

EFFECTIVE GUARDIANSHIP FOR UNACCOMPANIED AND SEPARATED CHILDREN IN THE CONTEXT OF MIGRATION IN ARMENIA

Educational and methodical manual



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ABBREVIATIONS

ACE	Alternative care in emergencies
BIC	Best interest of the Child
BID	Best interests' determination
CBOs	Community-based organisations
CBCP	Community-based child protection
CP	Child Protection
CP(i)HA	Child protection in humanitarian action
CPMS	The Minimum Standards for Child Protection in Humanitarian Action
CSOs	Civil society organisations
CSPID	Children and Social Protection Departments
ECD	Early childhood development
ECRE	European Council on Refugees and Exiles
FTR	Family tracing and reunification
GTBs	Guardianship and trusteeship bodies
GTCs	Guardianship and trusteeship commissions
HSID	Health and Social Issues Departments
IASC	Inter-Agency Standing Committee
IDP	Internally displaced persons
IFRC	International Federation of Red Cross and Red Crescent Societies
ICRC	International Committee of the Red Cross / Crescent
INGOs	International Non-Governmental Organisation
IOM	International Organisation for Migration
MHPSS	Mental health and psychosocial support
MCS	Migration and Citizenship Service
MIA	Ministry of Internal Affairs
MLSA	Ministry of Labour and Social Affairs
NGOs	Non-governmental organisations
PSEA	Protection from sexual exploitation and abuse
SGBV	Sexual and gender-based violence
SOP	Standard operating procedures
UASC	Unaccompanied and separated children
UASCM	unaccompanied and separated children in migration
UN	United Nations
UNCRPD	United Nations Convention on the Rights of Persons with Disabilities
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations International Children's Emergency Fund

INTRODUCTION

The United Nations Convention on the Rights of the Child (UNCRC) states the fundamental rights of children to life, health, development, and to care and assistance. It is ratified by almost all nations in the world (United Nations General Assembly, 1989).

Experiencing traumatic events or conflicts, leading to displacement either abroad or internally, can cause a serious disruption in the continuity of care, protection, and well-being to children, notably by provoking family separation. This separation makes children especially vulnerable and impede their access to them to access basic fundamental rights. Either voluntary, accidentally, or forced along the route, the effects of separation can be tremendous and long-lasting. In those cases, the national and local authorities are responsible for ensuring that children's rights are respected, and guardians play a crucial role in accompanying and protecting children who are deprived of a family environment or whose family is unable to represent their best interests.

The Recommendation on effective guardianship for unaccompanied and separated children in the context of migration, adopted by the Council of Europe's Committee of Ministers in 2019, sets clear guiding principles for the protection, assistance and safety of children on the move through guardianship¹. Its continued implementation is supported by the Council of Europe's Action Plan on Protecting Vulnerable Persons in the Context of Migration and Asylum in Europe (2021-2025)² and its Strategy for the Rights of the Child (2022-2027).³ The Explanatory Memorandum of the Recommendation on guardianship, prepared by the Council of Europe's Steering Committee for the Rights of the Child in 2022, illustrates different ways of organising guardianship in our member states, so that the specific needs of children in migration are catered for at every level.

The Council of Europe is implementing the project "Protecting the rights of Armenian children in post-conflict context" from January 2024.⁴ It aims at strengthening the capacities of civil servants and/or focal points and other professionals to effectively safeguard the rights of Armenian children affected by conflicts.

1 <https://rm.coe.int/cm-rec-2019-11-guardianship-en/16809ccfe2>

2 <https://rm.coe.int/action-plan-on-protecting-vulnerable-persons-in-the-context-of-migrati/1680a409fc>

3 <https://rm.coe.int/council-of-europe-strategy-for-the-rights-of-the-child-2022-2027-child/1680a5ef27>

4 <https://www.coe.int/en/web/yerevan/protecting-the-rights-of-armenian-children-in-post-conflict-context>

This manual is therefore conceived to enhance the knowledge of key stakeholders on guardianship, and to support national authorities to strengthen child protection systems. It starts by underlining the importance of a practice based on principles and standards to ensure the quality, consistency and efficacy of guardianship systems. It notably highlights the need to embed in guardianship systems a rights-based approach that considers ethical considerations such as the best interest of children. Then, the manual clarifies the role of guardians as a vital part of a comprehensive child protection framework and the different key elements that are necessary to all effective guardianship systems. Finally, drawing from legal frameworks at international, regional, and local levels, the manual then focuses on the current guardianship system in Armenia, both in theory and in practice.

ETHICAL CONSIDERATIONS IN GUARDIANSHIP: DUTY OF CARE

As underscored by the European Union Agency for Fundamental Rights⁵, the adherence to the Convention for the Rights of Children establishes an obligation from the States to care, protect and assist children without parental care (Article 20).

While it is true the CRC grants States considerable liberty in determining appropriate solutions, it mandates however key considerations, such as continuity of care, and attention to the child's "culture, language and religion", as well as to the child's self-respect, and dignity (Article 3).

Last but not least, it is of greater importance to underscore that States and parties have to comply to this duty of care in a way that safeguard and uphold best interests of the child, anytime, in any actions and decisions (Article 3).

USING THE MANUAL

The manual includes, in Section A, a summary of the key elements to consider and put in place in an effective guardianship system, from a theoretical point of view. The extensive Reference list provides further reading for those who wish to deepen their understanding. Each section outlines the topic in light of the most recent research, guides, or handbook.

Section B provides an overview of the relevant national, regional and international laws and regulations, offering a clear understanding of the legal

⁵ FRA, 2010, p. 11

responsibilities and rights that underpin effective guardianship systems. By examining key legal instruments, this section aims to guide stakeholders in ensuring compliance with the legal framework governing guardianship.

Section C compiles and presents the different elements of guardianship in Armenia and provides an analysis of the system as it stands. It is backed up by Section that lists recommendations on improving the system in the nearest future.

All sections can be read independently, as their sub-sections, If a specific topic is of interest to the reader.

A. THEORETICAL BASIS ON EFFECTIVE GUARDIANSHIP

1. DEFINITIONS

This manual follows the definitions set out in the Recommendation CM/Rec(2019)11 of the Committee of Ministers to member States on effective guardianship for unaccompanied and separated children in the context of migration (2019), unless specified otherwise.

- **Child:** any human being below the age of 18 years, is the most generic definition worldwide. In Armenia, a child is defined as any person under the age of 18, except in cases where he acquires full legal capacity in accordance with the procedure established by law or is previously recognised as fully capable.⁶
- **Unaccompanied child:** child who has been separated from both parents and other relatives and is not being cared for by an adult who, by law or custom, is responsible for doing so.⁷
- **Separated child:** child who has been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.⁸
- **Guardian:** person who is appointed or designated to support, assist and,

6 Article 3.1 (1) of the draft new law on the rights of the child and child protection system.

7 Committee on the Rights of the Child, General Comment N6, Treatment of Unaccompanied and Separated Children Outside Their Country of Origin, CRC/GC/2005/6, 1 September 2005, para.7.

8 Ibid, para. 8.

where provided by law, represent unaccompanied or separated children in processes concerning them.⁹

- **Guardianship:** process of appointing a guardian for a specific child for a specific period of time, through authority exercising its responsibility for the management of guardianship for unaccompanied and separated children in migration, including case management and support.
- **Migration:** movement of a person away from his or her place of usual residence.
- **Child protection:** Process of ensuring the safety, well-being, and rights of children by preventing and responding to abuse, neglect, exploitation, and violence affecting children.¹⁰
- **Child safeguarding:** measures to prevent harm, exploitation, and abuse of children in any interaction or activity led by the organisation or its partners. This involves implementing standards and practices across all operations to protect children from risks associated with programmes, staff, or partners.¹¹
- **Child protection in humanitarian action:** the approach and interventions designed to prevent and respond to abuse, exploitation, violence, and neglect experienced by children during crises, including armed conflicts and natural disasters. This approach focuses on creating safe environments for children, providing mental health and psychosocial support, and reuniting separated families, strengthening local child protection systems and coordinating with partners to ensure that children in emergencies are protected and supported.¹²
- **Child protection system:** set of laws, policies, regulations, procedures and services across all social sectors – especially social welfare, education, health, security, and justice – aimed at supporting the prevention and response to abuse, neglect, exploitation, and violence against children.

⁹ Recommendation CM/Rec (2019)11.

¹⁰ UNHCR Child Protection Framework, 2012, p. 8.

¹¹ UNICEF's safeguarding policy: https://www.unicef.org/media/159656/file/UNICEF_Policy_on_Safeguarding_March%202024.pdf.

¹² See UNICEF's information on child protection in humanitarian contexts on their website: <https://www.unicef.org/protection/protecting-children-in-humanitarian-action>.

- **Migration status:**
 - Refugee : person who is outside the country of their nationality and is unable or, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of their former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it (as defined by the Convention relating to the Status of Refugees);
 - Migrant: a person who moves away from his or her place of usual residence, whether within a country or across an international border, temporarily or permanently, and for a variety of reasons. The term includes: migrant workers; smuggled migrants; international students¹³
 - Asylum-seeker: someone who is seeking international protection (UNHCR).
 - Internally-displaced: people displaced within their own countries, uprooted by conflict, violence and disasters.¹⁴
- **Asylum:** Special safeguards for children claiming asylum (whether they are accompanied or not) should be respected, especially the principle of non-refoulement¹⁵ and also non-disclosure of personal details to authorities in countries of origin.¹⁶
- **Resilience:** Capacity to face adversity, cope (address the difficulties), adapt to (adjust to change and uncertainty) and transform their negative experiences into a positive long-term objective.¹⁷

¹³ About Migration | International Organisation for Migration, n.d.

¹⁴ About Migration | International Organisation for Migration, n.d.

¹⁵ See an explanation of this principle on Section 3.4, p. 23.

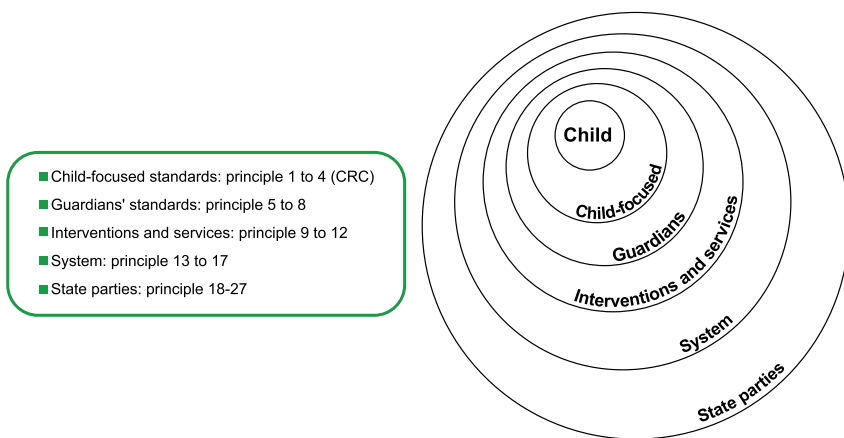
¹⁶ Council of Europe , 2010, p. 10.

¹⁷ Inspired from Terre des Hommes definition.

2. PRINCIPLES

This section sets out the principles that are essential to the effective implementation of a guardianship system. These principles follow the socio-ecological model which identifies factors and stakeholders that interconnect, affect, and influence child development and well-being within the guardianship system. These principles are interlinked and interdependent, and they include: child-centred principles, principles targeting guardians, principles guiding interventions and services, principles targeting guardianship systems, and principles targeting State parties.

Below is a visual representation of all principles.



2.1 Child-centred principles

Professionals should be trained and sensitised, and, therefore, should align with the core and fundamental standards set out by the [Convention on the Rights of the Child \(CRC\)](#), especially the following four, that are core to adopting a child-centred approach.

All decisions and actions impacting children should be taken in their best interests, preserving their optimal development, protection and well-being

The professionals working with UASCM regularly advocate for, assess, evaluate, prioritise and adjust the child's best interests, involving all relevant parties and ensuring that these assessments consider the child's views and unique circumstances (Article 3 of the UNCRC).

The European Court of Human Rights has accepted that “...there is currently a broad consensus – including in international law – around the idea that in all decisions concerning children, their best interests must prevail”.¹⁸

The concept of “best interests of the child” (BIC) generally refers to the child’s overall well-being, which is shaped by various individual factors (such as gender, age, maturity, and experiences) and other considerations (like the presence or absence of contact with parents, the existence and quality of relationships with extended family, and potential risks or capacities).

According to the CPMS¹⁹, the concept of the child’s best interests covers three main aspects:

1. **The fundamental right** to have their best interests evaluated and regarded as a primary consideration.
2. **The guiding principle** (meaning the selected interpretation of the law, legal provision or guideline) that best serves the child’s interests should be selected.
3. **The decision-making process standard** that must consider the potential impact on the child and show that the child’s right to have their best interests prioritised has been explicitly taken into account, in any decision affecting a child (see related section on BID procedure).

The best interest’s principle serves as a guiding framework for the design, implementation, monitoring, and adjustment of all programmes and interventions, and should be regularly re-evaluated. It applies universally to all children, regardless of:

- their administrative status (nationals, asylum-seekers, refugees, internally displaced persons, migrants, or stateless individuals);
- the parental setting (whether they are with their parents or caregivers, or if they are unaccompanied or separated);
- the context, sphere (private, public; welfare institutions, courts, administrative authorities, and legislative bodies) or the moment of the guardianship procedure;
- other personal characteristics.

18 See in relation to Article 3 *Rahimi v. Greece*, No. 8687/08, § 108, 5 April 2011 and in relation to Article 8, *Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, § 135, 6 July 2010.

19 CPMS, 2019, p. 41.

In the context of migration, this principle is particularly relevant, as it does imply:

- taking into account the specificities of the child, in terms of linguistic and cultural background, including in the way the child participates adequately into decision-making processes;
- balancing all factors to assess the best option and identifying durable solutions for unaccompanied and separated children: temporary care arrangements, possible family reunification, separation from foster parents or accompanying adults if there is a risk of exploitation, abuse or trafficking, relocation, for instance.

PROMISING PRACTICE:

The European Asylum Support Office (EASO) has developed a list of best interests of the child (BIC) elements and related safeguards that need to be taken into account in international protection. Under the form of a checklist, it can be found in their Practical Guide on the best interests of the child in asylum procedures, p. 37.²⁰

All decisions and actions should actively encourage, support and promote children's right to life, care, protection and development.

Professionals working with UASCM should take into account the impact of the context, children specific situation and their own response to them on (a) the preservation of children's right to life and survival and (b) their physical, psychological, emotional, social, and spiritual development. It is essential to leverage children's strengths and resilience, to enhance their chances of survival and development and to encourage stable, safe and nurturing relationships and care environments to allow correct stimulation and bonding (Article 6 of the UNCRC).

Children should enjoy their rights without discrimination.

Professionals working with UASCM have a legal obligation to uphold children's rights, ensuring that all children within their jurisdiction can enjoy these rights without discrimination (Article 2 of the UNCRC). This involves:

²⁰ https://euaa.europa.eu/sites/default/files/Practical_Guide_on_the_Best_Interests_of_the_Child_EN.pdf

1. identifying, prohibiting discrimination (based on origin, race, colour, sex, gender, sexual orientation, age, disabilities, nationality, religion, language, political opinions, ethnic or social origin, property, disability, birth immigration status or any other reason);
2. taking proactive measures to ensure equal opportunities, access to resources and participation, and to protect vulnerable group from abuse;
3. taking positive actions to mitigate and rectify inequality, respecting every child's dignity and diversity, if and when there is de facto.

As the CPMS underlies, that principle imply being aware of, and addressing our own spontaneous cognitive biases to avoid perpetuating exclusion and discrimination cycle unintentionally and hindering children's fundamental rights.

Professionals working with UASCM should ensure children have time and space to meaningfully participate in decisions that affect them.

Effective participation is done in a way that is age-appropriate and adapted to each child's gender, development, maturity, communication capacities, and context, including cultural and linguistic (Article 12 of the UNCRC).

According to Annex 1 of the Council of Europe Handbook on children's participation for professionals working for and with children, there are 9 basic requirements for Effective and Ethical Children participation, participation must be transparent and informative, voluntary, respectful, relevant, child-friendly, inclusive, supported by training, safe and sensitive to risk and accountable²¹. Additionally, participation must be facilitated with informed consent from both children and caregivers/foster parents/guardian.

Children's views must be respected and their input concretely used in decision-making, always keeping in mind changes in children's life or community dynamics. Ideally, follow-up must be provided after participation, to ensure real accountability. Last but not least, participation must uphold the child's best interests and do no harm principles.

For instance, whenever possible, UASC migrant children should be actively involved in defining their best interests.

21 This Annex can be found at: <https://cp4europe.org/sites/default/files/2023-06/CoE%20HANDBOOK%20-%20ANNEX%201.pdf>.

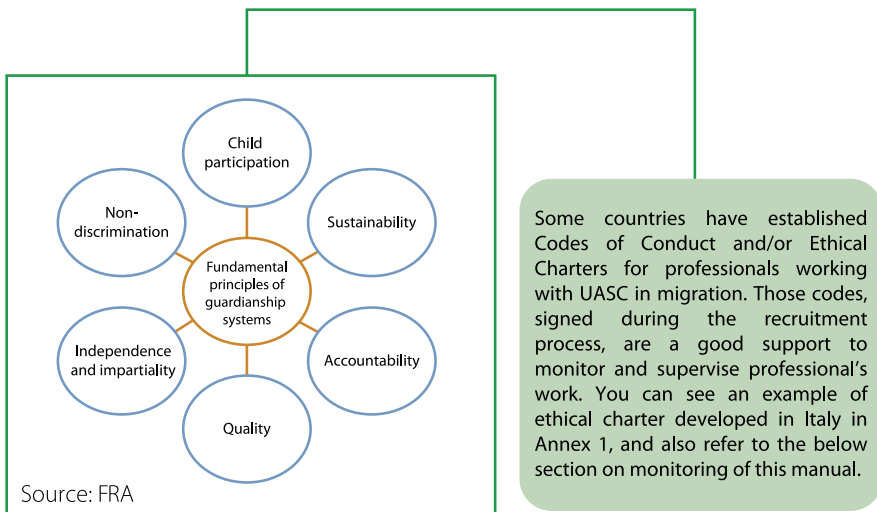
2.2 Guiding principles for guardians and foster care families

The European Union Agency for Fundamental Rights (FRA) provide extensive guidelines and framework about quality of the services to asylum seeker children, including guardianship systems.

In addition to the principle of idea of non-discrimination and participation that we already mentioned, the FRA ²² suggests the following additional principles to apply to all types of guardianship arrangements:

- Appointed guardians and legal representatives must be in a position to show independence and impartiality in their decisions, assessments, actions and representations;
- Appointed guardians and legal representatives should be qualified and trained professionals in child protection, child welfare, be sensitised to detect specific/particular needs, risks (like trafficking), and have adequate knowledge and experience about relevant topics like traumas;
- An official legal guardianship authority, that define duties, functions, and representation of guardians, should exist and be responsible, accountable for, monitored against the guardianship system, and guardian's acts;
- The guardianship arrangements should be sustainable and provided with enough resources (financial and human), to be effective on a long-term.

PROMISING PRACTICE



22 Guardianship for children deprived of parental care handbook (2014, p. 26)

2.3 Guiding principles for services and interventions directed to unaccompanied and separated migrant children

PROMISING PRACTICE:

The protection principles presented in this section are inspired from non-binding sources. However, there are considered as good practices, to think and conceive operational services and practical interventions that are designed in a safe way for UASCM.

Actions and interventions should not cause unnecessary harm or exacerbate existing problems.

Following the traditional ethical foundation of Do no Harm in humanitarian work, professionals working with UASCM should take steps to reduce overall risks to and vulnerability of unaccompanied and separated migrant children, including potentially negative effects of guardianship programmes, procedures and decisions.

The Minimum Standards for Child Protection in Humanitarian Action - CPMS, a handbook that uphold child protection standards that have been commonly agreed upon by UN agencies and local and international NGO working in the field of child protection, suggest to include, without being limited to:

- analysing risks trends;
- avoid physical, emotional, or psychological harm;
- monitoring vulnerabilities, hazards, social norms, changes in the context;
- supervising our actions, being mindful of the potential consequences of decisions;
- adapting to the context, culture;
- reducing unintended collateral effects;
- evaluating benefits;
- implementing safeguarding protocols and mechanisms.²³

Professionals working with UASCM should guarantee accessibility and inclusiveness

In line with the objectives 15 and 16 of the Global Compact for Safe, Orderly, and Regular Migration (GCM) that has been adopted by UN member states

23 CPMS, 2019.

in 2018,²⁴ this suggested principle implies identifying and removing obstacle and restrictions to assistance, like social or gender norms barriers, language, cultural limits, by providing translation, mediators, using child-centred language and methods, providing adequate information on the availabilities of services, removing costs, adapting facilities to ensure access for children with disabilities, ensuring a balanced gender of professionals working with UASCM, providing age-appropriate and adolescent-friendly services, etc.

Support children in recovering safely from the physical and psychological impacts of migration, displacements and family separation.

The GCM provides a framework to address child-specific vulnerabilities in migration contexts, advocating for accessible support for children to recover from trauma caused by migration and separation. Professionals working with UASCM should provide immediate and ongoing support to unaccompanied and separated migrant children and take all necessary steps to restore their safety, dignity, wellbeing and rights (adapted from CPMS, 2019, p. 45). This also include legal assistance, where and when needed.

Help unaccompanied and separated migrant children to claim their rights

Within the checklist proposed to implement Principle 1 of the Recommendation CM/Rec (2019)11 of the Committee of Ministers to member States on effective guardianship for unaccompanied and separated children in the context of migration, the question of support to the child to recover from any trauma suffered in their country of origin, during their journey or in the host State is mentioned. Professionals working with UASCM should provide all the necessary information, documentation, translation and solutions (such as legal aid, first time mentioning) to children and their foster carers to support them into upholding their rights (adapted from CPMS, 2019, p. 48).

Avoid unnecessary changes and measures

International and national child protection frameworks suggest that any intervention or action taken regarding an unaccompanied child should be absolutely necessary, meaning it should only be implemented if it is essential for the child's protection, safety, or welfare. Ensuring that UASC only face measures, placements, changes, or restrictions that are essential, protect them from unnecessary actions that could harm their development, limit their freedoms, or affect their rights, or even simply, disturb their sense of normalcy, and security (Committee on the Rights of the Child, General Comment No. 6, 2005).

Tailor care to UASCM's specific needs

UNHCR Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum (1997) call for appropriate guardianship, accommodation, and support, tailored to each child's age, gender, cultural background, and specific vulnerabilities, which differ significantly from those of adults or other minors with family support.

Embed safeguarding into processes, plans and actions, ensuring high-quality programming

Safeguarding refers to any actions that should be taken to prevent and respond to harm caused to any individual as a result of their contact with the provided services or the work of organisations, and their personnel, partners, suppliers and vendors.²⁵

2.4 Guiding principles for a comprehensive system approach

BEST PRACTICE:

Expanding a bit further upon Principle 8 of the Recommendation CM/Rec (2019)11 of the Committee of Ministers to member States on effective guardianship for unaccompanied and separated children in the context of migration that underline the need to have procedure, policies, services and actors to guarantee the continued well-being of UASCM, the principles presented in this section are inspired by the Minimum Standards for Child Protection in Humanitarian Action.

Strengthen child protection systems.²⁶

Professionals working with UASCM, as well as NGOs, should work towards improving the quality and availability of services and proposing innovative solutions into systems to improve protection outcomes for children, by actively collaborating with each other, adapting to the evolving contexts, linking up with informal community-based organisations and local authorities, advocating for national legislation changes to accommodate unaccompanied and separated migrant children, developing adequate response SOPs, reinforcing institutional responses and means, strengthening their own capacities, seeking public awareness and appropriated behaviours towards unaccompanied and separated migrant children, etc. The CP system should ensure a balanced representation of

²⁵ As underscored, the 'do no harm' principle is paramount for safeguarding, although those 2 concepts are different. See more about this in Annex 2. UNICEF Policy, 2024, p. 12

²⁶ By system here, we mean people, processes, laws, institutions, capacities and behaviours.

both genders in professionals, to facilitate interactions with children, in particular for children who might have been victims of violence.

Strengthen unaccompanied and separated migrant children's resilience Professionals working with UASCM should favour unaccompanied and separated migrant children's responsibilities, participation, contributions, skills, protective factors, well-being, strengths, and positive relations, all of which will support and encourage their resilience.

2.5 Guiding principles for state parties in ensuring that unaccompanied and separated children within their jurisdiction are effectively provided with guardianship

This section is a summary of the principles set out in the Recommendation CM/Rec(2019)11 of the Committee of Ministers to member States on effective guardianship for unaccompanied and separated children in the context of migration. For a larger and more detailed description of each principle, please consult Annex 3.

On 15 June 2022, the Committee of Ministers adopted an Explanatory Memorandum to the Recommendation CM/Rec(2019)11, providing guidance to member states on effective guardianship for unaccompanied and separated children in migration. The document outlines nine guiding principles for establishing an effective guardianship system, along with practical guidance and checklists for policymakers, authorities, and guardians to ensure the rights of children are protected during migration.

States should protect the rights of unaccompanied and separated children in migration through guardianship and their best interests.

This principle emphasises the need to establish a guardianship system for unaccompanied and separated children (UASC) in migration to protect their rights, prioritise their best interests, and meet their unique needs. It calls for compliance with international child rights obligations, aiming to protect children from risks like discrimination and violence, while supporting sustainable solutions, including family reunification when appropriate.

States should adopt and implement adequate legal, policy, regulatory and/or administrative frameworks for UASCM.

This underscores the need for robust legal and regulatory frameworks to ensure effective guardianship for unaccompanied and separated children (UASC) in migration. It calls for comprehensive standards covering guardian duties, recruitment, training, monitoring and support, inter-agency cooperation, and mechanisms for children to voice concerns. The system should prioritise children's best interests, ensuring stability, continuity, and legal protections, with judicial oversight when necessary.

States should ensure that an unaccompanied or separated child in migration has a guardian appointed or designated without undue delay.

This highlights the need for timely and individualised appointment of guardians for UASC in migration, extending support beyond age 18 if necessary. Regardless of immigration status, every identified UASC should have immediate access to guardianship, with continuous protection guaranteed. The guardian's role should persist until parental responsibility is established or adulthood is reached, and young adults should have access to transitional support when needed.

States should take measures to empower guardians to inform, assist, support and, where provided by law, represent unaccompanied and separated children in migration.

These measures aim to protect the rights and best interests of unaccompanied and separated children (UASC) by ensuring guardians serve as a bridge to relevant authorities and services. Guardians must be independent and impartial, with the authority to inform, assist, and support the child's legal and personal needs, including rights awareness, well-being, and transition to adulthood. Their role includes advocating for the child's best interests, facilitating decision-making, and ensuring the child is protected and informed in all procedures. Guardians should also maintain regular contact, uphold confidentiality, and coordinate with stakeholders while remaining free from external influence.

Information, access to justice and remedies, including child-friendly complaint mechanisms are provided to UASCM.

This recommends that states ensure unaccompanied and separated children (UASC) in migration have access to essential information, an impartial complaint system, and effective remedies to uphold their rights. Children should receive clear, child-friendly guidance on their rights and guardianship roles, verified by their guardian. Accessible, independent complaint mechanisms, including alternative dispute resolutions like mediation, should be available to address concerns, with proceedings conducted in a child-sensitive, confidential, and timely manner to safeguard their interests.

States should ensure that a competent authority is in place with responsibility for the management of guardianship for UASC in migration.

This principle calls for states to establish a competent authority responsible for managing and overseeing guardianship for unaccompanied and separated children (UASC) in migration. This authority should recruit, vet, and train guardians, set standards for conduct, and implement child-protection policies. Guardianship management should include child-friendly resources, support, and communication channels, ensuring manageable caseloads for individualised attention. Regular monitoring and record-keeping, compliant with international data protection, are essential to uphold guardians' accountability and protect children's well-being.

States should allocate adequate resources to ensure adequate recruitment and screening processes, qualified and trained guardians for an effective guardianship.

States should routinely gather data on UASC in migration to assess their needs and resource allocation, adapting guardianship measures as necessary, including during emergencies, and ensuring the needed sustainable financial, human, and technical resources, standards, confidentiality, and integrity is provided and in place.

States should establish effective co-operation and co-ordination mechanisms and measures for people exercising responsibilities towards UASC in migration, and the guardian and/or guardianship authority.

This principle stresses robust national cooperation and coordination that clearly define roles for guardians and authorities, with accountability and transparency among all agencies involved. Mechanisms and protocols should prioritise the safety and well-being of UASC, particularly in cases of disappearance, violence, or exploitation, ensuring information sharing respects confidentiality and the child's best interests. Multidisciplinary training and continuous monitoring are vital to sustaining effective collaboration across stakeholders.

States should guarantee international co-operation, for FTR and identifying and implementing sustainable, rights-based guardianship solutions.

This principle highlights the need for international cooperation to assist in family tracing, sustainable rights-based solutions, and the involvement of guardianship authorities. States should clearly define guardian roles in family tracing, care transfer, child trafficking prevention, and disappearances; establish legal frameworks and clear communication channels to prioritise the child's best interests. Effective collaboration among states, guardians, and institutions, along with regular sharing of best practices, is crucial for enhancing the guardianship of migrant children and ensuring their well-being across borders.

In addition, in line with the Charter of Fundamental Rights of the European Union (Article 7) and the UNCRC (Article 8), an additional principle could be added:

Family unity should be respected and be always priority.

If in the best interest of the child, and States should trace for the family, organise the transfer of the unaccompanied child and the reunification where possible, and take into account the existence of family links in other Member States.

3. KEY ELEMENTS OF EFFECTIVE GUARDIANSHIP

3.1 Type of guardianship and alternative care

The Guidelines for the Alternative Care of Children is the international framework approved by the United Nations General Assembly in 2009, aimed at ensuring that every child who is temporarily or permanently deprived of parental care receives appropriate protection and care. They serve as a guiding document to support governments, institutions, and caregivers to provide appropriate alternative care.

They outline for example the importance of quality in alternative care and emphasise the necessity of placing children in safe, nurturing, and family-like environments that provide a stable, loving, and secure setting. This care can take several forms, according to these guidelines.

- Kinship care: family-based care within the child's extended family or with close friends of the family known to the child, whether formal or informal in nature;
- Foster care: situations where children are placed by a competent authority for the purpose of alternative care in the domestic environment of a family other than the children's own family that has been selected, qualified, approved and supervised for providing such care;
- Other forms of family-based or family-like care placements (like supervised living arrangements);
- Residential care: any non-family-based group setting (transit centres in emergency situations, group homes, orphanages, residential care facilities, institutions), whether they are short- and long-term.

Priority should be always given to family-like community-based long-term solutions, that build on existing social structures. When family-based care is not possible, temporary institutional care and protection can be used, as last resort, and for the shortest time possible.

According to the Inter-Agency Guiding Principles on Unaccompanied and Separated Children²⁷, **guardianship** refers to “the designation of responsibility to an adult or organisation for ensuring that a child's best interests are fully represented”. The process of arranging guardianship can be administrative, or judicial.

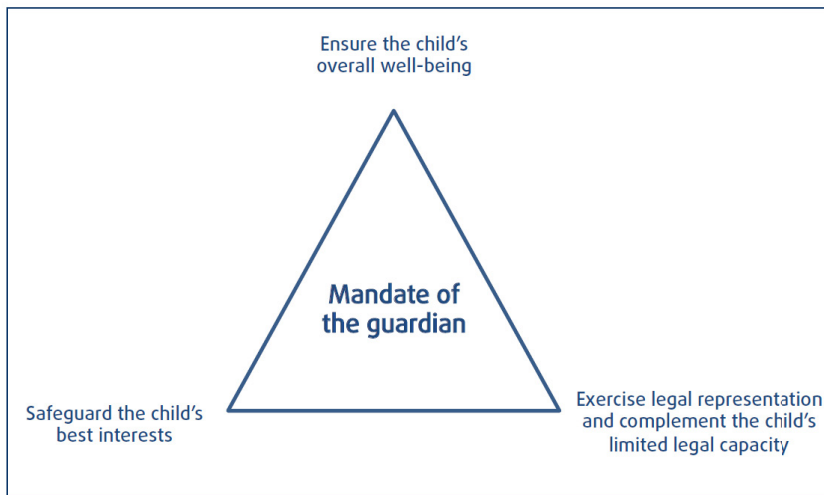
²⁷ ICRC, UNHCR, UNICEF, et al., 2004, p. 47

A **guardian**, in this context, is a natural or legal responsible adult, that has been selected, trained, and mandated legally, to support, care, protect and represent the child in all processes concerning them, with a view to ensuring the best interests of the child and exercising legal capacity for the minor where necessary. Recommendation CM/Rec(2019)11 notes that when an institution or organisation is appointed as legal guardian, a natural person should be designated aside to carry out the other duties of guardian.

3.2 Type of support and representation

Legal provisions, in terms of scope and type of support, vary between states. Functions are nowhere to be clearly defined, with the exception of the legal part of the representation, which is the narrower.

For the FRA²⁸, the guardian exercises three distinct functions:



Source: FRA

In that vision, representation in proceedings or complementation in the limited legal capacity of the child when required goes along with the protection and safeguarding of the child's well-being and best interests.

In a more general conception, guardians can be responsible for:

- safeguarding children’s best interests, children’s well-being and development;
- supporting children’s exercising their rights;
- ensuring a rights-based approach in migration policies are used with/for them²⁹
- facilitating the child’s participation in all steps;
- timely, regularly and effectively informing of and assisting the child in all legal, administrative, criminal, immigration and judicial proceedings (assessment of each child’s vulnerabilities, risks and needs; age-assessment, best interests’ assessments; guardianship procedures, family tracing procedures³⁰, family link assessments; relocation; tracing of missing children; document collection; interview preparation) and decision-making processes;
- filing and informing in cases of abuse, exploitation, trafficking, neglect, prostitution, or any forms of mistreatment or violence - or protecting him/her against them;
- supporting their access to sustainable care, accommodation, adequate living conditions, health care, education and professional training³¹
- promoting their necessary social interactions, religious practice, recreational activities, as well as the child’s material or emotional circumstances (Article 14 and 31 of the UNCRC;
- helping the transition into adulthood and independent life.

All of which, by:

- hearing the child’s view;
- being available and accessible;
- developing a trustful and nurturing relationship;
- treating the child with respect and dignity;
- maintaining and encouraging open and culturally-sensitive communication and expression, guaranteeing confidentiality;
- creating a sense of normalcy, routine, comfort and safety;
- being the link between the child and all other stakeholders, including authorities.³²

No matter how broad the responsibility of the guardian is, it is essential for the guardian to be appointed as rapidly as possible to ensure individualised support can be provided to each UASCM, decisions can be taken, and timelines for

²⁹ Recommendation CM/Rec(2019)11

³⁰ For more detailed description of responsibilities in transnational procedures and FTR, please see UEAA, Transnational procedures in the framework of international protection, 2024.

³¹ EUAA, 2024, p. 15.

³² UEAA, 2023, p. 21; 2024, p. 27; Save the children, 2011, p. 7.

administrative proceedings and procedural steps can be respected (for instance, for asylum or relocation). In situations of increased arrivals, when delays are foreseen, temporary guardians can be appointed to bridge the gap.³³

3.3 Guardians' eligibility, profiling and selection

According to FRA, three **types of persons** are eligible to exercise as guardians: 1) a relative and/or another person affiliated with the child; 2) a professional employed by guardianship institutions; 3) a volunteer natural person who is not related to the child and are recruited by the guardianship authority or other competent authority as guardians.³⁴

In line with the recommendation from the UN Guidelines on Alternative Care (2009), priority is usually given to, first, close relatives or people from the child's broader family environment; second, to placement of children within their own refugee/migrant community. Guardianship is normally be granted to the accompanying adult family member or non-primary family caregiver in the case of a separated child, unless there is evidence that doing so would not be in the child's best interests. A thorough examination of suitability for guardianship is necessary when child is accompanied by adult or caregiver who is not related to them. Additional measures (like appointing an adviser or legal representative) must be taken if the child's guardian is capable and willing to take care of them on a day-to-day basis but is unable to effectively represent their best interests in all spheres and at all levels of the child's life. UASC should have access to legal representation when they are involved in asylum procedures.

In all cases, guardians must be adequately trained for, qualified and well-equipped to navigate the complex laws and procedures related to asylum, migration, and child protection. Their qualifications should be defined in the domestic laws, together with the policies for their recruitment, training, and supervision, to ensure they have the necessary expertise, including knowledge of child welfare, psychology, cultural and gender issues, and the legal framework and national CP system.

BEST PRACTICE:

"Save the Children" has defined a set of indicators to verify if the guardian is well-equipped, with pertinent professional knowledge. They suggest to have working knowledge in various areas, including children's rights, migration and

33 FRA, 2020, p. 23.

34 FRA, 2015, p. 30

asylum law (international protection), child development/psychology, trauma, trafficking, intercultural communication, child protection, social welfare, and the child's home country situation. Guardians must also be aware of their personal and professional limits, seek continuous improvement, and proactively identify and respond to their learning needs. Effective case management, organisation,

accountability, resource management (including financial), and adherence to a set methodology are essential. Guardians should seek and receive adequate support, regularly share experiences with colleagues or community of practice, be open to supervision, and be reflective on their activities, duties, and motivations "Save the Children".

Additionally, they should be equipped to address effectively the needs and vulnerabilities of UASCM, specifically. Often, when guardians are employees of a guardianship authority, they are qualified social workers, social pedagogues, psychologists or legal professionals. When they are natural persons, the most **common prerequisites** reported by the FRA are the following:³⁵

- to be an adult (sometimes, minimum or maximum age limits can be included);
- to have legal capacity;
- to consent;
- not to be precluded fully or partially from exercising parental rights;
- not to be convicted for serious crimes;
- to be physically and psychologically healthy (a psychiatric report can be required);
- not to have been declared bankrupt; and
- to be free of conflict of interests.³⁶

Ideally, those criteria should also take into account the personal ties with the child, and the religious and cultural determinants (for instance, the question of a common language between the child and the guardian, knowledge of the national culture of the child, etc).

They should undergo a **vetting procedure** to be selected, that include reference and criminal record checks, interview, physical and psychological health reports, training (including on culturally sensitive competencies, attitudes, skills and communication), and an onboarding process, where the question of **financial gain** should be determined. Ideally, they should be entitled to

³⁵ FRA, 2015, p. 39.

³⁶ FRA, 2015, p. 40.

have a remuneration: either, as official employees from an institution, either as volunteers/self-employed, their expenses should be covered and they should receive a compensation fee, or benefits for their duties. Of course, this do not apply when a relative of the child is appointed: the best interests of the child and the blood or emotional ties prevail over the mentioned requirements and recruitment processes.

3.4 Parental rights

The appointment of a guardian, especially in the context of unaccompanied or separated minors, is primarily a protective measure intended to ensure the child's welfare and to represent the child's best interests in legal and administrative matters (Articles 24 of the Reception Conditions Directive 2013/33/EU). However, it does not necessarily mean that the parents are automatically deprived of their parental rights. Guardianship can be temporary, if the parents are later found, are able to reunite with and care for the child.

However, if parents are found and they are reasonable reason to think that the child might be in danger, at risk of abuse, neglect or when/if parents are not compliant with their parental responsibilities, or cannot care for him/her³⁷, a court may decide to revoke parental rights and recur to a permanent form of guardianship, as long as it is in the child's best interest to remove parental rights (Article 9 of the UNCRC).

There are also cases where a guardian is appointed to manage certain aspects of the child's life, such as legal matters or education, while the parents retain other responsibilities.

3.5 Child information and participation

According to a large survey, conducted by the European Union (FRA) in 12 EU Member States about the conditions of life and experiences with legal procedures of separated, asylum-seeking children, there is a lack of information regarding procedures or opportunities for children in the host country. This is problematic as children end up turning to "possibly unreliable information sources, such as compatriots, peers or even those who had smuggled them".³⁸

However, the availability of timely essential information is crucial for informed decision-making and access to available services and assistance, as it is vital

37 Child due to severe mental illness, addiction, or other incapacities.

38 FRA, 2023, p. 23.

for upholding rights and eliminating risks of rights' violations. This includes information about:

- functions, rights, duties and accessibility of guardians and any other involved parties and stakeholders;
- principles applying to them, inclusive of confidentiality in communication and data-protection obligations;
- complaint mechanisms available;
- proceedings concerning them;
- protection measures and rights (Recommendation CM/Rec(2019)11).

Throughout the different reference documents, it is underscored the importance for this information to be:

- adequate;
- easy to understand;
- child-friendly;
- timely;
- relevant to each case;
- appropriated and adapted to the child circumstances (capacity to read, age, maturity, language, etc.);
- sensitive to gender and culture.

3.6 Monitoring system, supervision and oversight of guardians

According to the Recommendation CM/Rec(2019)11 of the Committee of Ministers to member States on effective guardianship for unaccompanied and separated children in the context of migration, three different levels of monitoring can be organised:

- a. monitoring of guardians;
- b. monitoring of guardianship arrangements;
- c. monitoring of the guardianship system/process in itself.

Within the monitoring of guardians, we could however distinguish monitoring the person, and the exercise of guardians' duties and functions. As follows, several monitoring examples for each level:

- i. Monitoring of guardians: qualifications, vetting procedures, regular checks of criminal records, reference checks with previous employers/colleagues, appointment SOP, ethical code of conduct, access to mental health support, conflict of interest assessment, etc.

Monitoring of guardians' duties and functions: training and competency development monitoring, well-established competency framework or Terms of References, on-the-job supervision, yearly performance evaluation, effective disciplinary procedures against arbitrary decision-making or non-compliance to duties, acts record-keeping etc.

- ii. Monitoring of guardianship arrangements: individual complaint mechanisms for children, annual review processes, financial follow-up, quality checklists, internal reporting procedures on children protection, monthly reports on individual cases, regular statistics and indicators of progress, inspections, etc.
- iii. Monitoring of the guardianship system/process in itself: standards, system SOP, compliance monitoring (respect to rules and regulation), diagnostic monitoring (ensuring the UASCM receive the protection services they are supposed to receive), performance monitoring (institutional achievement), etc.³⁹

The Recommendation also mentions supervision and oversight. Monitoring, supervision, and oversight are related, all aimed at ensuring guardianship is performed correctly, but they differ in scope, focus, and form of execution. **Monitoring** involves regular, ongoing, continuous and specific tracking, observation and collection of data to ensure that processes, systems, or activities are proceeding according to a plan or standards, and to track progress and performance⁴⁰. **Supervision** refers to a direct on-site, real-time and hands-on support, guidance and assistance provided to workers and operations to ensure they receive the necessary support and feedback to perform their tasks, but also to inspect, control, evaluate them⁴¹. **Oversight** is described by the OECD “a function whereby an authority external to the body performing a particular task has the powers to review, direct or regulate the work”, which highlights the higher-level, broader and strategical aspect of this review, that targets the processes, policies, or institution to ensure accountability and proper governance. At this level, the oversight authority which produces the institutional measures has to be specialised and dedicated to guardianship.

DIFFERENCE AT A GLANCE

Level of Engagement:

- Monitoring is often automated or systematic, with little direct intervention.
- Supervision involves active participation and immediate feedback.

³⁹ UNESCO, 2011a, p. 14.

⁴⁰ OECD, 2022, p. 20.

⁴¹ UNESCO, 2011a, p. 6, 2011b, p. 2.

- Oversight is more hands-off, with interventions occurring based on reports or irregularities.

Goal:

- Monitoring aims for performance tracking.
- Supervision aims for effective execution.
- Oversight aims for ensuring accountability and integrity at a higher level.

Last but not least, it is worth noting that monitoring can be independent (external, conducted by courts, authorities, independent experts) or internally-lead (supervisory council, social welfare offices, municipal unit, migration services, Ministry of social affairs and family, etc.)⁴²

Here again, in line with the principle on participation, children should be consulted and should actively participate into monitoring: here some promising examples of children participation into monitoring.⁴³

3.7 Referral procedures

A **Referral Mechanism (RM)** is a structured system, working at national level, designed to help national authorities fulfil their obligation to protect and promote the human vulnerable individuals, including UASCM. It works through a coordinated approach that often involves collaboration with civil society, international organisations, and NGOs, aiming to efficiently refer vulnerable individuals to the most suitable and appropriate support services.⁴⁴

National child protection authorities or agencies responsible for the reception of third-country nationals and asylum-seeking individuals typically oversee the functioning of National Referral Mechanisms (NRMs). These mechanisms are often managed in collaboration with the national guardianship authority.⁴⁵

Sometimes, this mechanism is organised under the form of a set of SOP that are ready to be activated anytime. Same wise, the idea behind is to ensure a rapid and coordinated approach, and a services inter-operability, to protect and support vulnerable or at-risk children, linking them up to appropriate services to

⁴² FRA, 2014, p. 51.

⁴³ FRA, 2014, p. 53. For more methodological information about different monitoring level with children, you can refer to the online modules of CREATE – Child Rights Education in East Africa, and especially Module 5: Module 5 - Children's rights: planning, monitoring and evaluation, accessible at <https://www.open.edu/openlearncreate/mod/oucontent/view.php?id=53774§ion=2.5.1>. FRA, 2014, p. 53

⁴⁴ See Frontex recommendations about setting effective referral mechanisms, in Annex 5. Frontex, 2019, p. 25

⁴⁵ *ibid*, p. 68.

receive the necessary care and protection.

It is most often the police or the migration authorities who identify a UASCM during identification checks or migration processes at the borders. It can also be professionals working front line in the field of migration, child protection staff, social workers, NGO workers, or even individuals.

Once an UASCM is identified (or a child is suspected to be accompanied by persons who are not relatives, nor have official authority over the child, or if there is a reasonable suspicion that the child might be in danger or at risk, even when accompanied by their parents), they need to be immediately referred according to applicable national legislation, before any decision is taken. The child can be referred either to a court, a child protection authority or social services. Ideally, the referral mechanism should guarantee the timely appointment of guardians and protection of children. This procedure and the later arrangements should be specific for UASCM, and could also be extended to larger referral to services (medical assistance, housing, mental health, social services, legal aid, etc.).

To ease the referral process, it is advisable to have clear, identified and well-known contact person and details for each available service, in order to reduce the handover time and treatment delays between the referent and the receiving service.⁴⁶

3.8 Age assessment procedures

All children, especially the most vulnerable—such as unaccompanied and separated children—are entitled to guaranteed protection, to an identity, and States must respect and protect their identity, including children's right to a name, nationality and family ties. In cases where there are uncertainties about the child's actual age, for example when UASC do not have access to proper and appropriate identification, registration and documentation, it is essential to refer them to a certified **age assessment mechanism** to ensure their rights and protection are upheld properly.

As per the Council of Europe Recommendation CM/Rec(2022)22 of the Committee of Ministers to member States on human rights principles and guidelines on age assessment in the context of migration, age assessment refers to any process carried out by a competent authority to estimate a person's age. Such assessment and determination should take into account not only the person's physical appearance, but also their psychological maturity. Age-assessment

46 Ibid, p. 40

must be carried out in a scientific, safe, child-friendly and gender-sensitive and fair manner, avoiding any risk of harm to physical integrity of the child, duly respect to human dignity. Any medical examination for age assessment purposes should only be undertaken when reasonable doubts remain about the person's estimated age once the other measures of the procedure have been exhausted.

In accordance to the General Comment N6 about Treatment of Unaccompanied and Separated Children Outside Their Country of Origin from the CRC, Committee on the Rights of the Child, until this assessment is adequately conducted or where there remains uncertainty, the person should be given the benefit of the doubt, as the principle of presumption of minority should prevail, and they should be treated as such.⁴⁷

3.9 Asylum procedures

The right to asylum allows persons facing persecution to seek protection in another country from their country of origin, as agreed in the Universal Declaration of Human Rights (UDHR) (Article 14 (1)), and the Refugee Convention. This latest instrument set also the responsibilities of nations in granting asylum, and more especially, the prohibition to return asylum seekers or refugees to a country where they may face life threats or harm– which is called the **principle of non-refoulement**.

These principles form the ground of international protection, safety and dignity for refugee and displaced individuals. They are of course applicable to UASCM. Once arrived in a country, and throughout the whole asylum procedures, an appointed guardian (even temporary) will have the responsibility to:

- Guarantee the child's right to remain on the territory until the final asylum decision is taken (and ensure proper, safe accommodation);
- Accompany the child throughout the interview and documentation processes;
- Promote the best interests of the child and their full participation in all the stage of the procedures;
- Provide child-friendly, gender-sensitive and age- and context-appropriate explanations in a language that the child can understand⁴⁸

By contrast, when “guardianship” refers to adults who assume care responsibilities for the child (e.g. foster parents) they are usually not involved into the asylum

⁴⁷ CRC/GC/2005/6, 2005, para.31(a).

⁴⁸ FRA, 2023b, p. 12.

procedures. Same applies for the Best Interest Determination processes.⁴⁹

3.10 Access to legal assistance and justice

The Council of Europe defines child-friendly justice as “a justice system which guarantees the respect and the effective implementation of all children’s rights, giving due consideration to the child’s level of maturity and understanding and to the circumstances of the case. It is, in particular, justice that is accessible, age appropriate, speedy, diligent, adapted to and focused on the needs and rights of the child, respecting the rights of the child including the rights to due process, to participate in and to understand the proceedings, to respect for private and family life and to integrity and dignity.”⁵⁰

In essence, contact with legal assistance for UASCM might occur for several reasons:

- Of course, the asylum procedure implies contact with the law, until the determination of the child’s administrative status. It also includes complementary procedures, such as age-assessment.

Migration systems should be adapted for children and respect their rights, take into account their specific needs and circumstances and ensure they are equal and participative partners in the proceedings.⁵¹

- Guardianship can be formalised through a court or a judge.

This can be part of effective protection and contribution to find durable solution for the UASCM, in their best interests.

- In case of complaints (as part of the monitoring processes, see section 3.6).

When problems arise, unaccompanied children and/or their guardian must be able to report problems immediately with legal advisers through accessible, effective and simple to use complaints mechanisms⁵². Children also need to access remedy before a competent impartial and independent authority or body against the decision of the complaint’s mechanism in cases where the complaints mechanism is not in itself a court-based mechanism, according to the Principle 5, Section 2.5 above, from the Council of Europe Recommendations.

49 UNHCR, 2008, p. 19.

50 Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice, Art. II a.

51 Ibid, p. 2.

52 Ibid, p. 17

- When the UASCM is victim, witness or accused of offenses.

Children in mixed migration flows and UASC specifically are especially vulnerable to exploitation and other types of criminal victimisation, including trafficking in human beings. Their vulnerability may also continue following the settlement in the destination country, where these children may be criminally victimised in a variety of ways, including involvement by adults in criminal activities. As for national children, States should ideally apply the foundational ideas of juvenile justice and establish a minimum age at which minors can be tried, through an adapted, separate and specialised legal system. They should favour rehabilitation measures over punishment when the child is found guilty of an offense, always prioritising the best interests of the child over other considerations, but ensuring that the child offender is held accountable for their actions with a restorative approach, that is appropriate to their age and capacity for change. Alternative to detention should be privileged, and only in extreme cases and for the shortest time possible, children can be taken into custody, arrested, or imprisoned. They should not be put in prison with adults and be able to keep in contact with their family. States should oversee a legal system that facilitates the reintegration of children who have been in conflict with the law into society, as underlined by the CRC (Article 37 and 40).

- When the child has special needs.

By special needs, we refer to any type of vulnerability or circumstances that requires specific assistance, for instance: situations of trafficking/smuggling, gender-based violence and risks (sexual exploitation, pregnancy, FGM/C, forced and early married children, etc), mental or physical disabilities, exploited children, child heads of households, stateless children, adolescent parents, children who have been part of armed groups, children suffering from serious illnesses, children with mental health issues, children with different sexual orientation or gender identity and identification, neglected children.

Any UASCM needs to be treated with respect and decency and is entitled to a free and prompt access to legal aid, including legal representation and other appropriate assistance. This legal assistance is vital to ensure access to justice, fair proceedings, respect of their rights, and effective protection – and needs to be adapted, secured, confidential, and child-friendly, as underlines Principle 5, Section 2.5 above, from the Council of Europe Recommendations.

As underscored by ECRE, there is no existing complete standardised ‘checklist’, with proper indicators, showing what would constitute good quality assistance in

legal aid systems as regards unaccompanied children but overarching principles exists: this assistance should respect children's rights, contribute to the CP system, be as prompt and effective as possible, ensure participation and engagement of UASCM, be correctly dimensioned (in terms of time; qualifications, knowledge, skills and attitudes; financial and human resources), be monitored and evaluated against, and be supported by qualified interpreters to make it accessible and available to children.⁵³

To provide a coordinated response for the individual needs of each child, legal advisers and guardians should complement each other's work, maintain regular communication and a constructive relationship.⁵⁴

53 2014, p. 4.

54 Ibid, p. 7.

4. PROCEDURE (ROUTE)

4.1 Visual Outline for the asylum procedure for Unaccompanied and Separated Children

1. IDENTIFICATION



Identification by authorities (border patrol, police, migration officers) or NGOs, social workers, individuals

2. REGISTRATION



Collection of child's basic information (name, age, nationality, etc.) and documentation

3. REFERRAL



Referral to child-protection services / authorities / court

4. IMMEDIATE CARE AND PROTECTION



Immediate Protection : appointment of a legal guardian and/or social worker, without undue delay

5. LEGAL STATUS DETERMINATION



Determination of legal status; age-assessment; protection against refoulement

6. ACCESS TO SERVICES AND RIGHTS



Education, healthcare, psychosocial support, integration assistance, legal assistance

7. LEGAL STATUS DECISION



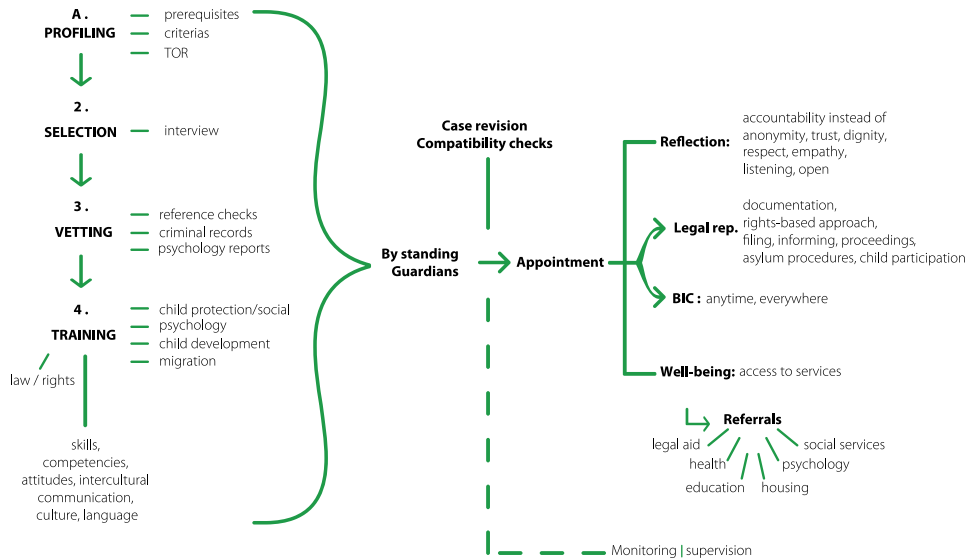
Status decision

8. LONG-TERM CARE SOLUTIONS



Family tracing, verification & reunification (in-country or cross-border); Foster care; repatriation; Adoption (only as a last resort).

4.2 Unaccompanied and Separated Children – Guardianship Process Overview



B. LEGAL FRAMEWORK AND POLICY INSTRUMENTS

1. INTERNATIONALLY

Unaccompanied and separated children (UASC) are entitled to international protection under international human rights law, international refugee law, international humanitarian law and various regional instruments.

The 1951 Refugee Convention and the 1967 Protocol (Relating to the Status of Refugees) establish standards that apply to children in the same way as to adults:

- (1) a child who has a “well-founded fear of persecution” for one of the stated reasons is a “refugee”;
- (2) a child who has refugee status cannot be forced to return to the country of origin (the principle of non-refoulement⁵⁵), and
- (3) no distinction is made between children and adults in social welfare and legal rights.⁵⁶

The Convention on the Rights of the Child (UNCRC) and its optional protocols⁵⁷ are the main international human rights instrument, providing important protection to UASC and setting the most comprehensive standards. **CRC** contains articles that are particularly important for unaccompanied and separated children in the context of migration. Here is a list of the main relevant articles. Please, do refer to Annex 4 for entering more into details:

- **Article 4:** Right to protection
- **Article 7:** Right to birth registration, name and nationality
- **Article 8:** Right to an identity
- **Article 9:** Right to family unity
- **Article 10:** Right to family reunification
- **Article 13:** Right to access information
- **Article 14:** Freedom of thoughts and religious
- **Article 16:** Protection of privacy
- **Article 19:** Right to protection from violence
- **Article 20:** Right to alternative care
- **Article 22:** Right to special protection and assistance when refugees

⁵⁵ See an explanation of this principle on Section 3.4, p. 23.

⁵⁶ UNHCR, 2001.

⁵⁷ Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, Optional Protocol on the Involvement of Children in Armed Conflict, Optional Protocol on a Communications Procedure.

- **Article 23:** Right to special care and support in case of disability
- **Article 24:** Right to high-quality, safe health care, water, food, environment, and information
- **Article 25:** Right to review of child's placement
- **Article 28:** Right to free primary education
- **Article 29:** Right to adapted and respectful education
- **Article 30:** Right to minority culture, language, and religion
- **Article 32-36:** Protection from harmful work, drugs, and all forms of sexual exploitation and abuse
- **Article 37:** Right under detention
- **Article 38:** Protection in war
- **Article 39:** Right to recovery and reintegration
- **Article 40:** Right to legal assistance and fair treatment in justice
- **Article 42:** Right to know about their rights.

These articles together ensure that UASC are provided with necessary safeguards and protection, ensuring their well-being, security, and respect for their rights during their migration journey and upon arrival in a host country.

2. REGIONALLY

The **Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms**, commonly known as the **European Convention on Human Rights** (the Convention), is a cornerstone document in European human rights law. It guarantees a wide range of civil, political, and social rights to individuals within the member states of the Council of Europe. Several key articles are particularly relevant for the protection of children, particularly those in vulnerable situations such as unaccompanied minors or those seeking asylum.

Key Articles in the Convention and their Implications for Migrant Children:

1. **Prohibition of Torture (Article 3)** is one of the most fundamental provisions of the Convention, which bans torture or inhuman or degrading treatment or punishment.
 - This provision is absolute, meaning that there are no exceptions, regardless of the circumstances (such as national security concerns or public emergencies). The prohibition extends to all forms of ill-treatment, including physical, psychological, and degrading conditions, particularly relevant to the treatment of vulnerable individuals, such as unaccompanied migrant children in detention facilities.
2. **Right to Liberty and Security of Person (Article 5)** ensures that “everyone has the right to liberty and security of person,” and setting out specific conditions under which deprivation of liberty may occur (e.g., lawful detention on criminal charges).
 - This article is particularly relevant for children in migration, as it sets limits on the detention of minors and requires that any detention be lawful and in line with procedural safeguards. In cases involving unaccompanied minors, Article 5 protects children from being unlawfully detained, whether in immigration centres or during the asylum process. Detention of minors should be used only as a last resort, and the conditions must be appropriate to their age and needs.
3. **Right to Respect for Private and Family Life (Article 8)** provides that “everyone has the right to respect for his private and family life, his home and his correspondence.”
 - This article is particularly important in cases involving family reunification

for UASC during migration. It mandates the protection of children's relationships with their families, including efforts to prevent family separation and facilitate reunification where possible. It also ensures that children have the right to live in dignity and in conditions that respect their privacy and personal integrity, including in care or detention settings.

4. **Right to an Effective Remedy (Article 13)** ensures that individuals whose rights have been violated under the Convention must have access to a legal process where they can seek redress for any breaches of their rights.
 - This article is vital UASC who may not have legal representation or support in migration-related legal proceedings. It ensures that they can access legal avenues to challenge decisions that might violate their rights (e.g., illegal detention or denial of asylum claims). The effective remedy requirement means that the authorities must provide accessible and adequate judicial remedies for the child, ensuring that their case is heard and addressed swiftly and fairly.

Recommendation CM/Rec(2019)11 of the Committee of Ministers to Member States on Effective Guardianship for Unaccompanied and Separated Children in the Context of Migration

The Council of Europe's Recommendation on effective guardianship for UASC in the context of migration is a landmark soft law instrument based on international and European human rights standards. It emphasises on clear **guiding principles for the protection, assistance, and safety of children in migration through guardianship**. The Explanatory Memorandum outlines different approaches to organising guardianship in member states to meet the specific needs of children on the move.

Key Aspects of the Recommendation:

1. **Establishing a Consistent Guardianship Framework:** Member States should establish a guardianship system for UASC that aligns with national structures while remaining flexible and compliant with international standards.
2. **Wide Dissemination of Recommendation:** Authorities, professionals, and stakeholders (e.g., policymakers, social workers, legal experts, NGOs) should be informed about the Recommendation to enhance awareness and responsibility.

3. **Establishing an Expert Platform:** A pan-European expert platform should be created to facilitate the exchange of best practices, guidance, and technical support for guardianship systems.
4. **Regular Progress Review:** The Committee of Ministers should review implementation progress every three years to ensure effectiveness and address challenges.

5. Guiding Principles for Guardianship:

1. **Immediate Assignment of Guardians:** It is crucial that guardians are assigned **promptly** to UASC, as this is critical to ensuring that the children's rights and best interests are safeguarded from the moment they arrive in the country. Guardians play a vital role in protecting the children's safety, providing emotional and psychological support, and ensuring their needs are met.
2. **Clear Protocols and Legal Certainty:** Member States should develop **clear protocols and policies** for guardianship that provide **legal certainty** for all parties involved in the process. This should include the roles and responsibilities of the **guardians**, the **children**, and other professionals. These policies should cover several essential areas:
 - Screening and recruitment of guardians: Ensuring that only qualified individuals are selected to become guardians.
 - Training for guardians: Offering training programmes to equip guardians with the knowledge and skills necessary to care for vulnerable children.
 - Appointment procedures and support: Clear guidelines on how guardians are appointed and the support they should receive throughout their mandate.
 - Supervision and oversight: Mechanisms to monitor guardians' work and ensure they are fulfilling their duties properly.
 - Complaints and disciplinary procedures: Establishing processes through which any misconduct or failure by a guardian can be addressed.
 - National and international cooperation: Encouraging collaboration between authorities at the national level and across borders to enhance

the protection of UASC.

Benefits of Implementing These Guidelines:

- **Consistency and Transparency:** The clear establishment of protocols and policies will provide consistency across member states, ensuring that the treatment of UASC is fair, predictable, and transparent.
- **Accountability:** With detailed guidelines on supervision, complaints, and disciplinary procedures, the system will ensure that those responsible for guardianship are held accountable for their actions.
- **Protection of Children:** By prioritising the best interests of the child, the Recommendation ensures that the rights of UASC are always at the forefront of any decision-making process, thus enhancing the safety and security of the children involved.

2.1 Case law

In the case of *Rahimi v Greece* (8687/08)⁵⁸, the European Court of Human Rights found that there had been a violation of the prohibition against torture or inhumane or degrading treatment, as well as the rights to liberty and to an effective remedy.

The case concerns a 15 years old when he arrived in Greece from Afghanistan as an unaccompanied minor. Upon his arrival, he was arrested and transferred to a detention camp for refugees awaiting deportation. During his detention, he received no information regarding the opportunity to apply for asylum or his other legal rights in a language he could understand. Additionally, he was placed with adults under inadequate conditions concerning accommodation, hygiene, and infrastructure. Following his release, as he was neither appointed a legal guardian nor provided any other assistance, the complainant was homeless until he received help from local NGOs.

“The applicant’s conditions of detention in the detention centre and the authorities’ failure to take care of him, as an unaccompanied minor, following his release had amounted to degrading treatment. The national authorities had given no consideration to the best interests of the applicant as a minor or his individual situation as an unaccompanied minor. Furthermore, they had not examined whether it had been necessary as a measure of last resort to place the applicant in the detention centre or whether less drastic action might not have sufficed to secure his deportation... The conditions of detention in the centre, particularly with regard to the accommodation, hygiene and infrastructure,

58 *Rahimi v. Greece* - 8687/08, Judgment 05.04.2011. Available at: <https://hudoc.echr.coe.int/eng?i=002-550>.

had been so severe as to undermine the very meaning of human dignity. The applicant had been unable in practice to contact a lawyer. Furthermore, the information brochure outlining some of the remedies available had been written in a language which he would not have understood, although the interview with him had been conducted in his native language. The applicant had also been registered as an accompanied minor although he had had no guardian who could act as his legal representative. Accordingly, even assuming that the remedies had been effective, the Court failed to see how the applicant could have exercised them."⁵⁹

In another case, *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*⁶⁰, the Court found that the Belgian Government violated the Convention by detaining a five-year-old child without her family at a transit centre for adults and subsequently deporting her to her home country. The child, travelling from Congo with her uncle without the required travel documents, to rejoin her mother in Canada, was detained in an adult facility for two months with no proper care, education, or counselling. Despite being extremely vulnerable due to her young age, status as an illegal alien, and unaccompanied by her family, the child received inadequate support. The judge ruled that her detention was inconsistent with the CRC and ordered her immediate release, but she was still deported. She was accompanied to the airport by a social worker and looked after in the plane by an in-flight attendant. No members of her family were waiting for her when she arrived.

Although the authorities had the ability to prevent or address the situation, they failed to provide the necessary care for the child, leading to a violation of her human rights and treatment amounting to inhumanity (violation of Article 3). The Court also found that distress and anxiety of the mother as a result of her daughter's detention also amounted to violation of Article 3, since the only action taken by the Belgian authorities had been to inform the mother that her daughter had been detained and to provide her with a telephone number where she could be reached. The child was deported without proper care or consideration for her well-being, amounting to inhuman treatment (violation of Article 3). The State failed to inform the mother about the deportation, violating its positive obligation. Both applicants had been subjected to disproportionate interference with their right to respect for their family life (violation of Article 8). The child had been detained under a law which contained no provisions specific to minors and her right to liberty had not been adequately protected (violation of Article 5(1)).

⁵⁹ Ibid.

⁶⁰ Available at: <https://hudoc.echr.coe.int/eng?i=002-3083>

The child had been deported without regard to the fact that she had lodged an application for release, which had been granted. The application had therefore been rendered ineffective (violation of Article 5(4)).⁶¹

In case of *Darboe and Camara v. Italy* (5797/17) concerning an unaccompanied minor asylum-seeker placed in adult reception centre and not provided minimum procedural guarantees in age-assessment procedure, the Court, among others, made a reference to the relevant parts of Recommendation of the Committee of Ministers CM/Rec(2019)11 as guiding principles for an effective guardianship system⁶².

61 *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium* - 13178/03, the Court Judgment 12.10.2006.

62 *Darboe and Camara v. Italy* (5797/17), Para. 66, the Court final judgement, 21.07.22. Available at: <https://hudoc.echr.coe.int/eng?i=001-218424>.

3. LOCALLY

The **Constitution of the Republic of Armenia** provides a broad framework for the protection of children's rights:

- Parental Rights and Responsibilities: Parents have the right and responsibility for the upbringing, education, health, and development of their children (Article 36(1)).
- Protection from Parental Rights Deprivation: Deprivation or limitation of parental rights can only be done through legal means aimed at child protection (Article 36(2)).
- Right to Participate: Children have the right to express their opinions in matters concerning them, and these opinions must be considered based on their age and maturity (Article 37(1)).
- Best Interests of the Child: In matters concerning children, primary attention must be given to their best interests (Article 37(2)).
- Right to Family Contact: Children have the right to maintain contact with their parents unless a court rules otherwise in the child's best interests (Article 37(3)).
- State Protection for Children Without Parental Care: Children left without parental care are under the care and protection of the state (Article 37(4)).
- Right to Education: Everyone has the right to education, and secondary education at public schools is free (Article 38(1)).

Armenia has ratified several important international treaties that protect children's rights:

- Convention on the Rights of the Child (CRC): Armenia joined the CRC in 1992, which is an integral part of RA legislation.
- Convention Relating to the Status of Refugees (1951) and its 1967 Protocol: Ratified in 1993, protecting the rights of refugee children.
- Convention Relating to the Status of Stateless Persons (1954) and Convention on the Reduction of Statelessness (1961): Ratified in 1994, ensuring rights to stateless children.

If the international treaties ratified by the Republic of Armenia define other norms regulating the rights of the child than those stipulated by this law, then the norms of the international treaty are applied.

Law on the Rights of the Child: Defines specific rights and protections for children, including:

- Non-Discrimination: Children's rights should be protected regardless of race, ethnicity, or social background (Article 4 or Article 4.1(1) of the draft

Law).

- **Rights of Refugee Children:** Refugee children displaced by conflict are entitled to safeguard their interests, and the state is responsible for providing necessary care and placement in appropriate institutions (Article 30).
- **Protection in Emergency Situations:** The state ensures immediate, free assistance to children in emergency situations, prioritising safety, family reunification, and social protection (Article 28 or Article 18 of the draft Law).
- **Children in Difficult Life Situations:** Children in difficult circumstances, including those without parental care, are under the care and protection of the state. The state ensures their care, upbringing, and protection by adoption, guardianship, trusteeship, or placement in a foster family or institution (Article 24 or Article 9.4 – 9.8 of the draft Law).

Additional Rights and Protections

- **Right to Life:** The law guarantees the right to life for every child (Article 5).
- **Right to Identity:** Children have the right to a name and citizenship from birth (Article 6).
- **Adequate Living Conditions:** The law ensures that children have access to living conditions necessary for their mental, spiritual, and physical development (Article 8 or Article 6 of the draft Law).
- **Protection from Abuse:** Children are protected from all forms of abuse, including physical, psychological, and other forms of mistreatment (Article 9 or Article 7 of the draft Law).
- **Prevention of Trafficking:** The state is tasked with ensuring the safety and security of children by preventing illegal transport, kidnapping, or trafficking (Article 23).

As stated in the Draft Law basic principles of child rights protection include:

1. **Non-Discrimination:** No child should face discrimination based on personal or social circumstances.
2. **Best Interests Priority:** The child's best interests must always come first.
3. **Respect for the Child's Opinion:** The child's views should be considered according to their age and maturity.
4. **Stability and Continuity:** The child's care, upbringing, and education should be consistent and stable.
5. **Family Environment First:** Children should live in a family setting whenever possible, with separation as a last resort.

According to the **Draft Law**, the mandatory consideration of the **child's best interests** in all matters affecting them, including adoption and foster care, is established, along with the mechanisms for its implementation. Besides, the provision on presenting the **child's opinion** in writing, orally or via video recording has been clarified, and it has been explained that when listening to the child's opinion or playing a video recording, the guardianship and trusteeship authority, the court or other bodies and organisations that ensure the child's right to express their own opinion or are obliged to listen to this opinion, involve a child psychologist or a social worker.

According to the **Refugee and Asylum Law**, a child under the age of 18 who is not accompanied by an adult caretaker in Armenia is classified as an **unaccompanied minor**. If the child is separated from their parents but accompanied by an adult, they are considered a **separated child** (Article 8.1 (2-3)). The MCS in Armenia assists UASC by providing accommodation and care according to national legislation. **Support is tailored to the child's age, sex, family connections, and best interests.** The service also ensures that UASC can exercise all rights granted under Armenian law.

Under **Article 41(5) of the Republic of Armenia Law "On Advocacy"**, the **Public Defender's Office** not only provides legal aid to suspects or accused individuals in criminal cases but also offers **free legal aid** to vulnerable groups, including children without parental care, refugees, and asylum-seekers. This ensures that vulnerable children are protected and their rights are upheld in legal matters. Free legal aid includes **consulting on claims and procedural documents** and **providing representation in criminal, civil, administrative, and constitutional cases.**

According to the **Draft Law**, all professionals working with children in the justice system must receive specialised training. In criminal proceedings, a qualified psychologist must be involved to safeguard the child's best interests and mental and physical health, preventing harmful participation.

The **non-refoulement principle** ensures that refugee children are not returned back to places where they could be exposed to violence, persecution, or other risks (Constitution of the the Republic of Armenia (Article 55), Law on Refugees and Asylum (Article 9), Law on Foreigners (Article 32).

The Family Code **specifies various forms** of alternative care, including **adoption, guardianship and trusteeship, foster care, and residential care.**

Armenia's legal framework for the protection of children's rights is robust,

incorporating both national and international standards. The Constitution, various international treaties, and national laws collectively ensure comprehensive protection for children, with a focus on the best interests of the child, non-discrimination, and the provision of care, education, and security.

C. GUARDIANSHIP IN PRACTICE

1. ANALYSIS OF THE ARMENIA CHILD PROTECTION SYSTEM

Under the upcoming *Draft Law on the Rights of the Child and the Child Protection System*, Armenia's child protection system consists of legal norms, functions, and policies designed to:

- Identify and support children in difficult life situations,
- Prevent and respond to child protection concerns,
- Detect, mitigate, and prevent violence against children,
- Effectively address cases of violence, and
- Safeguard and uphold children's rights.

Key actors in the child protection system in Armenia include:

- The National Commission on Protection of Children, which will function as a consultative body to support the development of state policies for protecting children's rights. Currently, this commission plays a key role in child protection. Under the new Draft Law, it will become a consultative body affiliated with the state-authorised agency. Its primary role will be to support a cohesive state policy on child rights protection, ensure the effective functioning of the system, and safeguard children's best interests.
- The Department of Health and Social Issues (HSID) of the Marzpet's Staff, operating at the regional level, and the Children and Social Protection Department (CSPD) in Yerevan.
- Guardianship and Trusteeship bodies (GTBs) in the marzes and the heads of administrative districts in Yerevan on behalf of the Yerevan Municipality at the community level in Yerevan.

The adoption of the draft law and the subsequent government decision will imply certain changes to the child protection system, that are yet to be defined. As stated in the Draft Law, the Head of Community exercises authority in child protection through social workers specialising in the field. Decisions are made based on the advice and opinions of these specialised social workers.

1.1 National level

The Ministry of Labour and Social Affairs (MLSA) is the primary authority responsible for policies on the admission and referral of children to formal alternative care at the national level.

The **National Commission for the Protection of Children's Rights**, chaired by the MLSA, serves as a consultative body aimed at developing a cohesive state policy on children's rights and welfare. The commission's key responsibilities include:

- Coordinating activities related to the protection of children's rights;
- Supporting the implementation of policies in child protection;
- Addressing challenges in the child protection system;
- Promoting collaboration between state agencies, local governance, and child care institutions, and
- Assisting in resolving issues faced by children in difficult life situations while encouraging cooperation between various organisations involved in child care and protection.⁶³

1.2 Regional level

At the regional level, the responsibility for implementing child protection policies falls to the **Marzpetaran's staff**. Key objectives of the Marzpetaran's staff include:

- Ensuring the protection of children's rights;
- Supporting the realisation of a child's right to live in a family environment;
- Analysing issues faced by children in difficult life situations;
- Managing the "MANUK" database for children in challenging circumstances;
- Monitoring and evaluating the activities of guardianship and trusteeship bodies (GTBs) within local self-government;
- Coordinating child care arrangements, including placements in residential institutions;
- Organising foster care activities, selecting foster carers, and;
- Concluding contracts with foster families, as well as monitoring the placement of children in these families.

The **Marzpetaran's Staff**, approves referrals for alternative care placements. While the implementation of national policies is mandatory in the regions, **Marzpetarans** are responsible for enforcing these policies within the **marzes**. Additionally, the **Children and Social Protection Department (CSPD)** oversees

63 Decision N1295-N of the Prime Minister of the RA.

child protection at the **Yerevan Municipality**. Although communities within the regions have the autonomy to adopt local policies, these must align with national child protection policies.

According to the Draft Law, it is planned to create multidisciplinary councils for the protection of children to facilitate the implementation of child protection functions by the Marzpetaran's staff, and in Yerevan – by the Yerevan Municipality. The activities of the Interdisciplinary Council for the Protection of Children, including the elimination of gaps associated with the activities of similar committees in the past, will be regulated by a by-law.

1.3 Community-level

At the community level, the responsibility for safeguarding children's rights and interests in cases of parental care absence falls to the **guardianship and trusteeship bodies** (GTBs) in marzes and the **heads of administrative districts** in Yerevan, on behalf of the Yerevan Municipality. The GTBs are local self-government bodies tasked with:

- Identifying children left without parental care;
- Safeguarding children's rights in situations such as the death of parents, deprivation or limitation of parental rights, parental incapacity, absence, avoidance of responsibility, and lack of care;
- Maintaining a register of children deprived of parental care, documenting reasons for child removal, and determining appropriate placement options based on specific circumstances of parental deprivation;

According to the Draft Law, the primary responsibility for identifying children left without parental care lies with the community social worker. Accordingly, the guardianship and trusteeship authorities will maintain records of such children, entering the relevant information into an information system. This system will be accessible to the regional governor's office and, in Yerevan, to the Yerevan mayor's office. Additionally, clear functions of specialised units at the local level in the field of child protection have been established, ensuring the activities of heads of guardianship and trusteeship bodies at the local level on a professional basis.

Organisations such as preschool education centres, public schools, medical institutions, and other similar entities are required to promptly report cases of children deprived of parental care to the GTBs, based on the child's current location. Upon receiving such reports, the GTBs must conduct an assessment of the child's living conditions within three days. If it is determined that the child is not receiving adequate care from parents or relatives, the GTBs must take

necessary actions to protect the child's rights and ensure their well-being until appropriate arrangements for their care and upbringing are made.⁶⁴

Additionally, Guardianship and Trusteeship Commissions (GTCs) are established under the GTBs to complement their work. The GTCs are consultative bodies, operating on a voluntary basis and consisting of 3 to 9 members. Their composition is approved by the head of the community. The GTCs may include employees from the Marzpetarans and the Yerevan Municipality, community staff and healthcare workers, police personnel, community educators, psychologists, social workers, lawyers, and representatives from NGOs (with their consent)⁶⁵.

1.4 Types of care in Armenia

The care and upbringing of children without parental care are arranged through adoption, or guardianship and trusteeship, or foster care. In the absence of these options, they may reside in educational, medical, or social protection institutions, or other entities focused on social protection of children that offer continuous (24-hour) support. When organising the care and upbringing of a child, it is essential to consider their ethnic origin, specific religious and cultural affiliations, native language, and the potential for continuity in their upbringing and education.

The Draft Law (Article 16(6)) specifies that, the choice of alternative care considers the child's need for stability, continuity, native language, age, sex, and other factors. Every child has the right to a periodic review of their care arrangement, ensuring their opinion and best interests are considered.

All decisions regarding the organisation of care and upbringing for a child without parental care must prioritise the child's best interests and be informed by a multidisciplinary assessment of their needs. These decisions should align with the following primary objectives:

- 1) To provide care and upbringing for the child in a family environment whenever possible, or, if not feasible, in a setting that closely resembles it;
- 2) To establish the necessary conditions for the child's education, care, and upbringing, including social and medical assistance and support services);

Before arranging the care and upbringing of children without parental care in families or organisations, the responsibilities of a guardian (which we call trustee

⁶⁴ Article 110, Family Code of the Republic of Armenia.

⁶⁵ The Republic of Armenia Government Decision N631-N, 2016.

for children between 14-18 of age) for these children are temporarily assigned to the GTBs⁶⁶.

Adoption is the primary option for providing care and upbringing to children deprived of parental care. However, for UASC, it should only be considered after all attempts to locate their parents, extended family, or usual caregivers have been thoroughly exhausted.

To return a child to their biological family, the GTBs work with the biological parents or relatives of the children on a continuous basis and, if necessary, they cooperate with the Marzpetarans or the Yerevan Municipality and other stakeholders through assessing their social and economic, health, moral, and psychological problems and initiating measures to solve these problems.⁶⁷

66 Article 11. Family Code of the Republic of Armenia

67 The Government Decision N1044-N, 2015

2. KEY ACTORS, COUNTERPARTS AND STAKEHOLDERS AND THEIR ROLES

At the **policymaking level**, the **Government of Armenia** holds the primary responsibility for leading policymaking, budget planning, and setting up **reception centres**. The government is also responsible for establishing operating procedures for these centres and approving the types of identification documents, including travel documents, for asylum seekers and refugees.⁶⁸

The **Migration and Citizenship Service (MCS)**, under the **Ministry of Internal Affairs** is the key government agency responsible for migration-related policies in Armenia. Its activities include:

- Receiving asylum seekers;
- Determining refugee status;
- Facilitating refugee integration through referrals to partner projects;
- Providing social, legal, and other forms of assistance, and;
- Issuing identification cards and travel documents to individuals granted refugee status.⁶⁹

The **National Security Service (NSS)** plays a critical role in verifying the identity of asylum seekers and conducting risk assessments. It provides evidence to support decisions regarding the potential national security threat posed by asylum seekers, including reasons for the cancellation or cessation of refugee status and exceptions to the **non-refoulement principle**.⁷⁰

The **Border Guard**, operating under the NSS, is responsible for directing individuals who have legally entered Armenia and are seeking international protection to the MCS, while also providing necessary information. If asylum seekers have entered the country unlawfully, the Border Guard records the asylum request and informs both the MCS and the police. The Border Guard has the authority to detain asylum seekers at the reception centre located at the border crossing point.⁷¹

The **Police** share essential information with the MCS regarding the asylum seeker's claims, verify the seeker's identity, and provide details on the grounds for terminating refugee status. The Police also play a role in overseeing the

68 Article 33, Law of the Republic of Armenia on Refugees and Asylum

69 Article 34, Law of the Republic of Armenia on Refugees and Asylum

70 Article 35(1), Law of the Republic of Armenia on Refugees and Asylum

71 Article 35(2), Law of the Republic of Armenia on Refugees and Asylum

deportation of individuals whose asylum requests have been denied, unless they are protected by the **non-refoulement principle**.⁷²

The **Ministry of Foreign Affairs (MFA)** plays a vital role in assisting the MCS in confirming the identity and nationality of asylum seekers, including unaccompanied asylum-seeking children. Armenia's diplomatic and consular services authenticate documents issued by entities under their jurisdiction for asylum seekers and refugees. **Additionally, consular services help reunite families of individuals granted refugee status in Armenia.**⁷³

The **Ministry of Education, Science, Culture, and Sport** ensures the right to education for asylum seekers and refugees. For UASC, admission to educational institutions is arranged in collaboration with the guardianship body, as per the request of the guardianship body.⁷⁴

The **Ministry of Justice** is responsible for legislative development, ensuring the quality of lawmaking, and overseeing the execution of extradition processes and the transfer of foreign convicted persons.⁷⁵

The **Council on Access to Justice for Children** is a multi-sectoral platform that promotes a coordinated approach to addressing issues related to equitable access to justice for every child. It is established under the Ministry of Justice in collaboration with the UNICEF. This advisory body discusses cases that are included in the agenda by government bodies or agencies.

Guardianship and trusteeship bodies are responsible for appointing guardians for UASC. The Marzpetarans and the Yerevan Municipality, in cooperation with the guardianship bodies, arrange accommodation and care for UASC.⁷⁶

The **Ministry of Labour and Social Affairs (MLSA)** works on initiatives that enhance the access of asylum seekers and refugees to the labour market, social security, and healthcare. The MLSA coordinates accommodation and support services for UASC and assists in their integration into Armenian society, in cooperation with local self-government bodies and **Guardianship and Trusteeship Bodies (GTBs)**.⁷⁷

The **Prosecutor's Office** is responsible for providing mutual legal assistance under international agreements and based on reciprocity in cases involving pre-

72 Article 36, Law of the Republic of Armenia on Refugees and Asylum

73 Article 37, Law of the Republic of Armenia on Refugees and Asylum

74 Article 39, Law of the Republic of Armenia on Refugees and Asylum

75 Para 10-11, Statute of the Ministry of Justice of the Republic of Armenia.

76 Article 41, Law of the Republic of Armenia on Refugees and Asylum

77 Article 38, Law of the Republic of Armenia on Refugees and Asylum

trial proceedings.⁷⁸

The **Penitentiary Service** and administrators of detention facilities are tasked with conducting interviews with individuals seeking international protection, including unaccompanied asylum-seeking children. They process asylum applications, inform asylum seekers of their rights, including access to free legal assistance, and transfer the applications to the MCS.⁷⁹

The **Ministry of Health** ensures that refugees and asylum seekers have access to free medical screening, preventative care, and necessary health measures, safeguarding their right to healthcare.⁸⁰

The **Office of Public Defender** under the **Chamber of Advocates of Armenia** provides free legal aid, including legal counselling and court representation, to children left without parental care, asylum seekers, refugees, and persons granted temporary protection in Armenia.⁸¹

Representatives of the **UNHCR** may establish contact with asylum seekers or refugees at any time, including those who are arrested or imprisoned, and participate in interviews with asylum seekers.⁸²

NGOs can exercise public oversight over the operations of temporary accommodation centres, ensuring the welfare of asylum seekers. This includes monitoring the living conditions, adherence to internal disciplinary regulations, and safeguarding the rights of asylum seekers. NGOs also provide essential services, such as shelter, psychological support, medical care, legal aid, and skills development for children.⁸³

The **Office of the Human Rights Defender of Armenia** accepts complaints from any individual, including children and their guardians, who have experienced violations of rights by state and local self-government bodies in Armenia. Complaints can be submitted in writing, orally (including private conversations), or through a hotline.⁸⁴ However, there is a recognised need for child-friendly complaint mechanisms to ensure children can effectively access these rights.

78 Para. 2, Statute of the Prosecutor's Office of the Republic of Armenia.

79 Article 37, Law of the Republic of Armenia on Refugees and Asylum

80 Article 40, Law of the Republic of Armenia on Refugees and Asylum

81 Article 41, Law on Advocacy.

82 Article 44, Law of the Republic of Armenia on Refugees and Asylum

83 Article 31.1, Law of the Republic of Armenia on Refugees and Asylum

84 Article 2.3, 15, Constitutional Law on Human Rights Defender.

3. INTERACTION BETWEEN STATE BODIES AND OTHER STAKEHOLDERS

While the **referral procedures** are not fully established within the asylum process for UASC, there are several established protocols for child referrals in Armenia:

1. **The Republic of Armenia Government Decision N1112-N (September 10, 2015):** This decision outlines the terms and conditions for providing care to children, elderly individuals, and people with disabilities. It regulates the referral of children to residential care institutions and facilitates information sharing among various stakeholders, including GTBs, Marzpetarans, the Yerevan Municipality, police, and other relevant bodies. It also focuses on the child's communication with their parents or legal guardians, identifying the child's best interests, and ensuring the standards and delivery of care.
2. **The Republic of Armenia Government Decision N1044-N (September 10, 2015):** This decision on Interdepartmental Social Cooperation outlines the framework for collaboration in providing social assistance. It defines the rights, obligations, and procedures for cooperation among different agencies, including the exchange of information, identifying individuals in need, and developing and monitoring individual social programmes. Cooperation is carried out through information sharing, administrative organisation, forming coordinating bodies, and working with multidisciplinary teams on social cases. Various social services, like socio-economic, socio-psychological, socio-pedagogical, socio-labour socio-labour and socio-legal are provided to citizens, including parents, guardians, trustees and other legal representatives of minors. State bodies and local governments monitor and evaluate the cooperation to improve the effectiveness of social services.
3. **The Republic of Armenia Government Decision N551-N (May 26, 2016):** This decision establishes the principles and criteria for referring children in adversity to alternative forms of care. It specifies the referral process, different types of alternative child care, and the stakeholders involved in the referral and decision-making process. The decision emphasises family-type care as the primary option and considers residential care a last resort, intended to be temporary and of the shortest duration possible.

4. The Republic of Armenia Government Decision N479-N (April 4, 2024):

This decision sets out the procedures for referral cases of children who have experienced violence. It details how such cases should be reported to the relevant authorities for protection or assistance. It also specifies how information about the case should be shared, the process for transferring the child to a centre or daycare facility, the terms of cooperation between involved entities, and the forms of support provided to the child, including how such support will be delivered.

The Draft Law introduces a framework for identifying children in difficult life situations, including those without parental care. It specifies the responsibilities of state bodies, local governments, and public organisations in the process and establishes the procedure for reporting and sharing information about these children.

4. ELEMENTS OF GUARDIANSHIP IN ARMENIA

4.1 Procedure and Conditions for Appointing a Representative for UASCM

Within the asylum procedure, the MCS of the MCS of Armenia's Ministry of Internal Affairs **appoints a representative** to safeguard the best interests of an UASC. No administrative action regarding the child's asylum application shall be taken until a representative has been designated. The appointment is formalised through an official decision by MCS.

If the asylum seeker does not possess a document verifying their **age**, the age information provided by them shall be considered accurate.

Any adult citizen of Armenia, a legally residing foreign national, or a stateless person who meets the established criteria may be appointed as a child's representative. The candidate must have relevant skills and knowledge in child welfare, refugee law, and asylum procedures and must have completed mandatory training. However, the specific competencies required are not explicitly defined in the law.

Representatives are nominated through NGOs specialising in refugee issues. Upon receiving a child's asylum application, MCS formally requests NGOs to propose candidates on the next working day. Within three working days of receiving the nominations, MCS appoints a representative, prioritising **candidates with expertise in child welfare**. The role of a representative is **voluntary**.

If the child already has a guardian or trustee, that person is automatically appointed as the representative. If a child is placed in a social protection institution (orphanage or child protection centre), a representative from that institution shall be designated as their representative. In such instances, the appointment occurs within three working days of the institution submitting an application to MCS.

A child's representative is appointed to represent the child's best interests in the asylum process. If, during the examination of the asylum application, the child is reunited with their family, the representative's powers may be **terminated**. It may also be terminated if the child is over the age of 18.⁸⁵

4.2 Foster care

The current Family Code defines foster care as the temporary arrangement of care and upbringing of a child in a difficult life situation in another family environment by a person selected, registered, trained, and qualified and approved by the competent authorities, until the situation in the child's family that was the basis for the use of foster care is resolved.

Draft Law on making amendments and additions to the Family Code proposes that foster care is the temporary care and upbringing of a child in need of alternative care, including those without parental care, in another family environment. It is provided by individuals selected, registered, and trained by the competent authorities until the child can return to their family, be adopted, or transition to another suitable care arrangement. In emergency foster care, close relatives are exempt from training; otherwise, they must complete it within six months. Additionally, the Government will determine the standards and procedures of selection, training, registration of foster parents, child care and child matching. Foster care regulations are aligned with key provisions from the UN Guidelines on Alternative Care. These provisions cover various aspects such as the selection, registration, qualification, and training of foster parents, the organisation of care and education within a foster family, the monitoring of foster care, financial support for foster families, and the framework for agreements.⁸⁶

The Family Code categorises foster care into **four distinct types**:

1. **General Foster Care:** This is applied when there are no grounds for choosing specialised, emergency, or respite foster families. It offers

⁸⁵ Para 1-15, Annex N1 of the RA Government Decision N239 -N of 9 March 2017.

⁸⁶ The Republic of Armenia Government Decision No. 751-N, dated 13.06.19, 2008.

standard care and upbringing for children in need of alternative care.

2. **Specialised Foster Care:** This type of care is designated for children with specific needs, including those with disabilities, severe health issues, educational challenges, mental or behavioural disorders, significant trauma, or young mothers and their children who require care.
3. **Emergency Foster Care:** This category applies when a child must be temporarily removed from their home due to specific circumstances, such as:
 - A significant illness affecting the child's parent or legal representative;
 - The parent or legal representative being arrested or imprisoned, without a decision on conditional sentencing or parole release;
 - An imminent danger to the child's well-being due to the parent's actions or inaction;
 - Natural or man-made disasters that prevent the parent or legal guardian from providing care;
 - Failure of the parent or legal guardian to provide appropriate care and education;
 - Disputes between parents regarding the child's residence or visitation arrangements;
4. **Respite Foster Care:** This type provides temporary care, either on a continuous basis or for specific periods such as weekends, holidays, or other non-working days. It is intended to support children with upbringing challenges, health issues, or disabilities, and to provide respite for parents or legal guardians who need assistance in caring for the child.

Foster care can be classified into two categories based on its duration (1) **short-term:** for a period of up to one month, with the possibility of extending it for an additional month, and (2) **long-term:** for a period of one year or more and can continue until the child reaches adulthood.

The care and upbringing of a child in a foster family is provided for the duration specified in the foster care agreement, which cannot exceed the child's 18th birthday, but may extend up to the age of 23, if necessary. The placement of a child in foster care is considered before the option of placing the child in educational, medical, or residential institutions.

It is prohibited to place siblings in separate foster families unless it is determined to be in the best interests of one or more of the children.⁸⁷

⁸⁷ Article 139, Family Code of the Republic of Armenia.

A foster parent must be an adult citizen residing in the country. Exceptions to this include individuals who are legally incapacitated, couples where one spouse is incapacitated, those who have been deprived of parental rights, individuals relieved of guardian duties, former adoptive parents whose adoptions have been annulled, and individuals with serious criminal convictions or addiction issues. Foster parents assume the rights and responsibilities of guardianship for the foster child.⁸⁸

The **selection** of foster parents is managed by the relevant departments of the Marzpetarans in the regions and the Yerevan Municipality in Yerevan. The selection process is carried out with a primary focus on the best interests of the child. The foster care arrangement is formalised through a contract between the foster family and the relevant department of the Marzpetaran or Yerevan Municipality.

The Marzpetarans in the regions and the Yerevan Municipality are responsible for **overseeing** the registration of foster families, **conducting needs assessments** for both foster families and children, determining the type and duration of foster care, and ensuring the welfare of the foster child through **oversight**. In this process, the GTBs collaborate with community social workers to **assess** foster families, **make** placement **recommendations**, and conduct regular **monitoring** of the foster care arrangement.⁸⁹

To ensure that foster parents fulfil their responsibilities, regular **monitoring** is conducted by the relevant staff of the Marzpetarans in the regions and the Yerevan Municipality in Yerevan. This includes **regular meetings and interviews** with both the child and the foster parent, and **frequent visits** to the foster family to monitor the child's living conditions, health, and overall well-being. These monitoring activities are intended to ensure that the foster care environment is safe, nurturing, and aligned with the best interests of the child.⁹⁰

The MLSA is responsible for organising **training** programmes for foster families, equipping them with the necessary skills and knowledge to care for children effectively.

A monthly **salary** is provided to foster families for each child under their care. This amount covers the minimum costs associated with the child's care and education,

88 Article 138.1, Family Code of the Republic of Armenia.

89 Article 137.1, Family Code of the Republic of Armenia.

90 Article 139.1, Family Code of the Republic of Armenia.

as well as additional funds for any extra needs. The duration of financial support, provided under a civil law contract for childcare, is based on the length of service.⁹¹

Currently, there is no specific formal **complaints mechanism** established for foster care.

4.3 Social Protection Institutions (Residential Care)

Placement of a child in a social protection institution (residential institution) is considered an extreme measure and should only be applied when other forms of family-based alternative care—such as guardianship and trusteeship care, foster care, or adoption—are unavailable. Residential care, such as in orphanages, should be considered only after all other options have been explored. While in social protection institutions, it is essential to maintain contact between the child and their parents or close relatives, unless a court order determines that such contact would not be in the child's best interests.⁹²

Guardians are not appointed for children who are fully under the care of the state in educational, medical, social protection, or similar institutions, as the institutional organisation assumes these responsibilities. However, if children are temporarily placed in a residential care setting by a guardian, the guardian's obligations toward the child remain in place.⁹³

Residential care institutions are required to provide periodic **training and medical examinations** for staff who directly work with children. This ensures that the staff is equipped to care for the children's physical and emotional needs.⁹⁴

The charters of social protection institutions settings require the establishment of written **complaint mechanisms** for children. However, these mechanisms are not always child-friendly and may need further development to ensure that children's voices are heard and addressed appropriately.

The living conditions of a child and operations of these institutions are regularly **monitored** by the GTBs and the juvenile affairs divisions of the RA Police. This oversight aims to ensure that the child's best interests are upheld and that their care promotes full development. GTBs, in cooperation with territorial social centres, social protection institutions, and other interdepartmental entities, work

91 Article 140, Family Code of the Republic of Armenia.

92 Article 136, Family Code of the Republic of Armenia.

93 Article 136, Family Code of the Republic of Armenia.

94 The Republic of Armenia Government Decision N 1324-N, dated 05.08.2004.

actively to reunite children with their biological families whenever possible. This process involves identifying parents' whereabouts, assessing socio-economic, health, moral, and psychological conditions, and implementing necessary interventions to facilitate family reunification. Additionally, GTBs regularly communicate with foster families, guardians, trustees, child and family support centres, and social protection institutions to monitor the child's well-being, living conditions, and specific needs. They also explore alternative care options that provide a family-like environment when reunification is not possible.⁹⁵

Non-governmental organisations are permitted to offer care and services to children only with the authorisation of the MLSA. **Supervision** of social protection institutions are conducted by the MLSA to ensure quality assurance in service delivery.

Social protection institutions and social care day centres work closely with the authorised state bodies, police, state administration, local self-government bodies, educational institutions and medical organisations. These collaborations ensure that all aspects of the child's care, including educational and health needs, are adequately addressed. Social protection institutions and day care centres are required to provide information to the relevant state bodies about the care they are providing when necessary.⁹⁶

4.4 Guardianship and Trusteeship (Kinship care)

In Armenia, children between the ages of 0 and 14 are provided with kinship care by their guardians, while adolescents aged 14 to 18 are assigned a trustee. It is essential that all decisions regarding the child's care and upbringing be made in consultation with the child, taking their preferences into account whenever possible.

When **appointing** a guardian or trustee, several factors are considered, including:

- The moral and personal qualities of the individual;
- The individual's ability to fulfil the duties of a guardian or trustee;
- The relationship between the guardian/trustee and the child;
- The attitude of the guardian's or trustee's family members towards the child;
- The consent and preferences of the child, if the child is able to express them.

⁹⁵ The Republic of Armenia Government Decision N 551-N dated 26.05.2016.

⁹⁶ The Republic of Armenia Government Decision N 1112-N, dated 25.09.2015.

Certain categories of individuals are **prohibited** from being appointed as guardians or trustees, mainly:

- Persons suffering from chronic alcoholism or drug addiction;
- Those who have committed intentional crimes against life and health;
- Individuals who have been removed from guardianship or trusteeship duties previously, and former adoptive parents, if the adoption has been revoked;
- Persons deprived of parental rights, or with limited parental rights;
- Those whose health conditions prevent them from fulfilling the duties of a guardian/trustee.⁹⁷

Guardians and trustees are responsible for ensuring the child's care, medical treatment, education, upbringing, and protection of their rights and interests. These responsibilities are undertaken on **voluntary basis**.

The local GTBs **oversee** guardians and trustees, ensuring they fulfill their duties. They have the authority to release a guardian or trustee from their responsibilities if the child is returned to their parents, adopted, or placed in a residential care institution.

If a guardian or trustee fails to meet their duties—such as misusing funds or neglecting the child—they may be **removed** from their position. Legal proceedings can be initiated to hold them accountable for their actions.

Trusteeship over a minor automatically **ends** when the individual reaches the age of 18, without the need for any special decision or action.⁹⁸

In Armenia, the responsibility for caring for children without parental care often falls on grandparents or other extended family members. Guardianship and trusteeship registration is relatively rare, and only children who are considered as “child in difficult life circumstances” or “child left without parental care” and receive state social services are registered in the “Manuk” database by the relevant departments of Marzpetarans’ based on information submitted by the GTBs., Yerevan Municipality and other relevant actors.

While the legal framework for appointing, assessing, and making decisions

97 Article 37-38 of the Civil Code of the Republic of Armenia (1998) and Articles 134-136 of the Family Code of the Republic of Armenia (2004).

98 Article 42 of the Civil Code of the Republic of Armenia (1998) and Articles 134-136 of the Family Code of the Republic of Armenia (2004).

regarding guardianship and trusteeship care is provided by law, there is no explicit mention of specialised preparation, support, or counselling services for guardians and trustees. Although, the Draft Law now foresees those services.

The GTBs are tasked with evaluating potential guardians and trustees to ensure that they comply with state regulations. They are also responsible for supporting and counselling children before they are placed in guardianship or trusteeship care. However, due to the lack of detailed procedures for matching children with guardians, determining the most suitable relative for caregiving, and prioritising the child's best interests, this support is not being practiced. The GTBs are required by law to conduct at least two visits per year to children in guardianship or trusteeship care. However, in practice, this requirement is often not met.⁹⁹

The **Draft introduces the concept of an actual guardian or trustee**, a temporary alternative guardianship mechanism for children left without parental care. This allows a close relative to provide immediate care in emergency situations until formal guardianship is established, preventing unnecessary trauma.

The actual guardian or trustee may be a close relative of the child, except in the case of found (adopted) children, for whom the guardianship and trusteeship authority at the child's location serves as the actual guardian or trustee. This provision ensures transparency in child care arrangements, even for short-term placements.

99 Report on "Assessing Alternative Care for Children in Armenia" (2018).

5. LOCAL PATHWAYS AND PROCEDURES (ROUTES)

5.1 Visual outline for the asylum procedures for UASCM in Armenia

Asylum Procedure for Unaccompanied and Separated Children (UASC) in Armenia



1. APPLY FOR ASYLUM

Submit an application at



Border checkpoints



Police



Ministry of Internal Affairs



Penitentiary institutions

Can apply in



Writing



Orally



by gestures



Illegal entry does not prevent asylum application



2. TEMPORARY SUSPENSION



Application suspended until a representative is appointed for the child



3. APPOINTMENT OF REPRESENTATIVE



Migration Service appoints a trained representative from qualified candidates (NGO-nominated experts, guardians, or child protection staff). Guardian/trustee or institution employees may serve as the representative if applicable.



The representative ensures the child's best interests throughout the asylum process.



4. INTERVIEW



Interview held shortly after registration.



Child must attend and provide accurate, detailed information.



Interview conducted within 2 weeks by an MS employee experienced with special needs.



The representative will participate in the interview.



Application suspended until



UASC have the right to:

- Receive legal advice on asylum procedures at Armenia's state border crossing points;
- Legally remain in Armenia until a final decision on their asylum application is made, including the completion of any court appeals;
- Be accommodated in a special shelter on a priority basis or in other designated institutions as provided by law;
- UASC who are victims of trafficking are entitled to special care and support, provided by specialised NGOs in accordance with the Law of the Republic of Armenia "On identification of and assistance to persons subjected to trafficking in and exploitation of human beings";
- Have a guardian and a legal representative;
- Access free legal assistance from the Public Defender's Office;
- Request an interpreter of their preferred sex during asylum interviews, free

- of charge;
- Receive education;
- Access free emergency and outpatient medical care, as well as hospital treatment;
- Challenge a negative decision from the Migration Service in court;
- Have their personal data protected;

5.2 Guardianship Process Overview

Arrival, Identification, and Registration

- MCS identifies UASC seeking asylum and refers them to protection services.
- Involves coordination with MLSA, Marzpet's staff or Yerevan Municipality, and GTBs for registration, accommodation, and care.
- When a UASC applies for asylum, MCS consults MLSA, regional authorities, or Yerevan Municipality to arrange suitable care.
- Considerations of BIC before placement: age, sex, health, safety, well-being, cultural background, and presence of relatives and other relevant factors.

Family Reunification & Long-Term Protection

- MCS verifies identity and nationality and seeks family reunification if in the child's best interests.
- GTBs and MLSA maintain records and monitor the child's status.
- If reunification is not possible, the guardian ensures the child's integration into the asylum system or alternative long-term care solutions.

Appointment of a Guardian

- GTBs, upon request from MLSA, regional authorities, or Yerevan Municipality, appoint a guardian (trustee).
- The guardian represents the child's best interests and participates in asylum procedures.

Placement of UASC

- UASC have priority placement in a temporary accommodation centre. If necessary, they can also be placed in short-term care centres.
- All actions prioritise the child's best interests, legal rights, safety, and well-being.
- Family Reunification: MCS attempts to locate parents/relatives when in the child's best interests.
- Foster Care or Guardianship: If reunification is not possible, GTBs arrange foster care or appoint a guardian.
- Adoption (if applicable): Considered if returning to family or home country is not feasible, following legal procedures.
- Institutional Placement (last resort): If no family-based care is available, UASC may be placed in educational, medical, or social institutions.

6. GAPS AND KEY RECOMMENDATIONS TO PROMOTE THE EFFECTIVE PROTECTION OF ALL CHILDREN IN ARMENIA

The Council of Europe has recently conducted an extensive gap analysis, that has been published in 2024¹⁰⁰. This assessment firstly identifies and analyses the gaps in the existing legislation, policies and practices in Armenia with regard to the protection and safeguarding of displaced children, including effective guardianship of UASCM, but also domestic good practices.

It also provides a set of detailed actionable recommendations based on the gaps and needs identified, pursuing the overall purpose of addressing the issues identified, including in terms of building institutional and human capacities.

For a brief summary of those identified gaps and recommendations, please consult Annex 5.

100 <https://rm.coe.int/needs-assessment-report-eng-2024-final-with-disclaimer/native/1680b1a686>

ANNEXES

Annex 1: Example of Code of Conduct, or Ethical Charter

- The appointed guardian and legal representative should promote the rights of the child and ensure their full implementation;
- The appointed guardian and legal representative should build and maintain a relationship of trust with the unaccompanied child and to be easily available;
- The appointed guardian and legal representative should value and encourage the self-determination and independence of the UASCM (for instance, through participation);
- The appointed guardian and legal representative should respect and value the culture of origin of the UASCM, their religion and their beliefs by helping them know the socio-cultural context in which they find themselves following their reception in our country;
- They should treat the minor in a fair, honest way, with dignity and respect, refraining from any attitude or devaluing, humiliating or degrading behaviour;
- They have to manage the relationship with the UASCM in all its aspects, including physical proximity as well as the use of social media, in a manner appropriate to its role;
- They have to refrain from any action that could harm or pose a risk of harm physically or psychologically the child, who may cause discomfort, embarrassment, shame or who may be considered in any way a form of emotional, physical or sexual abuse;
- They should refrain from any action that could be considered exploitative in any way or that could pose the child at risk of exploitation;
- They should not tolerate or participate in behaviours from the UASCM that are illegal, abusive or that put them at risk security;
- They should refrain from actions that may represent a conflict of interest and does not use their position to obtain personal advantages;
- They have to treat the child's financial matters with the utmost care and administers their assets in their exclusively interest;

- They should guarantee confidentiality to the child within the limits established by law;¹⁰¹
- They should protect him/her from exposure to media that is prejudicial to its security and development;
- They are careful to detect possible inappropriate behaviour and/or behaviour that violates or puts the rights of the child at risk and acts promptly to protect him/her;
- They have to act promptly to protect the minor if he/she detects situations of harm (potential or effective) for his/her psychophysical well-being or any form of mistreatment and abuse.

Pricoco et al., n.d.¹⁰²

Annex 2: Do No Harm and Safeguarding: definitions, differences and comparison

The concepts of “do no harm” and “safeguarding” are closely related but differ in focus, aim, and implementation.

The “do no harm” principle is a humanitarian ethical line of conduct that emphasises the importance of avoiding actions that may cause harm or worsen an individual's situation. It underscores the professional's moral responsibility to make their most to avoid contributing, directly or indirectly, to any form of physical, psychological, social, or cultural harm, to beneficiaries of their interventions and decision-making processes. This concept focuses more specifically on identifying risks and designing interventions so they do not have negative side impact.

Safeguarding is a broader and more comprehensive concept, that aim at protecting individuals, particularly children and vulnerable people, from abuse, neglect, exploitation, and harm, by setting of policies, procedures, plans, practices and systems designed to avoid harm, promote an environment that ensure safety and well-being, and respond to risks and incidents. This concept is generally used to refer to the internal organisational culture, and to prevent incidents caused by contact between staff (personnel, contractors, volunteers, implementing partners, suppliers, vendors, consultants, interns, secondees, spokespersons) and an external individual, especially in terms of Sexual Abuse and Exploitation.

¹⁰¹ This principle is also highlighted in UEAA, 2023, p. 20.

¹⁰² Translation from the author.

Annex 3: Detailed CM/Rec(2019)11 Principles

Principle 1 – States should protect the rights of unaccompanied and separated children in migration through guardianship and their best interests. This principle focusses on protection of the rights of UASC in migration by establishing an effective guardianship system that considers their specific needs and circumstances, with the aim of safeguarding and advocating for their rights while prioritising their best interests. International human rights obligations for children must be upheld when establishing a guardianship system. Unaccompanied or separated children in migration are entitled to special protection and assistance from competent authorities and a guardian. States should ensure that guardianship measures take into account children's best interests and specific circumstances. Effective mechanisms should be in place to protect children from risks such as discrimination, sexual violence, and child marriage. Guardianship should also assist in identifying sustainable solutions for children, including potential family reunification based on the child's best interests.

Principle 2 – States should adopt and implement adequate legal, policy, regulatory and/or administrative frameworks for UASCM. This emphasises the importance of adopting and implementing comprehensive legal, policy, regulatory, and administrative frameworks to ensure the provision of guardianship for UASC in migration. States should establish an effective guardianship system to meet the changing needs of children, ensuring coordination with other services and stakeholders to protect children's rights. A comprehensive legal framework should cover professional standards, recruitment procedures, guardian duties and support measures. It should also include training requirements, mechanisms for children to express their views, complaint procedures, inter-agency cooperation, confidentiality measures, and monitoring of guardians. Procedures for appointing, changing, and terminating guardians should prioritise the child's right to be heard, their best interests, and the need for stability and continuity. These regulations should be enshrined in law and subject to judicial review when necessary to safeguard children's well-being.

Principle 3 – States should ensure that an unaccompanied or separated child in migration has a guardian appointed or designated without undue delay. This underscores the prompt appointment or designation of guardians for UASC in migration, tailored to their individual characteristics to provide support to the child until they reach the age of majority. Additionally, arrangements should be made for care and support through guardianship or alternative methods during a transitional period after the child turns 18, as deemed suitable for specific circumstances. Every unaccompanied or separated child, regardless of their

immigration status, should have a guardian. States must appoint or designate a guardian promptly once a child is identified as such, ensuring continuous protection. Even in cases of delayed guardian appointment, the child's rights should not be compromised. States should guarantee rights protection by appointing a guardian for individuals even in case of uncertainty as to whether a person is a child. Children should be able to request a change in guardian if necessary. The guardian's role should continue until parental responsibility is established or the child reaches adulthood. Arrangements should be made for care and support through guardianship or alternative methods during a transitional period after the child turns 18, as deemed suitable for specific circumstances. These principles should also apply to young adults who require ongoing support after turning the age of majority. States must ensure proper care and protection for all children in migration.

Principle 4 – States should take measures to empower guardians to inform, assist, support and, where provided by law, represent unaccompanied and separated children in migration. These measures should aim to protect the rights and best interests of these children and establish a connection between the child and relevant authorities, agencies, and individuals responsible for their well-being. Additionally, states should ensure that guardians maintain the necessary independence and impartiality required for their role. Measures should empower guardians to inform, assist, and support unaccompanied or separated migrant children, supplementing their legal capacity if necessary. The guardian's role includes ensuring children understand their rights, reporting violence or exploitation, promoting well-being and development, guiding transition to adulthood, facilitating participation in decision-making processes, providing legal support, reporting missing children, cooperating with authorities in identifying and tracing families, managing assets, and assessing the need for additional protection measures for the child. Guardians play a crucial role in advocating for the best interests of the child and ensuring they have access to necessary support services for their welfare, development, and legal rights. The guardian has the authority to protect the child's best interests by assessing vulnerabilities and protection needs regularly. They should also assist in conducting best interest assessments, age assessments, and family tracing and missing children's cases, as well as immigration or asylum procedures. They can initiate the appointment of a lawyer for the child in legal proceedings if necessary and challenge authorities for not safeguarding the child's best interests. The guardian has a duty to the child and should establish trust through regular personal contacts and confidentiality rules. Any disclosure of information about the child needs the child's consent, unless it's in the child's best interests. The guardian should act as a link between the child and relevant authorities, agencies, and individuals, enabling them to

coordinate with other stakeholders on child-related issues. Measures should require stakeholders to inform the guardian and the child about relevant procedures and decisions. The guardian must be independent, impartial, and accountable, with no conflicts of interest. States must ensure guardians have the freedom from influence or interference in their role. Stakeholders should keep the guardian and child informed and collaborate on child-related matters.

Principle 5 – Information, access to justice and remedies, including child-friendly complaint mechanisms are provided to UASCM. That one recommends that states guarantee that UASC in migration receive necessary information and guidance, along with access to an impartial complaint mechanism and remedies to effectively assert their rights or address violations of their rights. States should provide children with comprehensive information and advice on their rights, procedures, and the role of guardianship authorities. This information should be provided in a child-friendly language, verified by the guardian, and should not be an alternative to communicating the information to the child. Effective mechanisms should be in place to allow children to access an independent complaint mechanism related to their guardianship arrangements. These mechanisms should be easily accessible, child-friendly, and transparent, with appropriate safeguards to protect confidentiality. Alternative dispute resolution mechanisms, such as mediation, should be encouraged if they serve the child's best interests. Children should have access to an effective remedy before an impartial and independent competent authority. Proceedings should be child-sensitive, accessible, and the urgency principle applied to provide justice in a timely and free manner.

Principle 6 – States should ensure that a competent authority is in place with responsibility for the management of guardianship for UASC in migration. This principle concerns institutional measures, emphasising the necessity for states to establish a competent authority designated with overseeing the management of guardianship for UASC in migration while considering the manner in which responsibilities for guardianship are organised in member states. States must ensure a competent authority manages guardianships, overseeing recruitment, vetting, and training of guardians and ensuring child-protection policies are in place. Eligibility criteria should be clear to avoid conflicts of interest with the child. This authority should establish procedures and support measures for guardians and children, including administrative support, training, and setting standards for guardian conduct. Communication, networking, and reporting mechanisms should be in place for guardians to handle cases of missing or abused children. Child-friendly information materials should also be provided to UASCM, covering guardian roles, rights, and available support services.

States should ensure that guardians have a manageable caseload, allowing them to effectively fulfil their duties while providing individual attention and support to each child. Regular monitoring and supervision of guardians' actions should be conducted to ensure they are fulfilling their responsibilities. The competent authority should have operational independence to oversee the child's well-being. Individual case files should be maintained for each child under guardianship, containing relevant information. Record-keeping measures should comply with international data protection standards, enabling evidence for proceedings and complaints.

Principle 7 – States should allocate adequate resources to ensure adequate recruitment and screening processes, qualified and trained guardians for an effective guardianship. States should regularly collect data to identify the number of UASC in migration, their needs, and allocated resources. It is important to review guardianship measures to adapt to changing needs, including in emergencies. States must provide sustainable and adequate financial, human, and technical resources to the guardianship authority. Staff should maintain high professional standards, confidentiality, integrity, and possess appropriate skills. Guardians must have qualifications and expertise in child development, child rights, welfare systems, and cultural needs. Lastly, guardians and authorities should receive support through education and training to effectively carry out their roles.

Principle 8 – States should establish effective co-operation and co-ordination mechanisms and measures for people exercising responsibilities towards UASC in migration, and the guardian and/or guardianship authority. This principle highlights the importance of cooperation and coordination at the national level. This includes establishing mechanisms to ensure effective cooperation and coordination between people exercising responsibilities towards UASC in migration and the guardian and/or guardianship authority. States should define the roles and responsibilities of guardians and guardianship authorities in relation to other authorities and stakeholders, particularly national and local authorities, welfare services, youth services, and organisations, to ensure accountability and transparency. An operational mechanism should be in place, including the guardianship authority, to prioritise the well-being of USAC in migration and the search for sustainable, rights-based solutions. States should develop protocols, agreements, standard operational procedures, and referral mechanisms to enhance cooperation between guardians, guardianship authorities, and other stakeholders. Referral mechanisms should address the role of guardians in cases of disappearance and cases of violence, abuse, trafficking, or exploitation of children. Confidentiality should be respected, including information sharing,

with the best interests of the child as the primary consideration. States should provide multi-agency and multidisciplinary training and tools to facilitate effective cooperation and coordination. Continuous monitoring and evaluation of cooperation and coordination should involve relevant stakeholders.

Principle 9 – States should guarantee international co-operation, for FTR and identifying and implementing sustainable, rights-based guardianship solutions. It highlights the need for international cooperation in addressing the needs of UASC in migration. This includes providing support for family tracing, identifying and implementing sustainable and rights-based solutions, and involving guardianship authorities and/or guardians in the process. States should define the roles and responsibilities of guardians and guardianship authorities in international cooperation for family tracing, care transfer, rights-based solutions, child trafficking prevention, disappearances, and missing children. They should have legal basis to provide international cooperation for UASC in migration. Clear channels for information requests and assistance should be established, prioritising the child's best interests. To ensure children's rights, cooperation between states, guardians, and institutions should be efficient. Regular sharing of knowledge and best practices related to guardianship of migrant children should be promoted. Cooperation should focus on safeguarding children's well-being and best interests across borders (Recommendation CM/Rec(2019)11).

Annex 4: Detailed Child Rights Convention Articles Applicable to UASCM

The Convention on the Rights of the Child (UNCRC) and its optional protocols¹⁰³ are the main international human rights instrument, providing important protection to UASC and setting the most comprehensive standards. CRC contains articles that are particularly important for unaccompanied and separated children in the context of migration:

- Article 4: States must take all necessary actions to ensure that every child can enjoy their rights by establishing systems and enacting laws that promote and protect children's rights.
- Article 7: Every child has the right to birth registration, to have a name and nationality, and, when possible, to know and be cared for by their parents.
- Article 8: States must respect and protect the right of the child to identity, and prevent the unlawful alteration of a child's name, nationality, or family relationships.

¹⁰³ Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, Optional Protocol on the Involvement of Children in Armed Conflict, Optional Protocol on a Communications Procedure

- Article 9: Children should not be separated from their parents against their will unless it serves their best interests. Children of separated parents have the right to maintain contact with both parents, unless this poses a risk to their well-being.
- Article 10: Families with members in different countries should be permitted to travel between those countries to maintain contact or reunite as a family.
- Article 13: Children have the right to access and share information, provided that it does not harm themselves or others.
- Article 14: Children have the right to hold their own beliefs and practice their religion, provided they do not infringe on the rights of others.
- Article 16: Children have the right to privacy.
- Article 17: Children have the right to receive information vital to their health and well-being.
- Article 19: Children have the right to protection from physical and mental harm and mistreatment.
- Article 20: Children unable to be cared for by their family are entitled to special care and must be cared for respectfully by individuals who acknowledge their ethnic group, religion, culture, and language.
- Article 22: Children have the right to special protection and assistance if they are refugees.
- Article 23: Children with disabilities are entitled to special care and support to enable them to live full and independent lives.
- Article 24: Children have the right to high-quality health care, safe drinking water, nutritious food, a clean and safe environment, and information to support their health.
- Article 25: Children in care have the right to regular evaluations of their living arrangements to ensure they are suitable.
- Article 28: All children have the right to free primary education. Any form of school discipline should consider the child's human dignity.
- Article 29: Education should fully develop each child's personality, talents, and abilities. It should promote children's respect for others, human rights, and both their own and other cultures.
- Article 30: Minority or indigenous children have the right to learn about and practice their culture, language, and religion.

- Article 32-37: States must protect children from work that poses risks to their health or education, from harmful drugs and from involvement in the drug trade, from all forms of sexual exploitation and abuse, from abduction, sale and trafficking, child prostitution, and child pornography, from any activities that exploit them or may harm their welfare and development.
- Article 37: No child may be subjected to cruel or harmful punishment. Children who violate the law should not be imprisoned with adults, should maintain contact with their families, and should not receive death sentences or life imprisonment without the possibility of release.
- Article 38: States must take all necessary measures to protect and care for children affected by war.
- Article 39: Children who have been neglected, abused, or exploited should receive specialised assistance for physical and psychological recovery and reintegration into society.
- Article 40: Children accused of breaking the law have the right to legal assistance and fair treatment in a justice system that upholds their rights. States must establish a minimum age for criminal responsibility and ensure minimum guarantees for fair and prompt judicial or alternative proceedings.
- Article 42: States should help children learn about their rights.

States and child-rights organisations should protect and promote the rights and the best interests of separated children in large-scale emergencies where it will be challenging to establish guardianship arrangements on an individual basis.¹⁰⁴

UASC are in a particularly vulnerable situation in the context of migration. UASC who have been victims of war, abuse, exploitation, neglect or torture, and especially girls who may have experienced gender-based violence in the context of war and armed conflict, require special care and support to restore their health, dignity, social life and self-respect. To protect and care for children affected by war and armed conflict, States must provide special protection and support to refugee and asylum seeker children with so that they can exercise all their rights, regardless of whether the child is applying for asylum or already has refugee status¹⁰⁵. Children belonging to indigenous or minority groups have the right to learn about and practice their own language, culture and religion. They

¹⁰⁴ CRC/GC/2005/6, 2005, para.39.

¹⁰⁵ UNCRC, 1989, Articles 38-39.

have the right to practice their own culture, language and religion in situations where these practices are not shared by the majority of the population (Ibid, Article 7, 20, 30).

Unless it is in the best interests of the child, a child must not be separated from their parents. Children who cannot be looked after by their own family have a right to special care provided by individuals who respect their ethnic group, religion, culture, and language. States must establish the underlying legal framework and take the required actions to ensure that the best interests of UASC are properly represented. States must provide UASC with special protection and assistance if they cannot be looked after by their immediate family. States shall designate a guardian or adviser as soon as UASC is identified and maintain such guardianship arrangements until the child has either reached the age of majority or has permanently left the territory or jurisdiction of the state. This also includes provision of alternative care that is continuous and respects the child's culture, language and religion. "The best interests of the child" should always be the guiding principle for their care and treatment. Like any child, an unaccompanied and separated child has the right to an adequate living standard that satisfies their social and physical needs, as well as fosters their development. States should help guardians to provide a child with an adequate living standard. UASC have the right to a periodic review of their treatment and the manner in which they are cared for, as well as their living arrangements, if they have been placed in a hospital or alternative care, for example in foster families, for the purpose of care or protection. Review procedures should be established and put into place to monitor effectiveness of the guardianship, guaranteeing that the child's best interests are taken into consideration at every stage of decision-making process and, above all, preventing abuse of the child. Additionally, states also must facilitate the reunion of separated children with their parents¹⁰⁶

Every action taken in relation to the child should be discussed with and reported to the guardian. The guardian should have the right to participate in all planning and decision-making procedures, such as hearings for immigration and appeals, interviews, care plans, and any efforts to find a long-term solution. The child's legal, social, health, psychological, material, and educational needs should all be appropriately met by the guardian or adviser, who should also act as a liaison between the child and any existing specialised agencies or individuals who already provide the continuum of care that the child needs. This requires the guardian or adviser to have the necessary expertise

106 Ibid, Article 22, 25, 27.

in the field of child care. The right to guardianship should not be granted to organisations or people whose interests might conflict with the child's. Children's views should always be taken into account, and they should be informed of all arrangements regarding guardianship and legal representation. UASC should receive information on guardianship, care and accommodation arrangements, and legal representation in a way that corresponds to their level of understanding and maturity. When necessary, interpreters should be made available at all stages of the communication process.

States and child-rights organisations should protect and promote the rights and the best interests of separated children in large-scale emergencies where it will be challenging to establish guardianship arrangements on an individual basis¹⁰⁷

UASC have the right to an education. They should have free access to primary education and various forms of secondary education. A child's rights and dignity must be respected in school discipline (UNCRC, 1989, Article 28). Free access to quality education should also be ensured for UASC with special needs, in particular children with disabilities. Also, the 1951 Convention relating to the Status of Refugees reiterates the obligation of states to provide education for refugee children¹⁰⁸

States must protect UASC, and in particular children with disabilities, from child labour, drug abuse, abduction, sale and trafficking, sexual and other forms of exploitation, including moving them illegally to a different place in or outside their country for the purpose of exploitation¹⁰⁹, as well as military recruitment. Unaccompanied and separated girls are at particular risk of gender-based violence, including for purposes of trafficking, sexual exploitation, forced marriage, and many others.

Annex 5: Extract from FRONTEX, 2019: Recommendations on Referral Mechanisms.

Frontex recommends setting up an easy and swift activation system for referrals and ensuring that referrals take place at the earliest stage possible. For any referral mechanism concerning children, the following principles should be taken into account:

- Protection of the rights of the child should be the first priority of all measures undertaken with full respect for the best interests of the child.

¹⁰⁷ CRC/GC/2005/6, 2005, para.39.

¹⁰⁸ UNHCR, 1951, Article 22.

¹⁰⁹ Ibid. Article 32-36

All children – whether unaccompanied, separated or accompanied – should have equal access to protection on the basis of need, and be kept together with family members when this is in their best interests.

- An efficient system should be as broad as possible, in order to respond rapidly to different forms of abuse, exploitation and human trafficking or abduction. A wide range of specialised services should be available, so that the specific needs of individual children can be properly addressed.
- A multidisciplinary and cross-sector approach should be pursued. Integrated child protection systems are the most efficient. Therefore, all relevant and specialised actors from government and civil society should be involved.
- The agreements established between different entities need to be flexible enough to handle the complexities of the referral process and address the various needs of children in different situations. All partners must be involved with regard to their roles and responsibilities and the underlying principle of cooperation needs to be carefully and closely defined within the mechanism.
- Access to support and protection services should be granted and facilitated.
- Transparency and a clear division of responsibilities are at the heart of an efficient referral mechanism.
- Building upon any pre-existing mechanisms with a view to strengthening local ownership should ease the process. Sustainability should be the goal.
- The mechanism should be regularly reviewed and updated to ensure efficiency and effectiveness of child protection. Synergies with other relevant referral systems should be sought.
- A border guard should always have the following at hand when available:
 - the contact details of the ‘must-call’ services: 24/7 child support and other emergency support;
 - a comprehensive list, with contact details, of all the protection services and programmes available (medical, mental health, legal, logistical, etc.), whether from national authorities, civil society, international organisations or NGOs.

Annex 6: Summary of identified gaps and recommendations of the 2024 Needs Assessment Report

6.1 Gaps

The Council of Europe, in the framework of the Project *Protecting the rights of Armenian children in post-conflict context*, commissioned a gaps and needs assessment, which pursued the overall purpose of identifying and analysing the gaps in the existing legislation, policies and practices in Armenia with regard to the protection and safeguarding of displaced children, including effective guardianship of UASC, and providing recommendations for addressing the issues identified, including in terms of building institutional and human capacities.¹¹⁰

Those issues were analysed in a wider context of child protection, child-friendly justice and alternative care reform, paying special attention to deinstitutionalisation and the protection and safeguarding of children affected by humanitarian crises.

- **Coordination and multidisciplinary approach**

The gaps and needs assessment also notes a general lack of proper interagency coordination, which hinders a truly multidisciplinary approach. Interagency cooperation and coordination in issues affecting UASC in Armenia is hampered by an apparent insufficiency of agency-level awareness about the mandates, functions and capabilities of other agencies involved. On some occasions, even with a clear division of responsibilities, a lack of mutual collaboration and coordination is reported. There is no working group that would provide a platform for coordination and information exchange, and ensure that there is no duplication of tasks or fragmentation in approach.

Specific SOPs and operational guidance has been found to be inadequate to ensure consistent implementation of applicable legislation, which results in variable quality of the services provided. This is further exacerbated by insufficient focus on capacity building and performance appraisal, and lack of sustainability of the capacity building efforts that do take place. The lack of an integrated national child protection system poses a major concern that requires priority attention. Same wise, the absence of a robust child protection in emergencies framework implies a need for a sustainable long-term institutionalised CP system

¹¹⁰ 2024 Needs Assessment Report on Armenia's deinstitutionalisation and child protection reform, including the protection of the rights of unaccompanied and separated children <https://rm.coe.int/needs-assessment-report-eng-2024-final-with-disclaimer/native/1680b1a686>

in emergencies mechanism, to ensure access of children to quality services under humanitarian crisis conditions.

Against this backdrop, the fragmentation of services and generally insufficient coordination, despite relatively clear agency mandates and taskings, are all the more salient.

- **Best interest of the Child consideration**

Additionally, one specific challenge identified through this gaps and needs assessment is the need for a uniform and consistent understanding of the concept of the best interests of the child across all sectors, underpinned by methodological guidance and standard operating procedures (SOP), to guide any placement-related decision.

- **Safeguarding**

Another salient gap is the lack of a legislative and/or policy basis for child safeguarding compliance, although authorities frequently use the social contracting model to outsource public services to the private and nonprofit sectors through public procurement schemes.

- **Family unity**

In terms of family unity, the assessment has been unable to find evidence of specific policies to promote family reintegration, nor to find a viable mechanism that restore parents' capacity to better care for the child (p.13). Similarly, it has not been able to find evidence of the existence of a state-level institutional mechanism for FTR.

- **Monitoring, supervision and oversight**

Another key challenge is the absence of a monitoring mechanism, and while guardianship bodies are in principle required to report to MoLSA, reporting is inconsistent and where done, is usually treated by the guardianship bodies as a mere formality. Guardian supervision does not occur consistently either (p.14). The about-to-be-adopted draft Law of the Republic of Armenia on the Rights of the Child and the Child Protection System will address this gap, but mixes together policymaking and oversight functions with operational functions of the competent body, which can undermine the effectiveness of monitoring and oversight, and result in delays in placement-related decision-making. Similarly, supervision is entrusted to heads of local communities, but might require escalation to a higher level in case of serious concerns or reported allegations against foster carers .

Further, as the functions of the guardianship body include guardian supervision, including monitoring and examining applications and complaints about their actions or inaction, it does not allow to escalate complaints where there is a conflict of interest .

- **Professionalisation of the foster care system**

A professionalised foster care system is underway and still need reinforcement to meet the existing demand, notably by rethinking the compensation and allowance in place to attract foster carers.

- **Justice gaps**

Regarding access to justice, Armenia does not have a full-fledged child-friendly justice system in place nor specialised juvenile courts or children's courts yet, although 2 "child-friendly corners" in Yerevan and Kapan are currently implemented and can be potentially relevant to displaced children in general and UASC in particular. The child-friendly approach and safeguards to children in contact with the law (in the conduct of criminal investigations, interviews, criminal proceedings, etc) exist, but lack specific details on their implementation, or proposed measures are underused .

It is also important to note that there are no child-friendly and accessible complaint channels for displaced children including UASC. The practical implementation of free legal aid for UASC and the accessibility of information in a language they understand or are reasonably expected to understand remains to be further assessed .

Considering the vulnerability of displaced children, in particular UASC, to criminal victimisation, the report noted the lack of a procedure for first responder medical practitioners to collect biological samples, which results in delays and irrecoverable loss of physical evidence, although it recognises a better detection of crimes against and/or affecting children due to an increase in capacity-building .

- **Human resources**

The gaps and needs assessment has identified needs for better resourcing of the foster care system and a greater investment into the recruitment of foster carers and their capacity building, as well of a specialised child protection social workforce to ensure sufficient numbers of social workers adequately trained and resourced to provide such support. Same applies to appropriately qualified psychologists . While the local legislation is largely consistent with the requirements of Recommendation CM/Rec(2019)11, the lack of supporting

regulations and mechanisms to attract a pool of eligible guardians undermines the effectiveness of the legislative provisions in question . There is no training or any other capacity enhancement scheme in place to ensure guardianship quality, once in place. A comprehensive capacity-building plan of relevant staff of the Migration and Citizenship Service, State Migration Service, the Border Guards and Officials who first come into contact with Asylum Seekers should be conceived, planned and executed, regarding detection, child-friendly interviewing techniques, prevention and response to risks of human trafficking and exploitation among UASC, age assessment capacities, etc. It should include regular refreshers and a standard curricula for continued professional development .

- **Identification, referral and prioritisation**

There is no definition of an unaccompanied or separated child that is applicable to UASC in internal migration flows (internally displaced), therefore a very low numbers of UASC are identified among displaced children. Relevant statistical indicators are inexistant, and the State Migration and Citizenship Service's SEKT database does not flag UASC cases, which results in a lack of statistical data on UASC . Same wise, a full-fledged child protection automated information system would support the mandatory reporting system, thereby contributing to uniform implementation of mandatory reporting requirements and minimising the risk of human error . Similarly, victim of trafficking (VoT) identification is either conducted in procedurally consistent manner.

Without legislative basis for UASC identification, there is no prompt registration, nor standard operating procedures including on age estimation and age assessment, nor prompt referral to necessary services, which are largely relying on UNHCR and its partners.

On its side, the 2021-2026 Action Plan of the Government Programme, aiming at reforming the process of handing over persons from border checkpoints to the jurisdiction of other institutions, does not include anything about UASC.

- **Adequate financial sourcing**

Representatives are supposed to act pro bono but there is no state funding allocated. Inadequate resourcing largely renders the guardian screening procedure ineffective.

Currently there is no budgetary funding envisaged for MoLSA capacity building (p.36), which pose challenges to the development of a workforce of specialised child protection social workers. It is also the case for strengthening the operation

of community-level multiagency multidisciplinary child protection councils .

- **Referrals**

The relevant services, such as psychological, medical, and shelter/housing, still depend on UNHCR and its partners to a certain degree

6.2 Recommendations to move forward

Some of the key recommendations for frontline practitioners concern the following:

- investing into better understanding of the existing processes, procedures and practices with regard to the best interests assessment and best interests determination, and developing a methodological guidance
- extending responders network to include services, such as psychological, medical, and shelter/housing from national providers, that would be relevant and sustainable - including a network of medical practitioners/facilities licenced to conduct emergency sexual assault examinations using sexual assault evidence kits
- ensuring that displaced children including UASC receive information that is linguistically and developmentally appropriate, including access to translation and interpretation services where required
- raising awareness of UASC's entitlement to free legal aid and ensuring that all parties involved in legal proceedings are informed about this right
- building a more diverse pool of foster carers to accommodate children's diverse linguistic and ethnocultural needs
- strengthening interagency cooperation at all levels is recommended to promote effective referrals
- adopting prescribing the indicators and an SOP for UASC identification
- putting into place mechanism to ensure that children of diverse ethnocultural, linguistic and religious backgrounds have access to quality services, including education, under humanitarian crisis conditions
- developing a specialised child protection social workforce to staff the child protective services. This workforce should have its own competency frameworks, staff schedule complete with job descriptions for each role, and a mechanism in place to ensure that regular training needs assessment

takes place and action is taken to address the training needs identified

- prioritising building practitioner capacities and strengthening interagency coordination mechanisms to promote a multidisciplinary approach.

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