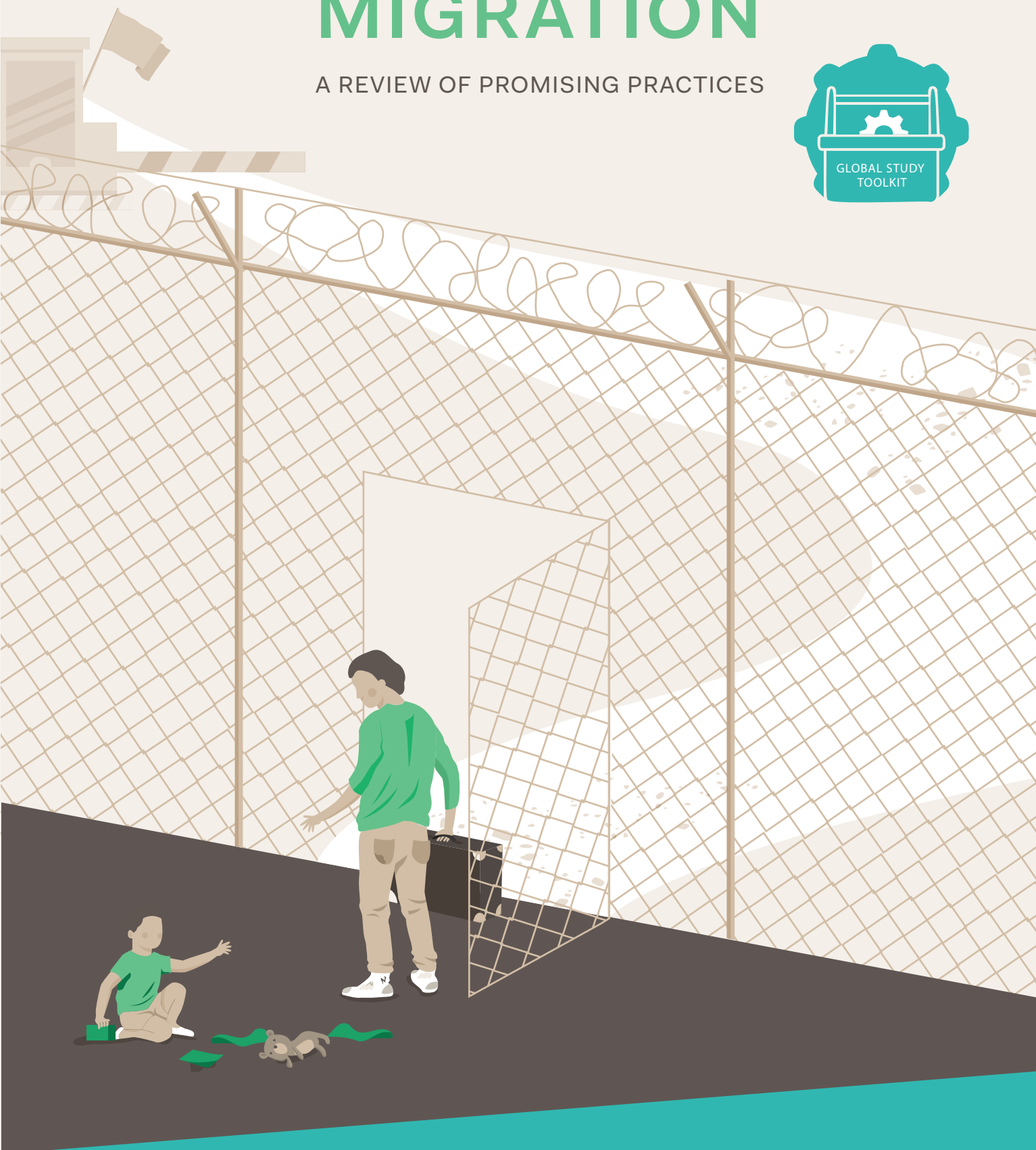


ENDING DEPRIVATION OF LIBERTY OF CHILDREN

# MIGRATION

A REVIEW OF PROMISING PRACTICES



Global Study on Children  
Deprived of Liberty



Global Campus  
of Human Rights

2022



## Global Campus of Human Rights

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### Summary:

*This toolkit is a series of publications, all of which build on the findings and recommendations of the UN Global Study on Children Deprived of Liberty, an extensive study that analyses different areas in which children are deprived of their liberty. This tool provides illustrations of States' practices across the world correlating with the recommendations of the Global Study in the field of migration, which aim to end deprivation of liberty for migration-related reasons and safeguard the human rights of children. An interactive version containing promising practices on all the Global Study areas can be found under [www.nochildbehindbars.com](http://www.nochildbehindbars.com). If you want to share further examples of cases and/or other materials, please get in contact with us through our email address [globalstudy@gchumanrights.org](mailto:globalstudy@gchumanrights.org).*

*This publication has been produced with the financial assistance of the Global Campus of Human Rights. The contents of this document are the sole responsibility of the author and can under no circumstances be regarded as reflecting the position of the GC.*

\* Main research as of July 2021, with some updated cases as of May 2022.

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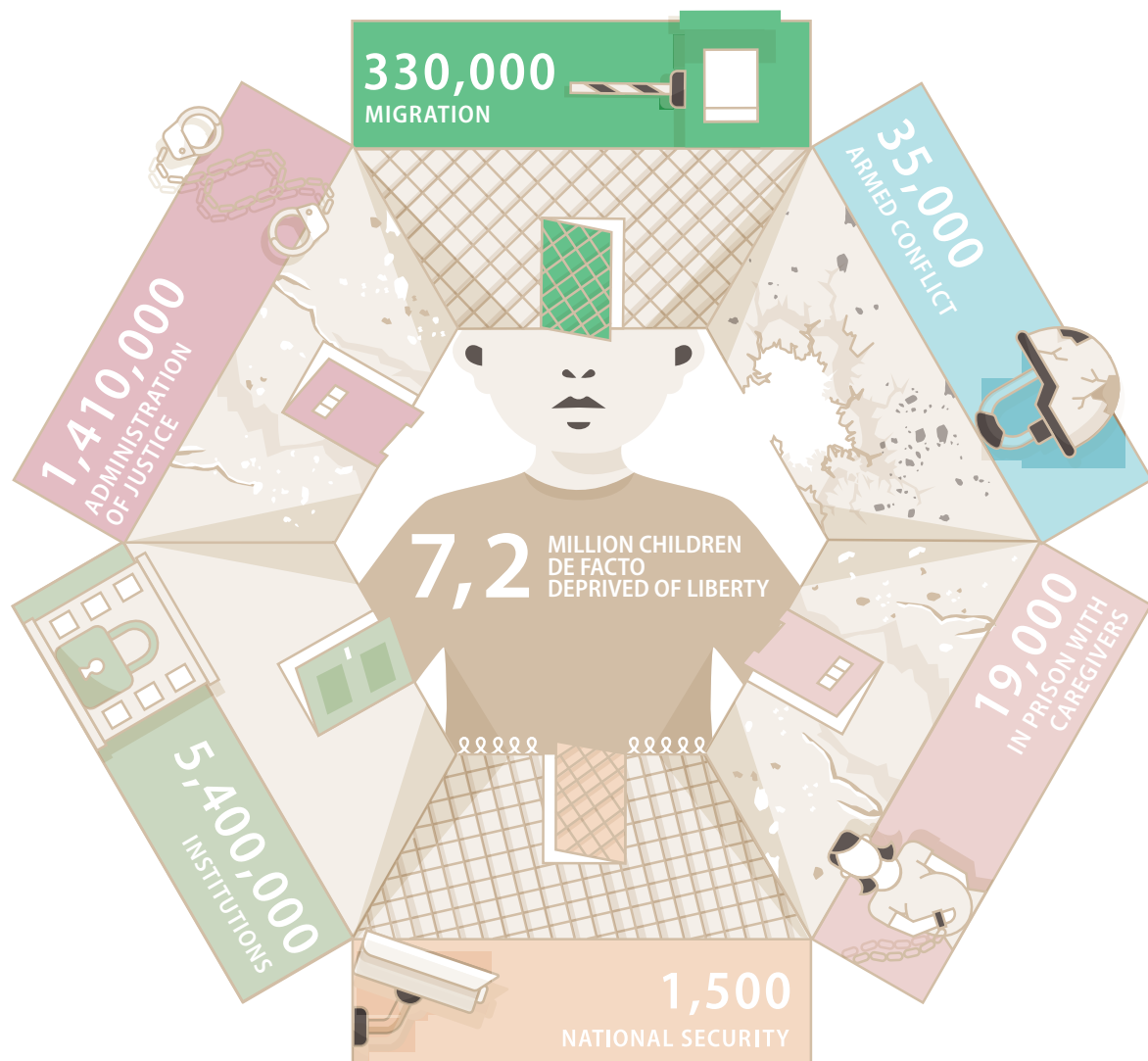
# List of Abbreviations

<b>AIDA</b>	Asylum Information Database
<b>AVRR</b>	Assisted Voluntary Return and Reintegration
<b>CBSA</b>	Canadian Border Service Agency
<b>CRC</b>	Convention on the Rights of the Child
<b>CWS</b>	Church World Service
<b>EASO</b>	European Asylum Support Office
<b>ECtHR</b>	European Court of Human Rights
<b>EU</b>	European Union
<b>GCHR</b>	Global Campus of Human Rights
<b>GMDAC</b>	Global Migration Data Analysis Centre (IOM)
<b>GS</b>	Global Study (as for UN Global Study on Children Deprived of Liberty)
<b>Havana Rules</b>	UN Rules for the Protection of Juveniles Deprived of Liberty
<b>HRC</b>	Human Rights Council
<b>IOM</b>	International Organisation for Migration
<b>ICMPD</b>	International Centre for Migration Policy Development
<b>INM</b>	National Institute of Migration (Mexico: Instituto Nacional de Migración)
<b>IRSS</b>	Immigration Research and Statistics Service (United Kingdom)
<b>MERCOSUR</b>	Southern Common Market (Mercado Común del Sur)
<b>NGOs</b>	Non-Governmental Organisations
<b>NHRIs</b>	National Human Rights Institutions
<b>NPM</b>	National Preventive Mechanism
<b>NPOs</b>	Non-Profit Organisations
<b>OCC</b>	Observation and Orientation Centre
<b>OHCHR</b>	Office of the High Commissioner for Human Rights
<b>RSD</b>	Refugee Status Determination
<b>UASC</b>	Unaccompanied Asylum Seeking Children
<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>UNICEF</b>	United Nations International Children's Emergency Fund
<b>WAN</b>	West African Network

# 1. INTRODUCTION

This toolkit is part of a series of publications, all of which build on the findings and recommendations of the UN Global Study on Children Deprived of Liberty (thereafter Global Study). This extensive Study analyses different areas in which children are deprived of their liberty, understood as confining a child to a narrowly bounded location from which he or she cannot leave at will and which is decided by a judicial or administrative authority.<sup>1</sup> Following this definition, the Study analyses deprivation of liberty of children within the field of administration of justice, in migration-related detention, within institutions, with an imprisoned caregiver, due to national security and in armed conflicts.

All the Global Study toolkits are grounded on international human rights law, primarily on the Convention on the Rights of the Child. Each of them focuses on a different area and aims to guide States and other relevant actors to implement the recommendations of the Global Study by providing examples of practice and further guidelines. These examples are regarded as “promising”, as they support the advancement and implementation of the recommendations of the Global Study.



## BOX 1 – Global Number of Children in All Situations of Deprivation of Liberty

Source: based on numbers provided in UN Global Study on Children Deprived of Liberty, p. 661

<sup>1</sup> Manfred Nowak, *The United Nations Global Study on Children Deprived of Liberty*, 2019, p. 11 and 12, based on international law.

### 1.1. Objectives of the toolkit and beneficiaries

The objective of this toolkit is to provide guidance to States and other stakeholders to support the process of **ending detention of children for migration-related reasons** and **safeguarding the human rights of migrant children throughout their stay in the country**, by sharing useful information to conduct appropriate reforms.

Children migrating all over the world are the main beneficiaries of this document. Children are understood as any person below the age of 18.<sup>2</sup> This includes children risking entering migration detention settings, those already living in deprivation of liberty for migration-related reasons, and finally also children in non-custodial settings whose procedural rights need to be ensured during the full status determination procedure and their stay in the country.

### 1.2. Target audience

This document has specifically been developed for States, governmental agencies, policy-makers, actors working on migration-related detention, but also for actors like non-governmental organisations working on the protection of children in the context of migration by providing guidance, doing advocacy work or others as well as, actors conducting monitoring work:

- **Governmental decision makers:** national and local level
- **Law enforcement representatives:** border authorities, national police authorities or other security forces and prison guards
- **Representatives from the justice sector:** Prosecutors and judges
- **Legal professionals** representing children
- **Child protection and welfare authorities**
- **Social workers, social education workers, service providers**
- **Healthcare practitioners:** doctors and psychologists
- **National Human Rights Institutions<sup>3</sup> (NHRIs), Ombudsman Institutions, National Preventive Mechanisms (NPMs) and visiting commissions to migration centres**
- **International and regional organisations working on the rights of migrants and children:** among them different UN agencies
- **National and local non-governmental organisations:** some mentioned above within legal professionals, social workers and other child protection actors

These contents also aim to be a useful source for **academia and researchers**, whose work on migration-related rights of children greatly contributes to keeping this focus on the political agenda.

<sup>2</sup> In line with the definition used by the UN Convention on the Rights of the Child.

<sup>3</sup> Including those specialised on Child and Youth Rights.

## 1.3. Structure

Divided into three main chapters, this toolkit introduces the reader to the thematic with an overview on the negative health impacts that migration-related detention has for children, and with other related findings about migration detention. A second chapter is dedicated to the international legal background and recent key developments that pose an effort to eliminate deprivation of children in this context. This section is followed by a set of recommendations based on the Global Study and examples of implementation, which are provided for different countries around the world.<sup>4</sup> The contents provided should be regarded as complementary resource to the Global Study and best used together with Chapter 11, focusing on migration.



This compendium of practical examples is the main part of this toolkit. Some practices illustrate models of legislation, strategies or action plans developed by the State, while others focus on actions developed by civil society. Many of these illustrations of practice show the importance of cross-sectoral and inter-agency cooperation between actors. The selection of cases is divided into six thematic “action areas”:<sup>5</sup>

- **Prohibition of Migration-related Detention**
- **Non-custodial Solutions**
- **Procedural Protection and Monitoring Mechanisms**
- **Prompt Identification and Adequate Age Assessment**
- **Safe Return Policies**
- **Disaggregated Data Collection**

In the annexes the reader finds additional practical materials, such as guiding questions for research, other toolkits, and publications, as well as additional information on the Global Study and its NGO Panel members. This information can also be complemented by further Global Study-related tools, such as an interactive map with further illustrations of practice and information, country case studies with a focus on data collection within the publication *Ending Deprivation of Liberty of Migrant Children through Improved Data*, the *Global Study Executive Summary*, the *Child-friendly Summary*, and the remaining Global Study toolkits on the other thematic areas. All these tools and publications can be found on the Global Study website.

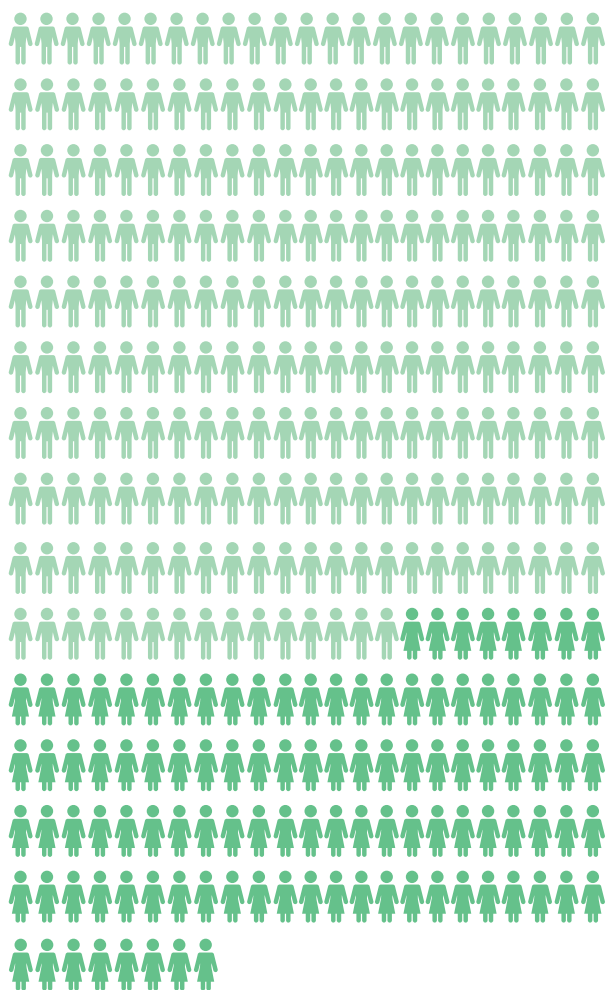
<sup>4</sup> The toolkit builds on the examples selected in the Global Study and does not claim to be exhaustive. Further examples have been added in the toolkit during the research process until July 2021, and a few cases have been updated in May 2022, which the reader can identify within source description. While this document aims to keep a regional balance of cases, it is to be highlighted that given language barriers some regions appear less represented as others.

<sup>5</sup> While this document covers specific thematic aspects it is also acknowledged that depending on the context there may be different and/or additional aspects to be added and pursued.



## 2. UN GLOBAL STUDY MAIN FINDINGS

Children across the world migrate for a variety of reasons. While some migrate to escape conflict, persecution, or discrimination, others migrate because of environmental degradation, natural disasters or food insecurity, or a combination of these factors. Others seek better lives and opportunities, like accessing education or health care, or to reunite with their families.<sup>6</sup>



 = 1,000 children

### BOX 2 – Number of Children in Migration-related Detention Worldwide

Source: UN Global Study on Children Deprived of Liberty (2019), p. 465.

According to extensive research from the Global Study, it was estimated that **at least 330,000 children may be deprived of liberty for migration-related reasons throughout the year in at least 80 States.**<sup>7</sup> This figure serves as an estimate of the minimum number of children that are reasonably expected to be in detention per year. However, it should be interpreted with caution, as efforts to measure the global scale are limited due to incomplete available data, which could mean that the estimate is a significant under-estimation of the true figure. The image on the left shows the proportion of boys and girls in migration-related detention.

In most States, immigration detention is managed by border authorities, national police authorities, or other security forces. In some cases, specialised authorities are responsible for immigration detention of children, such as child protection and family welfare offices.<sup>8</sup>

States offer multiple justifications for detaining children for migration-related reasons. Among them, there are health and security screening reasons, identity verifications or age assessments, or reasons related to their irregular entry or stay in the country. Other reasons are related to securing and facilitating deportation because the residence status expired, or the asylum application of the child was denied or out of fear of absconding.

While some children are detained with their parents, most of them are unaccompanied or authorities separate them from their families. These children are detained in special migration detention centres, prisons, closed reception centres, offshore locations, transit shelters and institutional settings.

<sup>6</sup> Ibid, p. 433.

<sup>7</sup> Nowak, Global Study (2019), p. 187 and 455.

<sup>8</sup> Ibid, p. 438.

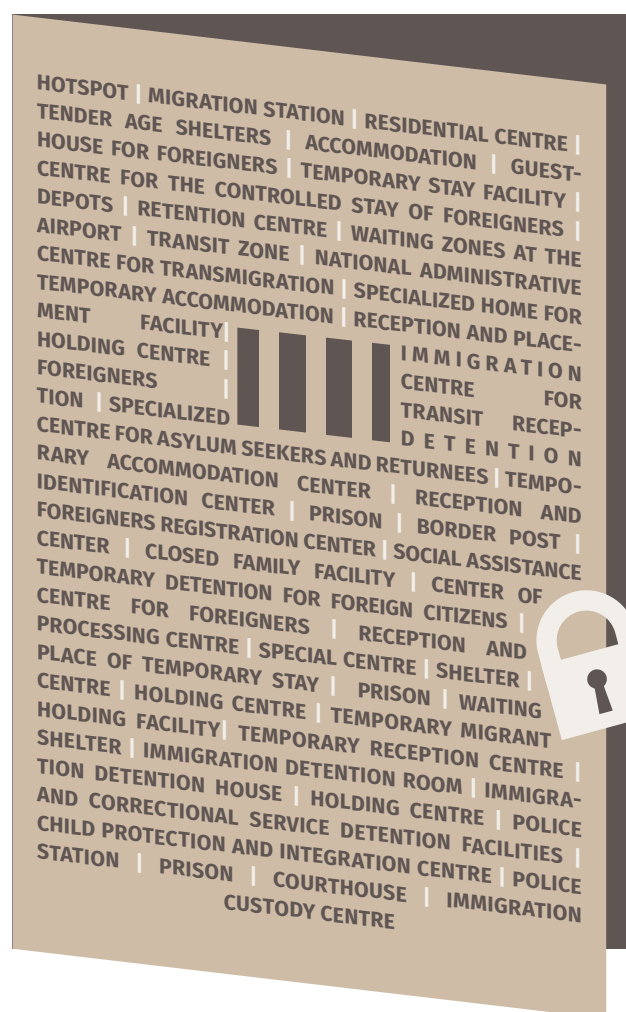


Some of the places of detention carry euphemistic and misleading names, such as ‘migration station’, ‘retention centres’ or ‘tender age shelters’. This makes it difficult to differentiate between places of detention and non-custodial solutions solely by their name. The infographic on the right exemplifies different names of migration-related detention that are used:

**Evidence shows that immigration detention is harmful to a child’s physical and mental health.**

It aggravates existing health conditions and causes new ones such as anxiety, depression, suicidal ideation, and post-traumatic stress disorder.<sup>9</sup> Some of the stresses causing mental harm are related to the context of detention itself regardless of the conditions - for example due to locked gates and constant supervision of detention officers. But often children also suffer from the deplorable conditions in detention as a consequence of a lack of appropriate accommodation, overcrowded detention places, the bad sanitary conditions, the lack of appropriate medical care and access to hygiene products, or due to a lack of adequate food and sufficient access to drinking water, as reported by the Special Rapporteur on the Human Rights of Migrants.<sup>10</sup> Furthermore, places of detention expose children to the risk of sexual abuse and exploitation. Stress causing mental harm for children is also related to the uncertainty of waiting for visa decisions and having pre-existing cases of trauma.

Notwithstanding these appalling findings, the Global Study highlighted that **at least 24 countries do not or claim not to use detention**. A recent report from the Special Representative of the Secretary-General on Violence against Children further acknowledges the **progress in over 60 countries providing alternatives to detention and rights-based solutions**.<sup>11</sup> These findings exemplify that it is possible to regulate migration through non-custodial settings, instead of using detention, which causes irreparable harm, is against the best interest of the child never be considered. In addition to examples of non-custodial settings further promising practices have been identified for the creation of this toolkit and can be found in Chapter 4.



**BOX 3 – Places where Migrant Children are Deprived of Liberty**

Source: UN Global Study on Children Deprived of Liberty (2019), p. 435.

<sup>9</sup> See Annex 3.

<sup>10</sup> Ibid, p. 440. See also: UN Special Rapporteur on the Human Rights of Migrants, A/HRC/28/68, para. 61. UN Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 2015, A/HRC/28/68. <https://www.refworld.org/docid/55082454.html>.

<sup>11</sup> Annual report of the Special Representative of the Secretary-General on Violence against Children, A/76/224, 2021, para. 80 .

### 3. INTERNATIONAL LEGAL FRAMEWORK

#### Immigration detention of children violates international law

Article 37(b) of the UN Convention on the Rights of the Child applies strict standards with respect to the right to personal liberty of children, clearly emphasising that a deprivation of liberty shall only be used as a measure of last resort. The term 'deprivation of liberty' refers to an interference where a person is forced to be at a private or public custodial setting from where he or she cannot leave at will, by order of a public authority.<sup>12</sup> Deprivation of liberty is not to be confused with the concept 'limitations of movement', which refers to a degree or intensity.<sup>13</sup>



"No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be **used only as a measure of last resort** and for the shortest appropriate period of time" (Article 37(b) CRC).

How does Article 37(b) apply to the context of migration? While there could be cases in which detention might be an unavoidable 'measure of last resort' to protect others – for example when a child committed a very serious crime and remains particularly dangerous – the act of children migrating is not a crime and should not be criminalised and judged as such. The main reasons for detaining children are to facilitate their deportation and to prevent absconding. Such reasons or similar ones cannot meet the high standards of international law with regard to the detention of children.<sup>14</sup>

It is also to be noted, that migration-related detention of a child might violate the right to life, survival and development as contained in Article 6 CRC and might amount to cruel, inhuman or degrading treatment in violation of Article 37(a) CRC.<sup>15</sup> Further, Article 3(1) of the CRC provides that the 'best interest of the child' shall be a 'primary consideration' when different interests are considered. **The detention of children to facilitate deportation, prevent absconding, or similar is not proportional and cannot be justified, as it conflicts with the best interest of the child, and can never meet the high standards established by international law that protects the well-being of children.**<sup>16</sup>



"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**" (Article 3(1) CRC).

The principle of best interest of the child has been addressed on numerous occasions and by many different actors at regional and international level, to be considered as primary consideration, and to be assessed in a comprehensive manner (and not to be limited only to the impact on health).<sup>17</sup> In its General Comment 14, the Committee on the Rights of the Child further provides that the principle of the best interest of the child can directly be applied before courts.<sup>18</sup>

<sup>12</sup> UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules), 1990, Rule 11(b). See: See page 61 of the Global Study for more detailed information on this terminology. See also: Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment, Art. 4.2.

<sup>13</sup> Global Study, p. 61.

<sup>14</sup> Global Study Executive Summary, p. 46.

<sup>15</sup> See also Global Study, p. 448.

<sup>16</sup> Global Study Executive Summary, p. 46, CMW/C/GC/4-CRC/C/GC/23, para. 10; cf. also: CRC/GC/2005/6, para. 61.

<sup>17</sup> Ibid.

<sup>18</sup> CRC/C/GC/14, para. 6(a). See section 4, for a practical example. CRC/C/GC/14, para. 6(a). See section 4, for a practical example.

The above mentioned legal principles and regulations should equally apply to unaccompanied and separated children as well as to children who migrate with their parents. If children migrate with their families, non-custodial solutions should be made available to them in order to avoid separation of children from their families, as indicated in Article 9 CRC:

In addition to these legal references, there is an emerging international consensus between international and regional human rights bodies towards an absolute prohibition of migration related detention of children.<sup>19</sup> Advocacy work towards this goal is reflected also through strong inter-agency commitment expressed by UN entities, UN human rights treaty bodies, UN special procedure mandate holders and regional human rights bodies and experts, which created an Inter-Agency Working Group to End Child Immigration Detention.<sup>20</sup> Further efforts towards ending immigration detention of children and seeking adequate reception and care are reflected also in other reports - one of the most recent ones was presented in 2020 by the Special Rapporteur on the Human Rights of Migrants on examples about ending immigration detention of children and seeking adequate reception and care.<sup>21</sup>


Next to these examples of cooperation the Global Compact for Safe, Orderly and Regular Migration must be noted, as it is the first intergovernmental agreement, which was prepared under auspices of the UN. This compact sets 23 objectives, including ending child immigration detention. Despite its non-binding character member States will review progress made at an International Migration Review Forum, planned for May 2022.<sup>22</sup>



“State Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. [...]” (Article 9(1) CRC).




“29(h) Protect and respect the rights and best interests of the child at all times, regardless of migration status, by ensuring availability and accessibility of a viable range of alternatives to detention in non-custodial contexts, favouring community-based care arrangements, that ensure access to education and health care, and respect the right to family life and family unity, and by **working to end the practice of child detention in the context of international migration.**”

<sup>19</sup> Already in 2005 by the CRC-Committee (See: CRC/GC/2005/6, para 61), in 2010 UN Working Group on Arbitrary Detention (A/HRC/13/30/, para 60), 2012 (A/HRC/20/24, para 41), 2017 CRC-Committee and UN Committee on Migrant Workers (CMW/C/GC/4-CRC/C/GC/23, op. cit. para. 10)). CRC/C/GC/14, para 6, 2020 Special Rapporteur on the human rights of migrants (A/75/183, para. 24). See also: Inter-Agency Working Group to End Child Immigration Detention 2016: 

<sup>20</sup> See Annex 5 for more information on the Inter-Agency Working Group to End Child Immigration Detention “Summary of normative standards and recommendations on ending child immigration detention”, 2016.

<sup>21</sup> OHCHR (2020), A/75/183.

<sup>22</sup> OHCHR, Global Compact for Safe, Orderly and Regular Migration, Objective 13: 

Above all promising practices among different States show that it is possible to apply migration policies and laws without having to resort to detention of children. Public authorities should always apply alternative measures to detention for migrating children and their families. They should direct resources used for detention for the active development of rights-based non-custodial solutions. While these alternatives to detention might contemplate limitations to movement, for example through an obligation to report to the authorities at concrete intervals, **non-custodial solutions have to ensure that certain minimum standards are covered**, as contained in Article 3.3. of the CRC:



“States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision” (Article 3(3) CRC).

Throughout all these measures, it is to be noted, that all children’s rights, including procedural and other rights, shall be guided by four General Principles, as declared by the UN Committee on the Rights of the Child, namely:

- **non-discrimination (Art 2 CRC):** «States parties shall respect and ensure the rights set forth in the present convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's parents or legal guardian, race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, poverty, disability, birth or other status.»
- **the best interest of the child (Art 3(1) CRC):** «In all actions concerning children whether undertaken by public or private social welfare institution, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration.»
- **the right to survival and development (Art 6 CRC):** «State parties shall ensure to the maximum extend possible the survival and development of the child.»
- **the right of children to express their views (Art 12 CRC):** «States parties shall assure to the child who is capable of forming his or her own views the rights to express those views freely in all matters affecting the child, the view of the child being given due weight in accordance with the age and maturity of the child”.

## 4. GLOBAL STUDY RECOMMENDATIONS & PROMISING PRACTICES

The recommendations provided in Chapter 11 of the Global Study have been clustered along six action areas in this publication:

- Prohibition of Migration-related Detention
- Non-custodial Solutions and Adequate Treatment
- Procedural Protections and Monitoring Mechanisms
- Prompt Identification and Adequate Age Assessments
- Safe Return Policies
- Data Collection

Each set of recommendations is followed by practical examples of implementation, which are developed on a public level by State authorities or in cooperation with international organisations, NGOs, and other actors. Furthermore, guiding questions for research and monitoring have been formulated for each thematic area (see Annex 3).



### BOX 4 – Covered by the toolkit as practical examples.

Source: data from the research findings

## Global Study recommendations and definitions applying to all key action areas

1. In all actions concerning children – including decisions regarding immigration law and enforcement – States should be guided by the best interests of the child.
2. The right of the child to have his or her best interests taken as a primary consideration means that the child's interests have high priority and are not just one of several considerations. Therefore, considerable weight must be attached to what serves the child best interest.
3. Considerations such as those relating to general migration control cannot override best interests' considerations.
4. Assessments of best interests of the child should be undertaken independent of migration authorities, and should be carried out by actors responsible for child protection and welfare and other relevant actors, such as parents, guardians and legal representatives, with due account for the views of the child.

Furthermore, the Global Study provides relevant definitions within the context of migration that should be taken into account when going through the thematic action areas:

**Child:** Any person under the age of 18 years as set forth in the CRC. States should employ this international definition in data collection, legislation, regulation, policy, and other State acts relating to deprivation of liberty.

**Family:** as set by the CRC Committee, family should be interpreted in a broad sense and include biological, adoptive or foster parents or, where applicable, the members of the extended family or community as provided for by local custom.

**Immigration detention:** Any setting in which children are deprived of their liberty for reasons related to their, or their parents' migration status, regardless of the name and reason given to the action of depriving children of their liberty, or the name of the facility or location where children are deprived of liberty as set forth by the UN CRC Committee and the UN Committee on Migrant Workers.

**Reasons related to migration status:** actions taken by States relating to a person's migratory or residence status, or the lack thereof, whether relating to irregular entry, stay or exit, as understood by the UN CRC Committee and the UN Committee on Migrant Workers.

**Deprivation of liberty:** when a person is subject to any form of detention or imprisonment or is placed in a public or private custodial setting which that person is not permitted to leave at will, by order of any judicial, administrative, or other authority.

**Restriction of movement:** for children, legitimate and proportional restrictions on freedom of movement that take into account age and maturity may be appropriate means of supervision, protection, and care, provided that they follow defined criteria and are in line with legislation on child protection and care; such cases are not deprivation of liberty.

## Action area 1: Prohibition of Migration-related Detention

According to the States responses to the Global Study questionnaire, 24 States do not, or claim not to deprive children of liberty for migration-related purposes. The explicit prohibition of migration-related detention in law is very important as a first step to end detention of children for migration-related reasons. This said, it must be further noted that an effective implementation of the legislation varies importantly between countries as exceptions in the law to deprivation of liberty may lead to big differences in its implementation. At the same time, it must be also mentioned that some States without legal prohibition do not detain children in practice for migration-related issues and provide non-custodial solutions. In order to have an overview on States practices it is essential that these collect data on detention and on the use of alternatives measures.

Under this policy area, **States should:**<sup>23</sup>

1. **Stop criminalising irregular entry/stay** and explicitly **prohibit and abolish migration detention** of children by domestic law.\*
2. Treat persons claiming to be children as such and not place them in detention while any **age assessment** is being completed.
3. **Not separate children from their families** except in accordance with applicable law and procedures when it is in their best interest.
4. **Extend the prohibition in law of any form of immigration detention of children** to unaccompanied and separated children as well as to children with their families.
5. Identify children currently deprived for migration-related reasons and immediately **release** them, together with their **family members**.
6. Ensure access to **non-custodial, community-based solutions**, including appropriate support and accommodation, as necessary for the adequate care and protection of children.\*\*

\* Some States refer in their national law to an absolute prohibition, detention only as a measure of last resort, or have other exceptions. See the concrete provisions in the examples.

\*\* Some countries refer to non-custodial solutions for migrant children already in their national laws and to the need to consider the best interests of the child. See concrete provisions in the examples.

<sup>23</sup> These recommendations are based on the Global Study recommendations as in chapter 11. Additional information has been added based on the “Inter-Agency Guiding Principles on Unaccompanied and Separated Children” and on States practices. The examples given of each country practice correlate with one or several of these recommendations.



## Illustrations of Practice

In Central and South America immigration detention of children is considerably less prevalent than elsewhere. **Argentina, Colombia, Nicaragua, Peru, Uruguay, Costa Rica, Dominican Republic** are some of the countries where migrant children are not detained because of their migration status.<sup>24</sup> For example, in **Ecuador**, the Organic Law on Human Mobility prohibits unconditionally the detention of children in immigration proceedings. The prohibition also extends to the parents, when this is in the best interest of the child.<sup>25</sup> Similar prohibitions concerning the detention of children can be found in Costa Rica and Dominican Republic.<sup>26</sup>

In **Colombia**, migrant children are also not detained on the basis on their migration status.<sup>27</sup> Even further, to avoid the risk of statelessness, children born in the country after August 2015 with Venezuelan parents are granted the Colombian nationality. This measure ensures children their access to citizenship, health, and education, among other rights and measures for their inclusion. More than 36.000 children have benefited from this measure called *Primero la Niñez* (Childhood First).<sup>28</sup>

In **Ireland**, the International Protection Act from 2015 prohibits detention of migrants and asylum seekers under the age of 18 under article 20(6).<sup>29</sup> Irish law further calls for the protection of the child, especially for unaccompanied minors.<sup>30</sup> The Act provides that the Child and Family Agency shall be notified to ensure their care and welfare, as described under Article 14.<sup>31</sup>

In March 2022, the **European Union** activated the Directive on Temporary Protection for persons fleeing from the war in Ukraine, only eight days after the start of the Russian invasion. This exceptional measure allows providing immediate protection for a temporary time. This directive defines right to move freely across the EU countries, access to residence permit for one to three years, access to suitable accommodation or housing, social welfare, education, medical care and access to the asylum procedure, among others.<sup>32</sup> It also includes specific provisions for unaccompanied children, including provisions on legal guardianship and arranging a place to live for the unaccompanied children with adult relatives, with a foster-family or reception centres with special provisions for minors or with the persons in charge of the child when fleeing, as provided in Article 16.<sup>33</sup>



"Their detention due to administrative migration infringements shall not be ordered under any condition. When children's or adolescents' best interest requires keeping the family together, the mandate of non-deprivation of liberty shall be extended to the parents, regardless of alternative measures that may be issued for migration control." Art. 2, Organic Law on Human Mobility, Ecuador.

<sup>24</sup> Nowak, Global Study (2020), p. 462. See also: OHCHR, Special Rapporteur on the human rights of migrants, Report on ending immigration detention of children and seeking adequate reception and care for them, A/75/183, 2020, p. 9.

<sup>25</sup> Presidency of the Republic of Ecuador, The Organic Law on Human Mobility. In Spanish: Last visited December 2021.

<sup>26</sup> OHCHR, A/75/183, p. 9, citing Decree on the Regulation of Refugees (Costa Rica) and Reglamento de Aplicación de la Ley General de Migración, 2004 (Dominican Republic).

<sup>27</sup> OHCHR, A/75/183 (2020), para 36.

<sup>28</sup> Ibid, 19. See also: *Primero la Niñez*, p. 4 and 24.

<sup>29</sup> Ireland: International Protection Act 2015. article 20 (6), revised May 2022. For information on the age assessment regulations see Action Area 4. <sup>30</sup>Ibid, Article 14..

<sup>31</sup> Ibid

<sup>32</sup> European Commission, Migration and Home Affairs, Temporary Protection. See:

<sup>33</sup> Council of the European Union, Directive 2001/55/EC, 2001. See:

Further guidelines have been developed to support Member States in the implementation of the Directive.<sup>34</sup> As member of the European Union and neighbouring country to Ukraine, **Poland** has granted for 18 months a permission for stay for people fleeing the war in Ukraine and also developed a law and programs for hosting persons from Ukraine, by providing for example cash payments of about 250 Euro per month for up to 60 days to companies and individuals for providing accommodations in their homes.<sup>35</sup> Beneficiaries of this temporary protection are also entitled to different social benefits and have access to social security, health care and more than 190,000 children were registered in schools.<sup>36</sup>

In **South Africa**, the Refugees Amendment Act 33 defines that migration-related detention of minors to be used as a measure of last resort, which is an important restriction but differentiated from a total prohibition:

In **Turkey**, the law provides that persons seeking international protection shall in principle organise their own accommodation and defines reporting obligations towards the authorities.<sup>38</sup> The law also contemplates

the existence of some reception and accommodation centres, where the needs for food, healthcare, and others should be met – priority for such accommodation is given to persons with special needs.<sup>39</sup> Unaccompanied children seeking international protection shall be placed “in suitable accommodations facilities, in the care of their adult relatives or, a foster family, taking the opinion of the unaccompanied child into account”.<sup>40</sup> This responsibility falls under the Ministry for Family and Social Policies. The law further provides that children over 16 years may be placed in reception and accommodation centres if the suitable conditions are available and that siblings are accommodated together to the extent possible and taking into account their best interest.<sup>41</sup>

In the case of **Thailand** a first step was provided in 2019 through a Memorandum of Understanding on the Determination of Measures and Approaches Alternative to Detention of Children in Immigration Detention Centres.<sup>42</sup> This document was signed by the Royal Thai Police, the Ministry of Social Development and Human Security, the Ministry of Foreign Affairs, the Ministry of Interior, the Ministry of Public Health, the Ministry of Education, and the Ministry of Labour and provides that children shall not be detained unless unavoidable and taking their best interests and views into consideration (Principle 4). It further informs that family-based care shall be prioritised and that basic standards must be provided for their development.<sup>43</sup> While this represents an important step forward this non-binding document should be followed by a prohibition of migration-related detention by law.



“The detention of a child must be used only as a measure of last resort and for the shortest possible period of time, taking into consideration the principle of family unity and the best interest of the child.”  
Art 29(2) Refugees Amendment Act 33 of 2008.<sup>37</sup>



**Annex 2**  
sources

**Annex 3**  
guiding questions

<sup>34</sup> Operational guidelines for the implementation of Council implementing Decision 2022/382

<sup>35</sup> European Commission, European website on Integration. Last review from 18 March 2022. See also: NBC News, Poland's resources running dry as Ukrainian refugee crisis continues, April 2022.

<sup>36</sup> Ibid.

<sup>37</sup> Amends the Refugees Act 1998, which considered *The detention of a child must be used only as a measure of last resort and for the shortest appropriate [possible] period of time, taking into consideration the principle of family unity and the best interest of the child.* – underlined are the new added parts in the amendment.

<sup>38</sup> Ibid, See Article 71.

<sup>39</sup> See Turkey Law No. 6458 on Foreigners and International Protection, Article 95 on “reception and accommodations centres”.

<sup>40</sup> Ibid, Art. 66(b).

<sup>41</sup> Ibid, Art. 66(c).

<sup>42</sup> Thailand, MoU

<sup>43</sup> Ibid.

## Action area 2: Non-custodial Solutions

Alternatives to detention of migrants present many benefits for individuals, society and for States. They support compliance with individual human rights and well-being of children and families, higher individual engagement and cooperation in procedures resolving migration status or even lower costs.<sup>44</sup>

As identified by UNHCR, the term 'alternatives to immigration detention' is not a legal term but is understood as a range of practices that are or can be used to avoid detention.<sup>45</sup> It refers to *"any legislation, policy or practice that allows asylum-seekers to reside in the community subject to a number of conditions or restrictions on their freedom of movement. As some alternatives to detention also involve various restrictions on movement or liberty (and some can be classified as forms of detention), they are also subject to human rights standards."*<sup>46</sup> Different terms are used to refer to 'alternatives to detention', such as 'non-custodial measures', 'alternative measures' or 'less restrictive measures'.<sup>47</sup> These are some of the alternatives used by a majority of States<sup>48</sup>:

- Provision of open or semi-open facilities
- Release with registration
- Regular reporting obligations to the authorities
- Release with the duty to reside in a specific administrative area / designated residence
- Surrender of identity documentation or passport
- Release on bail, bond or surety (money deposit)
- Controlled release


Examples of care options can include foster care, kinship care, child-headed households, foster family, family-based care arrangements, alternative community-based care, or similar settings.<sup>49</sup> For a definition of these concepts, see the Glossary in Annex 1.

While this section provides examples of non-custodial measures that ensure the right of personal liberty of children, it goes beyond in order to have a more comprehensive picture of what a child needs for its development by providing examples of access to health care or education.

Under this policy area, **States should**:<sup>50</sup>

1. **Make sufficient resources available** to promote the development, implementation, and improvement of non-custodial measures. This includes diverting resources from immigration detention to non-custodial solutions carried out by competent child protection actors.
2. Develop and implement **guidelines on open facilities** (activities, integration, services, cultural mediators, standards on non-disciplinary rules as the guiding rules, etc.).
3. Develop **credible and effective non-custodial solutions** with **alternative care** and **accommodation** for unaccompanied and separated children, in line with the [UN Guidelines for the Alternative Care of Children](#).
4. **Not separate children from their families** except in accordance with applicable law and procedures and when necessary for the best interests of the child.

<sup>44</sup> Council of Europe, *Summary report: International Conference organised jointly by the Council of Europe, the European Commission and the European Migration Network on Effective Alternatives to the Detention of Migrants*, 2019.  Last visited January 21, 2021. See also: European Programme for Integration and Migration, *Alternatives to detention: building a culture of cooperation Evaluation of two-year engagement-based alternative to immigration detention pilot projects in Bulgaria, Cyprus and Poland*. Available at 2020-ATD-Evaluation-Report\_Final.pdf (epim.info). Last visited January 21, 2021.

<sup>45</sup> UNHCR, *Detention Guidelines, Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, para. 8. 

<sup>46</sup> Ibid.

<sup>47</sup> Council of Europe, *Legal and practical aspects of effective alternatives to detention in the context of migration*, p. 17, 2017. Available at 

<sup>48</sup> Ibid.

<sup>49</sup> International Detention Coalition (IDC), *Ensuring Unaccompanied Children Avoid the Harms of Immigration Detention: Keeping children safe*, 2018, p. 1.  See also: Global Study, Chapter 11.

<sup>50</sup> These recommendations are based on the Global Study recommendations as in chapter 11. Additional information has been added based on the "Inter-Agency Guiding Principles on Unaccompanied and Separated Children" and on States practices. The examples given of each country practice correlate with one or several of these key issues.

5. Ensure that children with **family members** are allowed to remain with their families in non-custodial solutions.
6. Assess on a **case-by-case basis** each child's **individual needs** for appropriate protection and care, including what non-custodial, community-based solutions are more convenient for each child.
7. Assist each child to **meet their needs** and enjoy **access to rights** on the basis of equality with children who are nationals of the host country.
8. Ensure **access to information, legal assistance, health, housing, education and recreation and other services**, such as psychological support.
9. Ensure access to appropriate **case management** and regular **check-ins by social workers** and **social support**.


## Illustrations of Practice


In **Austria**, supervised group homes are arranged for adolescents seeking asylum over the age of 14 and who reached a certain level of maturity. They live in shared apartments with other adolescents their age and are under the supervision of care workers from local child protection authorities.<sup>51</sup> They also have access to apprenticeship opportunities, and in case of a negative asylum decision they are allowed to stay until they finish it.<sup>52</sup>


In **Belgium** unaccompanied minors arriving at the border are placed in the Observation and Orientation Centre (OCC), operating since 2007 as a facility for all unaccompanied minors regardless of their administrative status. There are two OCCs each with a capacity for 50 children.<sup>53</sup> The children can stay for 2-4 weeks and are supervised by social workers specialised in reception of unaccompanied asylum seeking children (UASC).<sup>54</sup> After a first observation phase, where staff conducts a medical, psychological and social profile, the children are referred to collective reception centres, where educators and supervisors support them.<sup>55</sup> For children arriving with their families, the government decided in 2008 that these are no longer detained, and are instead brought to family units, which are individual houses and apartments for temporary stay, and they also get support from a case manager.<sup>56</sup> While legally the families are detained in these places, in practice, they have liberty of movement.<sup>57</sup> This shows an important step in practice, which should be accompanied also by legal prohibition.

In **Canada**, the Red Cross First Contact Program was established in collaboration with the City of Toronto's Refugee Housing Task Group. The project is addressed to 16-17-year-old migrants and facilitates the release and referral of children into a shelter with appropriate care and services.<sup>58</sup> When an unaccompanied minor arrives at the airport, the Canadian Border Service Agency (CBSA) contacts the Red Cross, which looks for an appropriate shelter. Another important actor in this process, is the international law firm McCarthy Tétrault, which is also contacted by CBSA to assign the child a legal representative to guide them throughout the whole process.<sup>59</sup>

<sup>51</sup> OHCHR, A/75/183, p. 14.

<sup>52</sup> Ibid. See also: WKÖ, Abschiebestopp für Asylwerber in Lehre. 


<sup>53</sup> European Migration Network (EMN), The Use of Detention and Alternatives to Detention and Alternatives to 

<sup>54</sup> UNHCR, Growing numbers of unaccompanied minors seek asylum in Belgium, 2011. 

<sup>55</sup> Ibid.

<sup>56</sup> Ibid.

<sup>57</sup> EMN, 2014, p. 5. 

<sup>58</sup> UNHCR, Options for governments on care arrangements and alternatives to detention for children and families, 2015, p. 14. 

<sup>59</sup> Ibid.

Another program in **Canada** to be mentioned is the Toronto Bail Program, where migrants are released on bail and receive financial and social support, as well as help to find a lawyer or housing.<sup>60</sup> This program entails strict requirements that the applicants must comply with, such as reporting twice a week to the offices or having unannounced visits. Based on the data from the fiscal year 2020-2021, it is highlighted that the CBSA estimated that this program has lower costs if compared to costs of detaining an individual (daily average estimated in 9.81 CAD instead of 320 CAD in detention).<sup>61</sup> Furthermore, the data provided by the programme reveals that there is a high compliance rate, with only 40 persons non-complying out of 424 during the fiscal year 2020-2021.

In **Cyprus**, the Kofinou Reception and Accommodations Centre is a temporary open reception centre with place for up to 400 asylum seekers that is managed by a private company under supervision of the Asylum Service. Since 2018 it only accommodates families, unaccompanied children, and single women.<sup>62</sup> A report from 2020 highlights positive aspects, such as that the children in this reception centre attend primary and high school in the community, which offers further facilities such as a playroom, library, open-space playgrounds and a computer room.<sup>63</sup> Areas for improvement are also highlighted, such as difficulties revolving around restrictions for children living in the centre to attend school during the pandemic.<sup>64</sup>

In **Germany**, all migration and asylum applications are managed by the Federal Office for Migration and an emergency placement process has been defined in detail for unaccompanied children, which are firstly placed in emergency reception centres, and visited by a social worker.<sup>65</sup> Following this first step, children are moved to an initial reception centre, where a guardian and a case manager are assigned to the child. Together and considering the child's input, they work in order to find a long-term solution. This can be a supervised accommodation centre with other children, but also an independent accommodation, where other children live too. Another option is foster care with relatives or with unrelated families, though this second option is not common.<sup>66</sup>

Similar as in the Austrian case, **Greece** has established a housing programme where unaccompanied asylum seekers between the age of 16 and 18 are supported in semi-independent living under supervision of an interdisciplinary team, that supports them with the aim of leading them to gradual independency. The adolescents are supported with access to education, health, psychological development, legal aid, and interpretation.<sup>67</sup>

In **Indonesia**, UNHCR identified three non-custodial facilities for unaccompanied or separated children, one of them run by the Ministry of Social Welfare.<sup>68</sup> The other two shelters are run together by UNHCR Indonesia and the Church World Service. The three places together can accommodate up to 124 children and provide all basic necessities as well as psycho-social support and health care. These centres also offer education and numerous recreational entertainments. UNHCR, together with the Indonesian government and organisations - such as IOM, is working for the establishment of further accommodations for migrant children.<sup>69</sup>

In **Israel** unaccompanied children between 14 and 17 years old that seek asylum are integrated in residential schools where they live together with Israeli youth. These places, called "youth villages", group up to 300 minors, out of which a 10% are unaccompanied children. Children in these places have

<sup>60</sup> NGO Panel for the Global Study on Children Deprived of Liberty, *Children Deprived of Liberty: the need for a Global Study*, p. 8. Op. Cit: Global Detention Project, *Canada Detention Profile*.

<sup>61</sup> Global Detention Project, *Country Report*, 2021, p. 30.

<sup>62</sup> Yperesia Alisou Website. See also: AIDA, *Country Report Cyprus*, 2020,

<sup>63</sup> Global Detention Project, *Cyprus: Issues related to immigration detention*, 2020, p. 4-5. See also AIDA, 2020, p. 85.

<sup>64</sup> Ibid.

<sup>65</sup> IDC, 2018, p. 6.

<sup>66</sup> Ibid.

<sup>67</sup> OHCHR, A/75/183 (2020), p. 14.

<sup>68</sup> UNHCR, *Options paper 1: options for governments on care arrangements and alternatives to detention for children and families*, 2015, p. 14.

<sup>69</sup> Ibid.

access to local school, health care, clothing, social activities, psychological counselling, and appropriate nutrition.<sup>70</sup> These places, financed by the Ministry of Education, allow migrant children freedom of movement, and each village provides children with identity certificates. Moreover, the centres provide wherever possible vacation periods with Israeli host families where migrant children can spend time.<sup>71</sup> An example of a youth village that started in 2015 by integrating ten children that had been held in detention is the Goldstein Israeli Youth Village.

In **Malaysia** there is an increase in the government's willingness to transfer UASC to NGO-run shelters in the case of the Rohingya community. There is an important informal cooperation between UNHCR, the government and civil society organisations. In the frame of a pilot program proposed by NGOs to the government, an initiative was developed where about 30 children live in independent group homes where they receive support or in foster families that have the same ethnic background and speak the same language. The families receive a small financial support and case management support, while the children receive also support from case managers. To be noted is that this initiative "recognizes that it is preferable to support children in home-like environments, rather than institutional care, where safe and appropriate community-based care arrangements are available".<sup>72</sup>

In the **Mexican** State of Tabasco, UNICEF Mexico has provided support to implement an 'open-door' long-term shelter, called the Colibri shelter. The centre hosts at least 15 adolescents, providing individual attention through an integral alternative care.<sup>73</sup> Children living here have access to psychological support, health services, education and legal advice.<sup>74</sup> Moreover, this project identifies potential foster families to take care of children living in Colibri.<sup>75</sup> Data shows that at least 2,400 children in transit already benefited from this shelter.<sup>76</sup> In order to support the children, 108 psychologists, psychiatrists and social workers have become part of the National Mental Health Network.<sup>77</sup>

**Poland** forms part of a pilot project on alternatives to detention was created by the European Programme for Integration and Migration (EPIM) with the aim of contributing to national and regional discussions leading to reduce and end immigration detention. The project in Poland works with extremely vulnerable migrants and asylum seekers, including families with children in return procedures that would be "normally detained, but are allowed to live in the community instead, usually because they have children". This project called 'No Detention Necessary' is implemented by Stowarzyszenie Interwencji Prawnej (SIP), a civil society organisation that further developed a joint process with the border police to release migrants into the alternatives of the pilot project. A MoU was developed in 2020. Intensive support is provided on an individual basis.<sup>78</sup>

All children living in **Senegal** have access to education, which is compulsory between 6 and 16 years, regardless of their migration status. The schools do not have to inform the authorities about the migration status of the students.<sup>79</sup>

In **Yemen**, local authorities together with UNHCR run an alternative care system for refugee children and children seeking asylum. Small group homes for 6-8 children are rented near to families that have carefully been selected and that supervise the children. In addition to the supervision of the families, regular visits are undertaken by community workers or the child protection partner.<sup>80</sup>




**Annex 2**  
sources



**Annex 3**  
guiding questions

<sup>70</sup> Ibid, p. 13.

<sup>71</sup> Ibid.

<sup>72</sup> Save the Children and Asia Pacific Refugee Rights Network, *Unlocking Childhood: Current immigration detention practices and alternatives for child asylum seekers and refugee in Asia and the Pacific*, 2017, p 38-93. [unlocking\\_childhood.pdf](https://resource-centre-uploads.s3.amazonaws.com/unlocking_childhood.pdf) (resource-centre-uploads.s3.amazonaws.com)


<sup>73</sup> UNICEF, Annual Report - 

<sup>74</sup> UNICEF, *How UNICEF Works to Save Refugees and Migrant Children from Detention*, 2018. . See also: UNICEF, *Migrant and Refugee Children in Latin America and the Caribbean*. Available at  Last visited February 2, 2021.

<sup>75</sup> UNICEF (2017), 6.

<sup>76</sup> Ibid.

<sup>77</sup> Ibid.

<sup>78</sup> Epim, *Alternatives to detention: building a culture of cooperation* (2020), p. 4-11. 

<sup>79</sup> OHCHR, A/75/183 (2020), para 68.

<sup>80</sup> UNHCR, 2015.



## Action area 3: Procedural Protection & Monitoring

While the migrant status of children is being clarified, it is essential to ensure that they receive appropriate procedural protections, ranging from access to information and being informed in a language they understand to having access to legal counsel and many more (see below).<sup>81</sup> These protections should be monitored and ensured in all types of facilities.

Under this policy area, **States should:**<sup>82</sup>

1. Ensure **access to justice and effective remedies**, which includes the possibility of challenging detention, administrative sanctions and prosecution when children's rights to liberty and family life are violated.\*
2. Ensure access to **information about the process** in a child-friendly manner and in a language the child understands.
3. Ensure regular (and define 'regular') access by **legal representatives/legal assistance**, a **social worker** and **access to a translator where necessary**.
4. Establish and ensure regular **access to national and international monitoring bodies**, as well as to **civil society organisations** to custodial and to non-custodial facilities that may restrict migrant children's freedom of movement.
5. Regular **reporting on conditions in facilities** by the operator of the facility or by an independent body.
6. Produce **rights-based indicators and tools** for measuring progress of the protection and realisation of children's rights in the context of immigration detention and in the implementation of non-custodial solutions.
7. Provide specialised **trainings** for operators, field agents and all actors working with children.

\*In some countries children's applications are given priority in order to ensure they receive care, and to keep them out of detention and protect their best interest.

## Illustrations of Practice


In **Bulgaria** the IOM has created child-friendly leaflets with information on the asylum procedure step-by-step, including available services and their rights. To make this information more accessible, the leaflets are provided in different languages, such as Arabic, Pashto, Urdu, and Tamil.<sup>83</sup>


In **Colombia**, administrative authorities evaluate the needs of migrant children, and are in charge of explaining their rights, and representing them during the asylum procedure.<sup>84</sup> The children also are ensured access to health and education without distinction of their migrant status.<sup>85</sup>

National legislation in **Ecuador** foresees that authorities appoint a tutor or legal representation for unaccompanied children or adolescents. This applies also to children who are separated from their legal representatives. The law further provides that the applications of these children shall be treated with priority.<sup>86</sup>

<sup>81</sup> Committee on Migrant Workers and Committee on the Rights of the Child, *Joint General Comment No. 3/22, on the general principles regarding the human rights of children in the context of international migration*. See also: CMW/C/GC/3-CRC/C/GC/22, 2017, paras. 27-33 & 36-37. See also: Committee on Migrant Workers and Committee on the Rights of the Child, *Joint General Comment No. 4/23, 2017, op. cit.*, paras. 14-19; Committee on Migrant Workers, *General Comment No. 2 on the Rights of Migrant Workers in an Irregular Situation and Members of their Families*, CMW/C/GC2, 2013, paras. 27-3.

<sup>82</sup> The "Guiding Key Issues" are based on the Global Study recommendations as in chapter 11, on the "Inter-Agency Guiding Principles on Unaccompanied and Separated Children" and on States practices. The examples given of each country practice correlate with one or several of these key issues.

<sup>83</sup> IOM, *Protection of Children in Migration*, 2021. 

<sup>84</sup> OHCHR, A/75/183, 2020, on Colombia response to Questionnaire of the Special Rapporteur on the Human Rights of Migrants, 2019, p. 7. 

<sup>85</sup> Ibid.

<sup>86</sup> Presidency of the Republic of Ecuador, *The Organic Law on Human Mobility*, 2017, (Art. 99(8) and (9))  Last visited January 21, 2021.



In **Kenya**, case managers support unaccompanied children in the Dadaab refugee camp. In addition, psychological support and awareness campaigns are offered by NGOs, such as Save the Children and UN agencies.<sup>87</sup> In cases where children have been separated from their families, the community supports to find the family members of the children's clan through traditional clan-based mechanisms. Furthermore, the government established a police force in each camp within Dadaab and a mobile court, where a social worker supports children.<sup>88</sup>


Following the Law No 514-65, **Morocco** establishes the right of migrants to legal aid, which includes the provision of a lawyer and translation services as well as an exemption from legal fees.<sup>89</sup> Furthermore, the Moroccan Ministry dealing with migration affairs started a cooperation with IOM in 2018 and provided two trainings for operators and field agents on the identification, assistance and protection for children that are unaccompanied or have been separated from their parents.<sup>90</sup>

According to Dutch law, all children living in the **Netherlands** must have a guardian - either a parent, a relative, or a legal representative.<sup>91</sup> Guardianships for unaccompanied and separated children are organised by the national guardianship institution 'Nidos'. Here, youth workers are assigned as guardians to represent the children in legal procedures, and to protect their best interest, respecting their cultural background and acting on mutual commitment.<sup>92</sup> Professionals working at Nidos also monitor the condition of children's long-term care and accommodation; hence, controlling foster families and youth care facilities.<sup>93</sup>

In **New Zealand** migrant children travelling with their family have a right to have their asylum procedure assessed as independent rights holders, and every family member has to submit an own claim. A set of guidelines further informs that the child has the right to be heard, and the best interest of the child considered in any decision affecting them. This procedure enhances the child-specific rights by providing specific attention to the individual reasons for migration of the children, and not as part of the parents claim.<sup>94</sup>

Regional courts have an essential role when it comes to the implementation of children's rights.<sup>95</sup> For instance, the **European Court of Human Rights** (ECtHR) ruled that the detention of a minor Afghan that was seeking asylum in Greece was unlawful.<sup>96</sup> This decision was based on the conditions in which the applicant was put into (to begin, he was put in an adult detention centre), the inadequate care and his unlawful detention. The Court ruled a violation of several articles of the Convention for the Protection of Human Rights and Fundamental Freedoms in this case. Among others, the Court found a violation of Articles 5.1 and 5.4 on the right to liberty and security, as the detention appeared to be resulting from an automatic application of the legislation, without considering the best interest of the child, nor examining whether this was a measure of last resort, and without the applicant being able in practice to contact a lawyer.<sup>97</sup>

In **Zambia**, a set of tools provide guide to border officials on the initial reception of unaccompanied children, which should immediately be referred to the Department of Social Welfare and not be subjected to detailed interviews upon arrival, nor be refused the entry to the country. The tools applied have been developed by the government, in cooperation with IOM, UNICEF and UNHCR.<sup>98</sup>


<sup>87</sup> IDC, Keeping Children Safe, 2018, p. 8. 

<sup>88</sup> Ibid.

<sup>89</sup> OHCHR, A/75/183, 2020, on Morocco State response to Questionnaire, p. 6. OHCHR | Report on ending immigration detention of children and seeking adequate reception and care for them


<sup>90</sup> Ibid.


<sup>91</sup> NIDOS website  See also: IDC, Briefing Paper: Ensuring unaccompanied children avoid the harms of immigration detention, 2018, p. 8. 

<sup>92</sup> NIDOS website: 


<sup>93</sup> IDC, 2018, p.8.

<sup>94</sup> OHCHR, A/75/183, 2020, para 77. See also: Guidelines on Children or Minors at the Refugee Status Branch (2016-2017). 

<sup>95</sup> Council of Europe, Immigration Detention of Children: Coming to a Close?, 2017, p. 14. 

<sup>96</sup> ECtHR, Rahimi v. Greece, Case 8687/08,  (accessed 23.2.2021).

<sup>97</sup> Ibid.

<sup>98</sup> IDC, 2018, p. 10. 

## Action area 4: Prompt Identification and Adequate Age Assessment

In some cases passports or birth certificates are difficult to get, in other cases persons have lost their documents or had to leave the country without having time to pack or take their identity documents. Age assessments should only be used as last resort in case there is serious doubt about the person's age. Further recommendations under this policy area, regard that **States should:**

Under this policy area, **States should:**<sup>99</sup>

1. **Consider documents** that are available as genuine unless there is proof to the contrary and consider statements by children and their parents or relatives.
2. Only use **age assessment procedures** where there are grounds for serious doubt about an individual's age.
3. Design and implement **child-sensitive screening processes** to ensure prompt identification of children who come into contact with migration authorities. These must be carried out by **independent experts in a prompt, child-friendly, gender-sensitive and culturally appropriate manner and respecting the child's dignity.**\*
4. Undertake a **comprehensive assessment of the child's physical and psychological development**, conducted by **specialist paediatricians or other professionals** who are skilled in combining different aspects of **development**.
5. Conduct the assessments in a **language the child understands**.
6. Ensure that assessments include **interviews** with children and, as appropriate, that they are **accompanied by adults.**\*\*
7. **Not detain** persons claiming to be children while any assessment is completed.
8. Give the **benefit of the doubt** and apply any margin of error in favour of the individual concerned.

\*Some countries explicitly prohibit the examination of genitalia or methods implying nudity as a sexual maturity observation as a method for age assessments.

\*\* In some countries an independent review of the age assessment can be conducted.

## Illustrations of Practice

In **Ireland** age assessments are regulated by law and conducted where “reasonable grounds” for doubt as to the age are given by a member of the Garda Síochána or an immigration officer.<sup>100</sup> Article 25 of the International Protection Act defines that previous consent for examination is required as well as that information about the methods used and consequences of refusal – all of this shall be provided in a language the person understands. The examination shall be performed with dignity and taking as primary consideration the best interest of the child. The law further provides that the least invasive possible way shall be used.<sup>101</sup> Findings show that four non-medical methods are used, namely the revision of: documents submitted, estimations based on physical appearance, age assessment interview and social service assessments.<sup>102</sup>

<sup>99</sup> The “Guiding Key Issues” are based on the Global Study recommendations as in chapter 11, on the “Inter-Agency Guiding Principles on Unaccompanied and Separated Children” and on States practices. The examples given of each country practice correlate with one or several of these key issues.

In **Spain** the NGO Fundación Raíces brought an appeal to the Supreme Court in relation to a case of an unaccompanied minor from Mali. At his arrival to Spain, the child had declared being an adult in order to travel to Madrid without being interned or deported. At a later point, when he applied for legal guardianship, he also provided official documentation proving that he was a child. Despite this prove, the officials refused to declare him a minor because of “alleged inconsistency as to his real age, because some of his official documents were issued after his arrival in Spain, and because of his refusal to submit to medical examinations to determine his age”.<sup>103</sup> The courts in first instance upheld this administrative decision. After an appeal, the Spanish Supreme Court decided to curtail the ability of authorities to put into question official identification documents without providing a reasonable doubt on their reliability together with substantiated evidence.<sup>104</sup> This is especially relevant in relation to the requirements of age assessment examinations of minors, but also essential for the child protection services and right to legal guardianship, which had been denied upon his request as he was considered an adult. This decision of the Supreme Court set a powerful precedent for future cases.

Although the means by which local authorities determine age is not covered in legislation in the **United Kingdom**, in practice two social workers trained and with experience on working with young people assess the individual and come to a determination based on that assessment. A guidance and minimum standards to be applied by local authorities for the assessment is set by courts.<sup>105</sup> These standards are contained in legal judgements and entail basic requirements, such as providing interpreter if needed for the interview or having an independent adult present during the assessment.<sup>106</sup> Furthermore, the minor is informed about the reasons for such assessment and the methods applied. No medical reports are necessary and local authorities are not required to commission one. In case a medical report is submitted, then it will be considered, but will not have greater weight than the reports conducted by the social workers.<sup>107</sup> The system also offers the possibility to challenge the decision derived from the age assessment. The Statutory Guidance for local authorities by the English department of Education, further advises to follow the 2015 [Age Assessment Guidance](#), which explains in detail the different steps to consider and undergo when undertaking age assessments, including a checklist for the different stages.<sup>108</sup>



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sources

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<sup>100</sup> Ireland: International Protection Act 2015, revised 2021. See Art. 20.7(b).

<sup>101</sup> Ibid. Article 26(6).

<sup>102</sup> EASO, Practical Guide on Age Assessment: Second Edition, 2018, p. 106-107.

<sup>103</sup> Spain, Supreme Court, Civil Chamber Procedure no. 2629/2019 Decision no. 307/2020. See also: Advancing Child Rights. Strategic Litigation.

<sup>104</sup> Ibid.

<sup>105</sup> EASO practical guide on age assessment, 2018. P. 97-99.

<sup>106</sup> Ibid.

<sup>107</sup> Ibid, p. 97-99, 106-110.

<sup>108</sup> ADCS, Leading Children's Services, Age Assessment Guidance, 2015


## Action area 5: Safe Return Policies


No return should be conducted if there is a threat of a human rights violation of the child.<sup>109</sup> However, there are other circumstances, in which people wish to return to their countries of origin voluntarily while their asylum procedure is still pending or when there is no more fear of persecution.<sup>110</sup> Often, the reason of return derives from a rejected asylum application. This process needs to be carefully assessed to ensure that no human rights violations happen, and authorities should not deprive children of liberty before a return. Under this policy area, **States should**:<sup>111</sup>


1. Only return children based on a determination that such return is in the **individual child's best interests**.
2. Ensure that any **decision to return** a child to his or her country of origin, or to transfer a child to a third country, is based on evidentiary considerations on a **case-by-case basis**.
3. Ensure that the decision to return is pursuant to a procedure with appropriate due **process safeguards**, including a robust individual assessment, **the right to be heard**, and access to **legal assistance**.
4. Ensure that **the procedure** to decide upon a return ensures, inter alia, that the child, upon arrival, will be **safe and provided with proper care and enjoyment of rights**.\*
5. Ensure **appropriate protection and care** throughout the process of return when a transfer is based on the best interest of the child.
6. Children should **never be detained** for the purpose of removal.\*\*
7. Ensure that return is undertaken by a **child protection or child welfare authority**.
8. **Not return or transfer under no circumstances children** to a country where there are grounds to believe the child would face **risks of: persecution, torture, trafficking, gross violations of human rights or other irreparable harm**, whether from State or non-State actors.

\*Can include ensuring that socio-economical support within family can be provided to ensure child's well-being, ensure adequate accommodation, appropriate school and health care possibilities. Can include providing school certificates and documentation from the country of asylum application. Often international organisations are involved in the process.

\*\*States should actively ensure access to services and to non-custodial facilities for the children before they are returned.

<sup>109</sup> UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, 2017, p. 35. 

<sup>110</sup> UNHCR, Voluntary Return. 

<sup>111</sup> The recommendations are based on the Global Study recommendations as in chapter 11, States practice and IOM, UNHCR, UNICEF, et al., Guidance to respect children's rights in return policies and practices: Focus on the EU legal framework, 2019. 

## Illustrations of Practice

In **Belgium**, families with minor children whose asylum request was rejected are allowed, under certain conditions, to stay in their house or are sent to open family living units that are managed by the Immigration Office, avoiding their detention.<sup>112</sup>

In **Cyprus**, parents with minor children detected as residing illegally in the country are allowed to live with their children and are not detained if they communicate a date of voluntary return. Further conditions include regular reporting, surrender of travel documents, and financial guarantees.<sup>113</sup>

In **El Salvador**, the governmental Technical Commission cooperates with IOM in the field of return and reintegration of minors through “family reunification, reintegration and social reinsertion, prevention in communities and schools, and research and monitoring.”<sup>114</sup> This project seeks to support the governmental bodies improve how to ensure a good reintegration for unaccompanied children – including i.e. education - when returning to their country of origin.<sup>115</sup>


**Nigeria** is one of the 16 countries forming part of the West African Network for the Protection of Children<sup>116</sup>, a regional network created in 2002, with the aim of protecting migrant children from dangerous situations and reintegrate them in the country of origin or a third country.<sup>117</sup> This network integrates governmental authorities and agencies, networks and organisations and uses a “coordinated and standardised process to each child’s case”.<sup>118</sup> Yearly approximately 1000 children are supported through this network. Children’s views are considered in the decisions and they children are assisted at their arrival and at the reintegration in the community and return to school. The Network also takes into account the socio-economic status of the family where the child goes back to, and, if needed, it provides economic support to ensure the best interest of the child.<sup>119</sup>


Children living in the **Republic of Korea** have access to school independently of their migration status and undocumented migrant children cannot be deported until having completed elementary, middle and high school. This provision is regulated by an internal guideline of the Ministry of Justice.<sup>120</sup>


In **Sweden**, a system was developed to avoid the use of detention for children within the frame of voluntary repatriation after receiving a negative asylum result. Children are supported throughout the whole process by caseworkers through this program, which shows very high compliance. The program “highlights the importance of robust case management in supporting migrants’ compliance with the migration process.”<sup>121</sup>

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<sup>112</sup> EMN, Returning rejected asylum seekers: challenges and good practices in Belgium, 2016. 

<sup>113</sup> Cyprus, Office of the Law Commissioner, Follow-up to Concluding Observations, para. 28. 

<sup>114</sup> IOM, Unaccompanied Children on the Move, 2011, p. 34. 

<sup>115</sup> Ibid.

<sup>116</sup> The West African Network is an inter-agency network, based on the collaboration between the ISS-SG, the FICE, the RAO, and the GRPE. The countries targeted by the WAN are: Benin, Burkina Faso, Cabo Verde, Ivory Coast, Gambia, Ghana, Guinea Bissau, Guinea, Liberia, Mali, Mauritania, Niger, Nigeria, Sierra Leone, Senegal, Togo.  See also 

<sup>117</sup> IDC, 2018, p. 13. 

<sup>118</sup> Ibid.

<sup>119</sup> Ibid.

<sup>120</sup> OHCHR, A/75/183, 2020, para 70.

<sup>121</sup> Ibid, para 59.

## Action area 6: Data Collection

According to the Global Study findings, at least 330,000 children are detained for migration-related purposes per year around the world.<sup>122</sup> However, this number is likely to be a significant under-estimation, since in many countries there is insufficient information available. Some States collect data, but do not disaggregate it or only collect information for a group of children (e.g. unaccompanied children). Others just collect data on an ad hoc basis but not in a systematic and consistent manner.<sup>123</sup> States detaining children for migration-related reasons should regularly publish clear and disaggregated data, both on children deprived of liberty, but also for children living in non-custodial solutions to understand the use of detention/non-custodial solutions.

Under this policy area, **States should:**<sup>124</sup>

1. Collect and **make publicly available anonymised data**, disaggregated to the greatest extent possible and on an **annual basis**.
2. Produce rights-based indicators and tools for **measuring progress** of the protection and realisation of migrant children's rights.
3. **Disaggregate the data** to the greatest extent possible, including: age, gender (ideally reflecting, in addition to only 'female' and 'male', numbers for those whose gender identity does not match the sex assigned at birth or on identity documents), unaccompanied/accompanied status, nationality and migration status, disability, length of stay (including cumulative length of detention for individuals released and immediately re-detained), and place of detention.
4. States should make sure that **privacy rights and children's anonymity is protected**. Where the number of children is very low and therefore children might risk being identified, States could aggregate small number and use categories such as <5 or <10.

The Global Study further calls "the UN General Assembly to ensure the development and maintenance of an international database containing all relevant data on children's deprivation of liberty. In developing such a database, a common methodology, based on the Global Study, needs to be applied in order to enhance comparative research".<sup>125</sup>

## Illustrations of Practice

In **Australia**, the government department of Home Affairs gathers information on the population in detention facilities and creates monthly reports.<sup>126</sup> The reports include data on children in different types of facilities, dividing the information by "immigration residential housing, immigration transit accommodation and alternative places of detention". It also includes information on the State where children are detained and their nationalities. The monthly reports also contain information on alternative places of detention from 2013 to 2020.<sup>127</sup>

<sup>122</sup> Global Study, p. 465.

<sup>123</sup> Ibid, p. 455.

<sup>124</sup> The recommendations are based on the Global Study recommendations as in chapter 11 and on States practices.

<sup>125</sup> Global Study, p. 670.

<sup>126</sup> Australian Government, Immigration Detention.  Example of a monthly report "Department of Home Affairs, Immigration Detention and Community Statistics Summary", 2020. 

<sup>127</sup> Ibid, p. 10, 11. See Table 2.3: Housed minors by length of housing and facility type.

In cooperation with the Government of **Bangladesh**, UNHCR published statistics on refugees from Myanmar living in camps several times a year.<sup>128</sup> The statistics published are segregated by groups of ages and gender. These statistics include figures by persons with specific needs, such as: families with children at risk, individuals with disabilities and unaccompanied and separated children.<sup>129</sup>

In **Canada** the Canadian Border Service Agency (CBSA) publishes data on detention of children in relation to migration-related reasons on a yearly basis. The CBSA differentiates between “housing” and “detention” (see source for definition).<sup>130</sup> Information is disaggregated by detention grounds, gender, age, length of detention and facility type.<sup>131</sup> Data also provides information on a quarterly basis, including the length of stay in the Immigration Holding Centre.<sup>132</sup> Statistics from the fiscal year 2019 to 2020 provide that there was 1 minor detained for under 48 hours in Quarter 3 and 4 for the reason “unlikely to appear”, which refers to “a person may be detained if an officer believes the person is unlikely to appear for examination, an admissibility hearing, removal from Canada or at a proceeding that could lead to the making of a removal order”.<sup>133</sup> In comparison there were 52 minors in quarter 2 in a housed facility (all at the Immigration Holding Centre) with an average length of 16.3 days and for the following reasons: exam (1 person), suspected of serious criminality (2 persons), unlikely to appear (4 persons) and for identity reasons (45 persons).<sup>134</sup>

According to the migration data portal, **Mexico** publishes on a yearly basis a report containing “data on child migrants apprehended and detained by the state, by age categories 0-11 and 12-17 years old”.<sup>135</sup> It also provides information on the accompanied and unaccompanied status of children.<sup>136</sup> The National Commission on Human Rights uses statistics obtained from the Mexican National Institute of Migration on unaccompanied children migrating to Mexico that are in detention and segregated by federal entity.<sup>137</sup>

The **United Kingdom** publishes data on children deprived of liberty for migration-related reasons on a quarterly basis, including information on their nationality, first place of detention, current place of detention as well as its length.<sup>138</sup> This data set keeps track of the total number of applications for migrant children and young asylum-seekers. The number of children in detention is disaggregated by age, thus children: under 5, from 5-11, from 12-16 and 17 years old.<sup>139</sup> Yearly summaries are also published by the government.<sup>140</sup>



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<sup>128</sup> The reports containing the statistics do not provide a closer definition for “camps” and if the children can freely move.

<sup>129</sup> UNHCR, Joint Government of Bangladesh – UNHCR, Population factsheet block level as of 31st October 2020.

<sup>130</sup> Detained minor is defined as “a foreign national or permanent resident who is deemed to be inadmissible and is subject to an Order for Detention under A55 of the Immigration and Refugee Protection Act (IRPA)”, whereas “Housed minor” is defined as “A foreign national, permanent resident or Canadian citizen who, after the completion of a best interest of the child assessment, is kept with their detained parent/legal guardian at an IHC at the latter’s request. A housed minor is not subject to an Order for Detention and is free to remain and re-enter the CBSA IHC subject to the parent/legal guardian’s consent.” See CBSA Website.

<sup>131</sup> Canadian Border Service Agency (CBSA), Annual detention, fiscal year 2019 to 2020.

<sup>132</sup> CBSA, Quarterly detention statistics: 2019 to 2020. Arrests, detentions and removals - Quarterly detention statistics: Fourth quarter (Q4), fiscal year 2019 to 2020 (cbsa-asfc.gc.ca)

<sup>133</sup> Ibid.

<sup>134</sup> Ibid.

<sup>135</sup> Migration Data Portal, Child and young migrants data, 2020. See also: GDP, Country Report: immigration detention Mexico, 2021, p. 16. See also: Gobierno de Mexico, Boletines Estadísticos, cuadro 3.1.4.

<sup>136</sup> Ibid.

<sup>137</sup> ICNDH, Informe Especial: La problemática de niñas, niños y adolescentes centroamericanos en contexto de migración internacional no acompañados en su tránsito por México, y con necesidades de protección internacional, 2018, p. 93.

<sup>138</sup> GOV.UK, Statistical data set, Returns and detention datasets.

<sup>139</sup> Ibid. See also: Migration data Portal, Child and young migrants. See also: Crawley, H. The Situation of Children Immigrant Families in the United Kingdom, 2009, p. 11.

<sup>140</sup> GOV.UK Immigration Statistics, Available under “8. Detention and returns”.



# ANNEX 1: GLOSSARY

- **Applicant:** “In the migration context, a person who formally requests government or legal action, such as the granting of refugee status, a visa or work permit.”<sup>141</sup>
- **Assisted Voluntary Return:** “Logistical and financial support to rejected asylum seekers, trafficked migrants, stranded students, qualified nationals and other migrants unable or unwilling to remain in the host country who volunteer to return to their countries of origin.”<sup>142</sup>
- **Asylum seekers:** “Persons seeking to be admitted into a country as refugees and awaiting decision on their application for refugee status under relevant international and national instruments. In case of a negative decision, they must leave the country and may be expelled, as may any alien in an irregular situation, unless permission to stay is provided on humanitarian or other related grounds.”<sup>143</sup>
- **Case management:** “[...] is a process developed by social services to engage and support a person with complex needs. Unlike a guardian, a case manager does not have any legal authorities over a child. Instead, they are responsible for assessing the child’s situation, identifying solutions to problems, and providing advice and support. Case managers are often social workers or welfare professionals, but may also include people who are experienced in the migration or child protection sector.<sup>43</sup> In the context of care for unaccompanied children, case management is sometimes provided by the child’s guardian, but can also be provided by another person.”<sup>144</sup>
- **Child:** “any person under the age of 18, in line with the definition provided in the UN Convention on the Rights of the Child (Article 1).”
- **Deprivation of liberty:** “Any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.”<sup>145</sup>
- **Family:** following the guidance of the CRC Committee, it includes biological, adoptive or foster parents or, where applicable, the members of the extended family or community as provided for by local custom.<sup>146</sup>
- **Guardianship:** “Guardians are not necessarily the adults who supervise a child’s day-to-day living (such as foster family parents). Rather, a guardian is an independent advocate 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. The exact nature of guardianship can differ by country context. However, key responsibilities are to protect the best interests of the child, and to ensure the child’s views and opinions are taken into consideration in decisions that will affect them. In some countries, procedures such as family tracing and reunification cannot be started if a guardian has not been appointed”.<sup>147</sup>
- **Immigration detention:** “any setting in which children are deprived of their liberty for reasons relating to their migration status or that of their parents, regardless of the name or justification provided by the State for depriving children of their liberty or the name of the facility or location where the child is deprived of liberty.”<sup>148</sup>
- **Immigration/migration offence:** “An offence relating to the legality of the entry and/or continued presence of the child and/or his or her family in the country in question, or to the legality of the current place of residence of the child and/or his or her family following internal displacement.”<sup>149</sup>


<sup>141</sup> IOM, Glossary on Migration, 2011, p. 10. 

<sup>142</sup> Regional Mixed Migration Secretariat, Behind Bars - the detention of migrants in and from the East & Horn of Africa, 2015, p. 5. 

<sup>143</sup> Ibid.

<sup>144</sup> IDC, 2018, p. 8.  Op. cit. D. Corlett, et al., Captured Childhood, 2012.

<sup>145</sup> UN Rules on the Treatment of Juveniles Deprived of their Liberty (Havana Rules) Art. 11(b).

<sup>146</sup> General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), , 59.

<sup>147</sup> IDC, 2018, p. 8. Op. cit. European Union Agency for Fundamental Rights, Guardianship Systems for Children Deprived of Parental Care in the European Union: With a Particular on their Role in Responding to Child Trafficking, 2015.

<sup>148</sup> Nowak, Global Study, p. 434. Op. cit. Cf. Joint General Comment No. 4/23 (2017), para. 6.

<sup>149</sup> UNICEF, Toolkit on Diversion and Alternatives to Detention, 2009, Glossary. 

- **Independent monitoring mechanisms:** “Bodies that undertake monitoring of facilities where people are deprived of their liberty through on-site (announced or unannounced) visits.”<sup>150</sup>
- **Migrant:** “usually understood to cover all cases where the decision to migrate was taken freely by the individual concerned for reasons of ‘personal convenience’ and without intervention of an external compelling factor.”<sup>151</sup>
- **Reasons related to migration status:** “actions taken by States relating to a person’s migratory or residence status, or the lack thereof, whether relating to irregular entry, stay or exit, consistent with the Committees’ previous guidance.”<sup>152</sup>
- **Reception/institutional placement:** “these can include reception centres, large group homes and shelters. Supervision is usually provided 24 hours per day by a team of carers”.<sup>153</sup>
- **Refugee:** “A person, who ‘owing to well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinions, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country’”.<sup>154</sup>
- **Unaccompanied minors:** “Persons under the age of majority who are not accompanied by a parent, guardian, or other adult who by law or custom is responsible for them. Unaccompanied minors present special challenges for border control officials, because detention and other practices used with undocumented adult aliens may not be appropriate for minors.”<sup>155</sup>
- **Youth/Young Persons:** “those persons between the ages of 15 and 24.”<sup>156</sup>

### Alternatives to Immigration Detention

- **Alternatives to Immigration Detention:** “Any legislation, policy or practice that allows children, whether accompanied or not, to reside in the community or, when unaccompanied or separated, in appropriate reception or care arrangements where protection and assistance are provided to meet their specific needs.”<sup>157</sup>
- **Child-headed households:** “Child-headed households are a form of semi-independent living, whereby unaccompanied children live in a child- or peer-headed household. In this arrangement, children are cared for by an older sibling or by unrelated older children”.<sup>158</sup>
- **Foster care:** “situations where children are placed by a competent authority for the purpose of alternative care in the domestic environment of a family other than the children’s own family that has been selected, qualified, approved and supervised for providing such care”.<sup>159</sup>
- **Group care:** “is where children are placed in small group homes that are run like a family home, whereby groups of six to eight children or young people are cared for by consistent caregivers within the community. Where family-based care or independent living is not possible or advisable, small group care is strongly preferable to other forms of residential care.”<sup>160</sup> It is to be noted that «Residential care should be a last option, appropriate only where family-based or small group care arrangements are not possible or where family-based care is not considered to be in the best interests of the child.”<sup>161</sup>
- **Kinship and network care:** “Kinship care describes family-based care with a member of the child’s extended family (kinship care). Network care is family-based care with close friends of the family known to the child (network). Both of these arrangements can be formal or informal in nature”.<sup>162</sup>

<sup>150</sup> DCI Belgium, Practical Guide - Monitoring places where children are deprived of liberty (2016), pp. 15f.

<sup>151</sup> IOM, Glossary on Migration, 2011, p.61. 

<sup>152</sup> Ibid. / <sup>153</sup> IDC, 2018, p. 10.

<sup>154</sup> Regional Mixed Migration Secretariat, Behind Bars - the detention of migrants in and from the East & Horn of Africa, 2015, 9.  Op. cit. Convention relating to the status of Refugees, Art. 1A(2), 1951 as modified by the 1967 Protocol.

<sup>155</sup> Regional Mixed Migration Secretariat, 2015, 10.

<sup>156</sup> UNICEF, Toolkit 2009, Glossary. [https://www.unicef.org/tdad/index\\_55660.html](https://www.unicef.org/tdad/index_55660.html)

<sup>157</sup> UNHCR, 2015. 

<sup>158</sup> IDC, 2018, p. 10. Op. cit. UNHCR, Child Protection Issue Brief Alternative Care, 2014, 2.

<sup>159</sup> IDC, 2018, p. 9. Op. cit. Wildt et al., Reception and Living in Families, 2015, 18.

<sup>160</sup> UNHCR, 2015. / <sup>161</sup> UNHCR, 2015, p. 13. / <sup>162</sup> IDC, 2018, p. 9.

# ANNEX 2: TOOLS AND REPORTS

## 1. Global Study related documents and websites

- General Assembly report - <https://undocs.org/A/74/136>
- Full Study and Global Study Library - <https://omnibook.com/global-study-2019>
- OHCHR Website with information of the Global Study - <https://rb.gy/vcak0j>
- Global Study website, with information on projects and full library – [www.nochildbehindbars.com](http://www.nochildbehindbars.com)
- NGO Panel for the Global Study on Children Deprived of Liberty – <https://childrendeprivedofliberty.info/resources/publications>

## 2. Monitoring bodies, mechanisms, reports and guidelines (UN, State Parties, Civil Society)

- OHCHR treaty bodies database - [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en)
- UN Committee on the Rights of the Child website - <https://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx>
- UN Human Rights Council special procedures - <https://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx>
- Universal Periodic Review (UPR) - <https://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>
- Global Alliance of National Human Rights Institutions - <https://ganhri.org>
- Child Rights Connect database of civil society reports to the Committee on the Rights of the Child from 1991 to 2014 - <https://www.childrightsconnect.org/alternative-report-archive/>
- OHCHR treaty bodies database – [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en)
- Children’s rights behind bars, Child detention monitoring mechanisms/guidelines - <http://www.childrensrightsbehindbars.eu>
- Advancing Child Rights Strategic Litigation - <https://www.acrisl.org/>
- UN Global Compact for Safe, Orderly and Regular Migration - <https://www.ohchr.org/en/migration/global-compact-safe-orderly-and-regular-migration-gcm>

## 3. Assessments from regional mechanisms

- Council of Europe: Committee on the Prevention of Torture (CPT) - <https://www.coe.int/en/web/cpt>
- CoE Guidelines on child friendly justice - <https://www.coe.int/en/web/children/child-friendly-justice>
- Organisation of American States (OAS) - <http://www.oas.org/en/topics/children.asp>
- African Union/African Charter - <https://www.acerwc.africa/about-the-charter/>

## 4. Participation of children

- UN Committee on the Rights of the Child - <https://www.ohchr.org/EN/HRBodies/CRC/Pages/ChildParticipation.aspx>
- PRI Toolkit on interviewing children - <https://cdn.penalexchange.org/wp-content/uploads/2012/01/Toolkit-for-Interviewing-Children-Guardians-Staff-of-Juvenile-Detention-Facilities.pdf>
- Save The Children: Consultation Toolkit - [TOOLKIT.ARTWORK.savethechildren.org.uk](http://TOOLKIT.ARTWORK.savethechildren.org.uk)

## 5. Further sources

### Guiding principles for unaccompanied and separated children:

- ICRC, Inter-agency Guiding Principles on Unaccompanied and Separated Children - <https://shop.icrc.org/inter-agency-guiding-principles-on-unaccompanied-and-separated-children-pdf-en>
- UN Guidelines for the Alternative Care of Children - <https://undocs.org/en/A/RES/64/142>

### Alternatives to detention, practical examples:

- UNICEF, Toolkit on Diversion and Alternatives to Detention - <https://sites.unicef.org/tdad/>
- OHCHR, Report on ending immigration detention of children and seeking adequate reception and care for them, 2020 - [OHCHR | Report on ending immigration detention of children and seeking adequate reception and care for them](#)
- EPIM, Alternatives to detention: building a culture of cooperation Evaluation of two-year engagement-based alternative to immigration detention pilot projects in Bulgaria, Cyprus and Poland, 2020 - [2020-ATD-Evaluation-Report\\_Final.pdf \(epim.info\)](#)
- IDC, Alternatives to detention in Africa, 2018 - <https://idcoalition.org/wp-content/uploads/2018/04/There-are-alternatives-Africa-2018.pdf>
- International Detention Coalition, Keeping children safe, 2018 - [Keeping-Children-Safe-IDC-Briefing-Paper-Oct-2018.pdf](#)
- Save the Children, 2017, Current immigration detention practices and alternatives for child asylum seekers and refugees in Asia and the Pacific - [Unlocking Childhood: Current immigration detention practices and alternatives for child asylum seekers and refugees in Asia and the Pacific | Resource Centre \(savethechildren.net\)](#)
- UNHCR, Options for governments on care arrangements and alternatives to detention for children and families, 2014 - [553f58509.pdf \(unhcr.org\)](#)
- EASO, Practical Guide on Age Assessment, 2nd edition - [EASO Practical Guide on Age Assessment: Second edition \(europa.eu\)](#)

### Adequate Age Assessment:

- EASO, Practical Guide on age assessment, 2013 - [EASO Practical Guide on Age Assessment: Second edition \(europa.eu\)](#)

### Data Collection:

- Migration Data Portal - [Data | Migration data portal](#)
- Global Detention Project - [Immigration Detention Centres - Global Detention Project | Mapping immigration detention around the world](#)

### Safe Return Policies:

- OHCHR, The Universal Human Rights Index - <https://uhri.ohchr.org/en/search-human-rights-recommendations>
- Reliefweb, Guidance to respect children's rights in return policies and practices, 2019 - <https://reliefweb.int/sites/reliefweb.int/files/resources/Guidance%20in%20children%27s%20rights%20%282019%29.pdf>
- IOM, A framework for Assisted Voluntary Return and Reintegration, 2018 - [https://publications.iom.int/system/files/pdf/a\\_framework\\_for\\_avrr\\_en.pdf](https://publications.iom.int/system/files/pdf/a_framework_for_avrr_en.pdf)

# ANNEX 3: KEY QUESTIONS FOR RESEARCH

When preparing for country research, or a comprehensive country assessment process, you may find the following key questions useful at the beginning of such process.

## Action area 1: Prohibition of Migration-related Detention

### Key Questions

- Does national law explicitly prohibit detention of children for migration-related reasons?
- Are there restrictions to detention or exceptions provided in the law in which case children could be placed in migration-related detention?
- Is detention prohibited during the age assessment procedures?
- Does national law refer to the protection of children's best interests or the child?
- Is there a national child protection system?
- Does national law refer to non-custodial solutions for migrant children?
- Is family unit and keeping siblings together ensured by law?
- Are children released together with their family members in non-custodial solutions?
- Does national law include that children's applications are given priority?
- Does the State have a specialised Children's Court for migrant children?

## Action area 2: Non-custodial Solutions

### Key Questions

- Does the State provide non-custodial solutions for migrant children?
- What forms of non-custodial solutions do exist (e.g. NGOs and international organisations)?
- Does the State protect family unity in non-custodial settings by not separating children from parents or siblings?
- Does the State take into account each child's individual needs for appropriate protection and care of migrant children?
- Are children provided with identity documents or certificates?
- Does the State ensure access to health, and other services, such as access to appropriate food and water, adequate clothing, sanitation, psychological support?
- Does the State ensure access to education and recreation?
- Does the State ensure appropriate case management, and regular check-ins by social workers and social support?
- Are migration centres integrated into the local community?
- Does the State ensure access to and communication with the outside world?

## Action area 3: Procedural Protections & Monitoring

### Key Questions

- What are the regional/international implementation mechanisms protecting children's rights?
- Does the State ensure access to justice and effective remedies, including challenging detention, administrative sanctions and prosecution when children's rights to liberty and family life are violated?
- Does the State ensure access to free legal representation/legal assistance, social worker and/or access to a translator?
- Does the State ensure access to information about the process in a child-friendly manner and in an adequate language the child can communicate in?
- Does the State ensure access to national and international monitoring bodies to migration-related detention centres and non-custodial facilities (since these may restrict migrant children's freedom of movement)?
- Are there complaint mechanisms conducted by independent bodies?
- Is there regular reporting on the conditions by the operator of the facility or by an independent body?
- Is there a systematic best-interests' assessments when there are decisions taken that affect migrant children? Are these taken on a case by case basis?
- Does the State have a specialised Children's Court for migrant children?
- Are children's applications given priority in order to ensure they receive care, and to keep them out of detention and protect their best interest?
- Are trainings for operators and field agents working with children provided?

## Action area 4: Prompt Identification and Adequate Age Assessment

### Key Questions

- In what cases are age assessment procedures conducted? Are persons affirming to be minors treated as a child in case of doubt about the age? Are available documents considered genuine?
- Does the child need to give a formal consent before conducting the examination? Is the child informed about how the age assessment procedure works and about the possible outcomes?
- Is detention during the age assessment procedures prohibited?
- Is the assessment conducted in a safe environment, respecting the child's dignity?
- Are age assessment procedures conducted by specialised independent experts?
- Is the child accompanied by another person or representatives during the age assessment (social worker, parents, tutor)?
- Does the age assessment include medical examinations of the child's physical and/or psychological development (e.g. dental observation, hand/wrist X-ray)?
- Does the age assessment include sexual maturity observation?
- Do the age assessments procedures include non-medical examinations such as social service assessment or interviews/social interaction with children in a language that is familiar to the child, with interpreters if required?
- How does the State ensure that age assessments procedures are conducted in a child-friendly, gender-sensitive and culturally appropriate manner?

## Action area 5: Data Collection

### Key Questions

- Is data on migrant children in detention and in non-custodial solutions collected on a regularly basis (monthly or annual basis)?
- Is the data publicly accessible?
- Is the data disaggregated?\*
- Does data collection ensure privacy rights and children 's anonymity?
- Has the State developed rights-based indicators and tools for measuring progress of the protection and realisation of migrant children's rights?
- Does the State collaborate with supra-national actors, providing them with data, to update regional/international trends and progresses?

\*Could include one or several of these indicators: age (various categories), gender, unaccompanied/ accompanied status, nationality, migration status, disability, length of stay (including cumulative length of detention for individuals released and immediately re-detained), type of non-custodial solution/place of detention. Where the number of children is very low and therefore children might risk being identified, States should aggregate small number and use categories such as <5 or <10.



# ANNEX 4: BACKGROUND INFORMATION ON THE GLOBAL STUDY

Until recently, there was very limited understanding of the situation of children deprived of liberty across countries. Country-specific data on child justice in the criminal law context was scarce, and even more so were data on migration-related detention and institutional care provided for children. With push from civil society organisations, this thematic became an issue on the international decision-making agenda.

In October 2016, Professor Manfred Nowak was appointed as independent expert to lead the Global Study whose mandate was derived from the UN General Assembly of December 2014 that invited 'the Secretary-General to commission an in-depth global study on children deprived of liberty'.<sup>163</sup> The actual research process started in 2017 and lasted for three years. A complex Study methodology was developed, addressing three research questions:

- What is the current understanding of the situation of children deprived of liberty (targeting in particular the data gap)?
- What are current typical responses to such situations (focusing on existing legal and policy instruments and their implementation)?
- What efforts are needed to prevent the use of measures that deprive children of liberty, what non-custodial alternatives should be used

The research process involved many actors, from governments who collaborated filling out an extensive questionnaire for data and information gathering, to UN agencies, regional organisations, NHRIs, the international academic research community<sup>164</sup> as well as some 170 civil society organisations led by an NGO Panel co-convened by Defence for Children International and Human Rights Watch.<sup>165</sup> Particular efforts were made to enable 274 direct consultations with children from 22 countries.

Manfred Nowak presented the main findings from the research in his report to the UN General Assembly in New York in October 2019.<sup>167</sup> The full publication on the UN Global Study on Children Deprived of Liberty with more than 750 pages was presented in Geneva in November 2019, on the occasion of the 30th Anniversary event celebrating the adoption of the UN Convention on the Rights of the Child.<sup>168</sup> A revised version of the Global Study and its Executive Summary were published in 2020.<sup>169</sup>

The findings of the Global Study concern six thematic areas in which children live deprived of liberty: juvenile justice, detention with their primary caregivers, for migration-related reasons, in institutions, in the context of armed conflict or on national security grounds. The Study also includes four cross-cutting aspects to be taken into account along these 6 thematic areas, thus: the gender dimension, the impact on children's health, the situation relating to children with disabilities and the views and perspectives of children themselves.

According to the research findings more than 7 million children are currently living in deprivation of liberty in these different thematic areas. In addition to other findings related to each specific thematic area, the Global Study also contains a large set of recommendations. These include a set of overarching recommendations and thematic recommendations that specifically address each of the six thematic areas.

As a follow-up to the Study, many further activities have been funded and can be reviewed under the website [nochildbehindbars.com](http://nochildbehindbars.com).

<sup>163</sup> 13 UN General Assembly, Resolution 69/157 of 18 December 2014, UN Doc. A/RES/69/157 (3 February 2015), para. 52(d)

<sup>164</sup> With further guidance by an Advisory Board of 22 international experts.

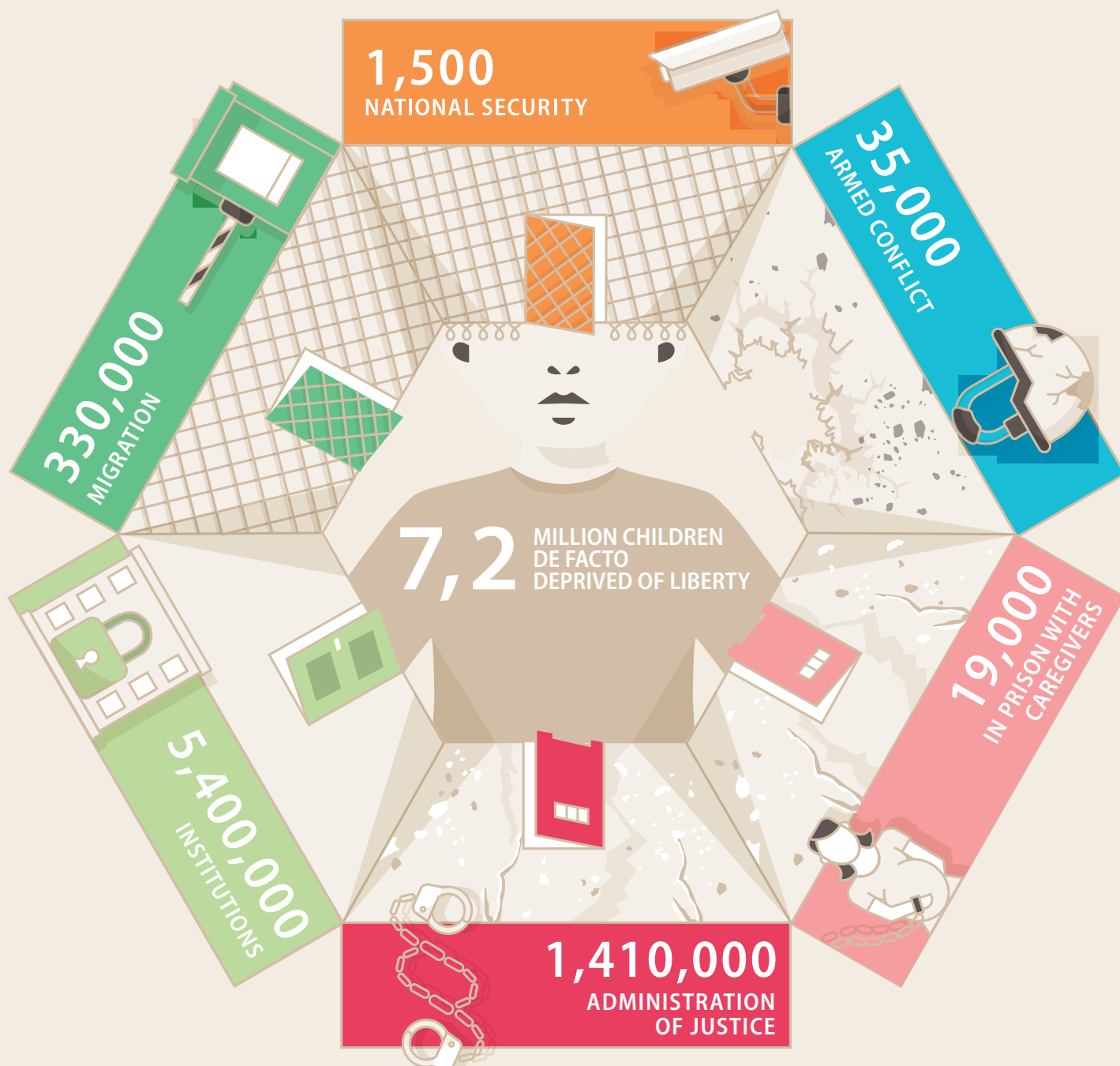
<sup>165</sup> As part of a core group of eight organisations, which also included the Child Rights International Network (CRIN), International Catholic Child Bureau (BICE), International Detention Coalition (IDC), International Juvenile Justice Observatory (IJJO), Penal Reform International (PRI), Terre des Hommes International Federation and the World Organisation against Torture (OMCT).

<sup>166</sup> See Chapter 5 of the UN Global Study on findings from children.

<sup>167</sup> UN General Assembly, *Report of the Independent Expert leading the United Nations Global Study on Children Deprived of Liberty*, UN Doc. A/74/136, (2019). See also: OHCHR, *Children Deprived of Liberty - The United Nations Global Study*.

<sup>168</sup> Global Study, 2019.

<sup>169</sup> Executive Summary of the Global Study, 2020. Bibliothèque - Global Study on Children Deprived of Liberty / Omnibook



**BOX 5 – Global Number of Children in All Situations of Deprivation of Liberty**

Source :based on numbers provided in UN Global Study on Children Deprived of Liberty, p. 661

# ANNEX 5: NGO PANEL FOR THE GLOBAL STUDY

The Global Study process has led to several processes for cooperation and exchange, most notably among the members of the thematic international research groups. For the Global Study Chapter 11 on migration, research was led by Günter Schumacher and Simon McMahon, from the Joint Research Centre of the European Commission, and Michael Bochenek, from Human Rights Watch and joined by many experts. UNHCR and IOM acted as the focal points in relation to other UN agencies, while the international NGO Panel supporting the Global Study was represented in the group by International Detention Coalition and Global Detention Project. The NGO Panel, bringing together some 170-member organisations, proved an essential resource for the research process.

NGO Panel for the Global Study on Children Deprived of Liberty<sup>170</sup>

## Core Group

1. [Defence for Children International](#) (DCI) – co-convenor
2. [Human Rights Watch](#) (HRW) – co-convenor
3. [Child Rights International Network](#) (CRIN)
4. [International Catholic Child Bureau](#) (BICE)
5. [International Detention Coalition](#) (IDC)
6. [International Juvenile Justice Observatory](#) (IJJO)
7. [Penal Reform International](#) (PRI)
8. [Terre des Hommes International Federation](#)
9. [World Organization against Torture](#) (OMCT)

Full list of Members of the NGO Panel: <https://childrendeprivedofliberty.info/about/the-ngo-panel-for-the-global-study-on-children-deprived-of-liberty/members-of-the-ngo-panel/>

## Further relevant child's rights networks and platforms

- Child Rights Connect, <https://www.childrightsconnect.org> - global network of some 90 organisations, engaged in advocacy, policy development and civil society support for the monitoring process with the UN Committee on the Rights of the Child, see: Engaging in the Reporting Cycle of the UN Committee on the Rights of the Child<sup>171</sup>
- European Network of Ombudspersons for Children (ENOC), <https://enoc.eu>.

In the current follow-up to the UN Global Study, a leading role is played by the Global Campus of Human Rights an international inter-university network for human rights research and training. It has established a far-reaching child rights research programme, with a dedicated sub-programme on UN Global Study projects focusing on disseminating and implementing the findings and recommendations across the world.

<sup>170</sup> NGO Panel on Children Deprived of Liberty. 

<sup>171</sup> Engaging in the Reporting Cycle of the UN Committee on the Rights of the Child. 

