not to do so.

Recommendation

The NIP must ensure that all unaccompanied children who make an application for international protection are not placed in adult accommodation, in line with children's rights standards.

Age assessment

Article 25 of the Asylum Procedure Regulation allows for multi-disciplinary assessments, including psychosocial assessments where, as a result of statements by the applicant, available documentary evidence or other relevant indications, there are doubts as to whether or not an applicant is a child.[62] Where there are still doubts as to the age of an applicant following the multi-disciplinary assessment, the Regulation provides that medical examinations *may* be used as a measure of last resort to determine the applicant's age.[63] Where the result of the age assessment is not conclusive with regard to the applicant's age or includes an age-range below 18 years, MS shall assume that the applicant is a child.[64]

[60] UN Committee on the Rights of the Child, *General Comment No. 6 (2005) on the Treatment of unaccompanied and separated children outside their country of origin*, CRC/GC/2005/6, para 40.
[61] Article 13(3) of the Directive states that where unaccompanied children are detained, MS shall ensure that they are accommodated separately from adults.
[62] Article 25(1) of the Asylum Procedure Regulation.
[63] Article 25(2) of the Asylum Procedure Regulation.
[64] Ibid.

The introduction of multidisciplinary assessments and of the presumption of minority when determining the age of unaccompanied children is welcome and in line with what was recommended by the Committee to Ireland in its 2023 Concluding Observations,[65] as well as the recommendations of the UN Special Rapporteur on the human rights of migrants.[66] It is concerning, however, that the Regulation still allows for medical examinations to be used (even if as a measure of last resort), and that a refusal to have a medical examination carried out may be considered to be a rebuttable presumption that the applicant is not a minor.[67]

The Committee's authoritative guidance in relation to unaccompanied children states that the assessment must be conducted in a scientific, safe, child and gender-sensitive and fair manner, avoiding any risk of violation of the physical integrity of the child; giving due respect to human dignity; and, in the event of remaining uncertainty, should accord the individual the benefit of the doubt such that if there is a possibility that the individual is a child, she or he should be treated as such.[68] The Committee states that States should refrain from using medical methods, which may be inaccurate, have wide margins of error, can be traumatic and lead to unnecessary legal processes.[69] The European Council on Refugees and Exiles states that medical examinations are not supported by science, provide inaccurate results and subject children to traumatic experiences.[70] It cannot be overstated that unaccompanied children undergo unimaginable traumatic journeys to reach safety and that medical examinations, often invasive in nature, can trigger feelings of fear, unsafety, and uncertainty given these children's situation of vulnerability. A refusal to undergo a medical

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[65] UN Committee on the Rights of the Child, *Concluding observations on the combined fifth and sixth periodic reports of Ireland*, CRC/C/IRL/CO/5-6, 7 February 2023, para. 40(e): *"Amend Section 24(2)(c) of the International Protection Act 2015 to allow for multidisciplinary assessments of unaccompanied persons' maturity and level of development to determine their age, and in cases of doubt ensure respect for the principle of the benefit of the doubt."*
[66] UN General Assembly (2024), *Report of the Special Rapporteur on the human rights of migrants, Gehad Madi: Children are children first and foremost: protecting child rights in migration contexts*, A/79/213, para. 58(j).
[67] Article 25(6) of the Asylum Procedure Regulation.
[68] UN Committee on the Rights of the Child (2005), *General Comment No. 6 (2005) on the Treatment of unaccompanied and separated children outside their country of origin*, CRC/GC/2005/6, para. 31(i).
[69] UN Committee on the Rights of the Child and UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, *Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return*, CMW/C/GC/4-CRC/C/GC/23, para. 4.
[70] European Council on Refugees and Exiles (ECRE), *Age Assessment in Europe*, Legal Note #13, December 2022, p. 18.

examination by an unaccompanied child should never be used as a presumption that the child is an adult.

Currently, there is no age assessment procedure that can accurately determine the age of a person.[71] The European Council on Refugees and Exiles states that a decision to initiate an age assessment procedure should be taken only where (a) it is clearly necessary following serious and substantiated doubts in the light of all the circumstances of the case, (b) it is directed at ensuring the safety and well-being of the child and (c) it is in line with their best interests.[72]

It is also concerning that the Asylum Procedure Regulation is silent in relation to an unaccompanied child's right to challenge the outcome of the age assessment. The establishment of complaint mechanisms is an integral part of any procedure that complies with the best interests of the child. The Committee and the UN Special Rapporteur on the human rights of migrants have stated that States should ensure that their determinations of age can be reviewed or appealed to a suitable independent body.[73] Complaint mechanisms must be in place in order to fully respect the right of the child to be heard, express their views and participate effectively in procedures that concern them.[74]

Recommendations

The NIP must ensure that age assessments are not carried out routinely but only as a measure of last resort when there are serious doubts about the child's age.

[71] Ibid, p. 12.
[72] Ibid, p. 9.
[73] UN Committee on the Rights of the Child and UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, *Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return*, CMW/C/GC/4-CRC/C/GC/23, para. 4; UN General Assembly (2024), *Report of the Special Rapporteur on the human rights of migrants, Gehad Madi: Children are children first and foremost: protecting child rights in migration contexts*, A/79/213, para. 58(j).
[74] UN Committee on the Rights of the Child (2009), *General Comment No. 12 (2009): The right of the child to be heard*, CRC/C/GC/12, para. 74.

The NIP must ensure that the Pact's national regulatory framework will introduce multidisciplinary assessments and the presumption of minority as part of the age determining process in line with EU law and the Committee's Concluding Observations to Ireland.

The NIP must ensure that medical examinations are not used to assess the age of a child as they cannot comply with the principle of the best interests of the child.

The NIP must ensure that if their age cannot be determined or if an unaccompanied child does not consent to have a medical examination carried out to determine their age the presumption is that they are a child.

The NIP must ensure that an independent, accessible and child-friendly review or appeal mechanism is made available to review the outcome of an age assessment.

Currently, in Ireland, there is a lack of clarity in relation to who has the role and responsibility to undertake age assessments. Under section 24 of the 2015 Act when, with reasonable cause, an international protection officer, considers it necessary to determine whether an applicant has not attained the age of 18 years, he/she may arrange for the use of an examination to determine the applicant's age. It follows from this provision that the International Protection Office (IPO) has the responsibility to undertake age assessments.

Alongside this, section 14 of the 2015 Act provides that, where it appears to an immigration officer that a person seeking to make an application for international protection, or who is the subject of a preliminary interview, has not attained the age of 18 years and is not accompanied by an adult who is taking responsibility for the care and protection of the person, the officer shall notify Tusla of that fact. When Tusla receives a notification under section 14 there is a presumption that the person is a child and the Child Care Acts 1991 to 2013 apply. From this point on, Tusla implements a policy called the 'Procedural Guidance and Assessment Framework for the determination of eligibility for services for separated children seeking international protection' (Procedural Guidance). According to the

Procedural Guidance, Tusla has a role in undertaking an 'intake eligibility assessment' for separated children to determine if the child referred to it under Section 14 requires services from the separated children's team; the purpose of this assessment being to establish if the person is a child in need of care and protection. The Procedural Guidance provides that, while the determination of a child's age is not part of the intake eligibility assessment, there may be a requirement to explore if the person is in fact a child as part of the assessment where there are doubts that the person referred to the service may be an adult.

Age assessment is a complex and sensitive process, which should lead to procedures that are rights-based and follow strict, objective and reliable rules. Through our complaints and investigations function, we have received information suggesting that the situation in Ireland is characterised by weak guarantees, fragmented procedural frameworks, and no application of the presumption of minority.[75] It is the OCO's understanding that the IPO and Tusla have engaged in bilateral discussions during 2023/2024 with a view to clarify and define their respective roles and responsibilities in relation to age assessment. We are not privy to the final outcome of this process, and we would welcome clarity in this respect.

Recommendations

The NIP must clarify who in Ireland is the "determining authority" referred to in Article 25 of the Asylum Procedure Regulation with the role and responsibility to undertake age assessments of unaccompanied children.

The NIP must ensure that the national legislative and policy frameworks are reviewed to incorporate a rights-based age assessment process, which complies with European and international children's rights standards.

[75] This has also been reported during the Oireachtas Joint Committee on Children, Equality, Disability, Integration and Youth debate on Challenges facing refugee and migrant children in Ireland, on 27 June 2023.

Free legal counselling

The Asylum Procedure Regulation makes provision for the right to legal counselling at all stages of the procedure and limits the entitlement to free legal assistance and representation to the appeal procedure.[76] It gives, however, MS discretion to provide for free legal assistance and representation in the administrative procedure in accordance with national law.[77]

According to the Asylum Procedure Regulation, free legal counselling, assistance and representation is to be provided by legal advisers or other counsellors, admitted or permitted under national law to counsel, assist or represent the applicants or by NGOs accredited under national law to provide legal services or representation to applicants.[78] This seems to indicate that legal counselling may be interpreted as legal advice, which would be reasonable given the complexity of the new procedures, and their accelerated nature and the imposition of tighter deadlines in general. However, Article 16 of the Asylum Procedure Regulation is not as clear when it qualifies free legal counselling as the provision of guidance on and an explanation of the administrative procedure including information on rights and obligations during that procedure; assistance on the lodging of the application and guidance on the different procedures under which the application may be examined, the rules related to the admissibility of an application, and legal issues arising in the course of the procedure. It is also not encouraging that under Article 16 effective access to free legal counselling may be assured by entrusting a person with the provision of legal counselling to several applicants at the same time.

It is concerning that the provision of free legal counselling in the administrative process may be excluded where the application is a first subsequent application considered to have been lodged merely in order to delay or frustrate the enforcement of a return decision. Likewise, free legal counselling may be excluded in the appeal procedure where it is considered that the appeal has no tangible prospect of success or is abusive.

[76] Articles 15 of the Asylum Procedure Regulation.
[77] Ibid.
[78] Article 19 of the Asylum Procedure Regulation.

Under the Asylum Procedure Regulation, an appeal does not have an automatic suspensive effect. While unaccompanied children benefit from the suspensive effect of an appeal, the same does not apply to children who are accompanied by their family, who may be subject to deportation while waiting for an appeal decision.[79]

We note that MS have the legal obligation to take into account the best interests of the child as a primary consideration when applying the Asylum Procedure Regulation.[80] Ensuring free, quality legal advice and representation for migrant, asylum-seeking and refugee children is most certainly in their best interests, especially if we consider the complexity of the asylum procedure, its restrictive nature and the tight deadlines imposed.[81] The Committee emphasises that unaccompanied children should, in all cases, be given access, free of charge, to a qualified legal representative, including where the application for refugee status is processed under the normal procedures for adults.[82] The Council of Europe Guidelines on child-friendly justice[83] provide that children should have the right to their own legal counsel and representation, in their own name, in proceedings where there is, or could be, a conflict of interest between the child and the parents or other involved parties. They should also have access to free legal aid, under the same or more lenient conditions as adults, and lawyers representing children should be trained in and knowledgeable on children's rights and, receive ongoing and in-depth training and be capable of communicating with children at their level of understanding.

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[79] Article 68 of the Asylum Procedure Regulation.

[80] Article 22 of the Asylum procedure Regulation.

[81] See also *Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return*, CMW/C/GC/4-CRC/C/GC/23, paras 16, 17(f) ; and *Joint General Comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration*, CMW/C/GC/3-CRC/C/GC/22, para 32(c).

[82] UN Committee on the Rights of the Child (2005), *General Comment No. 6 (2005) on the Treatment of unaccompanied and separated children outside their country of origin*, CRC/GC/2005/6, para. 69.

[83] Council of Europe, Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice adopted by the Committee of Ministers of the Council of Europe on 17 November 2010 and explanatory memorandum, paras 37-39.

Recommendations

The NIP must ensure that free legal counselling equates with free legal advice to safeguard children's rights during the asylum application process.

The NIP should ensure that all children (accompanied and unaccompanied) can avail of free legal counselling, assistance and representation during both the administrative and appeal procedures, in line with European and international children's rights standards.

The professionals should be trained in child friendly practice, and his/her role should include providing information regarding access to legal advice and support in a child friendly way and with the support of interpreter services.

The administrative and appeal procedures must be informed at all times by the right of the child to have his/her interests taken into account as a primary consideration.

The NIP must ensure that free legal counselling will not be excluded for children, whether accompanied or not, on the basis of ill-founded considerations or without necessary safeguards being put in place, including adequate, rights-based guidance.

The NIP must ensure that children accompanied by their family will not be deported while waiting for an appeal decision as this is contrary to their best interests.

Implementation of an independent monitoring mechanism

Article 10 of the Screening Regulation and Article 43(4) of the Asylum Procedure Regulation require MS to provide for an independent mechanism to monitor compliance with fundamental rights during the screening of new arrivals and when assessing asylum claims

at external borders. The EU FRA developed practical guidance to assist MS in setting up or designating national independent mechanisms to this effect.[84]

According to the Screening Regulation and the EU FRA practical guidance, the independent mechanism should monitor the implementation of all fundamental rights standards including relevant EU law, the ECHR, and other relevant regional and international human rights law, including the UNCRC. Attention should be paid in particular to access to the asylum procedure, the principle of non-refoulement, the best interests of the child and relevant standards and safeguards on deprivation and restriction of liberty. Adherence to procedural safeguards and dignified treatment and living conditions, in terms of the provision of food, clothing, temporary shelter and healthcare and the treatment of people in vulnerable situations should be equally monitored.

The Screening regulation provides that the monitoring mechanism will carry out its tasks on the basis of on-the-spot checks and random and unannounced checks, it should have unhindered access to all relevant locations to observe and shadow all activities during the screening and the asylum border procedures at any time, and it will have the power to issue annual recommendations to MS.[85]

The EU FRA practical guidance advises that the mechanism should also have the right to receive complaints from all people concerned and to refer these to other actors handling complaints, as appropriate. In case the mechanism has its own investigative powers, investigations into substantiated allegations of fundamental rights violations or investigations following complaints should be internally activated.

We note that the Committee and other UN Treaty Bodies welcomed the future establishment of independent mechanisms aimed at monitoring strict respect for human rights during screening and border procedures implemented at national level.[86] They

[84] FRA, *Monitoring fundamental rights during screening and the asylum border procedure – A guide on national independent mechanisms* - Practical Guidance, 2024 edition.
[85] Article 10 of the Screening Regulation.
[86] OHCHR, Child immigration detention must be prohibited following adoption of EU migration and asylum pact, UN experts say, 2 May 2024.

cautioned that adequate safeguards must be put in place to guarantee their independence. Most importantly, they offered to stand ready to assist with the prompt establishment of these mechanisms and to collaborate with them.

The EU FRA practical guidance underscores that the mechanism should ensure coherence and complementarity with national ombudspersons and national human rights institutions and maintain cooperation schemes and working relationships with them.[87] It also recommends that it should pool knowledge from other human rights-monitoring mechanisms, NGOs, academics and other actors working in the field of fundamental rights and migration.

The OCO has submitted a request of information to the European Network of Ombudspersons for Children (ENOC), with a view to gather information on the type of mechanism other EU countries are developing to monitor compliance with fundamental rights during screening and border procedures, which we may share with the Department if/when available.

Recommendations

The NIP should avail of the offer made by the Committee and other UN Treaty Bodies, to assist with the prompt establishment of the monitoring mechanisms and to collaborate with them.

The NIP must ensure that the monitoring mechanism is independent, adequately resourced, and equipped with qualified staff in accordance with the EU FRA practical guidance.

The NIP must ensure that the independent monitoring mechanism has enforcement powers and a clear mandate.

[87] FRA, *Monitoring fundamental rights during screening and the asylum border procedure – A guide on national independent mechanisms* - Practical Guidance, 2024 edition, p. 14.

The NIP should seek the views and expertise of existing national human rights-monitoring mechanisms, NGOs, and academics in relation to the establishment of the monitoring mechanism, as advised in the EU FRA practical guidance.