

# Practical Tool for Guardians

Introduction to international  
protection

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**Introduction to international protection**

**October 2023**

On 19 January 2022, the European Asylum Support Office (EASO) became the European Union Agency for Asylum (EUAA). All references to EASO, EASO products and bodies should be understood as references to the EUAA.



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## About this series

The European Union Agency for Asylum (EUAA) and the European Union Agency for Fundamental Rights (FRA) have joined forces in the development of a series of practical tools for guardians of unaccompanied children with international protection needs. The objective is to support guardians in their daily tasks and responsibilities during the asylum procedure, including the procedure under the Regulation (EU) No 604/2013 (Dublin III regulation) <sup>(1)</sup> and temporary protection. The series of practical tools addresses the following topics:

- temporary protection;
- introduction to international protection;
- regular asylum procedure;
- transnational procedures.

The four booklets complement each other.

The aim of these practical tools is to allow the guardian to better inform and assist children in the process, and thus help children to better understand the relevance of the steps involved. The child's meaningful participation and capacity to make informed decisions will be improved.

Good functioning guardianship systems are essential in promoting the best interests of the child and children's rights. Guardians are responsible for ensuring that any legal, social, medical and psychological needs are addressed throughout the specific procedure and until a durable solution is secured for the child.

In preparation for the drafting of these practical tools, the EUAA and FRA have consulted the European Guardianship Network through a rapid needs assessment to define the objectives and the topics covered by the practical tools.

Considering the target group of this series, the tools are based on the handbook on guardianship by FRA and the European Commission <sup>(2)</sup> and are consistent with the FRA training modules for guardians <sup>(3)</sup> as well as with EUAA training curriculum <sup>(4)</sup>.

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<sup>(1)</sup> [Regulation \(EU\) No 604/2013](#) of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) (OJ L 180, 29.6.2013).

<sup>(2)</sup> FRA and the European Commission, [Guardianship for Children Deprived of Parental Care — A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking](#), 30 June 2014.

<sup>(3)</sup> The FRA e-learning website is available at: <https://e-learning.fra.europa.eu/>.

<sup>(4)</sup> EUAA training catalogue is available at: <https://euaa.europa.eu/publications/training-catalogue-20222023>.



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## List of abbreviations

Abbreviation	Definition
<b>APD</b>	<b>asylum procedures directive</b> — Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast)
<b>CEAS</b>	Common European Asylum System
<b>CJEU</b>	Court of Justice of the European Union
<b>CRC</b>	United Nations Convention on the Rights of the Child
<b>ECHR</b>	European Convention on Human Rights — Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5
<b>EUAA</b>	European Union Agency for Asylum
<b>EU+ countries</b>	EU Member States and Schengen associated countries
<b>FRA</b>	European Union Agency for Fundamental Rights
<b>Member States</b>	EU Member States
<b>QD</b>	<b>qualification directive</b> — Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)
<b>RCD</b>	<b>reception conditions directive</b> — Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast)
<b>Refugee Convention</b>	The 1951 Convention relating to the status of refugees and its 1967 Protocol (referred to in EU asylum legislation and by the Court of Justice of the EU as ‘the Geneva Convention’)

## About this tool

This tool focuses on introduction to international protection <sup>(5)</sup>.

It aims at introducing newly appointed guardians to the concept of international protection, possible forms of protection recognised through the asylum procedure, the relevant legal framework and the related rights of the child.

The tool is structured in four parts:

1. What is international protection?

This chapter compiles the basic definitions included in international and EU law and provides a general overview about refugee status and subsidiary protection status.

2. What are the legal principles in international protection?

This chapter explains the principles of *non-refoulement*, the right to apply for asylum, the right to life and the prohibition of torture.

3. What is the legal framework related to the rights of the child?

This chapter details the principles and key rights in the Convention on the Rights of the Child (CRC) <sup>(6)</sup> and their connection with international protection.

4. What do I need as a guardian to support the child?

This chapter provides guidance to the guardian on key elements to consider when supporting children in accessing international protection.

The tool provides hyperlinks to additional resources and information on international protection.

### Disclaimer

This tool was developed while the Common European Asylum System (CEAS) was under reform by the EU institutions. Several instruments were only available as proposals and not as final and adopted legal documents at the time of drafting. Therefore, this tool has been drafted on the basis of the CEAS instruments legally in force at the time of its development.

The information contained in this tool has been researched, evaluated and analysed with the utmost care. However, this document does not claim to be exhaustive.

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<sup>(5)</sup> For more on temporary protection, see the EUAA-FRA, [Practical Tool for Guardians – Temporary protection for unaccompanied children fleeing Ukraine](#), November 2022.

<sup>(6)</sup> UN General Assembly, [Convention on the Rights of the Child](#), 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3.

# 1. What is international protection?

International protection is the way in which states **protect** third-country nationals when they are **at risk of persecution or serious harm in their country of nationality or habitual residence (if stateless)**. A person may be in need of international protection if they are afraid to return to their country of origin or habitual residence because they have a well-founded fear of persecution due to their race, religion, nationality, political opinion, or membership in a particular social group or they are at risk of suffering serious harm.

At the international level, the 1951 Refugee Convention and its 1967 Protocol <sup>(7)</sup> are the main legal instruments in the field of international protection, in particular with regard to **refugee status** and the **principle of non-refoulement**. The convention defines who is a refugee, their rights and the international standards for their treatment.

At the European level, in order to respond to the need for international protection and respect for fundamental rights, the CEAS was established. Notably, Directive 2011/95/EU (QD) <sup>(8)</sup>, introduced an **additional form of international protection called ‘subsidiary protection’**.

Be aware that temporary protection is also a form of international protection. Temporary protection is an exceptional measure to provide immediate and temporary protection in the event of a mass influx of displaced persons from non-EU countries who are unable to return to their country of origin. The legal basis is found in Council Directive 2001/55/EC <sup>(9)</sup>, adopted following the conflicts in the former Yugoslavia in 2001 but only triggered for the first time in March 2022 after Russia’s military invasion of Ukraine. Council Directive 2001/55/EC was activated to allow those persons fleeing Ukraine to apply for temporary protection and to have immediate access to protection in the EU.

Some Member States might also offer other forms of national protection to children, such as a permit to stay based on their minor age, a permit to stay under national protection, such as on humanitarian grounds for study reasons or health considerations or special protection for victims of domestic violence.

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<sup>(7)</sup> UN General Assembly, [Convention relating to the status of refugees](#), Geneva, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, and the [Protocol Relating to the Status of Refugees](#), 31 January 1967, United Nations, Treaty Series, vol. 606, p. 267 (referred to in EU asylum legislation and by the Court of Justice of the European Union as ‘the Geneva Convention’).

<sup>(8)</sup> [Directive 2011/95/EU](#) of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) (OJ L 337, 20.12.2011).

<sup>(9)</sup> [Council Directive 2001/55/EC](#) of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (OJ L 212, 7.8.2001).





### Related publication

To know more about the application of the temporary protection directive to children, see the EUAA-FRA, [Practical Tool for Guardians – Temporary protection for unaccompanied children fleeing Ukraine](#), November 2022.

## 1.1. Refugee status

The 1951 Refugee Convention <sup>(10)</sup> and the QD <sup>(11)</sup> defines who is a refugee.



### Article 2(d) QD (recast)

*‘refugee’ means a third-country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Article 12 [exclusion] does not apply.*

**An applicant qualifies for refugee status** if they satisfy all the qualification criteria of the refugee definition, as listed below.

- They are **outside** their country of nationality or of former habitual residence for stateless applicants;
- They have a **well-founded fear of being persecuted**;
- The persecution is for reason of one or more of the **five grounds** (race, religion, nationality, political opinion or membership of a particular social group);
- Owing to such fear the applicant is **unable or unwilling to avail of the protection** of their country;

None of the exclusion provisions apply. Exclusion is applicable, if there are serious reasons for considering that a child – who has reached minimum age for criminal responsibility – committed, for example, war crimes or a serious non-political crime outside the country in which the child is seeking asylum (or, in the case of subsidiary protection, that they constitute a danger to the community or the security of the Member State) <sup>(12)</sup>.

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<sup>(10)</sup> Article 1(A)2 Refugee Convention.

<sup>(11)</sup> Article 2(d) QD.

<sup>(12)</sup> The exclusion grounds for refugee status and subsidiary protection as laid down in the QD are similar and stem from the provisions of Article 1F of the 1951 Refugee Convention. It should be noted, however, that the

The QD lays down the definitions of key concepts of the refugee definition, namely acts of persecution <sup>(13)</sup>, actors of persecution <sup>(14)</sup>, actors of protection <sup>(15)</sup>, the definitions of each of the five reasons for persecution <sup>(16)</sup>, and the reason of exclusion <sup>(17)</sup>.

## 1.2. Subsidiary protection

Refugee status can only be granted if the well-founded fear of being persecuted is linked to at least one of the five aforementioned grounds. There are other situations where persons would be at risk of being subjected to serious harm if returned to their home country and therefore would be in need of protection. The EU asylum *acquis* provides for an additional form of international protection: subsidiary protection.



### Article 2(f) QD (recast)

*a third-country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm ... and to whom Article 17(1) and (2) does not apply*

A person qualifies for subsidiary protection if they:

- **do not qualify** for refugee status;
- and
- if returned to their country of origin, would face a **real risk** of suffering serious harm.

Serious harm consists of:

- the **death penalty** or execution; or
- torture or **inhuman** or degrading **treatment** or punishment; or
- a serious and individual **threat to a civilian's life or person** by reason of indiscriminate violence in situations of international or internal armed conflict <sup>(18)</sup>.

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exclusion grounds laid out in the QD for refugee status (Article 12) and subsidiary protection (Article 17) are not exactly the same. Article 17(1) removes some of the requirements for serious crimes (Article 17(1)(b)) and introduces additional exclusion grounds (Article 17(1)(d) and Article 17(3)) for subsidiary protection. For further guidance, see the EUAA, [Practical Guide: Exclusion](#), January 2017.

<sup>(13)</sup> Article 9 QD.

<sup>(14)</sup> Article 6 QD.

<sup>(15)</sup> Article 7 QD.

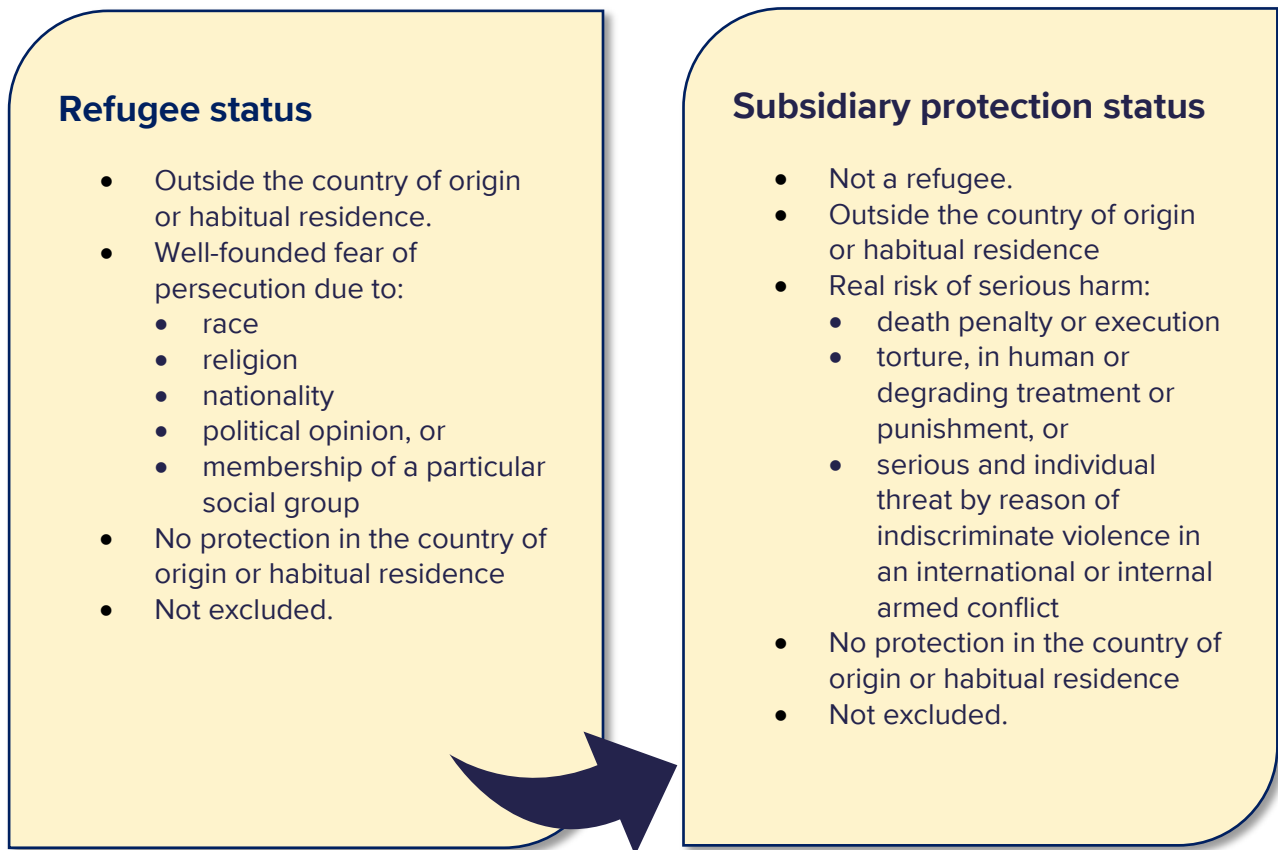
<sup>(16)</sup> Article 10 QD.

<sup>(17)</sup> Articles 12 and 17 QD.

<sup>(18)</sup> Article 15 QD.

The determining authority will always first examine whether the applicant qualifies for refugee status and, if not, whether the applicant is eligible for subsidiary protection <sup>(19)</sup>.

**Figure 1. Types of protection**



Note that on the basis of their own national legislation some EU+ countries could also grant a form of national protection through the international protection procedure or following the submission of a specific request directly to the competent authorities. Special protection permits based on humanitarian grounds are not considered a form of international protection. These kinds of permit are usually limited in time and may be renewed. For more information refer to your national legislation.

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<sup>(19)</sup> Article 10(2) of [Directive 2013/32/EU](#) of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), (OJ L 180/60, 29.6.2013) (APD).

**Practical tip**

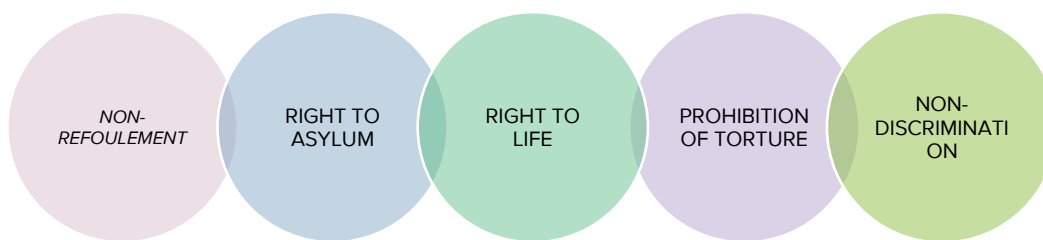
It is important that as a guardian you know the elements of the definition of refugee status and subsidiary protection, in order to help guide the child in the asylum process, help to register the application and bring the relevant documents and statements to the personal interview.

For example, if a child mentions to you a situation of persecution or risk of serious harm if they return, you could stress the importance of sharing that information with the competent authority.

## 2. What are the main principles of international protection?

International human rights law <sup>(20)</sup> lays down the obligations of governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups. Human rights are commonly understood as the inalienable rights to which a person is entitled merely for being human. They are built on underlying principles of universality, equality and non-discrimination, and are enshrined in treaties, rules of customary international law, EU law, national laws and other standards that define them and help to guarantee their full enjoyment. Human rights apply to all individuals, including all persons seeking international protection. Here you can see how some selected key fundamental rights are also linked with the right to asylum.

**Figure 2. The links between fundamental rights and the right to asylum**



### Principle of *non-refoulement*

*Non-refoulement* refers to the obligation of states to refrain from expelling or returning a person in any manner whatsoever to a country where they may face persecution and/or torture, inhuman or degrading treatment or punishment. The principle of *non-refoulement* is a core principle of international and EU refugee law. It is enshrined in the 1951 Refugee Convention <sup>(21)</sup> and in a number of human rights instruments <sup>(22)</sup>.

The prohibition of *refoulement* applies to all persons within the jurisdiction of a state also in the context of non-admission and rejection at borders. It is applicable to any form of forcible

<sup>(20)</sup> Office of the Human Rights Commissioner, 'International Human Rights Law' available at <https://www.ohchr.org/en/instruments-and-mechanisms/international-human-rights-law>.

<sup>(21)</sup> Article 33 Refugee Convention establishes the obligation of the state not to *expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion*.

<sup>(22)</sup> UN General Assembly, [Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#), 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85; UN General Assembly, [International Covenant on Civil and Political Rights](#), 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171; Council of Europe, [European Convention for the Protection of Human Rights and Fundamental Freedoms](#), as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5 (ECHR); European Union, [Charter of Fundamental Rights of the European Union](#), 26 October 2012, 2012/C 326/02.

removal, including deportation, expulsion, extradition, informal transfer or 'renditions', and non-admission at the border in any phase of the asylum process.

The **principle of *non-refoulement* applies in all circumstances** irrespective of the legal status of the person (e.g. undocumented migrants) and in all administrative decisions related to the stay or removal of the person in the territory (e.g. expulsion).

The principle of *non-refoulement* prohibits both direct and indirect *refoulement*.

- **Direct *refoulement*** means the return of a person to a country where they may face persecution and/or torture, inhuman or degrading treatment or punishment.
- **Indirect *refoulement*** (also known as chain *refoulement*, secondary *refoulement* or onward *refoulement*) means the return of a person to a third country without sufficient guarantees that they will be protected against *refoulement* to the country where they may face persecution and/or torture, inhuman or degrading treatment or punishment.

A **reliable assessment** as to the risk of direct or indirect *refoulement* must be undertaken by authorities in each individual case, prior to a refusal to enter or removal to a third country.

### Collective expulsion

Collective expulsion is also forbidden.

This means that states cannot remove individuals without examining their personal circumstances and, consequently, without enabling them to put forward their arguments against the measure taken by the relevant authority.

Their purpose is to guarantee that every decision to expel is based on an individual examination taking into consideration the individual and contextual circumstances.

An expulsion is characterised as 'collective' when there is no reasonable and objective examination of the particular case of each individual within the group. The size of the group expelled is not relevant: even two people may be sufficient to form a group <sup>(23)</sup>.

The principle of *non-refoulement* is directly linked to the right to asylum, which entails a requirement to grant individuals seeking international protection access to the territory and to a fair and efficient asylum procedure.

<sup>(23)</sup> Article 4 of Protocol 4 of the ECHR.





### Practical tip

It is important that as a guardian you have a good understanding of the principle on *non-refoulement*. This is in order to guarantee during the entire asylum process that children will not be refused entry to the country where protection could be sought, will not be expelled, or returned to a country where they may face persecution and/or torture, inhuman or degrading treatment or punishment.

You should also inform the child about this principle so that they can flag any risk they may face in their country of nationality or former habitual residence or in a third country to which they might be sent back.

### Right to asylum

**The right to asylum is a fundamental right ensuring that a person who is in need of international protection has the effective opportunity to apply for international protection to the competent authority.**

International law, and in particular the Universal Declaration of Human Rights 1948 <sup>(24)</sup> establishes that the right to asylum is an inalienable and indispensable right and, specifically, provides that ‘everyone has the right to seek and enjoy asylum from persecution in other countries’.

At EU level, the right to asylum is recognised by the Charter of Fundamental Rights of the European Union <sup>(25)</sup>.

It is important to remember that granting access to the asylum procedure does not necessarily mean granting the applicant international protection. The application will be duly examined by the competent authority which, subsequently, will issue the decision as to whether or not to grant protection to the person.

Many adults and children who may be in need of international protection are not aware of the rights, obligations and procedures for applying for international protection. It is therefore those who work on the front line in the field of migration who play a crucial role in guaranteeing everyone the right to asylum and guaranteeing access to international protection. This is done by proactively identifying people who may wish to apply for international protection, providing them with relevant information on the possibility of applying for asylum and referring them to the relevant authorities.

<sup>(24)</sup> Article 14 UN General Assembly, [Universal Declaration of Human Rights](#), 10 December 1948, 217 A (III).

<sup>(25)</sup> Article 18 European Union, [Charter of Fundamental Rights of the European Union](#), 26 October 2012, 2012/C 326/02.

The wish to apply for asylum can be expressed in any form. This means the expression could also be verbally made but note that words such as ‘asylum’ or ‘refugee’ do not necessarily have to be pronounced. It is sufficient that the will to ask for international protection is manifested in any form. For example, expressing a ‘fear of returning’ is sufficient.



### Practical tip

As a guardian you have an essential role in guaranteeing that the right to asylum is fully respected. For example, you might refer a child into the asylum procedure if they have expressed the need for asylum without explicitly referring to ‘asylum’ or ‘international protection’.

## Prohibition of torture

The prohibition of torture and inhuman or degrading treatment and punishment is closely related to the **non-refoulement** principle detailed in the previous chapter. States have an obligation to protect persons within **their territory from being exposed to the risk of such treatment or punishment**, irrespective of whether the risk is within the territory or if the risk exists outside the territory <sup>(26)</sup>. This is a non-derogable right.

## Right to life

At the international level, the right to life is laid down in the Universal Declaration of Human Rights, which affirms that ‘Everyone has the right to life, liberty and security of person’ <sup>(27)</sup>.

The right to life is also recognised by the EU Charter of Fundamental Rights <sup>(28)</sup>. Member States and their officials have a positive obligation to safeguard life, including taking preventive measures <sup>(29)</sup>. This flows from the jurisprudence of the European Court of Human Rights, whose case-law must also guide the interpretation of the rights set out in the Charter, according to Article 52(3).

<sup>(26)</sup> Prohibition of torture and inhuman or degrading treatment or punishment is recognised in Article 4 of the EU Charter as follows: ‘No one shall be subjected to torture or to inhuman or degrading treatment or punishment’. The prohibition of torture and inhuman or degrading treatment or punishment is an absolute right, which means that there are no permitted exceptions or qualifications. That means neither the public interest nor the rights of others nor the actions of the victim, however dangerous or criminal, can justify treatment prohibited by the article.

<sup>(27)</sup> Article 3 Universal Declaration of Human Rights.

<sup>(28)</sup> Article 2 EU Charter of Fundamental Rights ‘1. Everyone has the right to life. 2. No one shall be condemned to the death penalty or executed.’

<sup>(29)</sup> Preventive measures could be, for example, to protect someone from drowning in that state’s territorial waters, to protect the person from violence committed by others and from self-harm, and to protect people living near dangerous industrial sites in the event of a disaster. Consider this in the light of an applicant for international protection talking about suicide or an applicant in custody stating they have tuberculosis or HIV and need medicine. In these circumstances, state agents have an obligation to take preventive measures to safeguard the life of the applicants.

### 3. What is the legal framework related to children's rights in international protection?

#### 3.1. International and regional legal framework

The main international legal instrument related to children rights is the CRC. All Member States have ratified this convention and are obliged to apply it to all children in their territory, no matter their nationality or legal status. The CRC recognises children's social, economic, political, civil and cultural rights.

The UN Committee on the Rights of the Child monitors state parties' compliance with the CRC and issues guidance and recommendations on the implementation and interpretation of the convention.



#### Article 22 UN Convention on the Rights of the Child

*States Parties shall **take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee** in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, **receive appropriate protection and humanitarian assistance** in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties. (emphasis added)*

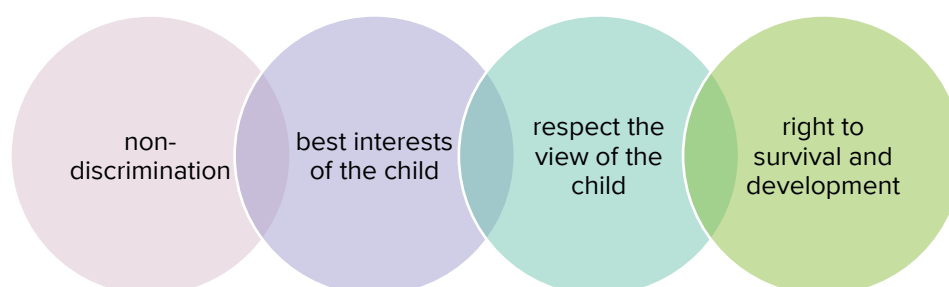
It is important to note that all the rights set forth in the CRC are applicable to children who apply for international protection. However, to ensure the rights and protection of children in the asylum process, who are considered to be in a particularly vulnerable situation, it is especially important to be aware of the following rights to:

- asylum
- protection from violence, abuse and neglect
- liberty
- family life
- freedom of expression and to be informed
- education
- healthcare
- accommodation

- social allowance and social security
- name, nationality and identity.

The CRC entails four key binding principles that guide the application of the rights enshrined in the convention.

**Figure 3. The four key binding principles of the Convention on the Rights of the Child**



At the regional level, a large number of conventions and their respective treaty bodies also protect the rights of children seeking asylum <sup>(30)</sup>.

## 3.2. EU legal framework

The existing EU policies and legislation provide a framework for the protection of children's rights in the asylum process, covering all aspects including reception conditions, the examination of their applications and integration.

The Treaty on European Union <sup>(31)</sup> lays down the EU's obligation to promote the protection of the rights of the child. The EU Charter of Fundamental Rights, regulations and directives, as well as the jurisprudence of the CJEU, have contributed to further determining the protection of these rights <sup>(32)</sup>.

The EU Charter of Fundamental Rights <sup>(33)</sup> includes three general principles inspired by the CRC, which are:

- children should be allowed to express their views freely and such views must be taken into account on matters that concern the child, in accordance with their age and maturity;
- in all actions relating to children, the child's best interests must be a primary consideration;

<sup>(30)</sup> ECHR; the jurisprudence of the European Court of Human Rights; Council of Europe, [European Social Charter, Collected texts \(7<sup>th</sup> edition\)](#), updated 1 January 2015; Council of Europe, [Convention on Protection of Children against Sexual Exploitation and Sexual Abuse](#), CETS No. 201, entry into force 01.07.2010; Council of Europe [Convention on Action against Trafficking in Human Beings](#), CETS No. 197, entry into force 01.02.2008.

<sup>(31)</sup> EU, [Consolidated version of the Treaty on European Union](#), (OJ C 326, 26.10.2012).

<sup>(32)</sup> FRA, [Handbook on European law relating to the rights of the child](#), 2022 edition, February 2022.

<sup>(33)</sup> Article 24 EU Charter of Fundamental Rights.

- every child must have the right to maintain a personal relationship on a regular basis and have direct contact with both of their parents, unless that is contrary to their best interests.

Six legislative instruments, considered to be the 'building blocks' of the CEAS, establish a number of provisions dedicated to children.

- The **reception conditions directive (RCD)** <sup>(34)</sup>, which aims to ensure a dignified standard of living for applicants, with comparable living conditions across Member States, **directly** refers to children and unaccompanied minors setting minimum standards for tailored reception conditions <sup>(35)</sup>.
- The **APD**, which introduces a common legal framework to reduce the disparities between national asylum procedures in Member States and to safeguard the quality and efficiency of decision-making, lays down specific guarantees for children during the asylum process <sup>(36)</sup>.
- The **QD**, which lays out the conditions for the qualification and status of third-country nationals or stateless persons as refugees or as beneficiaries of subsidiary protection, lays down specific guarantees for children <sup>(37)</sup>. It also explicitly recognises that some measures are persecutory precisely because they specifically target children. In accordance with the QD, acts of persecution can take the form of acts of a gender-specific or child-specific nature <sup>(38)</sup>. For example, underage recruitment, female genital mutilation/cutting, family and domestic violence, forced or underage marriage <sup>(39)</sup>.
- The **Dublin III regulation**, which establishes the criteria for determining which Member State is responsible for examining an application for international protection, contains specific provisions related to children establishing specific guarantees for them and specific criteria to determine the responsible Member State <sup>(40)</sup>.

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<sup>(34)</sup> [Directive 2013/33/EU](#) of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), (OJ L 180, 29.6.2013).

<sup>(35)</sup> The RCD refers to the following concepts and categories in these recitals and articles: 'minor' Article 2, point (d) RCD; 'unaccompanied minor' Article 2, point (e); 'family members' Article 2, point (c); 'representative' Article 2, point (j); 'family unity' recital 9; 'best interests of the child' recital 22 and Article 2, point (j), Article 23, Article 24; 'minor's best interests' Article 11(2); 'vulnerable persons' Articles 21, 22; registration and documentation Article 6; 'tracing the members of the unaccompanied minor's family' Article 24(3).

<sup>(36)</sup> The APD refers to the following concepts and categories in these recitals and articles: 'minor' Article 2, point (l); 'unaccompanied minor' Article 2, point (m); 'representative' Article 2, point (n) and Article 25; 'best interests of the child' recital 33, Article 2, point (n), Article 25(1), point (a), Article 25(6); the right of unaccompanied children to access free legal information Article 25(4); 'age assessment' Article 25(5); right of the child to make an application for international protection and, in the case of unaccompanied children, the application for international protection can be lodged on their behalf by competent authorities as laid down in Article 7(3).

<sup>(37)</sup> The QD refers to the following concepts and categories in these recitals and articles: 'minor' Article 2, point (k); 'family members' Article 2, point (j); 'unaccompanied minor' Article 2, point (l); 'family unity' recital 18; best interests of the child/minor recitals 18, 19, 27, 38 and Article 20(5); right to be heard/right to participation Article 20(5), 30(4)-(5); right to information Articles 22, 31; 'maintaining family unity' Article 23; 'family tracing' Article 31(5); 'child-specific forms of persecution' recital 28.

<sup>(38)</sup> Articles 9(2), point (f) and 10 QD.

<sup>(39)</sup> UNHCR, [Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1\(A\)2 and 1\(F\) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees](#), 22 December 2009, HCR/GIP/09/08.

<sup>(40)</sup> Articles 6 and 8 of [Regulation \(EU\) No 604/2013](#) of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) (OJ L 180, 29.6.2013).

- The **Eurodac regulation**, which constitutes the legal basis for an EU database for comparing fingerprints to ensure the effective implementation of the Dublin III regulation, refers to the best interests of the child <sup>(41)</sup>.
- The **temporary protection directive** <sup>(42)</sup>, which lays out down the minimum standards for providing temporary protection in the event of a mass influx of displaced persons. It has been firstly implemented for the first time in March 2022 after Russia's military invasion of Ukraine. It establishes particular obligations for the Member States to protect children and the European Commission has issued recommendations on how to fulfil them <sup>(43)</sup>.



### Related publication

To know more about the application of the temporary protection directive to children, see the EUAA-FRA, [\*Practical Tool for Guardians – Temporary protection for unaccompanied children fleeing Ukraine\*](#), November 2022.

<sup>(41)</sup> The best interests of the child as defined in recital 35 of [Regulation \(EU\) No 603/2013](#) of the European Parliament and of the Council of 26 June 2013 on the establishment of Eurodac for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast) (OJ L 180, 29.6.2013).

<sup>(42)</sup> [Council Directive 2001/55/EC](#) of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (OJ L 212, 7.8.2001).

<sup>(43)</sup> European Commission, 'Temporary protection' webpage available at [https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system/temporary-protection\\_en](https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system/temporary-protection_en).



## 4. What do I need to do as a guardian to support the child applying for international protection?

### 4.1. How do I support the child?

In general, international and European standards assign the below tasks and responsibilities to guardians of unaccompanied children to ensure the respect of their best interests.



#### Related publication

A detailed overview of the role of the guardian in the procedure is included in the EUAA-FRA, [Practical Tool for Guardians – The asylum procedure](#), October 2023.

#### Protect the child's safety and well-being

- Be available and accessible and dedicate sufficient time to each child.
- Develop a relationship of trust with the child, treat the child with the respect and dignity.
- Safeguard the child, including by ensuring the child receives appropriate care and services and protecting the child against all forms and risks of violence and exploitation.
- Support and facilitate the identification and/or the assessment of the child's special needs or any additional vulnerabilities and refer the child to the services they need.
- Support the child in enrolling onto school or educational programmes and in applying for the services that the child needs.
- Support the child in the transition to adulthood and independent life.
- Verify family links and support family tracing and/or family reunification where this is in the child's best interests.
- Support the child in all administrative matters.

#### Facilitate the child's participation by hearing their views and create the space for the others to consider the child's views while informing the child

As a guardian, you should inform the child of their rights and entitlements, available services, and the different procedures that concern the child, including the specific steps and possible outcomes of procedures. You should proactively engage the child in all decisions as well as guaranteeing that the principle of confidentiality is respected so that the child feels safe to share their views.

**Act as a link between the child and others**

- Act as an advocate for the child and promote their rights and best interests in relation to different state authorities and service providers and in specific procedures. Ensure the child has access to information from other actors, such as lawyers or social workers.
- Support the child in the different proceedings and help the child understand the content of official communication, decision-making and proceedings and what they mean for the child; ensure understanding and adequate interpretation or access to cultural mediators when needed.

**Assist in identifying durable solution in the child's best interests**

- Help identify and implement a durable solution for the child in the country of arrival, in the country of origin, or in a third country, according to the best interests of the child.

**Exercise legal capacity, where necessary, support the child in legal procedures and ensure access to legal assistance and counselling**

- Complement the child's limited legal capacity, for instance when signing official documents on behalf of the child.
- Apply for international protection for the child where this is in their best interests.
- Accompany the child to hearings and interviews.
- Ensuring the child's right to legal assistance is fulfilled; this could include legal information, counselling and representation in some cases.
- Manage the child's property.
- Provide informed consent for medical examinations and treatments of the child, including a medical examination for the purpose of age assessment, where applicable, based on a consultation with the child and according to what is in their best interests <sup>(44)</sup>.

<sup>(44)</sup> For more information, see the EASO, [Practical Guide on Age Assessment – second edition](#), 2018.



##### Related training materials

For more information on your role as a guardian and to improve your skills have a look at the training materials developed by FRA in close coordination with the European Guardianship Network available at <https://e-learning.fra.europa.eu/>. The training builds on international and EU standards, in particular the CRC, Council of Europe standards and EU law.

The training materials span the diversity of guardianship services and training contexts for unaccompanied children found across the EU to offer a standardised learning experience. It can also be adapted to different contexts, such as professional, academic and volunteer training, and national or local needs. It builds on earlier FRA work on guardianship.



##### Related Council of Europe recommendation

For more information on effective guardianship for unaccompanied and separated children in the context of migration, see the Council of Europe's Recommendation CM/Rec(2019)11 of the Committee of Ministers to Member States <sup>(45)</sup>.

#### What to consider regarding international protection in a nutshell

In particular, for unaccompanied children in the context of the international protection, you should consider the following.

- **An assessment of the particular situation of the child, according to what is in their best interests.** This means that all possible legal pathways are considered and evaluated with the child, such as, international protection, temporary protection or any other possible legal pathways. Depending on the country, this assessment might be conducted by child protection authorities and/or asylum authorities, involving you as a nominated guardian.
- **Registration.** As the guardian, you should support the child in registering and applying for international protection following the national procedure. Be aware that there might be cases where national protection may be a better option for the child and you will also support the child in that procedure (e.g. permit to stay based on their minor age, permit to stay under national protection such as on humanitarian grounds for study reasons or health considerations, special protection for victims of domestic violence).

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<sup>(45)</sup> [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, adopted 11 December 2019.

**Related publication**

To know more about this specific phase, see the EASO, [Practical Guide on Registration – Lodging of applications for international protection](#), December 2021.

- **Personal interview.** If the child has been channelled through the asylum procedure you should ensure they understand the meaning of the personal interview and the possible outcome.

**Related publication**

To know more about this specific phase, see the EUAA guides available on various topics relating to the examination of the application for international protection. All guides are available here <https://euaa.europa.eu/practical-tools-and-guides>.

- **Accommodation.** The RCD ensures that a standard level of reception conditions is guaranteed to all children. Moreover, it defines special categories of vulnerable applicants for international protection (including unaccompanied children) and obliges states to take into account the specific situation of these vulnerable persons <sup>(46)</sup>. It also provides for the assessment of the special reception needs of vulnerable persons <sup>(47)</sup>. Article 23 RCD seeks to ensure the child's best interests are taken as a primary consideration. Article 24 RCD establishes rules for the reception and treatment of unaccompanied children.

**Related publication**

For more information, see the EASO, [Guidance on Reception Conditions for Unaccompanied Children: Operational standards and indicators](#), December 2018.

- **Access to education.** The RCD provides that Member States must grant child applicants access to the education system under similar conditions to their own nationals for as long as an expulsion measure against them is not actually enforced <sup>(48)</sup>. Once enrolled in school, unaccompanied children should benefit from the same services as national children taking into account their special needs. As the guardian, you should make sure that indeed access to quality education has been granted. You might need to support the child in any administrative requirements, for example to validate previous degrees or diplomas or facilitate access to language lessons.
- **Access to medical or other assistance.** The RCD refers to healthcare in multiple articles <sup>(49)</sup>. Unaccompanied children as persons who might have special needs and are thus entitled to medical or other assistance. This could include, for example, psychological support for children witnessing war crimes, or services for child victims of rape. As the guardian, you should ensure the child is referred and has effective access to the relevant services.

<sup>(46)</sup> Article 21 RCD.

<sup>(47)</sup> Article 22 RCD.

<sup>(48)</sup> Article 14 RCD.

<sup>(49)</sup> Articles 13, 17 and 19 RCD.

- **Family reunification.** The guardian should promote close contact with the parents of the child provided if this is in the child's best interests. When the child does not have contact with parents or family members or does not know their whereabouts, the guardian should encourage the authorities to initiate family tracing and eventually family reunification if appropriate.



#### Related publication

To know more about safeguards in the asylum process, see the EUAA-FRA, [\*Practical Tool for Guardians – The asylum procedure\*](#), October 2023.

### Alternative legal pathways available in your country

To be filled by the EU+ country.

Country-specific information on alternative pathways can be found in the EUAA's Who is Who platform available at <https://whoiswho.euaa.europa.eu/>.

Please be aware that 'other legal pathways' should not hinder the possibility for children to apply for international protection should the need arise.

## 4.2. How to ensure the best interests of the child in the asylum procedure

Any best interests of the child process must give due consideration to child's views; the parents or guardian/caregiver's views; the identity of the child; the child's family environment, family relations and contacts; the situation in their country of origin; their protection needs; the care, protection and safety of the child, including the child's well-being and development; situations of vulnerability, including the risks that the child is facing and the sources of protection, level of integration in the host country; and mental and physical health, education and socioeconomic conditions <sup>(50)</sup>.

This analysis can be conducted by social workers employed by the asylum authority or by other actors and made available to the asylum authority. It must be set within the context of the child's gender; sexual orientation or gender identity; national, ethnic or social origin;

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<sup>(50)</sup> UNHCR, [\*2021 UNHCR Best Interests Procedure Guidelines: Assessing and Determining the Best Interests of the Child\*](#), May 2021.

religion; disability; migration or residence status; citizenship status; age; economic status; political or other opinion <sup>(51)</sup>; cultural and linguistic background or other status.



### Practical tip

As the guardian, you have to ensure the child's best interests are assessed by the authorities whenever decisions affecting the child are made <sup>(52)</sup>. These might include, for instance, decisions about safety, accommodation, education, healthcare, leisure activities, legal representation, potential relocations and/or transfers to another Member State or another durable solution, as well as in family tracing and reunification. During the assessment, the right of the child to be heard needs to be respected (see next section).

You should follow up on decisions that have a negative impact on the child with whatever mechanism is appropriate, intervene when the welfare of the child is in danger and challenge, within the limits of your authority, any decision that is deemed to be contrary to and/or does not promote the child's best interests.

Understanding the best interests of the child requires decision-makers to assess the needs of the child in the asylum procedure in a comprehensive way and to take those needs into account. This means to support the child during the whole administrative procedure but also be able to intervene with authorities if the child has special needs, for example in terms of accommodation, education and healthcare. Your role is to promote the wellbeing of the child and to react if the child expresses difficulties in interacting with the authorities and the administrative system.

<sup>(51)</sup> United Nations, [Joint general comment No. 3 \(2017\)](#) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration, 16 November 2017, section I, paragraph 3.

<sup>(52)</sup> UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, [Joint general comment No. 3 \(2017\) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 \(2017\) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration](#), 16 November 2017, CMW/C/GC/3-CRC/C/GC/22; UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, [Joint general comment No. 4 \(2017\) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 \(2017\) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return](#), 16 November 2017, CMW/C/GC/4-CRC/C/GC/23.





#### Related publication

For more detailed information on the specific action to take during the asylum procedure, refer to another tool in this series, the EUAA-FRA, [Practical Tool for Guardians – The asylum procedure](#), October 2023.

For a comprehensive overview, see the EASO, [Practical Guide on Best Interests of the Child in Asylum Procedure](#), 2019.



#### Practical tip

As the guardian, you should participate in relevant assessments about the child to ensure that the rights and the best interests of the child are a primary consideration in all decision-making processes and that the right of the child to be heard is respected. This is required by Article 12 CRC and Article 24 of the EU Charter of Fundamental Rights.

### 4.3. How to facilitate the participation of the child

The right to be heard (Article 12 CRC) outlines the rights of children to have their views heard and taken into consideration in accordance with their age and maturity. This right applies in all decisions affecting the child, including in relation to service provision and in the context of administrative and judicial proceedings. Children have different needs to make their views heard and to be listened to, some children may be timid, may have hearing or speaking impairments, some children may need an interpreter. Some children may be used to forming and expressing their opinion, for others this might be more difficult. The guardian should also manage the expectations of the child, as the decisions of the authorities might not always correspond with the child's wishes.

In the case of unaccompanied children seeking international protection, state officials and service providers will have to ensure for most children that they have access to assistance from an interpreter and that interpretation services respect quality standards, do not interfere with the content and substance of the communication, are neutral and at no point intimidate the child. The sex of an interpreter and the case officer may be relevant for a child and a child should be asked for their preferences, especially where the child is a victim of violence or exploitation or where the subject of the communication touches upon other sensitive issues.

This right is strictly correlated with the right to be informed. At all times, the child has a right to seek, receive and share information <sup>(53)</sup>. Information must be provided in a language that the

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<sup>(53)</sup> UN CRC, op. cit., fn. 6; UN General Assembly, [International Covenant on Civil and Political Rights](#), 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171; UN Committee on the Rights of the Child, [General comment No. 6 \(2005\): Treatment of Unaccompanied and Separated Children Outside their Country of Origin](#),

child understands. Providing information to the child is the responsibility of all actors who are in contact with the child, but it is also a very important aspect of your role as guardian. The child might not receive adequate information, or might have misunderstood, or might have forgotten. This right is strictly linked with the importance to receive legal assistance.

The right to confidentiality in the framework of asylum should be granted at all times. The child should be informed that all the information shared is confidential and under no circumstances will it be shared with the authorities of the country of origin. The information should be provided in a child-friendly manner, including taking into account the child's age and maturity.



### Practical tip

As a guardian, you have a responsibility to make sure the appropriate information reaches the child.

Other practical steps may include allowing and encouraging children to speak without the interruption, do not judge, contradict or challenge the children on the information they provide. Give children and families the right to ask questions and actively seek consent prior to sharing the information. Allocate enough time for the pauses and breaks in which the child is allowed to move, play and interact with friends. Help identify and use the most appropriate way to communicate with the children with disabilities. Provide writing and drawing material to help children describe their stories <sup>(54)</sup>.

1 September 2005, CRC/GC/2005/6; UN Committee on the Rights of the Child (CRC), [General comment No. 12 \(2009\): The right of the child to be heard](#), 20 July 2009, CRC/C/GC/12; UN Committee on the Rights of the Child (CRC), [General comment No. 14 \(2013\) on the right of the child to have his or her best interests taken as a primary consideration \(art. 3, para. 1\)](#), 29 May 2013, CRC /C/GC/14; Council of Europe, [European Convention on the Exercise of Children's Rights](#), ETS No. 160, entry into force 01.07.2000.

<sup>(54)</sup> UNHCR, [Technical Guidance: Child Friendly Procedures](#), 2021.

# Annex 1. Additional resources

## EUAA

### Access to the asylum procedure and registration

- EUAA, [Practical Guide on Information Provision – Access to procedure](#), February 2023.
- EASO, [Practical Guide on Registration – Lodging of applications for international protection](#), December 2021.

### Examination of the application

- EUAA, [Practical Guide on Political Opinion](#), December 2022.
- EUAA, [Practical Guide – Interviewing applicants with religion-based asylum claims](#), November 2022.
- EASO, [Guidance on Membership of a Particular Social Group](#), March 2020.
- EASO, [Practical Guide: Qualification for international protection](#), April 2018.
- EASO, [Practical Guide: Evidence assessment](#), March 2015.
- EASO, [Practical Guide: Personal interview](#), December 2014

### Child-related resources

- EUAA-FRA, Practical tools for guardians series on the following topics:
  - [temporary protection for unaccompanied children fleeing Ukraine](#), November 2022;
  - [the asylum procedure](#), October 2023;
  - [transnational procedures](#), 2023.
- EASO animations on:
  - [Age assessment for children](#), 2021.
  - [Age assessment for practitioners](#), 2020.
- EASO, [Practical Guide on Best Interests of the Child in Asylum Procedure](#), 2019.
- EASO, [Practical Guide on Family Tracing](#), March 2016.

**FRA**

FRA, [\*Guardianship for unaccompanied children - A manual for trainers of guardians\*](#), 1 March 2023.

FRA, [\*Handbook on European Law Relating to the Rights of the Child – 2022 edition\*](#), 13 April 2022.

FRA e-learning materials, 2022, available at <https://e-learning.fra.europa.eu/>.

FRA, [\*Handbook on European Law Relating to Asylum, Borders and Immigration – Edition 2020\*](#), 17 December 2020.

FRA-European Commission, [\*Guardianship for Children Deprived of Parental Care\*](#), 26 June 2014.

FRA and Council of Europe, [\*Fundamental rights of refugees, asylum applicants and migrants at the European borders\*](#), 2020.

**European Guardianship Network**

European Guardianship Network, [\*7 EGN Standards for the delivery of guardianship to unaccompanied children\*](#), 2022.

European Guardianship Network, [\*Children on the Move – A guide to working with unaccompanied children in Europe\*](#), February 2021.

European Guardianship Network, [\*Pilot Assessment System for Guardianship\*](#), September 2019.

**UNHCR**

UNHCR, [\*Technical Guidance: Child friendly procedures\*](#), 2021.

UNHCR, [\*Best Interests Procedure Guidelines: Assessing and determining the best interests of the child\*](#), May 2021.

UNHCR, [\*Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1\(A\)2 and 1\(F\) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees\*](#), 22 December 2009, HCR/GIP/09/08.

**UNICEF**

UNICEF, [\*Accelerating Inclusion of Refugee Children\*](#), June 2023.

UNICEF, [Strengthening Inclusive Social Protection Systems](#), February 2023.

UNICEF, [Convention on the Rights of the Child: The children's version](#), 2019.

UNICEF, [A Right to be Heard](#), December 2018.

UNICEF, [Psychosocial Support in Humanitarian Settings](#), August 2018.

UNICEF, [Methodology Guidance on Child Notice](#), 2015.

### **International Organization for Migration**

International Organization for Migration, '[Caring for unaccompanied migrant children](#)': A toolkit to promote culture sensitivity when caring for UMCs, 2022.

International Organization for Migration, 'Trafficking in persons: Protection and assistance to victims'. A self-paced, e-learning course available in [E-Campus](#).

### **Council of Europe**

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 and its Explanatory Memorandum, adopted 14 December 2022.

Council of Europe, [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, adopted 11 December 2019.

Council of Europe, [How to convey child friendly information to children in migration: a Handbook for frontline professionals](#), December 2018.

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