



An Binse um Achomhairc i dtaobh Cosaint Idirnáisiúnta  
The International Protection Appeals Tribunal

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**Guideline No: 2017/5**

**Appeals from Child Applicants**

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**Preliminary Issues**

**[1] Background**

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- [1.1] The Act, the 2017 Regulations and the Dublin Regulations all set out various matters relating to the conduct of Appeals before the Tribunal. These guidelines are intended to supplement the Act and Regulations and not to supplant them. In case of conflict, the provisions of the Act or relevant Regulation shall take precedence over these guidelines.
- [1.2] These guidelines apply to all Appeals involving a Child heard by the Tribunal and to Children at all stages of their interaction with the Tribunal, from pre-hearing stage until a decision is made.
- [1.3] These guidelines are primarily informed by the UNHCR 'Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status' and in particular 'Guidelines on International Protection No.8 Child Asylum Claims' issued on the 22<sup>nd</sup> September 2009 as well as UN Committee on the Rights of the Child General Comments Number 12 on the right to be heard and Number 14 on the best interests of the Child. Consideration has also been given to 'Guidelines for interviewing (separated) minors', Directorate of Immigration Finland (March, 2002).
- [1.4] These Guidelines are issued pursuant to S.63(2) of the Act.

**[2] Definitions**

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- [2.1] In these guidelines the following terms have the following meanings:-

**"2017 Regulation"** means S.I. 116 of 2017. International Protection Act 2015 (Appeals) Regulations 2017.

**"Act"** means the International Protection Act 2015 and shall include, where the context so permits or requires, any secondary legislation made thereunder.

**“Appeal”** means an Appeal made under the Act or under the Dublin Regulation.

**“Applicant”** means an applicant pursuing an Appeal and shall, where the context so admits or requires, include his or her representative, if any.

**“Child”** means a person under 18 years of age, when appearing before the Tribunal, who is outside their country of origin and appearing before the Tribunal in relation to an Appeal and refers to all Children appearing before the Tribunal, including those

- (i) accompanied by either/both parents or primary care giver and included within the scope of their parents/guardians asylum appeal,
- (ii) accompanied Children making an appeal in their own right,
- (iii) Unaccompanied Minors, or
- (iv) Other Children who are giving evidence, whether written or otherwise, in the course of an appeal.

**“Dublin Regulation”** means SI 525 of 2014, European Union (Dublin System) Regulations 2014.

**“Tribunal”** means the International Protection Appeals Tribunal established under the Act and shall, where the context so requires, include a Member assigned to determine an Appeal.

**“Unaccompanied Minor”** means a person referred to in section 14 of the Act, who, at the date of hearing of their Appeal, remains in the custody of the TUSLA pursuant to the Child Care Act 1991.

**“UNCRC”** means the 1989 United Nations Convention on the Rights of the Child and its applicable Protocols

**“UNHCR Guideline”** means the UNHCR ‘Guidelines on International Protection No.8 Child Asylum Claims’ issued on the 22<sup>nd</sup> September 2009.

**“UNHCR Handbook”** means the UNHCR ‘Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status’ December 2011.

### **[3] Overarching Principles**

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- [3.1] The best interests of the Child shall be a primary consideration of the Tribunal during all dealings with a Child, both in relation to procedure and the substantive consideration of the appeal. These considerations must also fully take into account the Child’s gender, sexual orientation, age, level of education, maturity, nationality, upbringing as well as their ethnic, cultural, social and linguistic background, their particular vulnerabilities, including mental or physical disability and any other particular characteristics or needs

brought to the attention of the Tribunal before or during the course of the proceedings.

- [3.2] Notwithstanding paragraph 3.1 of these guidelines, all elements of the refugee and person in need of subsidiary protection definitions must be satisfied by Child applicants when an appeal is being determined.
- [3.3] The Tribunal acknowledges the objective of protection for Children from violence and exploitation such as would jeopardise a Child's right to life, survival and development in the context of observing and applying the definitions and requirements necessary to establish refugee or person in need of subsidiary protection status.
- [3.4] Children, particularly those unaccompanied, warrant special attention. Bearing in mind the best interests principle set out in the UNCRC, the Tribunal should treat Children as Children first and foremost and asylum applicants second.

#### Pre-Hearing Matters

#### **[4] Prioritisation**

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- [4.1] The Tribunal shall endeavour to prioritise Appeals involving Children, ensuring wherever possible that hearings involving Children will be scheduled to meet the needs of the Child, in particular to prevent unnecessary waiting time, delays and disruption to the Child's care and educational needs.

#### **[5] Assigning**

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- [5.1] Pursuant to the Tribunal's existing assigning policy, where an Appeal relates to an Unaccompanied Minor, the Chairperson will use their best endeavours to ensure that the appeal is assigned to a Member who has received appropriate training, as determined by the Chairperson, in dealing with such persons.

#### **[6] Member's Training**

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- [6.1] The Tribunal shall use its best endeavours to ensure that all Members and, as appropriate support staff dealing with Child applicants, shall receive adequate Child-specific training.
- [6.2] Child-specific training should include awareness training on age and gender vulnerabilities and in age appropriate and gender sensitive techniques in taking evidence from Children and techniques appropriate to the assessment and evaluation of claims involving displaced Children who may have suffered trauma and/or loss.

[6.3] These training measures will be reviewed and updated as required.

## **[7] Information Provision**

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[7.1] The Tribunal shall ensure that the process by which their appeal will be determined is explained to a Child in a language and in a way they can understand. This includes information about their right to privacy and confidentiality enabling them to express their views without coercion, constraint or fear of retribution. Appropriate communication needs may need to be identified and selected prior to the commencement of the hearing. If necessary, videos, images and/or icons may be used to convey complex information.

[7.2] Without prejudice to 7.1, it is highly probable that any Child appearing before the Tribunal will be legally represented and will have a guardian present.

## **[8] Gender Issues**

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[8.1] A Child's request to have his or her appeal dealt with by a Member and/or interpreter of the same gender will be accommodated in accordance with the best interests of the Child.

## **[9] Legal Assistance**

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[9.1] In the unlikely event that Children are without legal representation at Tribunal stage, they will be strongly advised by the Tribunal to obtain legal assistance or advice.

[9.2] In the event that a Child is not legally represented before the Tribunal, the Tribunal will facilitate a postponement of the hearing until the Child has obtained representation or assistance.

[9.3] In circumstances where a Child declines the opportunity to be legally represented, the Tribunal must consider, where appropriate, after hearing from the Child's carer/guardian and any other relevant expert, whether or not it is in the best interests of the Child to participate in the proceedings without legal representation.

## **[10] Interpreters**

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[10.1] Children will be provided with an interpreter, who is able to ensure appropriate communication between the Child and the Tribunal.

[10.2] The Tribunal shall ensure that the interpreter is effective, that the Child is comfortable in the presence of the interpreter and that there is adequate understanding between both parties.

[10.3] If concerns arise in relation to matters set out in 10.2, the Tribunal will pause the hearing to clarify matters and, if necessary, postpone the hearing to a later date.

#### **[11] Scheduling**

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[11.1] Hearings involving Children, particularly young Children, may take longer to complete. The Tribunal will be cognisant of this when scheduling hearings.

[11.2] The Tribunal will schedule for hearings involving Children to be shorter in time than hearings involving adults and, where appropriate, will adjourn such hearings more frequently in accordance with the best interests of the Child.

### **At the Hearing**

#### **[12] Layout of Hearing Room**

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[12.1] The hearing room layout will be as informal as possible. It may be appropriate to arrange the room in an interview style as opposed to a more formal hearing room style.

[12.2] Where seating arrangements allow, the Tribunal will endeavour to be on the same physical level as the Child, to facilitate easier eye contact and non-verbal communication.

[12.3] Adequate space will be provided in the hearing for support persons, for example legal representatives and relatives, to sit alongside the Child. If the Tribunal determines that the Child is uncomfortable in the presence of any support person, the Tribunal may continue the Appeal without that person present.

#### **[13] Format**

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[13.1] Hearings are non-adversarial in nature. The Tribunal will explain this concept to the Child at the beginning of the Appeal.

[13.2] The Tribunal will inform Children that questions are permitted, that they make take their time in answering, that they must inform the Tribunal if they do not understand a question or a statement and that breaks can be taken.

[13.3] Hearings are confidential and Children will be assured of this prior to the beginning of the hearing.

#### **[14] Introduction of Hearing**

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[14.1] Before the hearing begins, the Tribunal will explain each step of the appeal process in a manner that the Child easily understands.

- [14.2] This introduction will include (but is not limited to): the purpose of the hearing; the role played by each person present in the room (e.g. the Tribunal's own role, the role of the interpreter and how the Child should best work with the interpreter, witnesses, legal representatives, support persons, UNHRC representatives etc); the format of the hearing; and, the possible outcomes of the hearing.
- [14.3] The Tribunal will also take time to clarify the format of the hearing for the Child and outline clear working rules for the hearing.
- [14.4] Where a Child has attained the age of 18 years at the time of a hearing, the Tribunal will nevertheless have regard to the age at which allegations of harm occurred and the age at which the claimant's claim was initially considered and will treat evidence produced when the claimant was a Child as the evidence of a Child, applying all relevant policies and procedures relevant to the treatment of the claim of a Child. Where a Child dependant turns 18 years prior to the conclusion of proceedings, they should continue to be treated as a dependant for the purposes of the proceedings unless that is against their wishes. The Tribunal will ascertain from the former Child how they wish to be considered.
- [14.5] The Tribunal will inform the Child as to how and when the Child will receive the Tribunal's decision in respect of the appeal. It is important to mention this at the outset to put the Child's mind at rest. The Tribunal will return to this aspect at the conclusion of the hearing.

#### **[15] Questioning Style/Terminology**

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- [15.1] Questioning will be approached in a sensitive manner and will take the Child's age, gender, maturity and any other relevant characteristic or vulnerability such as mental disability into account<sup>1</sup>.

#### **[16] Shared Burden**

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- [16.1] In adult asylum claims, while the burden of proof remains with the applicant at all times, it may be shared between the applicant and the individual examining their claim in accordance with paragraph 196 of the UNHCR Handbook. However, it may be necessary for the Tribunal to assume a greater share of the burden in cases involving Child applicants.
- [16.2] This may be of particular relevance in cases involving accompanied Children. In certain circumstances the will of the accompanied Child may be in conflict with their parents/guardians, or their parents/guardians may fail to put

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<sup>1</sup> For full guidance on questioning style/terminology see Appendix 1 below.



forward Child-specific criteria on their Child's behalf. In such cases, the Tribunal will consider whether the best interests of the Child are being served in accordance with paragraph 3.1 of these Guidelines. It may be necessary for the Tribunal to consider such a Child's appeal on a distinct and separate basis.

#### **[17] Breaks**

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- [17.1] The Tribunal may decide to take frequent breaks, at least every 30 minutes, when dealing with Children.
- [17.2] A full formal break in proceedings may not be necessary in every instance but a brief recess may be sufficient.

#### **[18] Right to be Heard**

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- [18.1] The Tribunal will ensure that the Child can effectively participate throughout the hearing. The views and wishes of the Child will be sought and considered throughout the Tribunal's decision making process.
- [18.2] A Child's view will be given due weight, in accordance with their age and maturity, when decisions affecting them are being made.
- [18.3] The Tribunal will allow the Child to participate and give testimony via a medium appropriate for their age. This may include drawing, writing as well as oral testimony.
- [18.4] The Tribunal will ensure that a Child is not exposed to unnecessary, repetitious or inappropriate examination by any representative, including the Child's own, or by the Tribunal itself. In doing so, the Tribunal should expect the parties to narrow the evidence and examination to matters in dispute and which it would be appropriate to put to the Child.

#### **[19] Note Taking**

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- [19.1] The Tribunal will try to minimise note taking in order to maintain an open interview environment and facilitate questions from the Child applicant. However it recognises that an accurate and complete record of the proceedings is desirable.
- [19.2] The Tribunal will explain to the Child in advance that note taking will occur, while at the same time emphasising that the Child is free to talk while this note taking is going on. This point will be emphasised in hearings involving young Children who may cease talking in order not to disrupt the interviewer's note-taking.

#### **[20] Concluding the Hearing**

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- [20.1] The Tribunal will allow a reasonable amount of time at the end of each hearing for questions and give the Child an opportunity to seek clarification of any outstanding issues.
- [20.2] The Tribunal will ask if the Child has any other information that they would like to add.
- [20.3] At the end of each hearing with a Child, the Tribunal will explain the next steps in the appeals process in a manner that the Child easily understands.
- [20.4] The Tribunal will explain the possible outcomes of the appeal in a supportive and pragmatic manner and avoid raising a Child's hopes unnecessarily. The Tribunal will remind the Child of how and when the Child will receive the decision of the Tribunal, and that it will maintain confidentiality.

### **Post-Hearing & Substantive Consideration of a Child's Appeal**

#### **[21] Assessment of Credibility Including Benefit of Doubt**

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- [21.1] The Tribunal recognises the fact that, in general, a Child's recollection and understanding of situations can vary from adult comprehension of the same situation.
- [21.2] Children may have a limited knowledge of the circumstances of their flight from their country of origin or the reasons that motivated that flight. The Tribunal will not draw adverse credibility findings based on lack of specific information alone.
- [21.3] The Tribunal is cognisant of the fact that Children may be afraid to speak freely and/or may seek to avoid situations or answering questions that remind them of traumatic experiences. Any reticence on the part of Child Applicants for these reasons will not adversely affect their credibility.
- [21.4] Where the Child's account appears broadly credible, they will be given the benefit of the doubt, unless there are good reasons to the contrary.

#### **[22] 'Well-Founded Fear of Persecution' with Respect to Children**

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- [22.1] The Tribunal is aware of Child-specific grounds for an asylum application as referred to in the UNHCR Guidelines at paragraph 18. These include (but are not limited to) female genital mutilation (FGM); witchcraft rites; forced labour; Child trafficking; forced marriage; Child prostitution; Child pornography; and, recruitment of Child soldiers.
- [22.2] The Tribunal recognises that actions, which may not constitute persecution



when experienced by an adult, could satisfy the persecution element of the refugee definition when experienced by a Child. In considering the protection needs of a Child it should be understood that Children are necessarily more vulnerable to the effects of torture and other forms of serious harm, and because they are in the critical stages of physical and psychological development, may suffer graver consequences than similarly treated adults.

[22.3] The principle of the best interests of the Child requires that the harm experienced in the past and/or feared upon return be assessed from the Child's perspective. An accurate assessment of the harm (and whether it constitutes persecution) requires both an-up-to date analysis and knowledge of Child-specific circumstances in the country of origin including existing Child protection services.

### **[23] Confidentiality**

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[23.1] In accordance with section 26 of the Act, the Tribunal shall take all practicable steps to ensure the identity of applicants is protected.

[23.2] The Tribunal recognises that applicant confidentiality is all the more vital when the applicant is a Child seeking asylum. Care will be taken by the Tribunal not to disclose information that could endanger the Child and/or their family members in their country of origin.

### **[24] Refugee Appeals Tribunal Decisions Archive**

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[24.1] Notwithstanding paragraph 23 of these guidelines, the Tribunal publishes all decisions, both granted and refused by the Tribunal, in the Refugee Appeals Tribunal Decisions Archive. All decisions in the online archive are redacted to exclude any information that may lead to the identification of applicants.

[24.2] Pursuant to the Tribunal's existing Policy, it may not be possible to place certain decisions in the Archive in circumstances where the Chairperson of the Tribunal is of the opinion that the identity of an applicant, or their family, cannot be sufficiently protected by redacting information from the decision.



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**Barry Magee**  
Chairperson

**International Protection Appeals Tribunal**

20.12.17

## Appendix

### Guidance on questioning style/terminology

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- [1] The Tribunal should formulate questions that are easy for the Child to understand and respond to using simple vocabulary.
- [2] The Tribunal will use a mixture of open-ended and direct questions when questioning a Child.
- [3] The Tribunal will use questioning techniques, such as summarising areas covered during the hearing and signposting future topics for discussion, where appropriate.
- [4] The Tribunal will bear in mind any cultural sensitivities that may affect a Child's verbal or non-verbal communication, for example use of eye contact with an adult.
- [5] Where practicable, the Tribunal will avoid legal terminology when questioning Child applicants. Concepts such as 'persecution' and 'well-founded fear' will be explained to the Child before commencing the hearing. The Tribunal may use alternative phrases to avoid confusion.
- [6] The Tribunal will check that the Child understands the question being posed. Caution will be exercised when using questions such as '*are you sure you understand?*' as Children may answer positively, even when they have not understood, out of a desire to please. One such approach is to ask the Child to explain to the Tribunal what it is that the Child thinks she or he has understood.
- [7] Where a Child uses a particular phrase or colloquialism, the Tribunal will clarify what the Child means and have them define concepts in their own words wherever possible.
- [8] The Tribunal, where practicable, will avoid the use of idioms and colloquialisms when questioning a Child.
- [9] Names and places should be repeated on a frequent basis throughout questioning.
- [10] The Tribunal will endeavour to ask one short question at a time, particularly when questioning younger Children.
- [11] The Tribunal will phrase questions positively where possible and seek to avoid negatives e.g. '*Didn't you go to the village?*'
- [12] The Tribunal will endeavour to avoid questions beginning with '*I suggest to*

*you...’, ‘I believe you told us...’, ‘Isn’t it a fact...’*

- [13] The Tribunal will seek to avoid tag questions e.g. *‘You hid in the bedroom, didn’t you?’* as such questions are unduly suggestive.
- [14] The Tribunal will endeavour to avoid using *‘Do you remember?’* questions.
- [15] The Tribunal will seek to clarify meaning and reduce inconsistencies by making inquiries beginning with; *‘Tell me more about that...’* *‘What do you mean when you say...?’*
- [16] The Tribunal will speak slowly and give Children enough time to answer, resisting precipitate interruption merely because a Child has paused in the giving of testimony.
- [17] The Tribunal will remain aware that concept words are problematic particularly for young Children e.g. *‘How many times?’*
- [18] The Tribunal acknowledges that inconsistency in Children’s statements is a normal part of the language acquisition process.
- [19] The Tribunal will be alert to the fact that many teenagers (particularly those who have been under-educated/parented, who are unattached or developmentally delayed) remain in the 7-10 year old stage. Teenagers are at greater risk of miscommunication because of adult’s higher expectation of their ability to understand formal language.
- [20] The Tribunal will be cognisant of the fact that Children who are upset may function at a lower level.
- [21] The Tribunal will be cognisant that what appears to be an unusual response from a Child to a point or question posed may be quite natural within the minor’s own culture, and will, if appropriate, explore the answer further with the Child to obtain clarification.
- [22] Further detailed information on topics for questions and wording can be found in *‘Guidelines for interviewing (separated) minors’*, Directorate of Immigration Finland (March, 2002).