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The Protection of Unaccompanied Children in Humanitarian Crises: Legal Challenges and Recommendations in the European Union (EU)

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ABSTRACT

Unaccompanied children are one of the most vulnerable groups in the humanitarian crises and conflicts. The growing number of unaccompanied children in recent years have posed serious concerns for the government and humanitarian actors. In response, the government and humanitarian actors have taken several measures and policies in order to provide adequate protection for unaccompanied children. While government and humanitarian actors are playing a key role in the protection of unaccompanied children, they are also facing a number of challenges in the protection of unaccompanied children. This study identifies those challenges that affect the protection of unaccompanied children conducted by government and humanitarian actors. Based on the interview with child protection expert, intense literature review of secondary sources, and analysing the case of the European Union (EU), the study shows that there are legal challenges (the best interests in national systems, legal guardianship and legal representation, the age assessment, the detention, and family tracing and reunification). The study also revealed that the governments and humanitarian actors need to adapt and strengthen strategies and services in order to provide adequate protection for unaccompanied children. This is because that the government and humanitarian actors can turn these challenges into opportunities to better protect the unaccompanied children. Therefore, the study also has provided some recommendations to address the challenges identified in the study. Further studies on the comprehensive solutions to those challenges and an intense analysis of the legal challenges could be done. This is so that the protection and well-being of unaccompanied children are improved and safeguarded.

Keywords: unaccompanied children, unaccompanied and separated children, unaccompanied children in humanitarian crises, child protection, protection of unaccompanied children, protection challenges, humanitarian action and protection, unaccompanied child protection in Europe

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ACRONYMS

AoR	Areas of Responsibility
BIA	Best Interests Assessment
BID	Best Interests Determination
CPWG	Child Protection Working Group
CRC	Convention on the Rights of the Child
CSO	Civil Society Organisation
EASO	European Asylum Support Office
EU	European Union
FRA	EU Agency for Fundamental Rights
FTR	Family Tracing and Reunification
GPC	Global Protection Cluster
IAWG	Inter-Agency Working Group
IAWG UASC	Inter-Agency Working Group on Unaccompanied and Separated Children
IASC	Inter-Agency Standing Committee
ICRC	International Committee of the Red Cross
IDTR	Identification, Documentation, Tracing and Reunification
IHL	International Humanitarian Law
IHRL	International Human Rights Law
IOM	International Organisation for Migration
IRC	International Refugee Council
NGO	Non-Governmental Organisation
OHCHR	Office of the United Nations High Commissioner for Human Rights
SOP	Standard Operating Procedure
TDH	<i>Terre des homes</i>
UAC	Unaccompanied Children
UAM	Unaccompanied Minor
UASC	Unaccompanied and Separated Children
UN	United Nations
UNCRC	United Nations Convention on the Rights of the Child
UNCRC	UN Committee on the Rights of the Child
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNFPA	United Nations Population Fund

INTRODUCTION:

Children suffer a lot during humanitarian crises and conflicts happening around the world. In 2016, UNICEF estimated 535 million children lived in countries affected by conflict or disasters, amongst them nearly 50 million have been forcibly displaced from their homes. Besides increasing vulnerability to exploitation, violence or casualties, children may be unaccompanied or separated from their families and caregivers, which makes them more vulnerable (IAWG, 2004).

Among the children in crises, the situation of unaccompanied children (UAC) - also known as an unaccompanied minor - is dire due to age, legal status, and many other factors. According to UNICEF, there are 300,000 unaccompanied and separated children recorded worldwide in 2015 and 2016, which is five-fold higher since 2010. Though, it is not possible to estimate exactly how many UACs are in worldwide as a whole. The research shows that ongoing conflicts, displacement, and their underlying factors have caused more children to be unaccompanied and separated (UNICEF, 2016 and House of Lords 2016), as well as forced or encouraged to migrate (IOM, 2011).

UACs migrate or leave their home country for different reasons and motivations (Tal Schreier, 2011: 61-75), including the result of war and conflict, natural disasters, mass population displacement, political strife (Carlson et al, 2012: 259-269), forced recruitment as child soldier, harmful cultural practices (Tal Schreier, 2011: 61-75), violence and poverty (Dorothy McLeod, 2016: 1) etc. Some children also migrate for the better opportunities such as education, work, and economic opportunities (Liv Feijen, 2008: 63-73). Moreover, children may also be smuggled or carried by an agent showing false papers (Liv Feijen, 2008: 63-73), which makes them “illegal”¹ in some governments’ eyes.

Regardless of their reasons for migrating, they are most vulnerable to violence and exploitation (Tal Schreier, 2011: 61-75), due to separation from caregivers of social or economic protection, due to their means of travel and stay in poor living conditions upon arrival into foreign state (Liv Feijen, 2008: 64). Moreover, improved border controls, lack of child-sensitive reception and asylum procedures, and insufficient legal advice and support are factors that further multiply the vulnerability of UACs (Liv Feijen, 2008: 63-73). In addition, the UACs face difficulties, such as fear of detention due to illegal entry into a foreign state (ACHILLI, Luigi, et al, 2017), or lack of easy access into the protection system (Liv Feijen, 2008: 63-73), which leads many UACs to avoid accessing protection and assistance

¹ “The term ‘illegal’ migrant defined as ‘non-citizens who have no valid leave to enter and/or remain within a State’, which can be the case when someone arrives without a visa, avoids border controls, shows falsified documents, overstays his or her visa or is issued with a deportation order, for example, following a negative asylum application.” Source: Council of Europe, (2007). The Human Rights of Irregular Migrants in Europe.

(ACHILLI, Luigi, et al, 2017), and disappear without a trace (Liv Feijen, 2008: 63-73). Consequently, many UACs forced to resort to negative coping mechanisms (UNHCR, 2014) which also multiply and stimulate exploitation including, and not limited to, child labour, monetary and sexual exploitation (ACHILLI, Luigi, et al, 2017). The UACs are also subject to discrimination or stereotyping, and struggle with questions of their identity in the foreign country (Simich & Mallozzi, 2016: 1-52). Moreover, they faced difficulties in adjusting home life in a new cultural environment (Carlson et al, 2012: 259-269), including food, language, appearance (Simich & Mallozzi, 2016: 1-52).

Because of their vulnerabilities and exploitation, these UACs have extensive needs: along with the malnutrition, instability, and trauma experienced prior to migration (Dorothy McLeod, 2016: 3). Research shows that the rates of emotional and behavioural problems are typically very high among UACs (Bronstein & Montgomery, 2013: 285-294), due to loss of one or both parents, as well as the loss of contact with family members (Carlson et al, 2012: 259-269). Therefore, it is clear that UACs are some of the most vulnerable migrants who need special ‘child protection’² and assistance appropriate for their situation (Tal Schreier, 2011: 61-75).

However, the governments and humanitarian actors are playing a crucial role in ensuring the diverse needs and protection of UACs. From the identification to the implementation of the durable solutions, the government and humanitarian actors are providing the protection services to the UACs, considering the individual’s mandate or particular areas of expertise. For instance, in the EU context, the asylum authorities, and child protection and welfare authorities from the respective countries are playing crucial roles for the protection of UACs, including providing international protection, responding asylum requests, arranging care, and durable solutions (House of Lords, 2016). Whereas humanitarian actors such as UNHCR provides technical expertise in the context of profiling new arrivals and establishing joint asylum, and IOM in the context of returning stranded migrants (Liv Feijen, 2008: 63-73).

While government and humanitarian actors significantly contributing to the protection of UACs, still there is a number of child protection gaps found in the protection system. The key protection gaps include the lack of identification, inappropriate age assessments, lack of alternative care (Save the Children, 2017), limited reception and shelter facilities, lack of legal supports, protective custody and detention of UACs (UNHCR, 2017 and FRA, 2018). Moreover, the participation of UACs is ignored when strategies are adopted to address these gaps. (Liv Feijen, 2008: 63-73).

² Child Protection Working Group (CPWG) is defined ‘child protection’ as “the prevention of and response to abuse, neglect, exploitation and violence against children”.

Despite having various legal and policy instruments in place for safeguarding the rights and protection of UACs, there is often denial in the application and implementation of these rights (Tal Schreier, 2011: 61-75). Many studies have highlighted that there is an inadequate consideration of the principles of the 1989 UN CRC (ACHILLI, Luigi, et al, 2017), especially there is often misinterpretation and lack of consideration of ‘the best interests’³ of UAC in different child protection and asylum processes (UNHCR, 2017). In addition, experts have highlighted that there is political pressure to classify UAC as “migrant” rather than “children” (Derluyn & Broekaert, 2008: 319-330). As a result, children faced an inability to access legal status and documentation. Consequently, the UACs faced significant challenges in accessing basic services, such as healthcare, education, and protection from possible arrest and detention (Tal Schreier, 2011: 61-75). The lack of access to protection and care can be a result of not having necessary legal status and documentation (ACHILLI, Luigi, et al, 2017).

Considering the discussion above, it is clear that the protection and care provided by the government and humanitarian actors to the UACs are not ‘adequate’⁴ or insufficient. Especially, the inadequate reception conditions (House of Lords, 2016); lack of available shelters (ACHILLI, Luigi, et al, 2017); lack of child protection safeguards; inadequate access to education and health services (FRA, 2017); inadequate child protection response to child victims of trafficking (CPAT UK and Missing People, 2016) and to the girls who faced serious protection risks (UNHCR, 2016). Though government and humanitarian actors are still trying to adapt strategies and services in order to provide adequate protection for these children.

Considering the aforesaid points, the main hypothesis of this research is that the government and humanitarian actors are facing challenges in order to provide adequate protection for unaccompanied children.

Thus, this study tries to explore the following question: **what are the challenges faced by government and humanitarian actors in the protection of unaccompanied children?**

Therefore, the aim of the research is to provide an understanding of the challenges faced by government and humanitarian actors in the protection of UACs. However, considering the research scope, restricted page number and implications of the challenges, **this study only focuses on the legal challenges**. Finally, it is meant to allow making a deeper understanding that could lead to adapt and strengthen the strategies and services in order to provide adequate protection for UACs.

³ The best interests of the child is a child rights principle. See the Article 3 of the UN Convention on the Rights of the Child 1989.

⁴ It will be called ‘adequate’ care and protection when “a child’s basic physical, emotional, intellectual and social needs are met by his or her caregivers and the child is developing according to his or her potential.” See IAWG UASC. (2013). Alternative Care in Emergencies Toolkit

Methodology: To address this question, the study collects and analyses data from a literature review of primary and secondary sources. The secondary sources in this study are the relevant literature including in-depth analysis of discourses and policies related to the protection of UACs in crises, and to the challenges faced by government and humanitarian actors in the protection of UACs. To do that I have prioritised the peer-reviewed researches, but have also included data from the humanitarians and NGOs reports. The EU, UNHCR, IOM, UNICEF, ICRC, IRC, Save the Children, Terre des homes and World Vision are the key humanitarian actors working for the protection of UACs, so this study is explored reports from the mentioned organisations.

The primary sources in this study are the semi-structured interview with unaccompanied child protection expert working at the humanitarian organisations (I have conducted one interview with child protection officer, UNHCR, who working with UACs in the EU). As there is a lack of information on the challenges humanitarian actors faced, it is important to get detailed information about their experiences on the protection challenges and recommendations.

Moreover, the study looks at the particular case in the European Union (EU), because it's recorded one of the highest numbers of UACs. According to Eurostat, the EU received some 274,000 total asylum applications from UACs during the period 2008 to 2016. The number of UAC applied for asylum in the EU has increased exponentially since 2014. According to Eurostat, 62,430 UACs applied for international protection in the EU in 2016, a decline of nearly one third compared with 2015 (more than 96, 500 UACs registered in 2015), but still almost 5 times higher than the annual average during the period 2008-2013. In 2016, the majority of UACs are male (89%), mostly aged 16-17 (68%). Yet, the above figures do not estimate the exact number of unaccompanied migrant children present in the EU as a whole (House of Lords, 2016), especially who were not identified by officials. For example, according to the European Council on Refugees and Exiles (ECRE), in 2013, 12,770 unaccompanied migrant children arrived in the EU without seeking international protection, compared with 12,725 seeking asylum (House of Lords, 2016). In addition, many unaccompanied minors who applied are not granted refugee status (Phillip Connor, 2017). However, UACs come to the EU for different reasons and motivation. They left their origin countries due to conflicts (63-84%) or for economic reasons (14-20%) (Sona Kalantaryan, 2017). For instance, over half of the UACs in EU are Afghans and Syrians (Eurostat, 2017). The migration in Europe is generally categorised as mixed migration flows. The majority of UACs enter the EU through two main routes such as Central Mediterranean routes (Italy, around 92%) and Eastern Mediterranean routes (Greece and Bulgaria), and they often seek

asylum and protection in Germany (58% in 2016) and Sweden (24% in 2015) (Sona Kalantaryan, 2017, by analysing Eurostat).

Definition of Concepts: This study also defines different concepts and specifies which definition will use for this study. In this study, the definition of ‘unaccompanied children’ proposes that “*any child under the age of 18 who is separated from his/her parents.*”⁵ The reason behind proposing this definition is that the definition presents an open and broad perspective that recognises different terminologies used for UACs around world, including unaccompanied minor, unaccompanied and separated children, and different unaccompanied migrant, asylum seeking, and refugee children group.

In this research, the ‘humanitarian action’ consider as a manner to “*save lives, alleviate suffering and maintain human dignity during and in the aftermath of man-made crises and natural disasters, as well as to prevent and strengthen preparedness for the occurrence of such situations*” (Good Humanitarian Donorship, 2003). In addition, this study acknowledges that the humanitarian action must be guided by the humanitarian principles of humanity, impartiality, neutrality, and independence (see the details of these principles in Good Humanitarian Donorship, 2003). This study also identifies that the humanitarian action includes both the provision of humanitarian assistance and the protection of civilians who don’t take part in the conflicts (Good Humanitarian Donorship, 2003).

In addition, this study also proposes the protection definition provided by the Inter-Agency Standing Committee (IASC) as “*all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law (i.e. human rights law, international humanitarian law and refugee law).*”⁶ The reason behind choosing this protection definition is that it presents a broad perspective to structure the protection activities by including human security, social, economic, and cultural rights beyond physical protection.

Moreover, this study proposes the child protection definition provided by the Child Protection Working Group (CPWG) as “*the prevention of and response to abuse, neglect, exploitation and violence against children.*” The reason behind choosing this child protection definition is that CPWG is the part of the global protection cluster, and the definition is also equally acceptable to the humanitarian actors who work in child protection collaborating with CPWG. However, this study looks at both the government and humanitarian actors who involve in the protection of unaccompanied children. The reason behind looking the government actors is

⁵ UNHCR, (2000). UNHCR Comments on CIC’s Draft Discussion Paper “Unaccompanied Minor Refugee Claimants.” Available at <http://ecrweb.ca/uam.htm>

⁶ “IASC (1999) IDP Protection Policy. The definition was originally adopted by a 1999 Workshop of the Inter-national Committee of the Red Cross (ICRC) on Protection”

that the roles of the EU member states as non-humanitarian actors working and leading for the unaccompanied child protection is praiseworthy in the EU context. Moreover, in this research humanitarian actors are taking into account includes UN agencies, NGOs, CSOs, IOs, international Red Cross and Red Crescent societies, private agencies, and donor agencies; those involved in the humanitarian action with the same aims of “saving lives and alleviating human suffering” and guided by humanitarian principles.

However, the different definitions and concepts are briefly discussed in the literature review.

Limitations: There are some limitations to this study. Though there is plenty of literature on the UACs in crises, there is very limited information found on the challenges faced by government and humanitarian actors in the protection of UACs. Moreover, the limited time to conduct the research and restricted page number also limited in evolving some of the aspects conversed in this study. It was also challenging to make an in-depth analysis of the specific group and population of UACs, specifically gender, children with disabilities, as there are limited researches. Due to a shortage of time and financial constraints, the research is conducted from the Geneva, not from the field, which is also a big limitation of the study. Therefore, the research is based on literature review and supplemented by a semi-structured interview with child protection expert working with UACs in the EU. There is no interview done with UAC which is also a limitation of this study. Moreover, the finding of sufficient child protection experts to be interviewed was also challenging, thus only one interviewed done with child protection expert who was available (It would be great if I could able to interview an ICRC child protection delegate or a government child protection/welfare official, as they are key actors in unaccompanied child protection in the EU).

Structure: The structure of the dissertation is divided into four chapters.

The **first** chapter is the literature review which discusses three main issues:

- a) The unaccompanied children: this section provides the definition of the concept and also highlights why children migrate unaccompanied and it's linked with the crises.
- b) Understanding protection and child protection: this section provides the definition of the protection and the child protection.
- c) Child protection specific to UACs: this section provides an understanding of the key protection services and activities, the key principles for protecting UACs, and it also analyses the International and European legal frameworks.

The **second** chapter identifies and analyses the challenges faced by government and humanitarian actors in the protection of UAC. This chapter also mentions to the EU as an example of a context.

The **third** chapter suggests some recommendations to adapt and strengthen the strategies and services for UACs in order to address the challenges mentioned in the second chapter.

The **fourth** chapter discusses the conclusion of the research.

2. LITERATURE REVIEW

The literature review explores and analyses the concept of UACs and why children migrate unaccompanied and it's linked to crises. It also explores and analyses the concept of protection and child protection. UACs requires specific protection related to their situation and needs, thus the literature review provides a brief understanding of the child protection specific to UACs. It also explores key services and activities, key principles, and international legal frameworks for protecting UACs.

2.1. Unaccompanied Children:

2.1.1 Definition of the concept (Unaccompanied Children)

An unaccompanied 'children'⁷ (also called unaccompanied minor) is a child without the presence of a legal guardian (Wikipedia). The definition of UAC is varied from country to country and organisation to organisation. According to the UN Committee on the Rights of the Child, the unaccompanied children or minor are those "*who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.*" An unaccompanied child is under the age of 18 years. Sometimes unaccompanied children also called separated children who have been separated from his or her parents but not essentially from the relatives. So children who are accompanied by other family members are called separated children (UNCRC, 2005). The UAC can be orphaned due to loss of one or both parents in crisis and forcefully migrate alone. However, Inter-agency Guiding Principles on Unaccompanied and Separated Children does not endorse the term 'minor' and recommends that the term 'child' be used instead to ensure use of the common definition of 'child', as set out in the Convention on the Rights of the Child (IAWG-UASC, 2017). Whereas the EU member countries and many other countries often use unaccompanied minor or both minor and children.

However, the above definition doesn't provide a clear understanding that whether UACs are migrant, asylum seeker or refugee. So it is important to further explore the definition of UAC in regards their status related to migration, asylum-seeking, and refugee. In the EU context, an unaccompanied minor migrant refers to "*a minor who arrives on the territory of an EU Member State unaccompanied by an adult responsible or who is left unaccompanied after he*

⁷ "Children" are defined in Article 1 of the 1989 Convention on the Rights of the Child (CRC) as "every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier."

or she has entered the territory of the Member States”(Asylum Qualification Directive 2011/95/EU). Similarly, unaccompanied asylum-seeking or refugee children are those persons under 18 years who are applying for asylum or seeking refuge in a foreign state by their own without an adult responsible for them (UK Home Office, 2012 and Plener, Paul L. et al, 2017).

In this study, the definition of unaccompanied children proposes that “*any child under the age of 18 who is separated from his/her parents.*”⁸ For the purpose of the study, all UAC migrant, asylum seeker, and refugee groups are referred to as UAC. The above definition also recognises the separated children who frequently looked after by relatives or other guardians whether by law or custom. Furthermore, the study also recognises both terms ‘child’ and ‘minor’. The reason behind proposing this definition is that the definition presents an open and broad perspective that recognises different terminologies used for UAC. In addition, this study is taking the EU as case, so it also allows the definition and terminologies of the EU.

2.1.2. Why Children Migrate Unaccompanied and It’s Linked to Crises:

There are different reasons and motivation for why children migrate unaccompanied. A UN Human Rights Council report (A/HRC/33/53) discussed that the reasons why children migrate are often complex and subject to the country of origin, social and cultural background and individual and family aspirations. There is often a difference between the motivation of migrated children who apply for asylum and the motivation of those children who do not apply. The children who seek asylum are often fled their country of origin due to the fear of persecution or because of violence and conflict. Children who don’t seek asylum are often moved to the desire countries with hopes to find a better future and often don’t want to be registered or be cared for the reception centres, which greatly limits the information on them. Moreover, this report shows that while there are several reasons why children migrate alone, but the common factor is the numerous violations of human rights of children in their country of origin, including lack of protection due to different violence, abuse, threats, intimidation, insecurity, poverty, lack of opportunities and poor access to education, health and other services (UN Human Rights Council, 2016).

In the EU context, an increasing number of children migrate unaccompanied to Europe in order to escape conflict, persecution, violence, natural catastrophes, and poverty, or in the expectation of a better life following educational and economic opportunities, or seeking family reunification (O'Donnell, R. & Kanics, J. 2016). For instance, over half of the UAC in EU are Afghans and Syrians (Eurostat, 2017). The children migrate unaccompanied from both

⁸ UNHCR, (2000). UNHCR Comments on CIC’s Draft Discussion Paper “Unaccompanied Minor Refugee Claimants.” Available at <http://ccrweb.ca/uam.htm>

Afghanistan and Syria to Europe are due to conflicts and crises. Therefore, it is clear that the children migrate unaccompanied has greatly linked to the crises. However, many UAC made very dangerous journeys, across land and sea, and once in Europe, they moved from one country to another, by their own or via smugglers and traffickers. Many seeking asylums for international protection, and many whom unregistered remain at risk of discrimination and exploitation (O'Donnell, R. & Kanics, J. 2016).

According to Eurostat, the number of UAC applied for asylum in the European Union has been increased exponentially since 2010. More than 96,500 UAC applied/registered for international protection in the EU in 2015 (Eurostat). Though there is no complete statistics on the exact number of unaccompanied migrant children present in the EU, especially those who do not apply for asylum, but the number is likely to be significant (O'Donnell, R. & Kanics, J. 2016).

However, the UAC faces several challenges and problems in the EU, such as enter into Europe following dangerous routes, the risk of detention, increased vulnerability to violence and exploitation, lack of safe reception, lack of legal advice and support, obstacles to family reunification, etc.⁹ Although the EU, Member States, humanitarian organisations are playing significant roles in the protection of UAC.

2.2. Understanding Protection and Child Protection:

2.2.1. Definition of Protection

The goal of the protection is to safeguard the full respect for the rights of all individuals, without discrimination (Global Protection Cluster, 2010). Inter-Agency Standing Committee (IASC) outlines protection as “*all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law (i.e. human rights law, international humanitarian law and refugee law).*”¹⁰ This definition provides a conceptual basis that can be used by different actors’ according to their area of work and scope. However, the definition also uses a broad concept by including “*the full respect of the rights of the individual*” which goes beyond the concept of survival and physical security, and provides enough scope to include humanitarian and relief activities, such as the provision of food, education, and healthcare. Moreover, the definition also blurs the lines between a rights-based approach and a needs-based approach (Oscar, C. 2016)

However, a global protection cluster report¹¹ shows that the protection can be seen as an objective, a legal responsibility, and an activity.

⁹ Margaret Tuite – Supplementary Written Evidence (UME0038). Available [here](#)

¹⁰ IASC (1999) IDP Protection Policy. The definition was originally adopted by a 1999 Workshop of the Inter-national Committee of the Red Cross (ICRC) on Protection”

¹¹ Global Protection Cluster (2010). Handbook for the Protection of Internally Displaced Persons

- Protection is an objective, as it entails ‘full and equal respect for the right of all individuals’, without discrimination, as underpinned in the legal frameworks. Protection is not restricted only to the survival and physical security, but it also guarantees all types of rights, including the rights to education and health (Global Protection Cluster, 2010).
- Protection is a legal responsibility, under IHL which applicable to ‘all parties of armed conflict’. Humanitarian actors playing crucial roles when the states and authorities are unwilling to accomplish their duty (Global Protection Cluster, 2010).
- Protection is an activity, which entails action to safeguard the enjoyment of rights. Protection activities can be carried out in three ways, such as to prevent or stop violations of rights, the remedy to violations, and to promote respect for rights and the rule of law. (Global Protection Cluster, 2010)

This study proposes the protection definition of the Inter-Agency Standing Committee as it presents a broad perspective to structure the protection activities by including human security, social, economic, and cultural rights beyond physical protection. Moreover, this definition also equally accepted to the humanitarian actors as this is the working definition of global protection cluster.

However, at the global level, the protection in humanitarian context is carried out and coordinated by the global protection cluster since 2005 under the cluster approach. UNHCR is the Global Cluster Lead Agency for Protection. As the definition of protection is very broad, thus IASC in 2005 divided the work of the Global Protection Cluster (GPC) into four Areas of Responsibilities (AoRs) such as Child Protection (lead by UNICEF); Gender-based Violence (lead-by UNFPA); Housing, Land and Property (lead-by NRC); and Mine Action (led-by UNMAS) (GPC).¹²

2.2.2. Definition of Child Protection:

The humanitarian crises and conflicts happening around the world are worsening the vulnerabilities of children, and at the same time disrupting the formal and informal systems that protect children (Williamson, Katharine, et al, 2017). Besides increasing vulnerabilities, the children tend to face increasing abuse, exploitation, violence, and neglect. The goal of the child protection is to protect children from all types of violence and exploitation. Child Protection Working Group (CPWG) outlines child protection as “*the prevention of and response to abuse, neglect, exploitation and violence against children.*” The child protection is also defined by different humanitarian actors from their organisational point of view and

¹² Global Protection Cluster (GPC). Available at <http://www.globalprotectioncluster.org/en/about-us/who-we-are.html>

mandate, but the definitions are quite similar what child protection working group defined. For instance, the definitions used by the Save the Children, and the World Vision are quite similar as they followed the CPWG's definition.

However, all the child protection concepts and works are influenced by and the grounded on the 1989 UN Convention on the Rights of the Child, which is the key human rights treaty concerning the children including UACs. The Article 19 of the UNCRC (1989) originally defines the 'child protection' which later followed by CPWG and other agencies. Therefore, in response to the Article 19 of the UNCRC (1989), the child protection activities mainly focus on addressing vulnerabilities of children such as separation, prevention of risks, such as sexual violence or child labor, or respond to specific incidents to minimise the impact on the child, for example supporting access to health and psychosocial services, legal remedy, and/or assist in the return and reintegration with their families and communities (Williamson, Katharine, et al, 2017).

This study proposes the child protection definition of the Child Protection Working Group, as CPWG is the part of the global protection cluster, and responsible for coordinating and responding child protection in the humanitarian context. So, the definition is also equally acceptable to the humanitarian actors who work in child protection collaborating with CPWG. However, child protection is an area of responsibility (AoRs) under global protection cluster, along with the three other AoRs. The child protection area of responsibility is also known for several years as a child protection working group (CPWG), which established in 2007 by the Inter-agency Standing Committee (IASC) and lead by UNICEF for coordination on child protection in humanitarian settings (CPWG)¹³

2.3. Understanding Child Protection specific to UACs:

A number of studies have revealed the vulnerabilities of UACs, and how UACs are particularly at risk of violence, abuse, detention, exploitation, and neglect.¹⁴ Therefore, it is clear that UACs are some of the most vulnerable migrants, who need special 'child protection' and assistance appropriate for their situation (Tal Schreier, 2011: 61-75).

3.3.1. Key protection services and activities (specific to UACs)

Humanitarian actors are implementing a set of child protection activities specific to UACs based on the Inter-Agency Guidelines on UASC and the Guidelines for the Alternative Care

¹³ Child Protection Working Group (CPWG). Available at <http://cpwg.net/>

¹⁴ (Ed.) Kanics, J., Senovilla Hernández, D., Touzenis, K., (2007) UNESCO, Migrating Alone: Unaccompanied and Separated Children's Migration to Europe; UNICEF, REACH (2017) Situation Overview: Unaccompanied and Separated Children in Transit in Ventimiglia, Italy, February 2017; Oxfam (2016) The impact of protection interventions on unaccompanied and separated children in humanitarian crises: An evidence synthesis protocol; Save the Children (2017) Out of Sight, Exploited and Alone: A joint brief on the situation for unaccompanied and separated children in Bulgaria, the Former Yugoslav Republic of Macedonia, Serbia and Croatia, April 2017"

of Children. The aims of the child protection activities specific to UACs are to restore a protective environment for UACs, by reducing their vulnerabilities and risks.

However, separation increases the vulnerabilities of UAC as they have lost the protective environment of their family (Williamson, Katharine, et al, 2017). Activities that aim to restore a protective environment particularly designed in two parts: A) tracing the child's family with aim of family reunification, if this is found to be in the best interests of child; or B) provide necessary alternative or interim care to the child, while they are separated from their family or until an alternative durable solution for the child has been identified and implemented (Williamson, Katharine, et al, 2017).

A. Family Tracing and Reunification:

The process of family tracing and reunification is commonly known as identification, documentation, tracing and reunification (IDTR). The IDTR is a set of actions designed by the Inter-Agency Guidelines on Unaccompanied and Separated Children. It includes the following steps.

- **Identification:** the process of establishing which children have been separated from their caregivers, and where they may be found. (IAWG, 2004)
- **Registration:** the compilation of key personal data for the purpose of establishing the identity of the child, for protection and to facilitate tracing. (IAWG, 2004)
- **Documentation:** the procedure of recording information to meet the specific needs of the children, including tracing, and to make plans for the child's future (IAWG, 2004)
- **Tracing:** the procedure of searching for family members or legal caregivers with an object of family reunification (IAWG, 2004)
- **Verification:** the procedure of ensuring the validity of the relationships and checking the readiness of the child and family members to be reunified (IAWG, 2004)
- **Reunification:** the procedure of bringing together the child and their family or legal care-providers for the aim of ensuring long-term care. (IAWG, 2004)
- **Follow-up:** a sort of activities for children and their families to assist their reintegration (IAWG, 2004)

Many humanitarian actors are working through the case management approach with UAC. In the case management approach, the early steps of the case management process (identification, registration, documentation, assessment, case planning), as like as the initial steps (identification, registration and documentation) of IDTR (Williamson, Katharine, et al, 2017). This initial or early steps of IDTR or case management help to safeguard the protection

and care of children including UACs, and also assist in the tracing of child's families. Family tracing and reunification (FTR) then becomes a service for those UAC, who are asked for support to find and or to be reunified with their family (Williamson, Katharine, et al, 2017).

B. Interim alternative care:

All children including UACs are entitled to the provision of emergency care for their basic survival (IAWG, 2004). Care arrangement must be adequate and appropriate to the needs of UAC. However, the interim alternative care is grounded on the UN Guidelines for the Alternative Care of Children 2009 and IAWG UASC Alternative Care in Emergencies Toolkit 2013.

- **Interim care:** Interim care is arranged on a temporary basis. It can be formal or informal, foster carers or in residential care. Interim care is planned 12 weeks (three months) which should be reviewed in a timely manner in order to refer the child for the longer-term care if necessary (IAWG UASC, 2013: 12)
- **Alternative care:** Alternative care is mainly provided by caregivers who are not children's biological parents. It can be informal or formal care. Alternative care includes kinship and foster care; family-based care, residential care for children etc.¹⁵

However, the interim alternative care is so crucial for the survival of the UACs. It is important to arrange cares for UAC as soon as they identified and registered. Moreover, there is a need for mainstreaming child protection within other clusters and sectors with the aim of availing the necessary assistance and cares for UACs.

2.3.2. Key Principles for Protecting Unaccompanied Children

There is a number of principles for protecting UACs, which are derived from international human rights, humanitarian, and refugee law. All of them are widely accepted, and applicable in each context. In addition, there are some principles of good practice for humanitarian programming. All these principles are so crucial for protecting UACs.

A. Child rights principles for unaccompanied children

- **Family unity:** The principle of family unity permits children to have a family, and a family to have the right to protect and care for their children. UAC must be provided services with the aim to family reunification or return to the family or legal caregivers as quickly as possible if this is in the best interests of the child (IAWG-UASC, 2017: 16).
- **The best interests of the child:** the best interests of the child should be the primary consideration in all actions regarding the wellbeing and protection of the children

¹⁵ United Nations (2009) Guidelines for the Alternative Care of Children, Article 29 (b) & (c).

(UNCRC, 1989: Article-3). The best interests principle must be considered in all humanitarian programs management phases including protection programs.

- **Non-discrimination:** one of the basic principles of international humanitarian and human rights law, which obliges that the protection must be granted to all regardless of race, colour, sex, disability, language, religion, political, national or other status (IAWG-UASC, 2017: 16). This principle grounded on the Article 2 of the Convention on the Rights of the Child, the Geneva Conventions, and their Additional Protocols. However, crises and emergencies often underpin existing differences, and further marginalise individuals who are at risk of discrimination (CPWG, 2012:15). Thus humanitarian actors must be taking into account the current and the new pattern of discrimination and power and must contribute to reducing the discrimination.
- **The right to life, survival, and development:** Every child has the inherent right to life, survival, and development. This principle is grounded on the Article 6 of UNCRC. Humanitarian actors must consider the effects of crises and the humanitarian response on the physical, emotional, psychological, social and spiritual development of children (CPWG, 2012:15).
- **Participation and respect for the views of the child:** Article 12 of the UNCRC 1989 provides legal basis and obligation to ensure the participation and respect for the view of the child. Children must be informed and involved in decision-making and plans regarding their placement, care, family tracing and reunification (IAWG-UASC, 2017: 16). Humanitarian actors should ensure child participation and active engagement in humanitarian interventions and protection.

B. Principles of good practice in humanitarian programming

In addition, humanitarian actors working for the care and protection of UAC should: oblige to ‘coordination’¹⁶ and cooperation with all organisations concerned; resort long-term commitments; integrate unaccompanied and separated children (UASC) programmes within a protection framework, and strengthen ‘child protection systems’¹⁷ with the aim of increase the resilience of all children and their families.¹⁸ Humanitarian actors must carry out their activities with impartiality and in line with overall protection needs, and the organisation’s mandate and expertise (IAWG-UASC, 2017: 16).

2.3.3. International and European Legal Frameworks related to UACs:

¹⁶ Child Protection Working Group, (2012). Minimum Standards for Child Protection in Humanitarian Action, see Standard 1: Coordination.

¹⁷ “A child protection system is defined as certain structures, functions and capacities that have been assembled to prevent and respond to violence, abuse and exploitation of children.” Source: Conference on Strengthening National Child Protection Systems in Sub-Saharan Africa, May 2012.

¹⁸ Child Protection Working Group, (2012). “Minimum Standards for Child Protection in Humanitarian Action, see Principle 5: Strengthen child protection systems, and Principle 6: Strengthen children’s resilience in humanitarian action.”

The primary responsibility of the parents, family, and community are ensuring children's survival and well-being, while the roles of national and local authorities are ensuring children's rights are respected, protected and fulfilled (IAWG-UASC, 2017:35). Unaccompanied children are entitled to receive international protection according to international human rights, humanitarian and refugee law. These legal frameworks made basis and obligations for the rights and protections of unaccompanied children against violence and abuse.

A. International and European Human Rights Law

The International human rights law establishes the rights of the human being including unaccompanied children, which applies both in peacetime and in conflict. Among international human rights law, the Convention on the Rights of the Child (CRC) is the most significant international human rights framework applicable to unaccompanied children. The UN General Assembly adopted the CRC in 1989 for protecting children from any kinds of threats, violence, abuse, exploitation, and neglect. CRC is one of the universally ratified international treaties for working with unaccompanied children. The rights and provisions underpin in the CRC 1989 are applicable without any discrimination according to the Article 2 of the UNCRC 1989. CRC also creates an obligation to take corrective measures to ensure that the child is protected against all forms of discrimination and punishment.

However, The CRC 1989 has five core principles which are very fundamental for protecting unaccompanied children: Right to family (Preamble, Article 16); the best interests of the child (Article 3); non-discrimination (Article 2); participation and respect for the views of the child (Article 12); the right to life, survival, and development (Article 6); and. (See details in 2.3.2 key principles part)

In addition, the convention sets a number of fundamental rights with the aim to safeguard the physical, psychological, social, and intellectual development of the children and adolescents. The CRC entitles protection to all children, including unaccompanied children, (Articles 19, 34, 35, 36) especially those who are most susceptible to abuse and exploitation. Moreover, Article 10 (1) establishes obligation that child should not be separated from parents and also made provision of family reunification. CRC also sets an obligation to provide assistance and alternative care for children. All the Articles of CRC are universally significant for child protection, and also a crucial tool for advocacy with relevant government authorities.

However, UACs are also allowed to the rights and protections according to other human rights instruments, such as: 'the 1966 International Covenant on Economic, Social and

Cultural Rights (ICESCR)', and 'the 1966 International Covenant on Civil and Political Rights (ICCPR)' etc.

In the context of EU, the major human rights treaty that provides rights and protection for UACs are the 1987 European Convention for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CRT), and the 1950 European Convention on Human Rights and Fundamental Freedoms (ECHR). The ECHR has a number of articles and protocols that ensure different rights of unaccompanied children. Moreover, if anyone feels that his or her rights have been dishonoured or violated under ECHR, can take a case to the European Court of Human Rights (ECHR) established by ECHR. The CRT is the most ratified treaty in the EU. Article 3 of the ECHR and CRT prohibit and protect unaccompanied children from any kind of tortures and ill-treatment.

B. International humanitarian law (IHL)

The International humanitarian law applies in the situations of international and non-international armed conflicts. IHL is enshrined in the Geneva Conventions (1949) and their Additional Protocols (1977) which is binding upon all parties to the conflict and provides protection to civilians, including unaccompanied children. IHL sets obligation for the respect, protection, and provision of care and assistance for children, including unaccompanied children; such as *“Children shall be the object of special respect and shall be protected against any form of indecent assault. The Parties to the conflict shall provide them with the care and aid they require, whether because of their age or for any other reason.”*¹⁹

Maintain family unity during evacuation or transfer is also a fundamental obligation sets out in IHL.²⁰ Moreover, IHL sets essential obligation for the provisions of family contact and reunification during an international and non-international armed conflict.²¹ In addition, provision of setting contact between family members²² and information on missing persons are also significant aspects of IHL for unaccompanied children. These legal principles and obligations of IHL are greatly supporting the family contact, tracing and reunification of conflict-affected unaccompanied children (IAWG-UASC, 2017: 37).

C. International and European refugee law

International refugee law guarantees and recognises the rights and protection of refugees and asylum seekers including unaccompanied refugee and asylum-seeking children. The Refugee Convention 1951 and its 1967 Protocol are the main refugee law treaty that outlines who is a

¹⁹ “Additional Protocol I (1977), Article 77(1). See also Additional Protocol II (1977) Article 4(3)”

²⁰ “Fourth Geneva Convention (1949), Article 27(1); Additional Protocol I (1977), Article 78.”

²¹ “Fourth Geneva Convention (1949), Article 26”

²² “Fourth Geneva Convention (1949), Article 25(1)”

refugee, and also provides legal obligation to the states for safeguarding the rights and protection of refugees and asylum seekers including UACs. The convention also sets responsibilities for the state who grant asylum. In addition, the convention sets specific provision of family unity, guardianship, and adoption for unaccompanied refugee children.

The principle of non-refoulement of the 1951 Refugee Convention is universally accepted, a customary international law that made legal obligation on states for not to expel or return a refugee when they feel their life or freedom would be threatened (UN Refugee Convention, 1951: Article 33). This means all states must respect the principle of non-refoulement whatever they ratify or not ratify the 1951 Refugee Convention. Therefore, it is very essential for unaccompanied children especially in accessing territory, prohibiting forcibly return, and cross-border tracing and reunification.

In the EU context, the EU member states are increasingly specialised and prioritised child-focused approach and procedures for asylum-seeking children. For instance, the EU Strategy on the Rights of the Child is adopted, and the best interests principle is incorporated in the EU Charter of Fundamental Rights. Moreover, EU has been adopted ‘asylum acquis’ for establishing a Common European Asylum System (CEAS) since 1999, which also significant for safeguarding unaccompanied children. Between 1999 and 2005, a number of legislative actions were taken for harmonising common minimum standards for asylum.²³ For examples, “Temporary Protection Directive (2001/55/EC); Reception Conditions Directive (2003/9/EC); Asylum Qualification Directive (2004/83/EC); and Asylum Procedures Directive (2005/85/EC); Family Reunification Directive (2003/86/EC); Return Directive (2008/115/EC); and Anti-Trafficking Directive (2011/36/EU)”²⁴ All these council directives are crucial legal measures for protection unaccompanied children in EU.

Finally, in each context, unaccompanied children-related policies, programmes, and decisions must be guided by the international human rights, humanitarian and refugee law.

3. CHALLENGES IN THE PROTECTION OF UNACCOMPANIED CHILDREN

To identify, understand and analyse the challenges in the protection of UAC, it is required to understand and analyse the child protection systems, functions, and other components. In the EU context, the child protection work for UACs could be either a single response addressing single problem and need, or an integrated multi-sectoral response, adding a multiple actors and sectors (legal, shelter, protection, health, psychosocial, etc.) in addressing diverse needs and problems of UACs (House of Lords, 2016). Moreover, the child protection work for

²³ European Commission. Common European Asylum System. Available at https://ec.europa.eu/home-affairs/what-we-do/policies/asylum_en

²⁴ Find all Council Directive and EU law in EUR-Lex website available at <https://eur-lex.europa.eu/homepage.html>

UACs across Europe remain broad and complex, which includes a wide range of interconnected activities and processes, including asylum processes (arrival and registration, age assessment, asylum application, reception and durable solutions), care and services arrangements (shelter, health, education etc.) and child protection concerns (family tracing and reunification, legal guardianship and legal representation, child detention, child trafficking, missing children, etc.), etc. (Kevin Byrne and Claus Bech Hansen, 2018).

In the EU context, a diverse range of actors involves in the protection of UACs, including government, humanitarians, academics, private sector etc. The asylum authorities, and child protection and welfare authorities from the respective countries are playing crucial roles for the protection of UACs, including providing international protection, responding asylum requests, arranging care, and durable solutions (House of Lords, 2016). While the humanitarian actors including UN agencies, NGOs, CSOs are working together with governments to design and strengthen strategies and procedures, to develop and promote burden-sharing schemes, to support arranging shelters and care, to implement pilot projects etc. However, in general, humanitarian actors have a very small role to play in national asylum and child protection systems in the EU (Liv Feijen, 2008: 63-73). While the evidence from the literature review and interview have acknowledged both the government and humanitarian actors roles and their way of working in the protection of UAC in the EU context.

However, the recent migration and refugee crisis is the greatest humanitarian challenge to have confronted the European Union since its creation (House of Lords, 2016). According to Eurostat, more than 96,500 UAC applied for the asylum and international protection in 2015 across Europe which is almost 5 times higher than the annual average during the period 2008-2013. Although the number of UAC declined in 2016-17, still high numbers of UAC continued to arrive in some EU countries, such as France, Greece, Italy and Spain (FRA, 2018).

Despite having sound legal frameworks and reputation of child protection in Europe, the magnitude of the recent UAC migration have posed real challenges for the EU member states and humanitarian actors working with UAC, and have revealed inherent cracks and gaps in national asylum and child protection systems (Kevin Byrne and Claus Bech Hansen, 2018; House of Lords, 2016). This has been repetitively admitted during the literature review and interview.

Consequently, the study identifies a number of challenges in the protection of UACs, based on the literature review, and an interview. This study identifies and emphasizes an area as the

most critical, where challenges remain across Europe: legal challenges (the best interests in national systems, legal guardianship and legal representation, the age assessment, the detention, and family tracing and reunification). The study emphasises on these challenges, due to its huge implications on the protection of UACs, its existence across Europe, and its trigger several gaps and challenges in the national responses. However, the study looks into diverse countries, including countries who are well-known for promoting and protecting child rights, like Nordic countries (Norway, Sweden, Finland, Denmark, and Iceland), and countries who are overloaded like France, Greece, Italy, and Spain. The study also looks at the good practices and positive developments in EU member states. The challenges in the protection of UACs, including underpinned cracks and gaps, are described in below -

3.1. Legal Challenges

There are legal obligations on EU member states to protect all foreign UACs. UACs are entitled to receive international protection according to international and European human rights, humanitarian and refugee law. These legal frameworks made basis and obligations for the rights and protections of UACs against violence and abuse (Liv Feijen, 2008: 63-73). The legal and policy frameworks for the protection of UACs in the EU is quite extensive. However, it is in the implementation of these legal and policy instruments that, there is often denial of the rights (FRA, 2017). In addition, the current migration crisis and the magnitude of UACs migration in EU have exposed serious gaps in national policies and legal frameworks. Besides, the several international frameworks and standards are unevenly translated into national regulatory frameworks. Therefore, there is a necessity to harmonise legal procedures within the EU and minimise the legal and policy gaps (Council of Europe, 2016).

In the EU, there are a number of areas of unaccompanied child protection where severe policy gaps, lack of harmonisation of legal procedures within the EU and lack of implementation of legal procedures observed. Interview with UACs and humanitarian actors have highlighted the following legal procedures and issues that affect the protection and legal status of unaccompanied children (FRA, 2010). The key legal issues and procedures where serious challenges and gaps occur are: the best interests in national systems, legal guardianship and legal representation, the age assessment, the detention, and family tracing and reunification.

3.1.1. Best Interests of the Child in National Systems Challenge

According to the Article 3 of the UN Convention on the Rights of the Child 1989 “In all actions concerning children, (whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies), the best interests of the child shall be a primary consideration.” The best interests principle is so fundamental legal

principle that should be the primary consideration to every aspect of the protection and well-being of a child (UNHCR, et al, 2017), or any solutions to the child's situation (Liv Feijen, 2008: 63-73). However, all EU Member States have ratified the UNCRC, and the best interests principle were enshrined in all the relevant EU legislation, such as the Anti-Trafficking Directive (2011/36/EU), and Return Directive (2008/115/EC) and the Return Handbook (House of Lords, 2016). To identify and apply the best interests of UAC, it is key to allow best interest assessment (BIA) and best interests determination (BID) in the national child protection and asylum systems (UNHCR, et al, 2017).

However, the national child protection and asylum systems across the EU still do not consider the best interests of UAC throughout the various processes a child gone through. While best interests included, the best interests considerations are rarely linked to each aspect of the protection and well-being of an unaccompanied child, or solutions to the child's circumstances (UNHCR, et al, 2017). Moreover, there is too little standardisation and understanding of what 'the best interests' (the principle) means and requires in practice, as a result, the divergent interpretation by the EU Member States also limit its application in practice (House of Lords, 2016). While, the practitioners revealed that it is not a problem of the principle, but the number of administrative procedures children facing or going through are hampering its application. Similarly, there is a clash remains between migration policies and a child's best interests (UNHCR, et al, 2017), some EU Directives were too narrow in scope, that also limits the application of the best interests obligation (House of Lords, 2016). For instance, in the UK, despite the existence of guidance on the application of the best interests principle, it is esteemed and is viewed as an obstacle by the immigration officials to the effective operation of immigration controls (House of Lords, 2016).

In addition, the absent or insufficient best interests assessment and determination procedures and guidelines across Europe are also serious gaps that hinder the implementation of the best interests of the unaccompanied child (UNHCR, et al, 2017). Moreover, there is a lack of legal materials and training on the best interests for the national authorities who conducted the best interest assessment and determination (Kevin Byrne and Claus Bech Hansen, 2018). For instance, the Nordic countries (Norway, Sweden, Denmark, Finland and Iceland) lack clear procedures and tools for best interest assessment (BIA) and best interests determination (BID), which resulted in poor-quality assessments and decisions on the best interests of UAC (Kevin Byrne and Claus Bech Hansen, 2018).

Moreover, there is no clear separation of the national child protection and asylum bodies and their responsibilities (UNHCR, et al, 2017). There is uniformity across Europe, in terms of

who conducts best interests assessment and determination, at what stage of the asylum process, and for what purposes (Kevin Byrne and Claus Bech Hansen, 2018). However, in most cases, the asylum bodies are conducting the assessment and taking decisions concerning the protection and well-being of UAC, who have lack of understanding and training on the best interests; and most importantly the asylum bodies examine options through the lens of asylum, and not child protection (UNHCR, 2017). Ideally, the best interests assessment and decisions should lead by an independent child protection body that has the right expertise and training (UNHCR, et al, 2017). In addition, there is a lack of involvement of legal guardians and lack of participation of UAC often reported (Kevin Byrne and Claus Bech Hansen, 2018). These systematic gaps and challenges negatively affect all aspect concerning UACs, from the provision of care to durable solutions (UNHCR, et al, 2017).

3.1.2. Legal Guardianship and Legal Representation Challenge

The UNCRC 1989, the EU Charter of Fundamental Rights and the EU asylum acquis have made legal obligations for the appointment of a legal guardian or legal representative (FRA, 2010). A legal guardian or legal representative is a person or an organisation who is being an agent and the voice of the child - plays crucial roles in safeguarding the best interests of the child, promoting the child's safety and well-being, facilitating child participation, assisting in durable solutions, and supporting the child in legal procedures and access to justice (FRA, 2015). A legal guardian or legal representative should be appointed to every UACs as soon as possible a UAC identified.

However, the guardianship and legal representation have rarely been implemented in a systemic approach to protect UACs, due to lack of a harmonised approach across Europe (UNHCR, et al, 2017). There are divergent procedures regarding the guardianship functions, their organisation and implementation found across Europe, while the effectiveness of the protection provided to UACs, largely depends on the nature of these functions and on how these functions are carried out (FRA, 2010). Moreover, the guardianship systems are often time-consuming to appoint a legal guardian (FRA, 2018), and expensive, which caused negative consequences for the UACs (UNHCR, et al, 2017). Humanitarian actors have highlighted that, in some countries, guardian represent more than 75 UAC, and meanwhile increasing UAC influx pose serious capacity problems for guardianship systems (UNHCR, 2017). Throughout Europe, the guardians are overwhelmed, received little training, and appropriate guidance and institutional support on their role and responsibilities. Even if, the guardianship structures are in place across Europe, the inadequate investment in training and support of the structures weakens their competences (UNHCR, et al, 2017).

For Instance, in Greece, the public prosecutors undertake the role of “the special temporary guardian” for UACs, prior to the appointment of a permanent legal guardian in line with Greek civil code.²⁵ However, in practice, the guardianship for UAC has rarely been implemented. According to a Safeguard report, the public prosecutors are usually little familiar about the needs and psychosocial circumstances of UAC to which they are appointed.²⁶ They are also overburdened by high caseloads - up to 1000 individual cases at a single time (Mixed Migration Platform, 2017: 4-8); has lack of expertise necessary for the guardianship, and often they limit their role to only find a permanent legal guardian without any determination of the best interests of the child, and assisting UACs in legal procedures (ACHILLI, Luigi, et al, 2017).

In Finland and Norway, the immigration authorities are selected and financed the legal guardians, that the independence of such guardians who represent the child’s best interests are questionable, and also there are risks of dismissal, if guardians advising against the age assessment or any other legal issues opposing the authorities view (Kevin Byrne and Claus Bech Hansen, 2018). However, Sweden’s guardianship model appears more effective than most, that the guardians are integrated into the national child protection system. Though, there are problems in the qualifications and capacities of the guardian in Sweden (Kevin Byrne and Claus Bech Hansen, 2018).

All these guardianship shortcomings across Europe often hinders the quality of the service and leaves many UACs without adequate protection, care, and justice that they are legally entitled to (Mixed Migration Platform, 2017: 4-8). Therefore, there is a need across Europe to develop a harmonise guardianship model that ensures that children have access to an appropriate legal guardian and legal representative (UNHCR, 2017). However, many humanitarian actors are working and initiating the project to establish and strengthen guardianship system, so that the UACs received legal supports which they don’t have. For instance, UNHCR implementing a guardianship project in Serbia to establish guardianship system in collaboration with the government and partners (UNHCR, 2018).

3.1.3. Age Assessment Challenge

Age assessment is a key legal procedure to determine whether an individual is a child or an adult when there are reasonable grounds for doubting about the claimed age. This is so that a child can preserve their identity, and can enjoy the provisions of protection and care entitled to them under the law (EASO, 2013). In 2013, the European Asylum Support Office (EASO)

²⁵ Greek Civil Code Articles 1589-1654.

²⁶ Safeguard Europe, (2016). Safeguard: Transnational Report Europe, November 2016.

published a harmonised age assessment guidelines comprising multidisciplinary methods, and 12 procedural safeguards and legal provisions to provide practical support to the Member States in the field of the age assessment.

However, the age assessments are often not conducted in accordance with relevant guidelines across Europe (EASO, 2013). The divergent age assessment procedures and practices across Europe have caused in conflicting decisions on the age of individuals, and which resulted in the interruptions in the protection, and the provision of care to UAC (UNHCR, 2017 and House of Lords, 2016). In many situations, the asylum authorities are conducting age assessments focusing only the medical methods, not considering the social and cultural aspects, which often leads to incorrect age assessments (UNHCR, et al, 2017). Moreover, no state has put all of the safeguards in place stated in the EASO guidelines (Kevin Byrne and Claus Bech Hansen, 2018), and very few countries are challenging the questionable results of age assessments (UNHCR, 2017).

For Instance, in Greece, specific procedural safeguards were drafted for the age assessment of UACs in 2016, which makes an obligation to consider the “gender-specific characteristics and cultural particularities” in the age assessment.²⁷ It also grounded a number explicit safeguards and legal provisions outlining the rights of UAC, such as a legal guardian, the presumption of a minority, informed consent, the use of the least invasive method, and right of refusal age assessment (Mixed Migration Platform, 2017: 4-8). In practice, however, the procedural safeguards have been systematically ignored. Interviews with humanitarian actors and the UACs revealed serious concerns over age assessment practices in Greece (ACHILLI, Luigi, et al, 2017). Such as: uneven implementation of safeguard procedural led by Hellenic Police; no/lack of involvement of child protection actors in the age assessment; age determination excessively focus on medical examinations; lack of capacity and accountability of the Hellenic Police regarding the age assessment procedures (Mixed Migration Platform, 2017: 4-8), lengthy and time-consuming age determination procedures - risking the protection of 16-17 years UAC; and no legal resources to challenge and alter the wrongful age decision (ACHILLI, Luigi, et al, 2017).

In the context of the Nordic region, a number of age assessment challenges and gaps have identified. In Finland, anyone who refuses to go through the age assessment process is considered an adult. In Norway, the medical examinations are given too much emphasis when age is determined. In Sweden, many UAC aged 15 years or older were categorised as adults without any age assessment – medical or others - due to the pressures on asylum systems. It is

²⁷ “269 Joint Ministerial Decision 1982/2016, Gov. Gazette B’335/16-2-2016”

observed that no Nordic countries have put all of the safeguards in place that stated in EASO 2013 guideline (Kevin Byrne and Claus Bech Hansen, 2018).

The divergent age assessment practices across Europe and uncertainty of the age assessment outcome have multiplied the vulnerabilities of UACs. Many UACs are either facing the discriminatory complexities of asylum processes, including detention, disruptions of protection and care due to becoming adult, and transfers under Dublin III Regulation²⁸; or willingly disappeared from the abusive asylum processes by accepting other risks (Mixed Migration Platform, 2017: 4-8). Moreover, the inaccuracy of age assessment also hampering to estimate exactly how many UACs in Europe (ACHILLI, Luigi, et al, 2017).

3.1.4. Protective Custody and Detention Challenge

The right to liberty and security is a fundamental right, as protected in Article 5 of the European Convention on Human Rights (ECHR), Article 6 of the EU Charter of Fundamental Rights, and in several UN treaties (FRA, 2017). The detention of children implicates various fundamental rights. While in Europe, the children detention allows under the Reception Conditions Directive (2013/33/EU) and the Return Directive (2008/115/EC), only as a last resort - for the shorter time period for the asylum and return purposes.²⁹ Half of the EU Member States national law ban or don't allow the detention of UAC for asylum or return purposes; whereas in some countries it can be possible in certain, exceptional cases, for examples Cyprus, Austria, Finland, and Hungary where detention is possible either asylum or return purposes (FRA, 2017).

However, the detention of UAC remains a major fundamental rights and protection challenge across Europe. A significant number of children are detained in the European Union during their asylum and return processes (FRA, 2017), due to a number of reasons, including inappropriate age assessment, lack of legal representation or guardianship, (UNHCR, 2017), lengthy process or pending for age assessment, lack of appropriate shelters facilities, children identify as adult, lack of alternatives guidelines and practices lack of child-friendly legal measures, misinterpretation of exceptional legal measures, and many other reasons (FRA, 2017 and ACHILLI, Luigi, et al, 2017). For instance, in Hungary, the new law allowing the systematic detention of asylum-seeking children over the age of 14 in the transit zones (AEDH, 2017). In Nordic countries, the criteria to enable detention are quite broad and not child-friendly, which resulted in detention is more common in practice than it should be (Kevin Byrne and Claus Bech Hansen, 2018).

²⁸ See Dublin III Regulation available at https://en.wikipedia.org/wiki/Dublin_Regulation

²⁹Please see the Reception Conditions Directive (2013/33/EU) and the Return Directive (2008/115/EC)

In Greece, the detention of UACs has increased alarmingly.³⁰ The increased influx of UAC, overstretched reception system, lack of legal representation, and the ‘EU-Turkey Agreement’³¹ have been kept many UACs in protective custody (ACHILLI, Luigi, et al, 2017). Terre des Hommes and Save the Children submitted a joint statement to the UN Human Rights Council in 2017, where they emphasised the destructive effect of the EU Turkey Agreement on increasing rates of unaccompanied child detention in Greece since all arrivals from Turkey were placed in closed centres (Mixed Migration Platform, 2017: 4-8)

Research shows that the detention of UACs in Europe has serious negative consequences on children’s physical, psychological, social and general development, including immediate and long-term mental health consequences (FRA, 2017). A number of factors caused these negative consequences, including lack of privacy and general protection concerns; inadequate access to services including education, mental health and psychosocial support; poor living conditions; and little opportunity for play. For instance, in France, detention of children was often placed under poor conditions, with a regular basis, without individual assessments (FRA 2018). However, the UACs are also most vulnerable in detention due to separation from parents (FRA, 2017 and FRA 2018). Interviews with humanitarian actors and UACs revealed that a significant number of UACs choose not to register or avoid the child protection system due to protective custody or detention, and it’s associated negative consequences. In many cases, child trafficking involves UACs who left protective custody willingly to find suitable countries or reunify with family, with the help of smugglers (ACHILLI, Luigi, et al, 2017).

However, when initiatives were taken for reducing policy gaps and policy change, there are often problems occurred in collecting evidence. The lack of documentation and access information on immigration detention remain challengeable, there is no reliable data about the exact number of children detained in Europe (FRA, 2018). For instance, Access Info Europe and the Global Detention Project conducted a two-year study on migration detention in Europe, where Sweden was the only Nordic country provided all of the information requested on the detention facilities and the number of persons detained. While Iceland, Norway, Denmark, and Finland didn’t respond or provide the requested information (Kevin Byrne and Claus Bech Hansen, 2018).

3.1.5. Family Tracing and Reunification Challenge

The family is the ultimate natural environment for the protection, growth, and well-being of the children, thus the family tracing and reunification are crucial when it is in the best

³⁰ Lizzie Dearden (2017). Number of unaccompanied child refugees in Greek detention centres rises 'alarmingly', says human rights group. Independent News UK.
³¹ Please see 'the EU-Turkey Agreement'. Available at <http://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/>

interests of the child (FRA, 2010). Family tracing and reunification is a key and necessary legal procedure for achieving the family unity (UNHCR, 2012), integrating children into the host community as well as it is the legal route within the EU (House of Lords, 2016). The Article 10 and 22 of the UNCRC 1989, Article 5 of the Family Reunification Directive, Article 19 of the Reception Conditions Directive, Article 15 of the Temporary Protection Directive, and Article 15 of the Dublin II Council Regulation have made legal basis and obligations for exercising the rights of the family tracing and reunification (FRA, 2010).

However, the family reunification for unaccompanied children is rarely implemented across the EU (House of Lords, 2016). There are a number of reasons identified behind, such as the family reunification procedure is too bureaucratic, lengthy and ineffective (Kevin Byrne and Claus Bech Hansen, 2018), and the minimum requirements stated in the Family Reunification Directive are falling back. (House of Lords, 2016). Moreover, the family reunification has been a restrictive trend in many EU countries. For instance, in Sweden, Denmark and Austria have made legislative changes that upholding restriction towards family reunification (House of Lords, 2016).

However, the Family Reunification Directive (2003/86/ EC), regardless of its implementation, was in itself imperfect (House of Lords, 2016). The Family Reunification Directive only permits the family reunification for refugees, but not for the beneficiaries of ‘subsidiary protection’³² (FRA, 2018). There are a number of legal and practical obstacles found across the EU in the family reunification of UACs who fall under beneficiaries of subsidiary protection. Many EU countries (e.g. Germany, Sweden, Austria, and Denmark) adopted provisional legal measures for rejecting beneficiaries of subsidiary protection from applying family reunification for a certain period (FRA, 2018). Practical obstacles also limited family reunification, such as: restrictive deadlines; high fees; closed embassies in countries such as Syria and Iraq; the obligation to provide proof of having adequate living space; strict approach to accepting official documents as proof of family links; and delays due to limited resources in the Immigration Service (FRA, 2018 and Kevin Byrne and Claus Bech Hansen, 2018). While, the family reunification of UACs under the Dublin Regulation is not being used by Member States (House of Lords, 2016), and is often a difficult and lengthy process (UNHCR, 2017).

On the other hand, UACs have revealed a number of concerns in the family tracing and reunification, including lack of access to information, support and advice on family reunification; lack of access to travel documents, and insufficient financial assistance for

³² Subsidiary protection is “an international protection for persons seeking asylum who do not qualify as refugees” (Wikipedia)

family reunification (UNHCR, 2012). Moreover, in Nordic countries, there are concerns that family reunification is sometimes used as a justification for child detention or return, without considering of the best interests of the child (Kevin Byrne and Claus Bech Hansen, 2018).

All these shortcomings in the family reunification across the EU resulted in a lack of trust among UACs on the legal system and forced them into the arms of traffickers in order to reunite their families. UACs have revealed that they would rather trust the smuggler to reunite with family than go through the family tracing and reunification procedure (House of Lords, 2016). Moreover, the family tracing can be a traumatising situation for a child, for example, by tracing out about the death of a parent. Thus, it is significant that the child's consent to family tracing is given serious consideration, particularly when family reunification is not in the best interests of the child. (Kevin Byrne and Claus Bech Hansen, 2018).

RECOMMENDATIONS

The following recommendations are grounded on the interview and literature review. The recommendations are provided to address the challenges identified in the previous chapter and structured accordingly. Though the study had a focus on the EU, but the most of the recommendations are applicable to other context.

4.1. Legal

4.1.1. Best interests in national systems

Consider the best interests in every aspect of the protection and well-being of UAC or any solutions to their situations (Liv Feijen, 2008: 63-73). The best interests consideration requires adapting existing procedures to make more holistic by involving child protection actors.

Enhance and institutionalise a harmonise model of the best interests assessment (BIA) and best interests determination (BID) procedures in the national regulatory framework through developing SOPs. A multi-disciplinary BIA should be conducted by the legal guardian to identify and arrange care and services. The BID should be conducted to decide and arrange durable solutions. The national child protection body should take lead in both the BIA and BID (UNHCR, et al, 2017). The recommendations provide in both - Safe and Sound, and UNHCR BID guidelines can be followed to develop a common harmonise model for BIA and for BID, along with clear guidelines for the implementation (Kevin Byrne and Claus Bech Hansen, 2018).

Ensure a clear separation between the asylum process and those who deal with the assessment of the best interests of the child. All decisions regarding the child should be taken by the national child protection body rather than the asylum body. Only asylum

decision should take by the national asylum body. The decisions related to the best interests assessments (BIA) and best interests determination (BID) should be taken by the national child protection body. Standard Operating Procedures (SOPs) should be developed to clarify the roles and responsibilities of each body which can help to ensure the distinction. UACs and legal guardian must participate in all decisions regarding children. However, there is a need to further explore and advocate the separation, as in some countries the separation would be difficult under existing legal instruments (UNHCR, 2017). For instance, humanitarian actors including UNHCR are advocating and collecting good practices for the separation between the asylum process and those who deal with the assessment of the best interests of the child (UNHCH, et al, 2017).

4.1.2. Legal guardianship and legal representation

Strengthen the guardianship system to address a number of existing child protection challenges and gaps, including best interest considerations, care arrangements, prevention of child exploitation and abuse. The national authorities should identify and replicate good practices, and while humanitarian actors can take pilot projects to ensure effective guardianship systems (UNHCR, 2017). For instance, UNHCR implementing a pilot guardianship project in Serbia to establish and strengthen guardianship system in collaboration with the government and partners (UNHCR, 2018).

Appoint one independent guardianship institution at a national level of EU each member states to recruit, train, appoint and monitor legal guardians and legal representative. For instance, the Netherlands have demonstrated the benefits of having one independent guardianship institution, which is more cost and time effective, and also more effective for the protection of UACs. However, the institution should be specialised and independent from the asylum authorities. In addition, the institution can develop a roster of professional and volunteer guardians to appoint guardians quickly during the mass influx of UAC (UNHCR, et al, 2017).

Create a central European alliance of all national guardianship institutions to assist in standardising guardianship practices and guidelines, cross-border coordination and case management, sharing information, and providing training to national institutions. In addition, an EU wide fund should be created which could be administered by the same central alliance to establish and strengthen national guardianship institutions (UNHCR, et al, 2017).

A trained legal guardian or legal representative should appoint as soon as possible in order to ensure that children feel safe and participate effectively in the national asylum and

protection process (Liv Feijen, 2008: 63-73). A timely appointment can decrease several problems of UACs dealing with in Europe.

Ensure regular training and monitoring of the guardians to safeguard the best interests and effective protection of UACs (ACHILLI, Luigi, et al, 2017)

4.1.3. Age Assessment

A harmonise age assessment guideline across Europe should be developed and followed to ensure harmonising age assessments practice across EU member states to ensure improved and timely protection for UACs. The European Union Agency for Fundamental Rights (FRA) can take lead to develop the age assessment guideline and standards based on existing good practices, which can then be further grounded into the national and EU legal instruments. Though the European Asylum Support Office (EASO) developed a harmonise age assessment guideline in 2013, it is rarely practised in the field. And the age assessment is not an issue limited to only the asylum process, but it ensured a child's identify and safeguard the protection, and the provisions of care a child entitled under the law. Therefore, national authorities should ensure that relevant actors who involve in the age assessment process are well-known on the procedural safeguards, and also receive regular training (UNHCR, et al, 2017).

Age assessment should only take place in cases of reasonable doubt about age and should be conducted in a dignified way respecting the child's culture, physical integrity, and self-esteem (Liv Feijen, 2008: 63-73). Every child should not go through an age assessment. Moreover, considering the high number of arrivals at a time, and difficulties in conducting holistic age assessment at identification points, a preliminary age assessment can be conducted by a child protection actor through cultural mediators at the point of arrival when there is reasonable doubt, to ensure timely placement in the reception centre. Afterwards, a multi-disciplinary (medical, social, cultural, psychological) age assessment should be conducted by the same child protection team as part of the best interests assessment (BIA) in order to take a logical and documented decision (UNHCR, et al, 2017).

Ensure the legal provisions to challenge and alter the questionable age assessment decision. The child protection authorities along with human rights agencies can assist UACs to have access to legal assistance in order to challenge age assessment results (UNHCR, 2017).

4.1.4. Protective custody and detention

Alternatives to the detention of UACs should be available both in-laws and in practice across Europe, by taking adequate legislative and policy measures. A number of good

practices of alternatives measures already exists in some European countries, which should be adopted by the EU member states, so that child's rights are respected (Sylvain Mossou, 2017). For instance, some European countries (Belgium, Finland, Ireland, and Poland) commonly placed UACs in special reception centres or shelters separately from adults (European Migration Network, 2015). Moreover, alternatives to detention of UAC can include surrender passports, live in a particular address, report frequently to the police, etc. (FRA, 2017). The International Detention Coalition, a network of over 300 NGOs, has published a handbook on alternatives to distension which describe a number of positive alternatives to prevent unnecessary immigration detention, can be used to design and implement alternatives measures across Europe.³³

Data collection on child detention must be taking place regularly in European countries. The EU Commission should encourage European countries to collect and provide child detention data. Having comprehensive and reliable data is a key to design and implement adequate policies and measures, as well as improve accountability, transparency so that children are protected from arbitrary detention. (Sylvain Mossou, 2017)

Free and appropriate legal assistance and information must be provided to the detained UACs. Again, legal guardian or legal representative could contribute significantly to inform UACs on the legal situation, and effectively protects their best interests (FRA, 2017).

4.1.5. Family Tracing and Reunification:

Support family reunification of UACs when it is in the child's best interests (FRA, 2010).

Effective mechanisms of family tracing and reunification should be available. Children should be consent about the available specialised services. Sufficient safeguards should be available so that family tracing or reunification application does not entail any negative results. Any needless bureaucratic and financial difficulties to a rapid family reunification should be eradicated. (FRA, 2010)

Reconsider the restrictive position of EU countries (including the UK) on family reunification. Sufficient legal aid should be available to UACs for processing family reunification. (House of Lords, 2016)

Targeted advocacy aimed at addressing family tracing and reunification challenges, particularly legislative amendments and an introduction of high operational standards in family reunification procedures. UN agencies and NGOs can play a significant role in this regard (UNHCR, 2012)

³³ Sampson, R., Chew, V., Mitchell, G., and Bowring, L. There Are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention (Revised), (Melbourne: International Detention Coalition, 2015). Available at <https://idcoalition.org/wp-content/uploads/2016/01/There-Are-Alternatives-2015.pdf>

UACs should receive support/ counselling (including psychological) before initiating family tracing so that they do not suffer any negative consequences. (FRA, 2010)

CONCLUSION:

The study has argued that the government and humanitarian actors are facing challenges in order to provide adequate protection for unaccompanied children. In response, the study identified and analysed an area as the most critical, where challenges remain across Europe: legal challenges (best interests in the national systems, legal guardianship and legal representation, age assessment, detention, and family tracing and reunification). Besides, the study revealed that the child protection work across EU remains broad and complex. Moreover, this study has found that the child protection work for UACs in Europe has gone beyond the traditional protection of survival and physical security, as it also provides scope for the provision of care and assistance, such as the provision of food, education, healthcare etc. This study also found that the unaccompanied child protection work in EU context - have blurred lines between rights-based and needs-based approach, and emergency and development approach.

This study acknowledged the fact that the roles of the EU member states as non-humanitarian actors working and leading for the unaccompanied child protection is praiseworthy. This study has also admitted the fact that despite having sound legal frameworks and reputation of child protection in Europe, the magnitude of the recent unaccompanied child migration have posed real challenges for EU member states and humanitarian actors working with UACs, and have revealed inherent cracks and gaps in national asylum and child protection systems.

As discussed, there are a number of areas in unaccompanied child protection across Europe where legal challenges found due to policy gaps, lack of harmonisation of legal procedures within the EU, and lack of implementation of legal procedures etc. The study discussed the challenge in best interests consideration, that how national systems across Europe hardly consider the best interests of UAC due to insufficient best interests assessment and determinations procedures, lack of standardisation and training, lack of involvement of child protection bodies and guardians, lack of separation between national asylum and child protection bodies and their responsibilities. While the challenge associated with legal guardianship and legal representation due to lack of harmonise approach, divergent practices, the time-consuming appointment process, overloaded guardians, lack of training and guardianship institutions have often left many UACs without adequate protection and legal supports. Moreover, the challenge in the age assessment across Europe due to lack of harmonisation and divergent age assessment procedures and practices, use of invasive

methods, avoid procedural safeguards, lack of scope to challenge and alter wrongful age decisions - have often triggered in conflicting age decisions, and multiplied the vulnerabilities of UACs, including interruptions in the protection, and provisions of care and services, as well as lead child detention, and child missing. The study also showed that how the child detention and protective custody became a serious concern and challenges for the UAC protection across Europe, due to misinterpretation of exceptional legal measures, lack of alternatives guideline and practice, lack of legal support and legal guardianship, inappropriate age assessment, lack of appropriate shelters facilities, and many other reasons. Finally, the study also showed that the family tracing and reunification directive and frameworks have rarely implemented due to legal and practical obstacles across Europe, which also increases their vulnerabilities to traffickers. All these systematic gaps and challenges negatively affect all aspects of UAC protection, from the provision of care to durable solutions.

Therefore, the main hypothesis of this research that the governments and humanitarian actors are facing challenges in the protection of UACs is proved. Moreover, the study revealed that the government and humanitarian actors need to adapt and strengthen strategies and services in order to provide adequate protection for unaccompanied children. Therefore, the study also has provided some recommendations to address the challenges identified in the study (see chapter 4). This is because that the governments and humanitarian actors in Europe can turn these challenges into opportunities by adapting and implementing necessary measures that will better protect all UACs and will help the EU to be a role model for other countries. However, this study has brought an outline of some of the challenges related to unaccompanied child protection work of governments and humanitarian actors. Further study regarding comprehensive solutions to those challenges, and an intense analysis of the legal challenges especially legal guardianship, and the best interests consideration challenges could be done.

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