

## **Submission to the Special Rapporteur on the Human Rights of Migrants by the International Detention Coalition**

May 2020

The International Detention Coalition (IDC) welcomes this opportunity to contribute to the Special Rapporteur's report on **"Ending immigration detention of children and seeking adequate reception and care for them"**.

The IDC is a global network, of over 400 civil society organisations and individuals in almost 100 countries, that advocate for, research and provide direct services to refugees, asylum-seekers and migrants affected by immigration detention. As a unique network of experts on and implementers of alternatives to immigration detention, a number of IDC member organisations and some IDC regional offices will be submitting information about specific country situations. Therefore, this submission will mainly focus on the policy framework for child-sensitive migration management systems, based on the principle of the best interests of the child<sup>1</sup>, which includes ending immigration detention of children and seeking adequate reception and care for them.

### **KEY POINTS**

- All States should put in place a policy framework for child-sensitive migration management, based on the principle of the best interests of the child. Immigration detention is never in the best interests of the child.
- Child-sensitive migration management policy frameworks should be based on legislation, policy and practices that allow children to remain in non-custodial, community-based contexts while their immigration status is being resolved, their best interest assessed, as well as before return.
- Immigration detention is not a mechanism for providing child protection – refugee, asylum-seeking and migrant children should be included in national child protection systems.
- Unaccompanied or separated refugee, asylum-seeking and migrant children should be integrated in alternative care systems that are developed in accordance with the [UN Guidelines for the Alternative Care of Children](#).
- Accompanied refugee, asylum-seeking and migrant children should be placed with their families in non-custodial, community-based accommodation options with case management support.
- The IDC has developed a [Child-Sensitive Community Assessment and Placement \(CCAP\) model](#) which can be adapted to national/local circumstances.
- The IDC has documented [hundreds of examples of alternatives to immigration detention](#) that also satisfy governments' concerns about compliance with migration management systems.
- The [Global Roadmap towards Ending Child Immigration Detention](#) offers step-by-step guidance for States and other stakeholders to phase out child immigration detention.

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<sup>1</sup> "In all actions concerning children... the best interests of the child shall be a primary consideration" - UN Convention on the Rights of the Child, 20 November 1989, Art. 3.1, available at: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

The term ‘alternatives to immigration detention’ does not have an established legal definition, nor is it a prescriptive concept. Alternatives to detention are defined by the IDC, as well as by other actors, as legal and policy frameworks by which people are not arbitrarily detained for reasons related to their migration status. Not just the provision of physical locations or placements, implementing alternatives to detention means the establishment of laws, policies, regulations and practices, as well as strengthening systems and capacities that allow States to move away from the use of immigration detention in accordance with international law.

In the case of children, these legal and policy frameworks should provide for child-sensitive migration management, ensure adequate reception and care and be based on the principle of non-detention of children for migration related purposes. One element of these frameworks should be the provision of various community-based accommodation or placement options for children (with families, or unaccompanied/separated). For unaccompanied and separated migrant children, this includes strengthening and developing national alternative care systems - among other elements of child protection and support - and ensuring migrant children’s inclusion in these systems, and the availability of appropriate alternative care arrangements as non-custodial placement solutions.

***1. Please provide information on any legislation or policy that prohibits or restricts the use of immigration detention of children and their families in your country.***

In 2017 the IDC produced a briefing paper, *Never in a Child’s Best Interests*<sup>2</sup>, that provides examples of domestic laws of more than 15 countries that either prohibit all immigration detention of children or prohibit the immigration detention of certain groups of children (younger children, unaccompanied or separated children, and asylum-seeking children).

The IDC advocates for prevention of immigration detention through the establishment of a presumption against immigration detention in domestic law and for the prohibition of all immigration detention of children and families in domestic law. IDC’s research shows that prohibition of child immigration detention in law is not only key to abolishing the use of detention in policy and practice but is also key to ensuring the sustainability of responses based on alternatives to detention.

***2. Please provide information on existing non-custodial alternatives to immigration detention of children in your country (e.g. community-based reception solutions) and elaborate how these alternatives effectively enhance the protection of the rights of migrant children and their families.***

***3. Please provide information on any existing good practices or measures taken in your country to protect the human rights of migrant children and their families while their migration status is being resolved, including inter alia their rights to liberty, family life, health and education (e.g. by ensuring effective access to inter alia adequate reception, healthcare, education, legal advice, family reunion).***

We will answer questions 2 and 3 together, since the IDC takes the view that **States should adopt overall policy frameworks for child-sensitive migration management**. These broader policy frameworks, which constitute what the IDC defines as alternatives to detention, should ensure access

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<sup>2</sup> International Detention Coalition, *Briefing Paper: Never in a Child’s Best Interests*, June 2017. Available at: [https://idcoalition.org/wp-content/uploads/2017/06/Briefing-Paper\\_Never-in-a-childs-best-interests\\_June-2017.pdf](https://idcoalition.org/wp-content/uploads/2017/06/Briefing-Paper_Never-in-a-childs-best-interests_June-2017.pdf)

to rights and services, and one element of the framework should be the provision of various accommodation or placement options for children (with families, or unaccompanied/separated) and should include appropriate alternative care for unaccompanied and separated children. Therefore, we are including community-based placement options (question 2) with all the other elements of alternatives to detention (question 3).

**A key principle underlying a child-sensitive framework for migration management is that the best interests of the child must be a primary consideration.** This principle should inform all parts of an alternative care system, as well as all actions relating to individual children (accompanied or unaccompanied/separated). Several guidelines are available to assist in the process of determining children's best interests,<sup>3</sup> which should be led, co-led, or guided by authorities responsible for child protection. The outcome of the best interests process should decide on the next steps for the child, including the type of care that the child (accompanied or unaccompanied/separated) receives pending a long-term solution. Immigration detention is never in the best interests of the child,<sup>4</sup> so alternatives should always be utilised.

**A child-sensitive framework of migration management must respect the principle of non-discrimination,<sup>5</sup> as well as the basic right of the child to survival and development<sup>6</sup>.** Therefore, it must include children's access to services, including education, health-care and psychosocial support.

**Refugee, asylum-seeking and migrant children should be included in national child protection systems.** Mainstreaming their care into national child-care systems ensures that they are not overlooked or discriminated against. Integrated child protection systems can facilitate cooperation and coordination between relevant agencies (including both child protection and immigration) to ensure protection of all children needing care.<sup>7</sup>

**The principle of child participation<sup>8</sup> is fundamental - this includes the right of the child to be heard when decisions are being made about them and therefore requires the provision of child-friendly information.** Children should be kept informed about the processes they are going through, the options available to them and their obligations in the proceedings. For example, in Germany an NGO has published a brochure: *Welcome to Germany: a guide for unaccompanied minors*.<sup>9</sup> Access to legal assistance and representation are also essential for children going through legal status determination and migration management processes.

**Case management is a fundamental element of alternatives to detention,** as it has been demonstrated to provide support to the affected individuals, and to also satisfy governments'

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<sup>3</sup> UNHCR, 2008, *UNHCR Guidelines on Determining the Best Interests of the Child*. Available at: <https://www.unhcr.org/4566b16b2.pdf>; UNHCR & UNICEF, 2014, *Safe & Sound: What States Can Do to Ensure Respect for the Best Interests of Unaccompanied and Separated Children in Europe*, p.19. Available at: <http://www.refworld.org/docid/5423da264.html>

<sup>4</sup> UN Committee on the Rights of the Child, Report of the 2012 Day of General Discussion on the Rights of All Children in the Context of International Migration, para. 78. Available at: <https://www.refworld.org/docid/51efb6fa4.html>

<sup>5</sup> UN Convention on the Rights of the Child, 20 November 1989, Art. 2, available at: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

<sup>6</sup> Ibid, Art. 6

<sup>7</sup> European Commission, 2015, *Coordination and cooperation in integrated child protection systems: Reflection paper*. Available at: [https://ec.europa.eu/anti-trafficking/eu-policy/coordination-and-cooperation-integrated-child-protection-systems-reflection-paper\\_en](https://ec.europa.eu/anti-trafficking/eu-policy/coordination-and-cooperation-integrated-child-protection-systems-reflection-paper_en)

<sup>8</sup> Ibid, Art. 12

<sup>9</sup> Bundesfachverband unbegleitete minderjährige Flüchtlinge e.V. (BumF). 2016. *Welcome to Germany: A guide for unaccompanied minors*. Available at: [https://b-umf.de/src/wp-content/uploads/2017/12/welcometogermany\\_english.pdf](https://b-umf.de/src/wp-content/uploads/2017/12/welcometogermany_english.pdf)

concerns about compliance with migration management systems.<sup>10</sup> The case manager forms an essential link between the individual, authorities and the community. Examples of the importance of case management for refugee and migrant children - in Kenya<sup>11</sup>, and in Belgium<sup>12</sup> - can be found in the referenced documents.

**The IDC has developed a Child-Sensitive Community Assessment and Placement (CCAP) model** which outlines the process of developing alternatives to child immigration detention. The CCAP model includes 5 key elements to be considered when implementing child-sensitive migration policy frameworks - 1. Prevention; 2. Assessment and Referral; 3. Case Management and Processing; 4. Reviewing and Safeguarding; and 5. Case Resolution – and can be adapted to national/local circumstances.<sup>13</sup> For example, NGOs in Mexico adapted this CCAP model to their national setting and agreed on a Model that describes the actions necessary to develop and implement alternatives to immigration detention for unaccompanied children in Mexico.<sup>14</sup> This led to a small-scale pilot project in 2015 for 20 children, who were released from immigration detention to two open-door alternative care programmes run by NGOs, which ensured their access to education, health-care, personal liberty, communication with families, and other rights, while the authorities conducted their status determination procedures. The positive outcomes of this pilot - for the participating children and for the development of more child rights-compliant policies - are set out in the brochure: *Practical Steps Towards Ending Immigration Detention of Children*.<sup>15</sup>

**Screening, Identification, Assessment and Referral are essential elements of the process that help frontline workers to identify the specific needs and situations that may make an individual vulnerable.** This will inform decision-making on the procedures to follow, including the type of alternative accommodation and services required. UNHCR and IDC have published a Vulnerability Screening Tool<sup>16</sup> to identify and address vulnerability, which provides a comprehensive set of prompts and questions aimed at identifying the risks of harm to the child. Several States have effective screening and referral processes. For example, the government of Zambia, in conjunction with IOM, UNICEF and UNHCR, developed a set of tools to guide the protection of vulnerable migrants in the country. These tools include guidance on the initial reception, screening and interviews of unaccompanied children. The guidelines direct border officials to immediately refer unaccompanied children to the Department of Social Welfare.<sup>17</sup>

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<sup>10</sup> International Detention Coalition, 2015, *There are alternatives: A handbook for preventing unnecessary immigration detention (Revised)*, ppVI -VII. Available at: <https://idcoalition.org/wp-content/uploads/2016/01/There-Are-Alternatives-2015.pdf>

<sup>11</sup> International Detention Coalition, 2018, *Briefing paper: Keeping Children Safe*, p. 8. Available at: <https://idcoalition.org/wp-content/uploads/2018/10/Keeping-Children-Safe-IDC-Briefing-Paper-Oct-2018.pdf>

<sup>12</sup> International Detention Coalition, 2015, *There are alternatives: A handbook for preventing unnecessary immigration detention (Revised)*, p.51. Available at: <https://idcoalition.org/wp-content/uploads/2016/01/There-Are-Alternatives-2015.pdf>

<sup>13</sup> International Detention Coalition, *Captured childhood: Introducing a new model to ensure the rights and liberty of refugee, asylum seeker and irregular migrant children affected by immigration detention*, 2012. Available at: [http://idcoalition.org/wpcontent/uploads/2012/03/Captured\\_Childhoodreport.pdf](http://idcoalition.org/wpcontent/uploads/2012/03/Captured_Childhoodreport.pdf)

<sup>14</sup> International Detention Coalition, *Community reception and placement: Model for Unaccompanied Migrant Children in Mexico*, 2015. Available at: [https://idcoalition.org/wp-content/uploads/2015/11/EL-MODELO\\_ENGLISH-WEB\\_FINAL0-1.pdf](https://idcoalition.org/wp-content/uploads/2015/11/EL-MODELO_ENGLISH-WEB_FINAL0-1.pdf)

<sup>15</sup> Aldeas Infantiles SOS Mexico, End Immigration Detention of Children, International Detention Coalition, *Brochure: Practical Steps Towards Ending Immigration Detention of Children*. Available at: <https://idcoalition.org/wp-content/uploads/2017/11/SOS-UAM-Brochure-WEB.pdf>

<sup>16</sup> UNHCR and International Detention Coalition, 2016, *Vulnerability Screening Tool: Identifying and addressing vulnerability - a tool for asylum and migration systems*. Available at: <http://www.refworld.org/docid/57f21f6b4.html>

<sup>17</sup> IOM, 2015, Training manual (Facilitators guide): Protection assistance for vulnerable migrants in Zambia. Available at: <https://www.iom.int/files/live/sites/iom/files/Country/docs/Manual-Protection-Assistance-for-Vulnerable-Migrants.pdf>

The IDC has documented hundreds of examples of alternatives to immigration detention, including for children with families and for unaccompanied and separated children, in its publication *There Are Alternatives*,<sup>18</sup> and in its online database.<sup>19</sup>

For children in families, examples of housing in the community and caseworker support arrangements in Spain,<sup>20</sup> the Czech Republic<sup>21</sup>, Hong Kong SAR (China)<sup>22</sup>, Belgium,<sup>23</sup> and the UK<sup>24</sup> – can be found in the referenced documents.

For unaccompanied children, alternative care systems must be in accordance with the UN Guidelines for Alternative Care of Children.<sup>25</sup> These guidelines – developed for children deprived of parental care – apply equally to the protection and care of refugee, asylum-seeking and migrant children as to the children of nationals.

Unaccompanied children should also be provided with a guardian who is tasked with the overall legal responsibility for the child, including the authority to make decisions on behalf of a child in order to protect their best interests and to ensure the child’s views and opinions are taken into consideration in decisions that will affect them. The exact nature of guardianship can differ by country context. Examples of guardianship arrangements for unaccompanied children - in the Netherlands<sup>26</sup>, and in Argentina<sup>27</sup> - can be found in the referenced documents.

For unaccompanied children, some examples of alternative care arrangements that may constitute adequate placement options are:

**Foster care** - where a child is placed by a competent authority in the domestic environment of a family other than the child’s own family that has been selected, qualified, approved and supervised for providing such care. Examples of foster care arrangements for unaccompanied children - in Serbia - can be found in the referenced document.<sup>28</sup>

**Kinship care** – where the child is placed in family-based care with a member of his/her extended family. Or network care, with close friends of the family known to the child. Examples of kinship and network care arrangements - in Sweden - can be found in the referenced document.<sup>29</sup>

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<sup>18</sup> International Detention Coalition, 2015, *There are alternatives: A handbook for preventing unnecessary immigration detention (Revised)*. Available at: <https://idcoalition.org/wp-content/uploads/2016/01/There-Are-Alternatives-2015.pdf>

<sup>19</sup> International Detention Coalition Database: <https://database.idcoalition.org/?s=child>

<sup>20</sup> Ibid, p.29, Box 8, *Ensuring asylum seekers can meet their basic needs*

<sup>21</sup> UNHCR, *Options Paper 1: Options for governments on care arrangements and alternatives to detention for children and families*, 2019, p.17. Available at: <https://www.refworld.org/docid/5523e8d94.html>

<sup>22</sup> Ibid

<sup>23</sup> Ibid, p.18

<sup>24</sup> Ibid

<sup>25</sup> UN Guidelines for the Alternative Care of Children, 24 February 2010. Available at:

[https://www.unicef.org/protection/alternative\\_care\\_Guidelines-English.pdf](https://www.unicef.org/protection/alternative_care_Guidelines-English.pdf)

<sup>26</sup> International Detention Coalition, 2018, *Briefing paper: Keeping Children Safe*, p. 8. Available at:

<https://idcoalition.org/wp-content/uploads/2018/10/Keeping-Children-Safe-IDC-Briefing-Paper-Oct-2018.pdf>

<sup>27</sup> UNHCR, *Options Paper 1: Options for governments on care arrangements and alternatives to detention for children and families*, 2019, p.6. Available at: <https://www.refworld.org/docid/5523e8d94.html>

<sup>28</sup> Save the Children, *Specialised foster care for unaccompanied and separated children in Serbia*, Case Study, 2017.

Available at: <https://resourcecentre.savethechildren.net/library/specialised-foster-care-unaccompanied-and-separated-children-serbia-case-study>

<sup>29</sup> International Detention Coalition, 2018, *Briefing paper: Keeping Children Safe*, p. 9. Available at:

<https://idcoalition.org/wp-content/uploads/2018/10/Keeping-Children-Safe-IDC-Briefing-Paper-Oct-2018.pdf>

**Semi-independent living:** – where children are provided with housing, supported supervision and access to a range of protection services. Examples of semi-independent living for unaccompanied children - in Greece<sup>30</sup> and in Ethiopia<sup>31</sup> - can be found in the referenced documents.

**Institutional care** - While family-based care and semi-independent living are usually the most favourable care options for unaccompanied children, in some contexts as a last resort they may be placed in institutional care, which can include reception centres, group homes and shelters. Examples of institutional care arrangements for unaccompanied children - in Israel<sup>32</sup>, Indonesia<sup>33</sup>, and Canada<sup>34</sup> - can be found in the referenced document.

**Whatever temporary housing/alternative care arrangement is established for a child, there must be an ongoing focus on case resolution and longer-term solutions.** These could involve third country solutions through relocation, resettlement, family reunification, or education visas. Or it could mean local integration in the host country, or return and reintegration to countries of origin or transit. The protection and care of unaccompanied children often requires transnational coordination, with the interaction of government agencies, services and social networks across national boundaries, eg the West Africa Network for the Protection of Children<sup>35</sup>. Case resolution is a fundamental element of alternatives to detention – and must be reached in accordance with a child’s best interests.

***4. Please indicate any challenges and/or obstacles in the development and/or implementation of non-custodial alternatives to immigration detention of children and their families.***

Some of the common concerns reported by IDC members are as follows:

- There are many States that have national laws and regulations that still permit immigration detention of children in violation of international law
- Lack of resources directed to adequate BIA/BID processes and to providing the necessary support staff for children (case managers, lawyers, and – for unaccompanied children – guardians), as well as lack of access by children to necessary services, such as education, health-care and psychosocial support
- Some States’ arguments that their policies of detaining children are based in their concerns to protect children who may be at risk of trafficking – but immigration detention is not a mechanism for providing child protection. Guidelines that outline measures to protect children from trafficking are available.<sup>36</sup>
- Children are often detained due to challenges related to age assessment. Age assessments should only be undertaken when absolutely necessary, and in compliance with the guidance.<sup>37</sup>

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<sup>30</sup>EKKA, UNHCR, UNICEF, Roundtable on Supported Independent Living for Unaccompanied Children, 1 February 2018.

Available at: <https://www.unhcr.org/gr/en/5711-roundtable-supported-independent-living-unaccompanied-children.html>

<sup>31</sup> International Detention Coalition, 2018, *Briefing paper: Keeping Children Safe*, p. 10. Available at:

<https://idcoalition.org/wp-content/uploads/2018/10/Keeping-Children-Safe-IDC-Briefing-Paper-Oct-2018.pdf>

<sup>32</sup> UNHCR, *Options Paper 1: Options for governments on care arrangements and alternatives to detention for children and families*, 2019, p.15. Available at: <https://www.refworld.org/docid/5523e8d94.html>

<sup>33</sup> Ibid

<sup>34</sup> Ibid, p.16

<sup>35</sup> International Detention Coalition, 2018, *Briefing paper: Keeping Children Safe*, p. 13. Available at:

<https://idcoalition.org/wp-content/uploads/2018/10/Keeping-Children-Safe-IDC-Briefing-Paper-Oct-2018.pdf>

<sup>36</sup> Missing Children Europe, 2016, *Summit handbook: Practical guidance on preventing and responding to unaccompanied children going missing*. *Missing Children Europe*, available at: <https://missingchildreneurope.eu/summit>

<sup>37</sup> Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child, 15 November 2017, Para. A4.,

In Italy a Presidential Decree came into force in January 2017 clarifying the age assessment procedure, in accordance with the best interests of the child principle.<sup>38</sup>

- There is a lack of accurate age- and gender-disaggregated data – on numbers of children/families in immigration detention and where they are being held
- There are some very promising pilot projects that demonstrate that alternatives to immigration detention meet the needs of children and also satisfy governments' concerns about compliance with migration management systems, but there has been insufficient scaling-up of these pilot projects.

***5. What support could other stakeholders (other than your Government) provide to strengthen the development and/or implementation of non-custodial alternatives to immigration detention of children and their families that enhance the protection of their rights?***

The IDC calls on States, together with other stakeholders (civil society, UN, intergovernmental agencies, and refugee and migrant communities) to commit to a roadmap to ending child immigration detention. Prior to the adoption of the Global Migration Compact, the [Initiative for Child Rights in the Global Compacts](#) - of which the IDC is a Steering Committee member - developed a *Roadmap to Ending Child Immigration Detention*,<sup>39</sup> which includes the development of funded National Action Plans, production of comprehensive disaggregated data, developing or strengthening fully human rights-compliant alternatives to detention, public reporting on progress, and reviewing and improving laws to ensure compliance with international obligations.

Regional and cross-regional support and peer learning among States, with the engagement of all stakeholders, is key to advancing the phasing-out of child immigration detention. It is also essential for building a global community of actors to work collaboratively to end the detention of children and families in the context of international migration. For this process of cross-regional support and peer learning, the involvement of the widest possible range of actors will be beneficial to all - from States that do not detain children for migration-related purposes but which are facing challenges in establishing adequate alternative care systems, to States currently resorting to automatic detention of children. Every actor has a role to play in sharing progress, challenges and concerns to advance together towards the ending of child immigration detention.

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Available at:

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsrMulHhdD50s6dX7ewCBgoc3aRFSDe0ukyIgphiFFs8N%2Fk1uf0mPUJgdK2vXMEFXwBUJydRTZ4IlLcOtT9GDUqemWeCc2%2BI%2F6gJkKBzFDWgi>

<sup>38</sup> Asylum Information Database (AIDA), *Italy: Age assessment procedure for unaccompanied children victims of trafficking*, 16 January 2017. Available at: <http://www.asylumineurope.org/news/28-02-2017/italy-ageassessment-procedure-unaccompanied-children-victimstrafficking>

<sup>39</sup> Initiative for Child Rights in the Global Compacts, *Roadmap to Ending Child Immigration Detention* [https://www.childreonthemove.org/wp-content/uploads/2017/12/Roadmad-to-ending-detention\\_FINAL\\_12142017.pdf](https://www.childreonthemove.org/wp-content/uploads/2017/12/Roadmad-to-ending-detention_FINAL_12142017.pdf)