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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Ending immigration detention of children and providing adequate care and reception for them

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the human rights of migrants, Felipe González Morales, in accordance with Assembly resolution [74/148](#) and Human Rights Council resolution 43/6.

* [A/75/150](#).



Report of the Special Rapporteur on the human rights of migrants, Felipe González Morales

Ending immigration detention of children and providing adequate care and reception for them

Summary

The present report outlines the main activities undertaken by the Special Rapporteur on the human rights of migrants, Felipe González Morales, during the reporting period since his most recent report to the General Assembly.

In the report, the Special Rapporteur examines the international legal framework protecting the human rights of migrant children. He reviews the impact of immigration detention on children and existing alternative care and reception solutions. On the basis of information and analysis provided by States, civil society, national human rights institutions and other stakeholders, the Special Rapporteur identifies good practices and concludes that the immigration detention of children is effectively avoidable. The Special Rapporteur recommends that Member States shift away from a focus on enforcement and coercion towards providing human rights-based alternative care and reception for all migrant children and their families.

I. Introduction

1. The present report is submitted to the General Assembly by the Special Rapporteur on the human rights of migrants, Felipe González Morales, pursuant to Assembly resolution [74/148](#) and Human Rights Council resolution 43/6.

II. Activities¹

2. On 22 May 2020, the Special Rapporteur participated in a webinar about the impact of the coronavirus disease (COVID-19) on migration in Latin America, organized by the Max Planck Institute on International and Comparative Public Law.

3. On 26 May, the Special Rapporteur, along with the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, issued a joint guidance note on the impacts of the COVID-19 pandemic on the human rights of migrants.

4. Also on 26 May, he participated in a webinar about the response of international organizations to the challenges presented by COVID-19 to human mobility, convened by the Organization of American States and the American University Washington College of Law.

5. On 27 May, the Special Rapporteur was a panellist at a webinar on the regularization of migrants during the pandemic and beyond, organized by the Global Coalition on Migration.

6. On 3 June, at the invitation of the Law School of the University of Luxembourg, he gave a lecture entitled “The development of multilateralism in migration and the Global Compact for Migration”.

7. On 11 June, he was a panellist at a webinar organized by Amnesty International’s Colombia Section about the situation of Venezuelan migrants in several countries of South America and the Caribbean in the context of the pandemic.

8. On 19 June, at the invitation of the Supreme Court of Mexico, he gave a lecture about the criminalization and decriminalization of migration.

9. On 26 June, the Special Rapporteur participated in the launching of a guide on monitoring migratory detention, published by a coalition of civil society organizations from Mexico, for which he contributed the prologue.

10. On 30 June, he gave a presentation at a webinar about the human rights of migrants and the COVID-19 pandemic, organized by the Pontifical Catholic University of Peru.

III. End immigration detention of children and provide adequate care and reception for them and their families

A. Introduction

11. Migration is a fact of life in a globalized world, as well as an essential and overwhelmingly positive human phenomenon (see [A/70/59](#)). Children throughout recorded history have been and continue to be on the move for various reasons, including because their fundamental rights are threatened, to reunite with their family members or because they are in search of safety or a better life. Some children travel

¹ For activities between August 2019 and April 2020, see [A/HRC/44/42](#).

with their families, while others may migrate on their own or are separated from their families during the journey.

12. Every day, all around the world, migrant children are detained, whether alone or with their families, on the basis of their or their parents' migration status. At least 330,000 children are detained for migration-related purposes every year and 77 States are known to still detain children for migration-related reasons. The Special Rapporteur is concerned about the impact of detention and family separation on migrant children and their families, including its use to attempt to deter irregular migration, and the rising prevalence of rhetoric and policies that seek to criminalize undocumented migrants, including children.

13. International and regional human rights bodies have repeatedly stated that immigration detention of children is never in the best interests of the child and is a violation of international human rights law. In recent years, a consensus has emerged among the international community that detention damages children's physical, developmental, emotional and psychological health, depriving them of their fundamental rights and their childhood. Based on the fundamental principle of the best interests of the child, States are required to work towards the complete elimination of immigration detention of children by developing and implementing human rights-based non-custodial alternatives to detention.

14. For the above reasons, the present report is focused on the elimination of immigration detention of children and their families and the obligation to provide them with adequate care and reception. Through the report, the Special Rapporteur aims to support Member States by providing actionable recommendations on means to enhance the protection of the rights of migrant children and their families through human rights-based non-custodial solutions. In preparing the report, the Special Rapporteur sent questionnaires to Member States, national human rights institutions, civil society organizations and relevant stakeholders, including United Nations entities, to request information on good practices on the subject of the report. On 16 April 2020, the Special Rapporteur also held a webinar consultation on the issue. He is grateful for the observations and information shared by a wide array of stakeholders.²

15. The report is based primarily on the inputs and submissions received, complemented by additional research. While not aiming to map all existing legislation and policies on ending immigration detention of children and providing adequate care and reception for them, the Special Rapporteur, through the report, aims to identify good practices and initiatives that demonstrate that immigration detention of children can be avoided.³

B. International human rights framework

16. Under international human rights law, every child, at all times, has a fundamental right to liberty, family life, health, development, non-discrimination and freedom from all forms of physical or mental violence, injury or abuse, and to have their best interests as the primary consideration in all actions concerning them.⁴ The

² Submissions are available at www.ohchr.org/en/Issues/Migration/SRMigrants/Pages/CallEndingImmigrationDetentionChildren.aspx.

³ For definitions of "immigration detention" and "reasons related to migration status", see [CMW/C/GC/4-CRC/C/GC/23](#), para. 6.

⁴ Convention on the Rights of the Child, art. 37; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, arts. 16 and 17; Universal Declaration of Human Rights, arts. 3 and 9; International Covenant on Civil and Political Rights, art. 9.

Committee on the Rights of the Child has clearly stated that immigration detention of any child is a violation of children's rights and always contravenes the principle of the best interests of the child.⁵ This position has been affirmed by joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/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.

17. Several special procedures mandate holders have also stressed that immigration detention of children should be prohibited ([A/HRC/39/45](#), annex, para. 11, [A/HRC/37/50](#), para. 73, and [A/HRC/30/37](#), para. 46).

18. In addition, several United Nations human rights mechanisms have emphasized that children should never be criminalized or subject to punitive measures, such as detention, because of their or their parents' migration status (see [CMW/C/GC/4-CRC/C/GC/23](#)). Immigration detention of children can never be understood as compliant with the child's best interests, not even as a measure of last resort, as there are always non-custodial solutions available ([A/74/136](#), para. 91).⁶

19. A great number of initiatives and efforts demonstrate that there is an international momentum towards eliminating immigration detention of children. Member States made concrete commitments to work towards ending the practice of child detention for the purposes of determining migration status when adopting the New York Declaration for Refugees and Migrants (General Assembly resolution [71/1](#), para. 33).

20. Building upon these efforts, and with the adoption of the Global Compact for Safe, Orderly and Regular Migration, States committed to work to end the practice of child detention in the context of international migration by ensuring the availability and accessibility of a viable range of non-custodial alternatives that are in line with international law (General Assembly resolution [73/195](#), annex, para. 29).

21. Furthermore, the 2030 Agenda for Sustainable Development provides an overarching impetus for action to end violence against children and to leave no child behind. To fully realize Sustainable Development Goal target 16.2, which pledges to end violence against children, States must address issues of structural violence, abuse and denial of essential services that children often face in immigration detention. This includes developing and implementing human rights-based non-custodial solutions, and in connection with Goal target 10.7 on facilitating orderly, safe, regular and responsible migration, calls for planned and well-managed migration policies.

22. The human rights of children have neither nationality nor borders. In addition to the right to liberty, all children, without distinction, discrimination or exception, are entitled to all the rights of the child as protected under international human rights law, including the Convention of the Rights of the Child (see also [CRC/GC/2005/6](#)). The child's right to non-discrimination includes the protection of children against all forms of discrimination and punishment, specifically on the basis of the status of the child and his or her parents or family members. The irregular situation in which migrant children and their families may find themselves does not deprive them of their humanity or their human rights, including their economic, social and cultural

⁵ Committee on the Rights of the Child, "Report of the 2012 day of general discussion", para. 32. Available at www.ohchr.org/Documents/HRBodies/CRC/Discussions/2012/DGD2012ReportAndRecommendations.pdf.

⁶ See also Inter-American Court of Human Rights, advisory opinion OC-21/14, "Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection", 19 August 2014.

rights. Irrespective of the type of care and reception arrangements made in practice for migrant children, international human rights law requires States to ensure that education is available and accessible to every child on the basis of equal opportunity and without discrimination⁷ and to ensure access to essential services such as health-care services.⁸ Access to appropriate health services is essential for children's physical, mental and cognitive skills development.

23. In the context of migration, respect for family unity and the right to family life requires States not only to refrain from actions which would result in family separations but also to take measures to maintain family unity and reunite separated family members.⁹ Article 9 of the Convention on the Rights of the Child protects the child's right to family and makes clear that children should never be separated from their parents or guardians unless it is considered in the child's best interests, such as in cases of parental abuse. Furthermore, family unity is not a valid reason to justify the detention of migrant children, considering the harmful effects of detention on their health and development. International and regional experts have emphasized that when the child's best interests require keeping the family together, the imperative requirement not to deprive the child of liberty extends to the child's parents and requires the authorities to provide alternative measures to detention for the entire family.¹⁰

C. Immigration detention of children and its impact on children's rights

24. Immigration detention of children, both alone and with their families, is always a child rights violation on its own under international human rights law. Regrettably, few countries in the world in their national legislation explicitly prohibit immigration detention of children. In some countries, migrant children are detained with adults;¹¹ in other countries, migrant children are separated from their family members and detained in different facilities.¹² Even in countries where there are policies protecting children from immigration detention, lengthy age assessment procedures or the lack of reliable age assessment tools can result in immigration detention of children.¹³ In a few countries, while unaccompanied children are integrated into alternative reception systems, children with families are detained. Another worrying phenomenon is that in a number of countries, migrant children are de facto detained with their parents or guardians as "guests" in detention facilities. This practice makes detained migrant children legally invisible.

25. The detention of children in the context of international migration often leads to further violations of other human rights, such as the right to physical and mental integrity, the right to health care, the right to education and the right to family life.

⁷ Convention on the Rights of the Child, arts. 28 and 29; International Covenant on Economic, Social and Cultural Rights, art. 13.

⁸ Convention on the Rights of the Child, art. 24.

⁹ The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families protects all migrant workers and members of their families against arbitrary or unlawful interference with family life (see art. 14); Convention on the Rights of the Child, preamble and arts. 3, 7–10, 16 and 18; International Covenant on Civil and Political Rights, art. 17.

¹⁰ See [CMW/C/GC/4-CRC/C/GC/23](#), para. 11; Inter-American Court of Human Rights, advisory opinion OC-21/14, para. 159; and [A/HRC/28/68](#), para. 80.

¹¹ Submission by the End Child Detention network.

¹² Submission by the Global Justice Clinic, NYU School of Law.

¹³ Age assessment is highlighted as a challenge in most of the submissions from Member States.

26. Immigration detention, even in the most amenable conditions and for a short duration, can have a profound and negative impact on children and may constitute a form of cruel, inhuman or degrading treatment of migrant children (A/HRC/28/68, para. 80).¹⁴ Scientific literature demonstrates that detention, even for short periods, has a detrimental and long-lasting effect on a child's development and their physical and mental well-being, and might aggravate previous trauma.¹⁵ Detention harms children regardless of its condition, and this damage can occur even if the detention is of relatively short duration.¹⁶ For children fleeing human rights abuses or persecution, detention is often part of a continuum of violence in their lives. Lengthy migration procedures lead to prolonged immigration detention. Research indicates that children who are detained for extended periods are more likely to experience fear, isolation, psychological deterioration, disempowerment and depression.¹⁷ The longer they are detained, the more likely they are to be exposed to traumatic events.

27. Moreover, detention of migrant children often occurs in appalling physical and grossly inadequate conditions, without proper oversight or regulation. Overcrowding, restriction of movement within the facility, insufficient access to food, water and sanitation, medical care and other essential services, and lack of recreation and educational activities are among the most common issues. There are also reports of abuses by State officials, private guards or fellow detainees, including torture and ill-treatment, systematic extortion, sexual abuse and even enslavement. Detention conditions may also have a gendered impact: for instance, girls may receive fewer services than boys and older boys may be more likely to be separated from mothers than girls.¹⁸

28. Migrant children in detention facilities are unlikely to receive any formal education or vocational training, which hinders the enjoyment of their rights to education and to development. Opportunities for educational activities and alternative learning programmes are very limited owing to the nature of detention.

29. Migrant children's health concerns are often exacerbated by inadequate medical services and treatment while in detention. Exposure to the unsanitary and overcrowded conditions of detention increases their risk of infections. These risks are more acute in the wake of the current COVID-19 pandemic. Deficient responses to the pandemic violate the inherent dignity of those in immigration detention and create conditions that constitute ill-treatment.¹⁹ Furthermore, the abuse and neglect children are exposed to in detention can instigate or compound mental disorders and developmental problems.²⁰

30. Detention can have profound implications for migrant families. When families are detained together, it can undermine the capacity of parents to care for their children by rendering them unable to function in their roles as primary caregivers. In some countries, migrant children are separated from their family members against their will. Separated children experience a wide range of psychological disturbances,

¹⁴ See also European Court of Human Rights case law, inter alia, *A.B. and Others v. France*, No. 11593/12, 12 July 2016; and European Court of Human Rights, "Factsheet – Accompanied migrant minors in detention", May 2020, available at www.echr.coe.int/Documents/FS_Accompanied_migrant_minors_detention_ENG.pdf.

¹⁵ Submission by the Stanford Human Rights in Trauma Mental Health Program.

¹⁶ Julie M. Linton and others, "Policy statement: detention of immigrant children", *Pediatrics*, vol. 139, No. 4 (April 2017).

¹⁷ Submission by the Stanford Human Rights in Trauma Mental Health Program.

¹⁸ Manfred Nowak, *The United Nations Global Study on Children Deprived of Liberty* (November 2019). Available at <https://omnibook.com/view/e0623280-5656-42f8-9edf-5872f8f08562/page/1>.

¹⁹ Submission by the Global Justice Clinic, NYU School of Law.

²⁰ Submission by the Stanford Human Rights in Trauma Mental Health Program.

including adverse consequences to their mental health and development, separation anxiety and long-term impact and trauma.²¹

31. Children in immigration detention are at a heightened risk of experiencing violence and abuse and are more vulnerable to torture and ill-treatment, trafficking and exploitation. Structural vulnerabilities may be compounded for groups that are particularly vulnerable to sexual and other forms of violence, such as unaccompanied and separated children, migrant girls, children with disabilities and children belonging to ethnic or social minorities, including the lesbian, gay, bisexual, transgender and intersex (LGBTI) community (see [A/74/136](#) and [A/HRC/37/50](#), para. 28).²² LGBTI children and girls are often placed in gender-inappropriate detention facilities with unrelated adults and face discrimination, greater social exclusion and violence, and barriers to accessing essential services such as education and health, in particular services related to sexual and reproductive rights.

32. Children have a range of physical, psychosocial, emotional and cognitive developmental needs. All of these can be severely compromised in detention settings. Medical research demonstrates the long-term impact of the continuous and cumulative nature of health, educational and social and economic exclusion in addition to the stress and violence affecting children in detention. These consequences have broader repercussions on societies, preventing children from reaching their full potential and limiting the development of entire communities.

D. Good practices and initiatives prohibiting and restricting the use of immigration detention of children

33. Recent years have witnessed an outpouring of efforts in many countries to prohibit, restrict and reduce the use of immigration detention of children. Supported by civil society and national human rights institutions, States are exploring alternative reception and care options for both unaccompanied migrant children and those with their families. An overview of existing legislation, policy and practice around the world demonstrates that ending child immigration detention is entirely feasible and that non-custodial alternative reception and care arrangements can provide migrant children and their families with a protective and nurturing environment.

34. In many countries in different parts of the world, immigration detention does not exist and children are never held in detention for migration-related reasons.²³ The *United Nations Global Study on Children Deprived of Liberty* shows that 24 jurisdictions, mainly in South and Central America, sub-Saharan Africa and the Asia-Pacific region, do not or claim not to deprive children of liberty for migration purposes.²⁴ A review of national legislation and policies based on information received was undertaken to assess the extent to which national legislation and policies prohibit or restrict the use of immigration detention of children and their families. It is, however, important to note that the effective implementation of such legislation and policies varies significantly among countries.

²¹ Ibid.

²² See also International Lesbian, Gay, Bisexual, Trans and Intersex Association and Lucas Ramón Mendos, *State-Sponsored Homophobia 2019* (Geneva, ILGA World, March 2019).

²³ Submissions by Colombia, by Ghana, by Senegal and by Uruguay.

²⁴ *United Nations Global Study on Children Deprived of Liberty*, pp. 455 and 463.

Legislation and policies that prohibit the use of immigration detention of all children

35. Some countries unconditionally prohibit the use of immigration detention of all children in their legislative and policy frameworks. In Ireland, the International Protection Act 2015 specifically prohibits the detention of any applicant for international protection under the age of 18. There is no provision for the detention of minors for immigration-related reasons in Irish legislation.²⁵

36. In Colombia, Nicaragua, Peru and Uruguay, migrant children are not detained on the basis of their migration status.²⁶ In Central and South America, immigration detention is considerably less prevalent than elsewhere.²⁷ In Costa Rica, for example, the Decree on the Regulation of Refugees emphatically prohibits the detention of all children regardless of whether they are accompanied or unaccompanied. In the Dominican Republic, the Regulation of the General Law on Migration specifically prohibits the detention of migrant children.²⁸

37. Other countries have gone beyond the prohibition of detention of children for migration-related purposes. They provide migrant children with enhanced protection by ensuring adequate and prompt referral to child protection services. In Ecuador, the Human Mobility Law prohibits immigration detention of children. The law also guarantees the protection of the right to personal liberty for parents or caregivers, implementing alternatives for the family, if it is in the best interests of the child to maintain family unity.²⁹

38. Various countries on the African continent grant freedom of movement to their citizens, including the member States of the Southern African Development Community and the Economic Community of West African States.³⁰ In this context of non-criminalization of migration, countries such as Kenya and South Africa also have national legislation prohibiting the immigration detention of children.³¹

39. In addition to explicit prohibition provided in national legislation, in Asia, several countries have recently enacted policies committing to end or sharply reduce detention of migrant children. For instance, in January 2019, several Thai agencies signed a memorandum of understanding stipulating the respective responsibilities and putting measures in place to provide social services and alternative care for migrant children under the age of 18.³² Similarly, in 2018, Indonesia developed a policy pledging that refugees, including children with their families and unaccompanied or separated children, should no longer be detained but rather be allowed to live independently in shelters or community accommodation centres.³³ Although further efforts are necessary to ensure an effective and systematic implementation, these initiatives represent a significant first step towards ending the immigration detention of children.

²⁵ Submission by Ireland, and sect. 20 (6) of the International Protection Act 2015 of Ireland.

²⁶ Submissions by Colombia and by the Nicaragua Ombudsman.

²⁷ *United Nations Global Study on Children Deprived of Liberty*, pp. 460–462.

²⁸ Dominican Republic, Reglamento de Aplicación de la Ley General de Migración, 2004.

²⁹ Submission by the Public Defender of Rights of Ecuador.

³⁰ International Detention Coalition, *There are alternatives: Africa* (Melbourne, Australia, 2018). Available at <https://idcoalition.org/wp-content/uploads/2018/04/There-are-alternatives-Africa-2018.pdf>.

³¹ Submission by the Refugee Consortium of Kenya.

³² Submission by the Permanent Mission of Thailand to the United Nations.

³³ Submission by Indonesia.

40. In Europe, the Committee of Ministers of the Council of Europe has established that children should, as a rule, not be detained,³⁴ and has acknowledged that the Council of Europe “has a role to play in bringing to an end the immigration detention of migrant children and in identifying alternatives to that practice”.³⁵ In 2017, the Council of Europe Action Plan on Protecting Refugee and Migrant Children in Europe (2017–2019) was adopted. The Action Plan, inter alia, aimed at addressing some of the most persistent challenges with regard to the protection of migrant children, including by promoting measures to prevent the detention of children in the context of migration and supporting member States in providing appropriate reception, protection and care to them. The Parliamentary Assembly of the Council of Europe has also adopted a series of recommendations and resolutions consistently emphasizing that children should never be detained for immigration-related purposes and has encouraged member States to, inter alia, develop and implement non-custodial, community-based alternative programmes for children and their families.³⁶

Legislation and policies that restrict the use of immigration detention of specific groups or categories of children

41. Some States have included in their national legislation a prohibition on detaining children under a certain age or on the detention of specific individuals regarded as particularly vulnerable, such as unaccompanied or separated children. Some States allow, however, the detention of migrant families and older children who do not fall within protected categories.

42. Several European countries only prohibit immigration detention for younger children. For example, in Czechia, legislation provides that unaccompanied children under the age of 15 may not be detained.³⁷ Similarly, Poland only prohibits the detention of unaccompanied child asylum seekers under the age of 15.³⁸ In Switzerland, the Federal Act on Foreign Nationals and Integration forbids immigration detention of children under the age of 15.³⁹ In Austria, the Aliens Police Act provides that children under the age of 14 may not be held in detention pending deportation.⁴⁰

43. Many other countries prohibit the detention of unaccompanied or separated children or children seeking international protection. Half of the member States of the European Union do not allow unaccompanied children to be detained for asylum or return purposes.⁴¹ Czechia, Cyprus, Germany and the Netherlands do not detain

³⁴ Committee of Ministers of the Council of Europe, “Guidelines on human rights protection in the context of accelerated asylum procedures”, section XI, para. 2. Available at https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805b15d2.

³⁵ Ibid., Reply to Parliamentary Assembly recommendation 2056 (2014) on the alternatives to immigration detention of children, para. 2. Available at <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?FileID=21296&lang=EN>.

³⁶ Parliamentary Assembly recommendation 1703 (2005), recommendation 1596 (2003), recommendation 1985 (2011), resolution 1810 (2011), resolution 1707 (2010), resolution 2020 (2014), recommendation 2056 (2014), resolution 2136 (2016), resolution 2195 (2017), resolution 2295 (2019) and resolution 2324 (2020). Available at <https://pace.coe.int/en/pages/official-documents>.

³⁷ Submission by the Public Defender of Rights of Czechia.

³⁸ Poland, Law on Foreigners. Available at <http://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20130001650>.

³⁹ Switzerland, Federal Act on Foreign Nationals and Integration, art. 80, para. 4, and art. 80a, para. 5; submissions by Switzerland and by Terre des Hommes Suisse.

⁴⁰ Austria, Aliens Police Act, art. 76 (1); submission by the Permanent Mission of Austria to the United Nations.

⁴¹ European Union Agency for Fundamental Rights, *European legal and policy framework on immigration detention of children* (Luxembourg, Publications Office of the European Union, 2017).

asylum-seeking children.⁴² In the United Kingdom of Great Britain and Northern Ireland, according to the Immigration Act 2016, unaccompanied children should not be detained except in very exceptional circumstances.⁴³ Similarly, in Guatemala, Decree No. 44 provides that as a general rule, unaccompanied and separated migrant children and adolescents shall not be detained and establishes that authorities shall prioritize open reception solutions to protect the rights of the child and family.⁴⁴ Ukrainian legislation provides that refugees and other individuals seeking international protection have the right to reside with relatives in a hotel, rented premises or temporary accommodation centres for refugees.⁴⁵ Under the Law on Foreigners and International Protection adopted by Turkey, detention is prohibited for unaccompanied minors seeking international protection and other vulnerable individuals.⁴⁶

Countries refraining from placing children in immigration detention in practice even though a prohibition is not enshrined in their domestic laws

44. A number of countries refrain from placing children in immigration detention in practice even though a prohibition is not enshrined in their domestic laws. In Cyprus, while legislation only prohibits the detention of a minor who has applied for asylum, in practice, children and families are not detained.⁴⁷ In Denmark, the Aliens Act implicitly allows minors to be administratively detained, as there is no distinction between adults and minors in the wording of the law; however, children and their families are generally accommodated in special parts of open asylum centres. Hence, since 2016, the detention of unaccompanied and separated children has as a rule not been applied in Denmark.⁴⁸ In Germany, “immigration detention”, including of children, does not occur, with the exception of individuals who are taken into custody and are awaiting deportation under special circumstances, which is allowed under domestic law. However, most federal states of Germany – which are responsible for implementing the respective legislation – completely refrain from placing unaccompanied minors, pregnant women, families or single parents with minor or school-age children into deportation custody.⁴⁹ Malta does not pursue a detention policy of children, irrespective of whether they are accompanied or otherwise. All care methods available to children are therefore community-based reception solutions.⁵⁰ Similarly, while Spanish law only prohibits the detention of unaccompanied minors, in practice, migrant families with children are never detained, and non-custodial measures are often provided for their appropriate reception and care.⁵¹ Italy and Portugal also have policies not to detain children for immigration-related purposes.⁵²

⁴² Submissions by the Platform for International Cooperation on Undocumented Migrants (PICUM) and by Cyprus.

⁴³ United Kingdom, Immigration Act 2016. Available at www.legislation.gov.uk/ukpga/2016/19/pdfs/ukpga_20160019_en.pdf.

⁴⁴ Guatemala, Decreto No. 44, Código de Migración, 2016. Available at www.acnur.org/fileadmin/Documentos/BDL/2017/10978.pdf.

⁴⁵ Submission by the Ukrainian Parliament Commissioner for Human Rights.

⁴⁶ Turkey, Law on Foreigners and International Protection, Law No. 6458 of 2013. Available at <https://www.refworld.org/docid/5a1d828f4.html>.

⁴⁷ Submission by Cyprus.

⁴⁸ Submission by Denmark.

⁴⁹ Submission by Germany.

⁵⁰ Submission by Malta.

⁵¹ Spain, Ley Orgánica 4/2000, 2000; submission by Accem and Fundación Cepaim, Spain.

⁵² Submission by PICUM.

E. Existing alternative care and reception arrangements for migrant children and their families

45. The present section provides a non-exhaustive compilation of good practices and initiatives demonstrating that there is a wide range of alternative reception and care arrangements available, which can enhance the protection of the human rights of migrant children and their families while their migration status is being resolved. These alternative arrangements include family-based alternative care options such as foster care or kinship care, and community-based arrangements or appropriate reception centres. It is worth highlighting that some of these care arrangements integrate migrant children into national child protection systems. In the meantime, progress has been made in recent years on engagement-based solutions that use a case management approach to increase children's participation and find sustainable solutions in each child's best interests.

Alternative care arrangements for unaccompanied children

46. Alternative care arrangements should be viewed as provisional measures while family tracing is carried out and until children can be reunited with family members, if applicable and appropriate for their best interests (see General Assembly resolution 64/142). Priority should be given to family- and community-based solutions, with residential care only considered for the shortest time possible and when the former are not possible or are not in the child's best interests.

47. A commendable effort in providing alternative care for migrant children has been the initiative taken by the mayors of 10 European cities, who pledged to shelter unaccompanied migrant children living in desperate conditions in Greek island camps or near the Turkish border. In a letter addressed to European Union leaders, these mayors called on European Governments to show much greater generosity and solidarity with children in desperate need, and declared their cities ready to provide shelter, comfort and safety for unaccompanied children.⁵³ On this front, the European Commission is also leading important efforts to relocate 1,600 unaccompanied children. As of the time of writing, Belgium, Bulgaria, Croatia, Finland, France, Germany, Ireland, Lithuania, Luxembourg, Portugal and Switzerland are part of this initiative.⁵⁴

Integration of migrant children into national child protection systems

48. Migrant children should be considered as children first, and States are obliged to fulfil the rights of every child in their territory. Some promising practices exist in which States identify and refer unaccompanied migrant children to their national child protection systems. According to the information received, this is the case, for example, in Azerbaijan,⁵⁵ Croatia,⁵⁶ Cyprus,⁵⁷ Germany,⁵⁸ Hungary,⁵⁹ Ireland,⁶⁰

⁵³ Public statement from European cities on vulnerable children in the refugee situation in Greece, 22 April 2020. Available at www.politico.eu/wp-content/uploads/2020/04/City-Letter-on-refugee-children-relocation-April-2020.pdf.

⁵⁴ European Commission, "Migration: first unaccompanied children relocated from Greece to Luxembourg", 15 April 2020. Available at https://ec.europa.eu/commission/presscorner/detail/en/IP_20_668.

⁵⁵ Submission by Azerbaijan.

⁵⁶ Submission by Croatia.

⁵⁷ Submission by Cyprus.

⁵⁸ Submission by Germany.

⁵⁹ Submission by Hungary.

⁶⁰ Submission by Ireland.

Mexico,⁶¹ Romania,⁶² Senegal,⁶³ Sweden⁶⁴ and the United Kingdom,⁶⁵ and likewise in Finland, Iceland and Norway.⁶⁶ In Colombia, migration guidelines establish that undocumented unaccompanied and separated migrant children should, upon entering the country, be referred to child protection services to guarantee their rights.⁶⁷ Similarly, in the Philippines, at arrival, undocumented children are referred to the Department of Social Welfare and Development, which provides guardianship and access to shelter and essential services.⁶⁸ These initiatives highlight the importance of focusing on strengthening existing national protection systems and improving access for migrant children.

Family-based care options, including foster care

49. Family-based care refers to care for a child in a family-like situation. Where a child is temporarily or permanently deprived of her or his family environment, and after assessing the child's best interests, he or she may be placed, by a competent authority, with a family other than the child's own family, that has been selected, qualified, approved and supervised for providing such care. The family-based care option, including foster care, is considered to be one of the most appropriate forms of care, and provides individualized support to unaccompanied migrant children. Studies show that children placed in foster care are more satisfied with their living environments and better integrated into local communities.

50. Foster care for migrant children exists in many countries, including Belgium, Bulgaria, Denmark, Greece, the Netherlands, the United Kingdom and the United States of America.⁶⁹ In Ireland, all newly arriving separated children under the age of 12 are placed in foster care, while those over the age of 12 are placed in one of three residential intake units in Dublin that are registered children's homes. After assessment, children are placed in the most appropriate placement option, the most prevalent form being with a foster family.⁷⁰ In 2019, Mexico launched a pilot foster care programme as part of its efforts towards ending the detention of migrant children in the country.⁷¹ In Ethiopia, a pilot project in the Shire refugee camps placed unaccompanied children in foster families.⁷²

Community-based care arrangements

51. Community-based care arrangements include a broad range of approaches designed to allow migrant children without parental care to live in a family setting within a community and benefit from various supportive services. In Quebec, Canada, for example, asylum seekers and unaccompanied or separated children are assigned a social worker to assess their protection and care needs, make referrals for their adequate support and accommodation and guide the child through the asylum

⁶¹ Submission by Mexico.

⁶² Submission by Romania.

⁶³ Submission by Senegal.

⁶⁴ Submission by Sweden.

⁶⁵ Submission by the United Kingdom Committee for UNICEF (UNICEF UK).

⁶⁶ UNICEF Office of Research-Innocenti, *Protected on Paper? An analysis of Nordic country responses to asylum-seeking children* (Florence, Italy, 2018), p. 39.

⁶⁷ Submission by Colombia.

⁶⁸ Asia Pacific Refugee Rights Network and International Detention Coalition, *Capacity-building workshop on alternatives to detention*, Jakarta, 2013.

⁶⁹ *Nidos, Reception and living in families: overview of family-based reception for unaccompanied minors in the EU Member States* (Utrecht, the Netherlands, 2015); submissions by the American Psychological Association, by Denmark and by Greece.

⁷⁰ Submission by Ireland.

⁷¹ Submission by the United Nations Children's Fund (UNICEF).

⁷² Submission by Lumos.

process.⁷³ Similar initiatives have been implemented in Bulgaria, where social workers are involved and engaged in all stages related to working with unaccompanied migrant children.⁷⁴

52. When migrant children are placed in the community, they can have better access to a wide range of support services provided by various actors, including civil society. These services, if provided in a collaborative manner, in which multidisciplinary professionals such as lawyers, social workers, medical and mental health personnel work together, can offer holistic care that addresses the psychosocial, legal and medical needs of migrant children. For instance, in the United States, Terra Firma, a project of Catholic Charities, has been providing coordinated legal, medical and counselling services to migrant children in New York City. Programmes provided by the project include individual and group therapy to address the effects of violence, and medical and legal services, along with psychosocial services and sports activities.⁷⁵

Supervised independent living and group homes

53. A number of countries provide supervised living arrangements or group homes where an adolescent child or a group of migrant adolescents can live independently and develop independent living skills, in line with their best interests. In Austria, when asylum-seeking children over the age of 14 reach a certain level of independence and maturity, they can move to a shared apartment. The adolescents are supervised by dedicated care workers from local child protection authorities and are provided with care and support services as well as opportunities for apprenticeships.⁷⁶ In Greece, a supported semi-independent living programme provides supervised independent living arrangements for unaccompanied asylum seekers aged 16 to 18. In addition to housing, the programme links children with education, health, psychosocial development, legal aid and interpretation. An interdisciplinary team that includes a social worker, a psychologist and other specialists “offers psychosocial support with a view to the teenagers’ gradual independence”.⁷⁷ And in Italy, accommodation is offered in apartments throughout Milan, where continued protection is granted, together with a gradual acquisition of autonomy and responsibility.⁷⁸

Alternative care and reception options for migrant families with children

Community-based living arrangements

54. Several countries have made significant progress in successfully implementing community-based solutions for migrant families with children. For instance, in Cyprus, families with an irregular migration status are permitted to reside in the community subject to conditions that can include regular reporting requirements, the surrender of travel documents and financial guarantees.⁷⁹ Similar initiatives have been undertaken in Vienna, where a family accommodation facility is run by a non-governmental organization in cooperation with the police.⁸⁰ This measure

⁷³ See Programme régional d’accueil et d’intégration des demandeurs d’asile (PRAIDA). Available at www.ciusswestcentral.ca/programs-and-services/lifestyle-habits-and-prevention/asylum-seekers-praida/im-an-asylum-seeker/.

⁷⁴ Submission by the Government of Bulgaria.

⁷⁵ Submission by the American Psychological Association.

⁷⁶ Office of the United Nations High Commissioner for Refugees (UNHCR), “Options paper 1: options for governments on reception and care arrangements for children and families”, 2019.

⁷⁷ Submission by Human Rights Watch.

⁷⁸ ISMU Foundation, *At a Crossroads, Unaccompanied and Separated Children in Their Transition to Adulthood in Italy* (Rome, UNICEF, UNHCR and the International Organization for Migration (IOM), 2019), pp. 65 and 66.

⁷⁹ Submission by Cyprus.

⁸⁰ Submission by the Permanent Mission of Austria to the United Nations.

combines residence requirements with reporting obligations. Examples of housing migrant families with children in the community also exist in Belgium, Czechia, Spain, the United Kingdom and Hong Kong, China.⁸¹

55. Other community-based arrangements include open reception centres, accommodation within ethnic communities, and shelters, as well as independent and supported accommodation.

Case management support

56. In recent years, the practice on case management-based alternatives has been growing, with governments, local authorities and civil society organizations developing new programmes in a number of countries for both unaccompanied children and families with children. Case management is a social work approach “designed to ensure support for, and a coordinated response to, the health and well-being of people with complex needs”.⁸² Case management models involve a case manager (who is not a decision-maker) providing a link between the individual, the authorities and the community, and whose role is to assist individuals to work towards case resolution.⁸³ A growing body of practice and international evidence shows that case management increases participation, compliance and durable case resolution, while improving individuals’ coping capacity and well-being. By building trust in the system, providing stability and facilitating agency, case management is an efficient and cost-effective approach to governing migration without using immigration detention.⁸⁴ The high compliance rate of this approach is proven by a handful of case management-based programmes all over the world.⁸⁵

57. In Thailand, a multidisciplinary working group comprising immigration and child protection officials and representatives of United Nations agencies is tasked with finding alternative care measures and developing an individual plan for each migrant child. The working group also appoints a case manager from civil society to coordinate with the service providers specified in the individual care plan for a child and his or her family. Case managers and legal advisors support the migrant families through relevant immigration procedures.⁸⁶

58. Since 2018, the Home Office of the United Kingdom has been developing a pilot programme in order to test the benefits of case management as a methodology. In Utrecht, the Netherlands, the Government is funding a case management programme run by a local civil society organization.⁸⁷ The Greek authorities, together with UNHCR and METAdrasi, a Greek non-governmental organization, implemented a programme in 2019 for the protection and safeguarding of unaccompanied minors through the provision of case management services, to support the transition to a new guardianship scheme.⁸⁸

59. In Sweden, a caseworker system for asylum seekers was developed as part of a shift away from detention, and has been highly successful in achieving effective case resolution. The vast majority of participants in community-based programming comply

⁸¹ Submission by the International Detention Coalition.

⁸² See Eiri Ohtani, *Alternatives to detention: from theory to practice – evaluation of three engagement-based alternative to immigration detention pilot projects in Bulgaria, Cyprus and Poland* (European Programme for Integration and Migration, 2018). Available at www.epim.info/wp-content/uploads/2018/10/ATD-Evaluation-Report_FINAL.pdf.

⁸³ Ibid.

⁸⁴ PICUM, “Implementing case management-based alternatives to detention in Europe”, March 2020.

⁸⁵ Submissions by Lumos, by PICUM and by the United Nations Major Group for Children and Youth.

⁸⁶ Submission by Thailand.

⁸⁷ Submission by PICUM.

⁸⁸ Submission by Greece.

with voluntary repatriation when found ineligible to remain, without the need to resort to detention. After screening and assessment, asylum seekers are provided with access to various services within the community, and are supported throughout the process by caseworkers. The programme's success highlights the importance of robust case management in supporting migrants' compliance with the migration process.⁸⁹

60. In 2018, Canada began implementing community case management and other non-custodial solutions. While implementation gaps remain, Canada has significantly reduced the number of children in immigration detention.⁹⁰

61. One emblematic initiative from civil society is the European Alternatives to Detention Network, a group of European non-governmental organizations who run case management-based alternatives to detention pilot projects in six European countries (Bulgaria, Cyprus, Greece, Italy, Poland and the United Kingdom) with regional-level organizations.⁹¹

Alternative measures before removals

62. Administrative detention of families with children is used in many countries during the implementation of removal procedures. This is the case even in countries where migrant children and their families are generally not detained due to their migration status. Based on the information provided by Member States and other relevant stakeholders, there are practical alternative measures to execute the removal of families and children without detention. In Austria, alternative measures before removal include accommodation in rooms determined by the Federal Office for Immigration and Asylum, reporting periodically to a police department or making an appropriate financial deposit.⁹² In Denmark, adults who have received a final refusal on their application for asylum, and who do not participate in the return to their country of origin, will as a starting point have a duty of residence at the return centre as well as a duty to report to the Danish police several times a week. Some persons also have a duty to notify the Prison and Probation Service if they do not intend to stay at the return centre overnight. These obligations are not imposed on minors.⁹³ In Switzerland, for removal purposes, instead of administrative detention, families and children can either present themselves regularly to the authorities or stay in a designated place before the removal order is implemented. In most cases, the removal of families and children is made from a shelter.⁹⁴

F. Good practices on providing access to rights and services in alternative care and reception arrangements

63. The right of every child to safety and protection does not cease when they migrate; on the contrary, they are entitled to the continuum of protection of their human rights, regardless of their migration status. When providing alternative care and reception arrangements for migrant children and their families, States need to ensure the respect of children's rights. These include the rights to education; to the enjoyment of the highest possible standard of health; to an adequate standard of living; to family life; to rest, leisure and play; to practice their own religion; and to

⁸⁹ International Detention Coalition, *There are alternatives: a handbook for preventing unnecessary immigration detention*, rev. ed. (Melbourne, Australia, 2015).

⁹⁰ Canada Border Services Agency, "Alternatives to detention: questions and answers", July 2018.

⁹¹ Submission by HumanRights360. See also European Alternatives to Detention Network, available at www.atdnetwork.org.

⁹² Submission by Austria.

⁹³ Submission by Denmark.

⁹⁴ Submission by Switzerland.

use their own language. Children, like all individuals, are better able to cooperate with immigration and asylum procedures if their basic needs are effectively met, enhancing their coping abilities, resourcefulness and agency.

Non-discrimination legislation and policies in child protection and care

64. Several countries have adopted specific legislation and policies to ensure the provision of basic services to all children, including both nationals and non-nationals, without discrimination. Portugal treats all children, whether Portuguese or non-national, without discrimination with regard to access to basic services such as health care and education. Swedish law provides that all children should receive the same level of care, irrespective of whether they are citizens or foreigners. Asylum-seeking children are provided with access to various essential services such as accommodation, schooling and health and dental care.⁹⁵ Thailand has recently taken comprehensive measures to ensure that the rights of migrant children are enshrined in law and policy, irrespective of their status. In the Child Protection Act of 2003, migrant children are not distinguished from Thai children.⁹⁶ The Migration Law of Uruguay recognizes the inalienable rights of migrants and their families without prejudice to their migratory situation.⁹⁷

Access to education

65. Efforts have been made by many States to ensure migrant children can go to school and realize their fundamental right to basic education. Belgium, Bulgaria, Finland, Germany, Italy, the Netherlands, Spain and Sweden have explicitly recognized undocumented migrant children's entitlement to basic formal education.⁹⁸ In Bosnia and Herzegovina, most school-age asylum-seeking children are enrolled in the formal primary education system (A/HRC/44/42/Add.2, paras. 54 and 55). In Cyprus, migrant children are provided by law with access to the basic education system.⁹⁹ In Denmark, children aged 6 to 16 receive education at a school operated by the Danish Red Cross or at a local school.¹⁰⁰ In Malta, all unaccompanied migrant children have access to State school education free of charge. Whenever necessary, particularly with reference to linguistic needs, preparatory classes are made available at State schools.¹⁰¹

66. In Colombia¹⁰² and Uruguay,¹⁰³ for example, as in other countries in the Americas, children, regardless of their migration status, are entitled to access the national school system. In Argentina, the Migration Law of 2004 provides that in no case shall the irregular status of a foreigner prevent her or his admission as a student to an educational institution, whether public or private; national, provincial or municipal; or primary, secondary, tertiary or university.¹⁰⁴

67. In Morocco, 3,336 foreign children, including unaccompanied minors, have been enrolled in formal education for the school year 2018/19, and more than 800 migrant children were re-enrolled after outreach activities targeting the education of

⁹⁵ Swedish Migration Agency webpage for children seeking asylum. Available at www.migrationsverket.se/English/Private-individuals/Protection-and-asylum-in-Sweden/Children-seeking-asylum.html.

⁹⁶ Submission by the International Bar Association's Human Rights Institute.

⁹⁷ Submission by Uruguay.

⁹⁸ UNHCR, UNICEF and IOM, "Access to education for refugee and migrant children", September 2019; submissions by Germany and by Sweden.

⁹⁹ Submission by Cyprus.

¹⁰⁰ Submission by Denmark.

¹⁰¹ Submission by Malta.

¹⁰² Submission by Colombia.

¹⁰³ Submission by Uruguay.

¹⁰⁴ UNESCO, *Global Education Monitoring Report 2019: Migration, Displacement and Education – Building Bridges, not Walls* (Paris, 2018).

migrant children. Classes to support migrant children, including language classes, are also being organized.¹⁰⁵

68. In Senegal, education is compulsory between the ages of 6 and 16, and all children living in Senegalese territory have access to the education system. Schools do not have any obligation to inform the authorities about the migration status of their pupils.¹⁰⁶ In Thailand, at least 160,000 migrant children were enrolled in Thai schools in 2019.¹⁰⁷

69. Further efforts are being made to assist migrant children in overcoming language and other barriers. Portugal, for instance, has implemented educational support policies for the acquisition of Portuguese as a second language in primary and secondary education to ensure the educational success of migrant students, no matter their mother tongue, origin and age.¹⁰⁸ Similar approaches have also been developed in Finland, the Netherlands and the United Kingdom by providing individualized learning plans in the formal education system for newly arrived migrant children, tailored to the child's specific needs and profile.¹⁰⁹

70. To ensure that the migration status of a child is never a barrier to accessing services, Portugal has launched a "go-to-school" programme designed to regularize young children who were born in Portugal to migrant parents and attend State schools, but who are not lawfully staying in the country, granting residence permits directly at school. Similarly, in the Republic of Korea, migrant children are able to receive compulsory public education regardless of their parents' migration status. The Ministry of Justice also has in place an internal guideline that provides undocumented migrant children with a suspension of deportation until they complete elementary, middle and high school. Parents of such children are, "in principle, subject to deportation but are provided suspension of detention and temporary residence in unavoidable circumstances".¹¹⁰

Access to health-care services

71. Colombia¹¹¹ and Spain¹¹² have explicit provisions in their legislation that emphasize universal access to the national health-care system, irrespective of migratory status. The Danish Immigration Service covers the expenses for necessary health treatments. All children accommodated at reception, accommodation and return centres receive the same health treatment as Danish children.¹¹³ In Morocco, migrants have access to free basic health care, as Moroccan nationals do.¹¹⁴ Furthermore, a number of countries, some at the city level, have developed practices ensuring that migrants, including children, have meaningful access to health-care services. Among the advances made on this front is the provision of health care beyond emergency care, including for migrants in an irregular situation, in cities in Germany, Italy and Norway. Several local authorities have also played a critical role in ensuring the affordability of health care and services for migrants in cities such as Vienna, Düsseldorf (Germany), Utrecht (Netherlands) and Trondheim (Norway).¹¹⁵

72. Including the entire population in the health-care system has a positive impact on public health and is in the best interests of the community as a whole, notably by limiting

¹⁰⁵ Submission by Morocco.

¹⁰⁶ Submission by Senegal.

¹⁰⁷ Submission by the International Bar Association's Human Rights Institute.

¹⁰⁸ CCPR/C/PRT/5, para. 43.

¹⁰⁹ UNHCR, UNICEF and IOM, "Access to education for refugee and migrant children".

¹¹⁰ Submission by the Network for the Rights of Children and Adolescents with Migrant Background.

¹¹¹ Submission by Colombia.

¹¹² Submission by Accem and Fundación Cepaim, Spain.

¹¹³ Submission by Denmark.

¹¹⁴ Submission by Morocco.

¹¹⁵ United Nations Human Rights Regional Office for Europe, *Promising local practices for the enjoyment of the right to health by migrants*, 2019.

the spread of contagious diseases. The efforts of Portugal to ensure that migrants can access public services during the COVID-19 outbreak deserves mention. Under the measures taken, Portugal has granted all migrants and asylum seekers who have pending applications the right to temporary residency, thus giving them access to the national health service, welfare benefits, bank accounts, work and rental contracts.¹¹⁶

Formal status, documentation and regularization as a means of protection

73. Regularization policies significantly contribute to migrant children's integration into the host society as well as to the fulfilment of their rights, their development and the protection of family life. It also improves the social and economic situation of migrant families, allowing parents to better fulfil their obligations to their children. In this regard, in their national laws, Eswatini, Kenya, the United Republic of Tanzania and Zambia consider unaccompanied migrant children found on the border with an unidentifiable nationality as their own nationals.¹¹⁷

74. Some countries have adopted national legislation and policies creating various types of residence permits and regularization pathways for migrant children and their families. Finland and Norway, for example, provide residence permits for unaccompanied children who do not meet the legal requirements to enter or stay in the country, but who cannot be returned to their countries of origin.¹¹⁸ Similarly, Sweden conducted a regularization programme from 2005 to 2006, targeting individuals and mostly families with children who had been issued removal orders but could not be returned to their country. The programme granted 17,406 residence permits and took into account factors such as length of stay in Sweden, situation in their country of origin, criminal history and social and health circumstances.

75. Under the measure *Primero la Niñez* (Childhood First), Colombia granted nationality to children born in Colombia to Venezuelan parents from 2015 onward, benefiting more than 36,000 children who were at risk of statelessness, thereby ensuring the protection of the children's rights and their inclusion.¹¹⁹ In Uruguay, decree No. 118/018 provides for the possibility of granting permanent residency to foreign nationals in vulnerable situations, including unaccompanied minors.¹²⁰

Legal advice, representation and interpretation

76. Immediately after arrival and identification, each unaccompanied or separated child should be provided with a qualified guardian tasked with protecting their best interests. The provision of a legal representative may also be necessary when the child is involved in asylum or judicial proceedings. Guardianship exists in a number of countries. For example, in Switzerland, unaccompanied asylum-seeking children are guaranteed by law a support person, who guides, supports and represents the child during the entire asylum process.¹²¹

77. New Zealand has provisions to ensure that accompanied children in family asylum and immigration processes are treated as independent rights holders who have their own child-specific or individual reasons for such processes, instead of as an "add on" to their parents' files.¹²²

¹¹⁶ Joana Gorjão Henriques, "Governo regulariza todos os imigrantes que tenham pedidos pendentes no SEF", *Público*, 28 March 2020. Available at www.publico.pt/2020/03/28/sociedade/noticia/governo-regulariza-imigrantes-pedidos-pendentes-sef-1909791.

¹¹⁷ International Detention Coalition, *There are alternatives: Africa*.

¹¹⁸ UNICEF Office of Research-Innocenti, *Protected on Paper?*, p. 43.

¹¹⁹ Submission by Colombia.

¹²⁰ Submission by Uruguay.

¹²¹ Submission by Switzerland.

¹²² Immigration New Zealand, "Guidelines on children or minors at the Refugee Status Branch", 2017.

78. Children have the right to be heard and consulted on and informed of all decisions that have a fundamental impact on their future. Whenever they are referred to asylum, administrative or judicial procedures, they must be provided with child-sensitive information, legal advice and representation. Several countries provide for the appointment of a lawyer to represent migrant children in the various proceedings they may face. In the Netherlands, Sweden and the United Kingdom, for example, State-funded legal assistance is available to unaccompanied children and to families for asylum cases, including appeals. Free legal advice is offered both by the Danish Immigration Service and by the Danish Refugee Council.¹²³ In other countries, such as Kenya, civil society organizations play a fundamental role in providing legal representation.¹²⁴ Moreover, many countries have adopted specific policies to provide interpretation services in their mother tongue or a language the migrant child understands,¹²⁵ as well as child-friendly information regarding migration procedures. All these initiatives show that many actors across the world are searching for ways to enhance the reception and care of migrant children and their families.

G. Main challenges among key actors

79. Detention is expensive, administratively burdensome and an ineffective migration management tool which does not deter irregular migration. Despite international standards and an emerging consensus on the complete prohibition of immigration detention of children, some countries continue this appalling practice. Many countries continue to detain children because of their or their parents' migration status or before deportation.

80. Immigration detention constitutes a key pillar of a State's approach to criminalizing migration, and reflects a criminal justice-oriented approach towards migration. This approach contributes to discrimination against migrants and breeds xenophobia in the society. This explains why in some countries, immigration detention is implemented in a way that interferes with children's right to family unity and limits their access to rights and essential services such as health, education and legal representation. Some States only prohibit immigration detention of children who belong to certain vulnerable categories, while allowing it for the rest, leading to severe protection gaps and fragmented approaches.

81. Discrimination against non-national children seems to be another key challenge to overcome. Even in countries that do not detain migrant children, the standard of what constitutes adequate care for migrant children tends to be lower than for national children. Lack of capacity of national child protection and welfare systems and underdeveloped or ill-performing alternative care systems are other major obstacles. In many countries, the underresourced national child protection system fails to provide adequate care for migrant children.

IV. Conclusions and recommendations

82. Detention of any child for reasons related to their, their parents' or their legal guardians' migration status is always a child rights violation and may constitute cruel, inhuman or degrading treatment of migrant children. Immigration detention of children and their families has a pervasive impact on

¹²³ Submission by the Danish Institute for Human Rights.

¹²⁴ Submission by the Refugee Consortium of Kenya.

¹²⁵ European Asylum Support Office, *Annual Report on the Situation of Asylum in the European Union 2018*, sect. 4.3.

children's physical, social, emotional and cognitive skills development, depriving them of their fundamental rights, and their future.

83. To meet States' commitment to eliminate immigration detention of children, whether unaccompanied or with families, a paradigm shift is required to transition away from a focus on enforcement and coercion due to the criminalization of migration and towards providing human rights-based alternative care and reception through engagement-based solutions, such as a case management approach.

84. According to the information provided by States and other relevant stakeholders, immigration detention of children is effectively avoidable, whether through explicit prohibition under domestic law or by refraining from such practices, despite prohibition not being enshrined in domestic law.

85. Promising initiatives in a number of countries showcase significant efforts made by States and many other actors to provide migrant children and their families with alternative care and reception arrangements that aim at fulfilling the best interests of the child, along with their rights to liberty and family life and other essential services while their migration status is being resolved. It is also proven that there are practical alternative measures before removals.

Recommendations

86. The Special Rapporteur calls on States to end child immigration detention and provide adequate alternative care and reception for all migrant children and their families, which promote children's rights and well-being. More specifically, States are urged to:

(a) Establish in domestic law an explicit prohibition of immigration detention of all migrant children under the age of 18, including unaccompanied children and children with their families. Policy framework and quality assurance processes should be established to ensure that the prohibition is effectively implemented and that migrant children are provided with the strongest protection;

(b) Release all migrant children, both unaccompanied children and children with families, from immigration detention and place them in appropriate alternative care and non-custodial reception facilities that promote and respect their human rights;

(c) Strengthen existing national child protection and welfare systems and integrate unaccompanied migrant children into these systems without any discrimination, irrespective of the child's migration status. Child protection and welfare authorities, rather than immigration authorities, should take primary responsibility for the care and safety of migrant children. Child protection authorities should be informed and involved from the outset upon the identification of an unaccompanied or separated migrant child;

(d) Promote and provide capable, committed and sufficient resources for the development and implementation of alternative care and reception arrangements for migrant children and their families, including by redirecting some resources currently expended on immigration detention;

(e) Promote family unity throughout asylum and other migration-related procedures, refrain from adopting any policy that would lead to systematic family separation and take appropriate measures to prevent and respond to family separation in the context of international migration;

(f) Provide alternative care arrangements, preferably family-based alternatives, for migrant children without parental care, while facilitating family tracing and reunification according to the best interests of the child;

(g) Strive to ensure the provision of all the material, social and emotional conditions necessary to ensure the comprehensive protection of the rights of the child, allowing for children's holistic development while in alternative care and reception facilities;

(h) Take affirmative action to overcome obstacles in order to ensure migrant children's access to health care, education, adequate housing and other rights and essential services. Such measures may include reviewing laws and regulations, overcoming administrative barriers, developing firewalls between public service providers and immigration enforcement authorities, providing interim documentation to facilitate access to services, making concrete efforts to overcome language and other access barriers, ensuring the affordability of services and increasing awareness of the human rights and entitlements of migrant children and their families;

(i) Develop national child protection case management frameworks that are resourced to effectively cater for durable individual solutions for migrant children and their families;

(j) Regulate and provide oversight for alternative care and reception arrangements for migrant children and their families;

(k) Gather and publish age-, gender- and disability-disaggregated data on the use of immigration detention of migrant children and their families and of the national availability and capacity of alternative care and reception arrangements for children. Data-gathering and reporting can serve as a basis for assessing progress achieved on ending immigration detention of children and fostering the development of evidence-based policies;

(l) Develop human rights-based, gender-responsive and child-sensitive migration policies to ensure that every migrant child, regardless of his or her migration status, is considered as a child first and foremost. All migrant children should be entitled in law and in practice to all the rights enshrined in the Convention on the Rights of the Child. States should ensure that the child's best interest is the guiding principle in the design and implementation of migration policies and a primary consideration in all actions and decisions that concern each migrant child, including decision-making on migration procedures and the consideration of alternative care and reception solutions;

(m) Provide mandatory training for officials, first responders and those who come into contact with migrant children with regard to vulnerability indicators, child-sensitive assessments of protection needs and the identification of appropriate referral mechanisms and the rights of the child;

(n) Establish partnerships and deepen cooperation, at the local, national, regional and international levels, in the development and implementation of non-custodial alternative care and reception arrangements for migrant children and their families. Members of the international community should continue to fund, develop and actively promote innovative child-rights compliance initiatives;

(o) States are encouraged to continue efforts to ensure a human rights-based, child-sensitive and gender-responsive implementation of the Global Compact for Safe, Orderly and Regular Migration and to implement recommendations contained in the global study on children deprived of liberty (A/74/136). This should include the translation of the principle of international

responsibility-sharing into concrete action through effective cooperation and solidarity on voluntary repatriation; facilitating local integration or resettlement; and looking for region-wide durable solutions that respect and protect the human rights of migrants;

(p) Ensure that measures taken in the context of the COVID-19 pandemic meet international human rights standards and that migrants, especially migrant children, are included in all aspects of national responses to the global health crisis. States should immediately release migrant children and their families from immigration detention into non-custodial and community-based alternatives to detention in order to protect the rights and health of migrants and staff in these facilities. Further recommendations are included in the Joint Guidance Note on the Impacts of the COVID-19 Pandemic on the Human Rights of Migrants.¹²⁶

¹²⁶ Available at www.ohchr.org/Documents/Issues/Migration/CMWSPMJointGuidanceNoteCOVID-19Migrants.pdf.