

Alternatives to Detention: Practical Example of Care of Migrant Children

Training Materials on Alternatives to Detention for Migrant Children



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® **Alternatives to Detention: Practical Example of Care of Migrant Children -**
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Care of migrant children: the need for alternatives to detention

CADRE project - April 2022

Table of Contents

I. Alternatives to Detention – general remarks	6
1.1 Definition	6
1.2 Principles guiding the assessment on an alternative to detention for a child	7
1.2.1 The best interests of the child principle	7
1.2.2 Minimum intervention principle	7
1.2.3 Regular review.	8
II Alternatives to Detention that comply with children’s human rights	8
<i>Key factors – essential for effectiveness of alternatives to detention</i>	9
2.1 Case management (community assessment & placement (CAP) model).	9
Examples of good practices	12
2.2 Placement of children in mainstream child protection system, family-based care	15
Examples of good practices	17
2.3 Other alternatives to detention used for adults	19
2.3.1 Residential Facilities	19
2.3.2 Regular Reporting	20
2.3.3 Supervision	21
2.3.4 Bail, bond, guarantor or surety	21
2.2.5 Assigned Residence and Return houses	22

This training module is the second in a series of training materials relevant to alternatives to detention for migrant children developed as part of the CADRE (Children’s Alternatives to Detention protecting their Rights in Europe) project. The series includes the following training modules:

- I. Care of migrant children: the need for alternatives to detention
- II. Alternatives to detention: practical example of care of migrant children
- III. Appropriate procedures to guarantee access to effective remedies for migrant children in detention and when subject to alternatives to detention
- IV. How to communicate and work with children subject to alternatives to detention

I. Alternatives to Detention – general remarks

1.1 Definition and concept

The term “alternatives to detention”, for purposes of this module, refers to a range of formal and informal practices, that constitute any law, policy or practice utilised instead of deprivation of liberty of migrants and refugees¹ while their status is pending or are awaiting deportation.² The core element here is that **alternatives to detention are applied instead of detention and not used as an alternative form of detention.**³

The UN Committee on the Rights of Migrant Workers and their Families (CMW),⁴ the supervisory body of the International Convention on the Rights of all Migrant Workers and their Families, understands as alternatives to detention all community-based care measures or non-custodial accommodation solutions – in law, policy or practice – that are less restrictive than detention. The Committee says that these must be considered in the context of lawful detention decision procedures to ensure that detention is necessary and proportionate in all cases, with the aim of respecting the human rights and avoiding arbitrary detention of migrants, asylum seekers, refugees and stateless persons.

The CMW has indicated that: “In order to ensure that migrant and asylum-seeking children are not placed in immigration detention or in closed alternative care facilities for children, child protection and welfare actors should take primary responsibility for children in the context of international migration.”⁵

As a general matter, children should not be subject to any form of administrative detention. Therefore, any such detention should be the exception rather than the rule, and should be a measure of **last resort**, to be imposed for very short periods and for a narrow range of reasons only where other **less restrictive alternatives** are not feasible.⁶

Children must never be detained solely because of their or their parents’ migration status.⁷

The UN Committee on the Rights of the Child, the UN Special Rapporteur on the human rights of migrants,⁸ the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment⁹ and the Parliamentary Assembly of the Council of Europe¹⁰ all make it clear that immigration detention of migrant children is **not in their best interest** and that detention of vulnerable individuals, including unaccompanied children is prohibited under international law.

¹ Migrants and refugees are separate categories with distinct protection regimes, for purposes of shorthand we will use the term “migrant children” to encapsulate both and that also include stateless children, in these materials.

² UN High Commissioner for Refugees (UNHCR), Detention Guidelines, 2012, para. 8, available at <https://www.unhcr.org/publications/legal/505b10ee9/unhcr-detention-guidelines.html>; International Detention Coalition (IDC), There are Alternatives: A handbook for preventing unnecessary immigration detention (revised edition), 2015, p. 7, available at <https://idcoalition.org/wp-content/uploads/2016/01/There-Are-Alternatives-2015.pdf>; See more details on the definition in Module I on the Care of migrant children: the need for alternatives to detention p.3-4.

³ CCDH, Practical Guidance on Alternatives to Immigration Detention: Fostering Effective Results, June 2019, p. 12, available at <https://rm.coe.int/practical-guidance-on-alternatives-to-immigration-detention-fostering-/16809687b1>.

⁴ UN Committee on the Rights of Migrant workers and their families, General comment No. 5 (2021) on migrants’ rights to liberty, freedom from arbitrary detention and their connection with other human rights, Advance unedited version, UN Doc. CMW/C/GC/5, 23 September 2021, para. 48, available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT/CMW/GEC/9459&Lang=en.

⁵ *Ibid*, para. 45.

⁶ *Rahimi v. Greece*, ECHR, Application no. 8687/08, Judgment of 5 April 2011, para. 109. Human Rights Committee, [General Comment 35](#), para. 18;

⁷ [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, CMW/C/GC/4-CRC/C/GC/23, 16 November 2017, para.5; [United Nations High Commissioner for Refugees \(UNHCR\)’s position regarding detention of refugee and migrant children in migration context](#) (January 2017).

⁸ Statement of 16 May 2016.

⁹ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, [A/HRC/28/68](#), 5 March 2015, para. 80.

¹⁰ [Resolutions 1707](#)(2010) and [1810](#)(2011).

The most effective way in which authorities can comply with the State's international human rights law obligations, is by implementing alternatives to detention for children which place unaccompanied migrant children in ordinary mainstream child protection systems by means of appropriate case management.

Further alternatives to detention often used **for adults** that may also impact children as their family members and their rights may include: community placement and case management; reporting obligations, such as reporting to the police or immigration authorities at regular intervals; the obligation to surrender a passport or travel document; residence requirements, such as living and sleeping at a particular address; release on bail with or without sureties; guarantor requirements; electronic monitoring, such as tagging. These are individually or in combination sometimes deployed by countries, but whether they are appropriate and consistent with obligations around the rights of the child is contentious.

1.2 Principles guiding the assessment on an alternative to detention for a child

1.2.1 The best interests of the child principle

The best interests of the child principle must be a primary consideration in any decision affecting the child, whether in relation to detention or not.¹¹ The European Court of Human Rights (ECtHR) has been clear **that in relation to children in migration, respecting the best interests of the child requires States to seek alternatives to detention in each case.**¹² The CMW and CRC also call upon States to ensure implementation of alternatives to detention to families with children, as it is not legitimate to justify the detention of children on the grounds that they should not be separated from their family when accompanied (Joint General Comment No. 4 and 23, 2017, para 11).

In determining appropriate alternatives to detention for migrant children, there must be a formal and systematic procedure for determining what would constitute the child's best interests. The best interests principle plays a role at all stages during migration procedures, including in screening and evaluation.¹³

1.2.2 Minimum intervention principle

The minimum intervention principle¹⁴ posits that the less intervention, the better. Always using the least restrictive measures should be the general rule, taking into account the particular needs, vulnerabilities and circumstances of the child concerned.

Steering Committee on Human Rights (CDDH), Council of Europe, Practical Guidance on Alternatives to Immigration Detention: Fostering Effective Results, June 2019

163. At the UN level, the CRC Committee, the UNHCR and the Special Rapporteur on the human rights of migrants have, inter alia, highlighted that when alternatives to immigration detention are applied in an individual case, the principle of minimum intervention must be respected and the least intrusive measure possible should be applied, based on an individualised assessment which takes into account the particular needs, vulnerabilities and circumstances of the person concerned.¹⁵

164. Similarly, according to the Special Rapporteur on the human rights of migrants when restrictions on personal liberty are deemed unavoidable, consistent with the principles of

¹¹ For more details on the best interests principle, see Module I on the Care of migrant children: the need for alternatives to detention 1.2.1 *Best Interests Principle*.

¹² *Rahimi v Greece*, ECtHR, Application no. 8687/08, Judgment of 5 April 2011, para. 109; *Popov v France*, ECtHR, Application no. 39472/07 and 39474/07, Judgment of 19 January 2012, para. 141; *Muskhadzhiyeva and Others v. Belgium*, ECtHR, Application no. 41442/07, Judgment of 19 January 2010, para. 98; *Kanagaratnam and Others v. Belgium*, ECtHR, Application no. 15297/09, Judgment of 13 December 2011, para. 94-95.

¹³ See PICUM, Steps for the procedure and implementation when return is a durable solution in the best interests of the child, available at https://picum.org/wp-content/uploads/2019/09/2019_Flowchart_childrens_rights_in_return_policies.pdf and PICUM, Best interests procedures, available at https://www.youtube.com/watch?v=uFDXw_1CdOs&list=PLGAVFHUV9FuQ2Zf-cZ5ITr3I80IIRXJsbE&index=1&ab_channel=PICUM.

¹⁴ UNHCR, Options paper 1 <https://www.unhcr.org/553f58509.pdf>, Steering Committee on Human Rights (CDDH), Council of Europe, *Practical Guidance on Alternatives to Immigration Detention: Fostering Effective Results*, June 2019, p. 9, <https://rm.coe.int/practical-guidance-on-alternatives-to-immigration-detention-fostering-16809687b1>

¹⁵ See Jorge Bustamante, UN Special Rapporteur on the rights of migrants, *Report of the Special Rapporteur on the human rights of migrants*, 65th Session, UN Doc. A/65/222, 4 August 2010, para. 92 (a) and 95; CRC, *Report of the 2012 Day of General Discussion on the Rights of All Children in the Context of International Migration*, para. 79; UNHCR, Detention Guidelines, 2012, Guideline 4.3, para. 39.

reasonableness, necessity, and proportionality, they should be considered along “a sliding scale of measures from least to most restrictive, allowing for an analysis of proportionality and necessity for every measure.”¹⁶

165. In the EU context, the CJEU in its leading judgment *El Dridi*, further confirmed that Directive 2008/115/EC establishes an “order in which the various, successive stages” of the removal procedure are to take place.¹⁷ This order is congruous with a “gradation which goes from the measure which allows the person concerned the most liberty [...] to measures which restrict that liberty the most.”¹⁸ Therefore, member States are required to use “the least coercive measure possible” based on an individual assessment in each case. It is essential that the principle of proportionality is observed throughout the stages of the return procedure.¹⁹
166. The UNHCR has further clarified that the level and appropriateness of any community placement (as an alternative to detention) should “balance the circumstances of the individual with the risks to the community.”²⁰ Further, the individual and/or his/her family should be matched to an appropriate community as part of the assessment of alternatives to detention as well as the required level and availability of support services.²¹ Finally, persons subject to restrictions or conditions on their personal liberty in the context of alternatives to detention should receive information on the conditions governing the application of such alternatives, including their obligations and rights as well as the consequences of non-compliance.²² Detention should not be automatically imposed following a failure of an alternative measure.²³

1.2.3 Regular review

Alternative measures that restrict liberty should be subject to particularly strict human rights safeguards, including continuous access to a lawyer and periodic review by an independent body.²⁴

Even where the measures do not restrict liberty, children subject to alternatives need to have timely access to effective complaints mechanisms as well as effective remedies.²⁵

Regular reviews enable authorities to identify changes in circumstances that affect placement decisions, such as new vulnerability or risk factors, and identify any new or enduring barriers to case resolution.

II. Alternatives to Detention that comply with children’s human rights

There are various types of alternatives to detention, characterized by different levels of restrictions and coercion.

As in accordance with international human rights standards, liberty is the rule and children should never be detained in the immigration context,²⁶ the ICJ and partners in this project recommend alternatives to detention that we deem to comply with these standards.

This module thus focuses on standards and examples of case management for both families and unaccompanied children (Section 2.1) and placement of unaccompanied children in mainstream care systems (Section 2.2).

¹⁶ François Crépeau, UN Special Rapporteur on the human rights of migrants, *Report of the Special Rapporteur on the human rights of migrants*, UN Doc. A/HRC/20/24, 2 April 2012, para. 53 and 73.

¹⁷ *El Dridi*, CJEU, Case no. C-61/11 PPU, Judgment of 28 April 2011, para. 34 and 41

¹⁸ *Ibid.*, para.41.

¹⁹ *Ibid.*, para.41-43.

²⁰ UNHCR, *Detention Guidelines*, 2012, Guideline 4, para. 20.

²¹ *Ibid.*, Guideline 4, para. 20.

²² François Crépeau, UN Special Rapporteur on the human rights of migrants, *Report of the Special Rapporteur on the human rights of migrants*, UN Doc. A/HRC/20/24, 2 April 2012, para. 66.

²³ *Ibid.*, para. 55. See, by analogy, UN Standard Minimum Rules on Non-Custodial Measures (“Tokyo Rules”), adopted in 1990, approved by the General Assembly resolution 45/110 of 14 December 1990,

²⁴ IDC, *There Are Alternatives: A handbook*, 2015, p. 31-33; UNHCR, *Guidelines on the Applicable Criteria and Standards Relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, Guideline 4.3, para. 37, available at <http://www.unhcr.org/refworld/docid/503489533b8.html>

²⁵ UNHCR and OHCHR, *Global Roundtable on Alternatives to Detention of Asylum-Seekers, Refugees, Migrants and Stateless Persons: Summary Conclusions*, (May 2011), 31, available at <http://www.unhcr.org/refworld/docid/4e315b882.html>

²⁶ See Module I on the Care of migrant children: the need for alternatives to detention, 1.2.1 Best Interests Principle.

Key factors – essential for effectiveness of alternatives to detention

The Practical Guidance on Alternatives to Immigration Detention: Fostering Effective Results of the Council of Europe **Steering Committee on Human Rights (CDDH) sets out several** key factors essential for effectiveness of alternatives to detention:

Effective alternative programmes encapsulate the following essential elements:

- **Screening and assessment** – Understanding the individual circumstances and using screening and assessment to make informed decisions about management and placement options;
- **Access to information** – Ensuring individuals are well-informed and provided with clear, concise and accessible information about their rights, duties and consequences of non-compliance;
- **Legal assistance** – Providing meaningful access to legal advice and support from the beginning and continuing throughout relevant procedures;
- **Case management services** – Supporting individuals through personalised case management services and advice;
- **Dignity and human rights** – Safeguarding the dignity and human rights of individuals, and ensuring their basic needs can be met; and
- **Trust in asylum and migration procedures** – Building trust and respect through a spirit of fairness and cooperation, rather than an exclusive focus on control or punishment.

In cases of children, additional factors will be essential, such as

- The appointment of a guardian as soon as possible for unaccompanied children;
- The right to be heard and best interests of the child are duly respected at all times;
- Procedures take place in child-sensitive manner; and
- Age assessment procedures only take place when strictly necessary, are conducted in a manner that respects the child's worth and dignity, and presumption of minority is applied.²⁷

2.1 Case management (community assessment & placement (CAP) model)

Case management is a support mechanism, and structured social work, for migrants and refugees centred on the engagement of affected individuals with migration procedures and on case resolution. Regarding children, case management can address the individual child's needs in an appropriate, systematic and timely manner by taking into consideration the best interest of the child and children's meaningful participation.²⁸ A growing body of practice and international evidence shows that case management increases compliance and case resolution while improving individuals' coping and well-being.²⁹ By building trust in the system, providing stability and facilitating agency, case management increases engagement and participation in the migration process while avoiding immigration detention.

Authorities and practitioners **should be aware of and understand the cultural background of every child. Cultural mediators** can help both children and the authorities towards better cooperation and understanding, but need to be well trained.

Liberty is the rule

Case management is especially used in cases of families, when they can have a place to stay with no restrictions on their liberty, as it is a pre-requisite for effective case management support and case resolution. Building trust cannot be done when people are detained or have their liberty restricted. Therefore, unfortunately, it may be very difficult to include elements of case management upon arrival for instance, when in most cases people are detained.

Steering Committee on Human Rights (CDDH), Council of Europe, Practical Guidance on Alternatives to Immigration Detention: Fostering Effective Results, June 2019

210. Case management or case worker support is an individualised comprehensive support mechanism for individuals undergoing immigration procedures with the objective of achieving case resolution.³⁰ A common feature of this measure is the presence of a case manager responsible for assisting the individual (or families) throughout the immigration procedure, from initial claim until return or grant of status. The role of the case manager, who can be

²⁷ See Steering Committee on Human Rights (CDDH), Council of Europe, [Practical Guidance on Alternatives to Immigration Detention: Fostering Effective Results](#), June 2019

²⁸ International Rescue Committee, Child protection at the IRC, available at <https://childprotectionpractitioners.org/child-protection-areas-of-intervention/child-level-interventions/child-protection-case-management/>.

²⁹ IDC, *There are Alternatives: A handbook*, 2015, p. 7 ; International Detention Coalition (IDC), European Alternatives To Detention Network and PICUM, *Implementing Case Management Based Alternatives To Detention In Europe*, March 2020, p.2

either a state or a civil society representative, is to ensure access to information, legal aid and representation in relation to immigration procedures. This can also entail basic survival mechanisms such as facilitating access to welfare services, health care, work or education.³¹

211. Case management is usually comprised of three key components:
- a) **individual assessment** to identify the needs and risks of the person;
 - b) development of **case plans** to effectively address these needs; and
 - c) **referral** which involves **continuous monitoring** to ensure that any changes are properly addressed.³²

The use of appropriate case management allows for a holistic approach to the child and their family. The case resolution does not only explore access to international protection, but also other alternative legal solutions for the person's status. The aim of family reunification is a critical consideration aspect to consider in cases of unaccompanied children.

As case management involves building trust with the case manager, while people are based in a safe environment, it also increases trust and engagement with the decision-making process. This further facilitates the exchange of information between the authorities and the family / child and can lead to higher quality of decisions and better support in each individual case.

Persons with vulnerabilities

Case management is particularly suitable for vulnerable individuals and groups with higher support needs (for instance a person with a disability, or belonging to a minority group). In cases of families, the individual needs and vulnerabilities of each family member must be taken into consideration.

Return as an option for families

Return is one option to be considered by the family and case manager, and the work based on trust and search for solutions jointly, can empower the families in their choices.

However, the *non-refoulement* principle – the prohibition of the forcible transfer of persons, in any form, to countries where they face a real risk of persecution or serious human rights violations – must apply in all situations.

Children in the context of international migration, in particular those who are undocumented, stateless, unaccompanied or separated from their families, are particularly vulnerable, throughout the migratory process, (...).³³ (para 39) For example, a briefing by the European Parliament stressed that unaccompanied children often do not have access to proper and appropriate identification, registration, age assessment, documentation, family tracing, guardianship systems or legal advice.³⁴

Family reunification in the country of origin should not be pursued where there is a "reasonable risk" that such a return would lead to the violation of the human rights of the child.³⁵

In conjunction with other more restrictive alternatives

Case management elements can be also used in conjunction with many of the other alternatives to detention models or approaches, or as a bridging period when moving away from detention towards case management that respects liberty.

Case management is a flexible system, where only certain elements will be applicable in various circumstances, and at least contribute to better compliance and well-being, health and human rights compliance of alternatives to detention.

³⁰ See also IDC, *There Are Alternatives: A handbook*, 2015, p. 12-13, section 2.5, 2.5.3, p.47, section 7 and particularly p. 52, section 7.2.

³¹ European Commission, *Return Handbook on providing guidance to national authorities on standards and procedures for implementing the Return Directive 2008/115/EC*, 2015, p. 68.

³² IDC, *Case management as an alternative to immigration detention: the Australian experience*, 2009, p. 5, available at <http://www.refworld.org/pdfid/4f3cc2562.pdf>.

³³ CRC and CMW *Joint General Comment no. 4 on the Protection of the Rights of All Migrant Workers and Members of Their Families and General Comment o. 23 (2017) on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return*, UN Doc. CMW/C/GC/4 and 23, 16 November 2017, para 39.

³⁴ European Parliament (Anja Radjenovic), *Vulnerability of unaccompanied and separated child migrants*, April 2021, p. 6, available at [https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/690575/EPRS_BRI\(2021\)690575_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/690575/EPRS_BRI(2021)690575_EN.pdf)

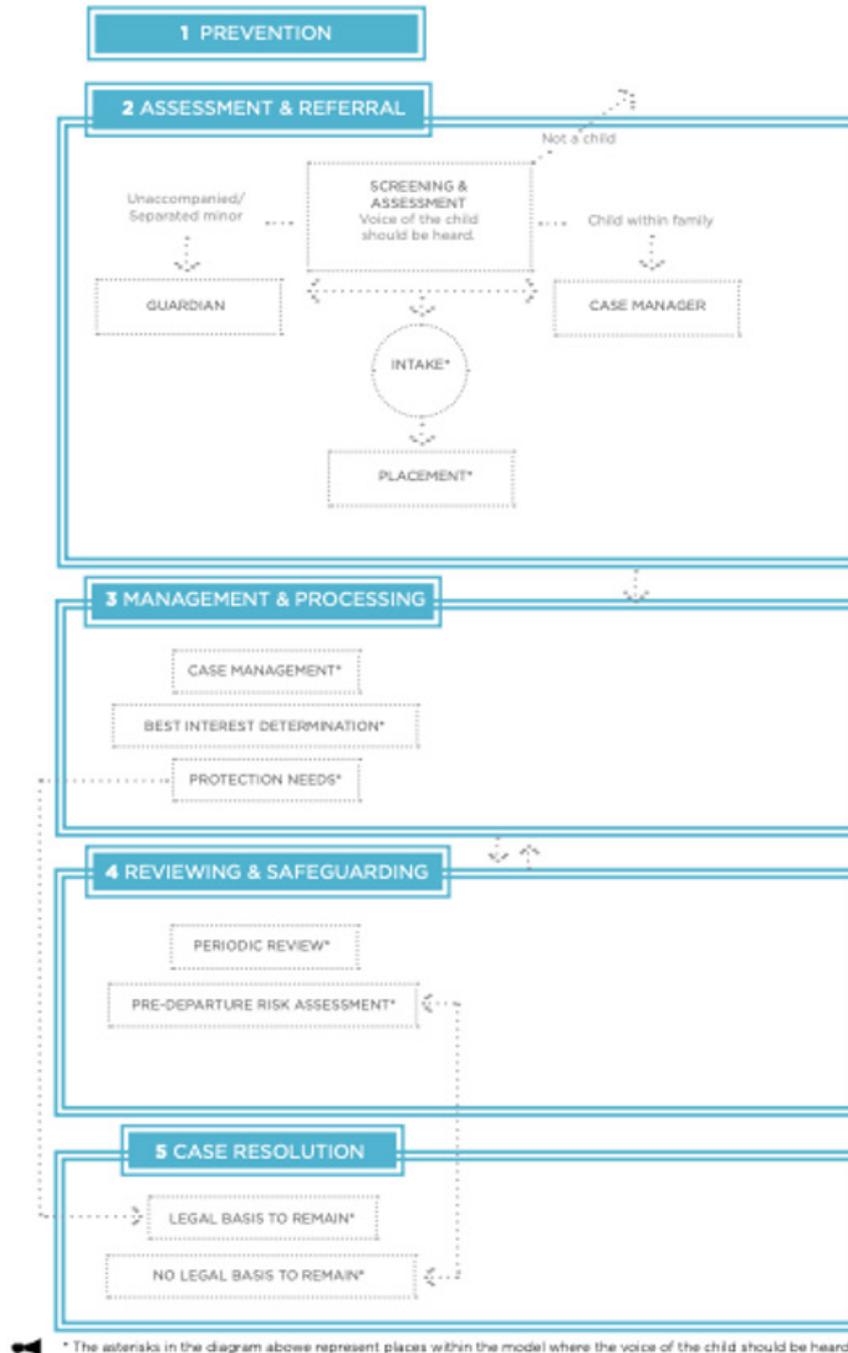
³⁵ CRC and CMW, *Joint General Comment 4 and 23*, para. 35.

The Child-sensitive CAP model

In the Child-sensitive Community placement and Assessment Model³⁶ (Child-sensitive CAP model), the principles of liberty and of minimum standards underpin the three processes of decision-making, placement and case management.” The IDC developed a 5-step process to avoid detention of migrant children.

CHILD-SENSITIVE CAP MODEL

THE CHILD-SENSITIVE COMMUNITY ASSESSMENT AND PLACEMENT (CCAP) MODEL
 A 5-step process to avoid the detention of refugee, asylum seeker and irregular migrant children.



³⁶ IDC, A Captured Childhood, 7/2016, <https://endchilddetention.org/research/captured-childhood-research-report/>.

Case-Resolution

Case management should lead to fair and timely case resolution.

Elements that impact on the fairness of the case resolution system include

- > difficulty obtaining information on immigration processes,
- > inconsistent or contradictory information or decisions,
- > weak mechanisms for appealing negative decisions, and
- > lack of transparency of the decision-making process (such as reasons for negative decisions).

A prolonged and inefficient case resolution process can also impact a person's belief in the system and willingness to accept final outcomes, whether it be independent or voluntary departure or deportation.

Case resolution can draw from a range of solutions including:

- regularisation programs,
- humanitarian or protection visas,
- other permanent visas,
- short-term 'bridging' visas,
- departure to a third country,
- return to a different area of the country of citizenship, and additional resources to support sustainable return.

Practical challenges with the implementation of case management

- >> Case management requires the engagement and/or training of qualified case management professionals. For now in most countries specific or adequate professional training for case managers is lacking.

EXAMPLES OF GOOD PRACTICES

Screening and early care in the Netherlands

The Netherlands was mentioned as a good example during the ICJ transnational workshop, as applying sufficient screening time. INLIA, the International Network of Local Initiatives with Asylum Seekers, has together with the city of Groningen developed a model where both bed, bath and bread and assistance are offered (BBB). This model is based on five basic principles and has reportedly led to positive experiences and results.³⁷ The BBB model starts with the guiding principle that State authorities must explain in a credible manner, why a lawful residence is or is not a possibility. Such guidance is provided by a non-governmental organisation.³⁸ Local authorities have an important role in the facilitation of the BBB operation as they provide the necessary resources and maintain good contacts with the local police and cooperate in the area with other stakeholders.³⁹

The BBB+ model will only be practicable where individuals, many of whom are in vulnerable situations are prepared to engage and cooperate with the process. Taken into account that cooperation with the assistance is necessary, the duration of the reception and support is not fixed from the start as time pressure is counterproductive. The model is designed to be built on three key principles: peace, space and respect.⁴⁰

Multidisciplinary Commission at a University, the Netherlands (the BIC model)

The University of Groningen has created a multidisciplinary commission that conducts diagnostic pedagogical assessments of the best interests of the child when authorities or courts need to make a decision requiring a best interests of the child assessment. It is called the BIC- model (the Best Interests of the Child Model).

This assessment is generally requested by the lawyers or representatives of children. The aim is to

³⁷ The BBB stands for bed, bread and bath and the BBB+ stands for the bed, bread and bath as well as intensive guidance that comes on top of it.

Orbit vzw, *BBB+ een project op stedelijk niveau als alternatief voor de detentie van mensen zonder wettig verblijf*, 2018, p. 2-3, available at <https://www.orbitvzw.be/wp-content/uploads/2018/04/BBBINLIAtechnische-ficheORBITvzwDEEL1def.pdf> in 2019, five other municipalities set out a pilot project named LVV which stands for National Immigration Services: Stichting INLIA Foundation, Dossier recht op opvang, available at <https://www.inlia.nl/nl/expertise-centrum/dossier-recht-op-opvang>

³⁸ Orbit vzw, *BBB+ een project op stedelijk niveau als alternatief voor de detentie van mensen zonder wettig verblijf*, 2018, p. 3, available at <https://www.orbitvzw.be/wp-content/uploads/2018/04/BBBINLIAtechnische-ficheORBITvzwDEEL1def.pdf>.

³⁹ Orbit vzw, *BBB+ een project op stedelijk niveau als alternatief voor de detentie van mensen zonder wettig verblijf*, 2018, p. 3, available at <https://www.orbitvzw.be/wp-content/uploads/2018/04/BBBINLIAtechnische-ficheORBITvzwDEEL1def.pdf>.

⁴⁰ Orbit vzw, *BBB+ een project op stedelijk niveau als alternatief voor de detentie van mensen zonder wettig verblijf*, 2018, p. 2, available at <https://www.orbitvzw.be/wp-content/uploads/2018/04/BBBINLIAtechnische-ficheORBITvzwDEEL1def.pdf>, 3.

provide expert advice from a “behavioural and children’s rights perspective indicating the best interest of the child in migration law.”⁴¹

To be able to identify the best environment for the child, the Best Interest of the Child – Questionnaire (BIC-Q) was developed.⁴²

The Questionnaire analyses seven main conditions in the family setting of the child to determine the best interests in each situation: adequate physical care, safe direct physical environment, affective atmosphere, supportive, flexible child-rearing structure, adequate examples by parents, interest and continuity in upbringing conditions, future perspective.⁴³ The Questionnaire also consists of seven conditions regarding the child’s “societal upbringing context” to determine the best interests in each situation. These seven conditions are: the safe wider physical environment, respect, social network, education, contact with peers, adequate examples in society and stability in life circumstances and future perspective. It can be filled in from the perspective of a professional, a parent and the child. In addition, the child participates as well by giving their opinion about the quality of its environment by means of a Best Interest of the Child – Self report (BIC-S).⁴⁴

In the next step, an appointment to set a date for conducting a diagnostic interview is made with the child and their parents/caretakers after a lawyer or a legal representative has registered the case of the refugee or migrant child.⁴⁵ This interview will be held with both the parents/caretakers and the child. It has the aim to identify the living conditions of the family and the development of the child. After this interview, information from third parties that are involved with the child and/or their family is requested after the child and/or their family have given their consent. In addition, the security situation in the country of origin or the parent’s country of origin will be assessed. Based on all this information, a report assessing the best interests of the child is drafted.⁴⁶

Although the BIC model provides an interesting example, there is a need for caution especially with regards to the lack of previous contact and knowledge of the child by the experts who develop this assessment. During the ICJ CADRE workshop⁴⁷ this was raised as a potential risk or such assessment of the child’s best interests by an expert panel.

Cultural mediators in age assessment procedures in Italy

In Italy, the age assessment procedure is mainly regulated by L. 47/2017 (known as “Legge Zampa”) and Presidential Decree of the Council of Ministers n. 234/2016. Moreover, there are some non-binding protocols signed at the regional level and between regions and Central Government, aimed at harmonizing practices.⁴⁸ According to the law, the assessment has both a social and a medical nature and it must be carried out through a **multidisciplinary procedure** that has always **involve a cultural mediator** (art. 19 bis D. lgs 142/2015). With regard to the detailed age assessment components, a unique procedure has been laid down in the Protocol of July 9th, 2020⁴⁹ and it serves in particular as guideline for the courts, social services and hospitals within the entire Italian territory. The Protocol reaffirms that **one of the mandatory members of the multidisciplinary team is the cultural mediator**, whose presence grants that the minor understands the information provided to them, that they are heard during the procedure and that, during the interviews aimed at establish minor’s maturity, their cultural and social context will be duly considered. Moreover, the Protocol establishes that a margin of error of two years has to be presumed in medical assessment, so when the person claims they are a child, and that fits within the two years margin, it has to be assumed that the person is a child.

In any case, after more than one year from the Protocol’s issue, its implementation can change significantly depending on the region.

In the Italian region of Sud-Tirol, **a good practice has been developed with regard to the mandatory presence of the cultural mediator during age assessment procedure**. In most parts of Italy this professional is appointed through the reception system, meaning that the availability, qualification and skills of the person may vary according to the specific reception center. However, in Sud-Tirol **the cultural mediator is employed by the public hospitals**. This allows for a more uniform and continuous presence of cultural mediators during age assessment procedure.

⁴⁴ University of Groningen, *Method*, 2018, available at <https://www.rug.nl/research/study-centre-for-children-migration-and-law/orthopedagogical-diagnostic-tests/method>

⁴⁵ University of Groningen, *Method*, 2018, available at <https://www.rug.nl/research/study-centre-for-children-migration-and-law/orthopedagogical-diagnostic-tests/method>

⁴⁶ *Ibid.*

⁴⁷ CADRE Second Transnational workshop in October 21-22 2021 on exchange of good practices on human rights compliant alternatives to detention, available at <https://www.icj.org/eu-migrant-children-should-be-treated-first-and-foremost-as-children-regardless-of-their-status/>

⁴⁸ The main one has been signed by Italian Government, Regions and Local Authorities on July 9th, 2020: “*Multidisciplinary protocol on unaccompanied minors age assessment*”, available at <https://www.statoregioni.it/media/2751/p3-cu-atto-rep-n-73-9lug2020.pdf>

⁴⁹ *Ibid.*

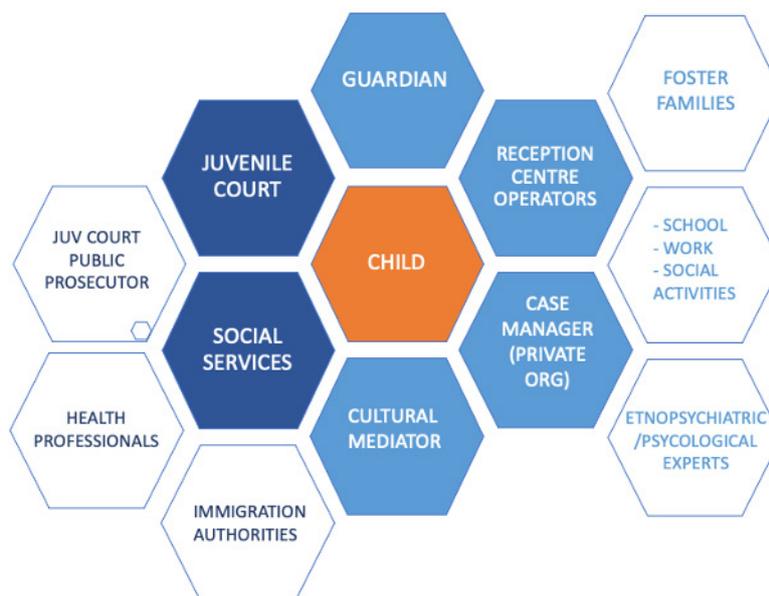
Another good practice can be identified in the decision of non-profit organizations, that are in charge of reception facilities for minors, of asking for a multidisciplinary team – composed of a cultural mediator and an ethnotherapist – to be included among the services included in the allocation of funds. This would mean that every reception centre, in addition to medical, social and legal assistance, could also allow the presence of cultural-diversity experts during the interactions of the child with public authorities (for instance, during the interviews with social services or with the judge).

Cooperative approach in Italy

The system of reception and protection of unaccompanied minors in South-Tirol Province was established in 2000, through an administrative decision of the executive by the Autonomous Province (n. 1330/2001). To cope with the increased arrivals of unaccompanied minors from 2000-2003, the private social sector, in agreement with the Autonomous Province of South-Tirol and the Social Services of the City of Bolzano, supported the establishment of a **first reception center for minors living in the street**. Following an initial period of 15 days spent in the first reception centres (which today can be extended up to six months), unaccompanied minors were accommodated in socio-pedagogical reception facilities, or in “assisted residences” (with higher degree of autonomy) together with Italian children. The intervention was based on the principle of non-discrimination between foreigner and national minors, principle that has been formally adopted by Italian law in 2017 (art. 1, L. 47/2017, known as “Legge Zampa”).

The assistance of minors is since 2000 coordinated by the Autonomous Province, in cooperation with a network of private organizations. Within the South-Tirol area, nine NGOs, under the acronym of CRAIS, are in charge of the management of reception facilities for minors and are recognized by the public service as main interlocutor to discuss and verify the status of the art and decide on the policies to be implemented on the subject.

Maps of actors involved in the reception/protection system
(public actors on the left, private actors on the right)



Cooperation between non-governmental actors in Hungary

During the workshop, the need for a regular communication between the regular actors was emphasized.

For instance, in Hungary, there is often active cooperation among concerned individuals and institutions. Such cooperation consists of regular roundtable meetings between the child protection guardians, the children’s home staff where unaccompanied minors are accommodated, and civil society actors: the legal representative, social workers and psychologists. These discussions serve as a substitute for the best interest determination procedure and are held on a regular basis, if needed. The meetings focus on assessing the best interests of the children who are under the mandate of the relevant actors and on identifying individual needs, as well as sharing relevant information with each other in order to effectively form an interdisciplinary response.⁵⁰

⁵⁰ Information provided by the Hungarian Helsinki Committee, December 2021.

It should be noted, however, that this cooperation is initiated and organized by civil society, and the participation of state authorities is only partial. State actors who participate are child protection guardians, who have a certain level of autonomy to act, but the asylum authority is not among the participants. This cooperation should not be mistaken for an active, child-friendly approach by the Hungarian authorities, which have engaged in systemic human rights abuses affecting thousands of children in the past years.⁵¹

Case-management for families in Belgium

The Jesuit Refugee Service in Belgium has implemented a small pilot project⁵² (Plan Together: towards durable solutions) offering community-based alternatives to detention to a group of refugees and migrants, undocumented families with minors, running from September 2020 to February 2023. This project was established in response to three main problems in Belgium. First, is the failure to resort to less coercive measures before ordering detention. The second is “return houses” are effectively an alternative form of detention rather than an ATD. Third, Belgian law still allows for detention of refugee and migrant children.

The project has been designed in a manner which seeks to shift the practicing culture in Belgium from one which focuses on ‘return rates’ to one that focuses on effective, durable solutions, which might in principle be legal stay in Belgium, in another EU country or in the country of origin.

JRS Belgium offers support to families with children (the youngest child can be max the age of 16) up to the age of 16 without legal residence. The families are supported at home and on a legal, social and psychological level to work on a sustainable future perspective. The regular home counselling stands in place of prevents a deprivation of liberty of the family and thus detention. There can still be an order to leave the country, but there is no detention order.

Under its case-management mechanism, this project seeks a holistic process which explores all possible options for a person/family, that is a legal stay in Belgium or in any other EU Member State or durable return, in dialogue with immigration authorities. It starts with screening and selection and involves initial basic actions to build trust, regular home visits, monthly team meetings with immigration office, legal screening, individual plan of action, impact assessment, and ultimately case closure.

>> Challenges/lessons learned:

The first lessons that emerge from this pilot project include the importance of clarifying expectations of this process from the very start, which is exploring all options, one of which may be return. It also demonstrates the necessity of concrete actions to help gain trust with the beneficiaries and intervention plans with set objectives.

Another challenge is the insufficient coordination between the different services. Lawyers should be better integrated in the case management and collaborate more closely with the family and the services surrounding them. Often, their role is limited to managing the asylum application or the regularization procedure. The connection between the different services is not always obvious ; there is a need to nurture the relationship with the lawyer and support the liaison work of the case managers, who also provide legal follow-up.⁵³

2.2 Placement of children in mainstream child protection system, including family-based care

Placing the child in the mainstream child protection system of the country is most often likely to result in higher degree of human rights protection for children (right to family life, right to education, right to health, etc.) as this way migrant children are more likely to have better access to their rights.⁵⁴ In ensuring that these rights are fully enjoyed by the unaccompanied or separated children, the host country may need to pay special attention to the child’s vulnerable status and take additional measures.⁵⁵

⁵¹ *Ibid*

⁵² Information extracted from 1st transnational workshop presentation on *Alternatives to detention vs. alternative forms of detention of migrant children*, June 17 and 18 2021, available at <https://www.icj.org/eu-real-alternatives-to-detention-for-migrant-children-should-be-used/>, Maaïke Vanderbruggen, JRS Belgium

⁵³ Information provided by Emna Mzah from Defence for Children International (DCI) Belgium, December 2021.

⁵⁴ UN, CMW *General Comment No. 5 (2021) on migrants’ rights to liberty, freedom from arbitrary detention and their connection with other human rights*, UN Doc. CMW/C/GC/5, 10 November 2021, para 78; UN, CMW, *General Comment No. 2(2013) on the rights of migrant workers in an irregular situation and members of their families*, UN Doc. CMW/C/GC/2, 28 August 2018, para 72.

⁵⁵ UN, CRC, *General Comment No. 6 (2005) on the Treatment of Unaccompanied and Separated Children Outside Their Country of Origin*, UN Doc. CRC/C/GC/2005/6, 1 September 2005, para 90.

As migrant children are first and foremost children, the special care available to national children should be immediately available to asylum seeking and other children in the migration context. Additional services may need to be put in place, such as access to interpretation and education on various cultures for the services themselves as well as for the foster families.

Steering Committee on Human Rights (CDDH), Council of Europe, Practical Guidance on Alternatives to Immigration Detention: Fostering Effective Results, June 2019

212. Alternative family-based accommodation is a general name for a range of alternative care options for unaccompanied or separated children that may include either formal or informal settings such as kinship care, foster care and other family-based or family-like settings that are not “residential” in nature. Such arrangements help ensure that children are with the support and protection of a legal guardian or other recognised responsible adult or competent public body at all times.⁵⁷
213. **Kinship care** is defined as “family-based care within the child’s extended family or with close friends of the family known to the child, whether formal or informal in nature.”⁵⁸ Kinship care can include care provided by blood relations, legal kin or fictive kin. Blood relations mean there is a genetic relationship between the child and kin caregiver, as for example a maternal grandmother caring for her grandchildren. Legal kin are adults who marry into a family but have no genetic or biological relation, such as a step-grandmother. Fictive kin are adults unrelated by either birth or marriage, who nonetheless have an emotionally significant relationship with the child that would take on the characteristics of a family relationship (e.g. members of an ethnic community).⁵⁹
214. **Foster care** is defined as “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.”⁶⁰
215. Other family-like care settings include any short or long term care arrangement other than kinship care or foster care whereby a child is placed in the domestic environment of a family where the carers have been selected and prepared to provide such care, and may receive financial or other support or compensation for doing so.⁶¹

With appropriate safeguards and monitoring, the rights of the children placed in mainstream child protection system must be respected and protected, including the best interests of the child principle and the right to be heard.

Where family members are present, children must never be separated from their parents/families and placed in alternative family care unless it is deemed in the best interests of the child to do so – otherwise, this practice would be in violation of the child’s and parents’ **right to family life**.

Child protection services might not be used to working with migrant children, might require further training and awareness raising. It is equally important that **interpretation and intercultural training** be available, as required, for child protection authorities to work with the child prior to their placement.

The case manager provides access to other services, experts and practitioners, as needed in each particular case, case manager does not necessarily have to be a lawyer or a social worker.

Guardian

Guardians play an important role in different life situations of children who are unaccompanied or separated from their families or cannot avail themselves in the protection of their parents/caregivers. Each unaccompanied or separated child should have a guardian appointed as soon as possible. States are required to make sure there is necessary underlying legal framework for that.⁶² Guardians should have had and should continue to receive appropriate professional training.⁶³ The guardian is not a substitute for a lawyer, to which children must also have access. A guardian may in some cases also play the role of a case manager.

⁵⁷ See, for example, UNICEF, UNHCR and Save the Children, Separated Children in Europe Programme, *SCEP Statement of Good Practice*, 4th Revised Edition, March 2010, p. 28.

⁵⁸ General Assembly, Guidelines for the Alternative Care of Children, A/RES/64/142, 18 December 2009, para.29 (c)(i).

⁵⁹ *Better Care Network et al*, Discussion Paper, March 2013, p. 7-8.

⁶⁰ General Assembly, *Guidelines for the Alternative Care of Children*, A/RES/64/142, 18 December 2009, para. 29 (c)(ii).

⁶¹ *Better Care Network et al*, Discussion Paper, March 2013, p. 9.

⁶² UN, CRC, *General Comment No. 6 (2005) on the Treatment of Unaccompanied and Separated Children Outside Their Country of Origin*, UN Doc. CRC/C/GC/2005/6, 1 September 2005, para. 21, 33, 69.

⁶³ Article 31 Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (*EU Qualification Directive*).

Age assessment

Children whose age assessment is pending, because of a serious doubt of their age, should be given the benefit of the doubt and presumption of minority. This raises many questions about where the children should be placed pending their age assessment. They should clearly not be placed in a centre for adults. But, can they be placed with children if there is a possibility that they are actually adults?

During a workshop with experts and practitioners,⁶⁴ some participants suggested that a child that just turned 18 might be better placed in a centre for children than in a place for adults. It was stressed that one should **use and develop tools** such as more cooperation with NGOs and **creating a safe space** for possible children whose age is being assessed.

EXAMPLES OF GOOD PRACTICES

Placement of unaccompanied children in mainstream care in Italy (South-Tirol)

In Italy, according to article 1, L. 47/2017, unaccompanied foreign minors enjoy the rights related to the protection of the child **on equal grounds as national and European children**. While the law establishes a principle of non-discrimination, unaccompanied minors are not in practice always treated in a manner equal to Italian nationals all over Italy. In this regard, the example of the South-Tirol Autonomous Province is a good practice, as unaccompanied children are **accommodated together with Italian children**. There is no difference between the foreign and local children regarding the placement in the mainstream child protection, as accommodation and services are managed by the Province – through social services – in cooperation with private organizations.

When an unaccompanied child arrives or it is found on the territory of the Province, the person is referred by the police or social services to the reception system through a contact point (telephone line reachable 24/24h.), managed by one of the organizations of the private sector (Volontarius). The minor is thus accommodated for an initial period in the first reception centres for foreigner children; if no place is available within the first reception system, minors can be placed in “emergency accommodation” in ordinary socio-pedagogical facilities. Following the initial period spent in first reception centres, in order to promote the integration of unaccompanied minors they are placed in the facility that best suits the individual integration project.

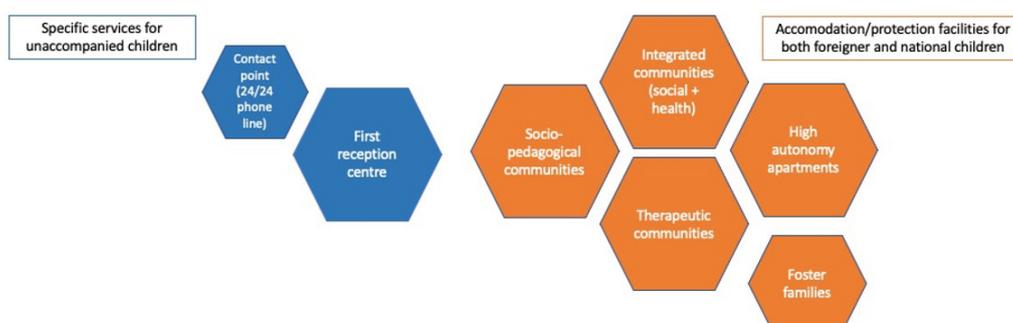
In the Autonomous Province of Bolzano there are different types of facilities, all of them accommodate equally foreigner and national children, depending on their needs:

- socio-pedagogical communities (age: 3-12, 12-18, 16-21; only M, only F or mix M+F);
- integrated communities (social + health intervention);
- therapeutic communities (health intervention, for minors with psychiatric or addiction vulnerabilities);
- assisted residences / high autonomy apartment.

In specific situation the child can be placed in foster care families, for instance, when they are under 15 years old).

Local social services and private organizations are in charge of the entire system of reception and protection of unaccompanied minors. Once the child is hosted in a centre, the reception measures must be ratified by the Juvenile Court, which is also in charge of the appointment of a guardian. The main actors involved in the system are therefore actors of the **mainstream child protection system**: in Italy immigration authorities have no competences whatsoever in the management of migrant children reception.

Map of reception system for unaccompanied minors within the mainstream child protection system



⁶⁴ CADRE Second Transnational workshop in October 21-22 2021 on exchange of good practices on human rights compliant alternatives to detention, available at <https://www.icj.org/eu-migrant-children-should-be-treated-first-and-foremost-as-children-regardless-of-their-status/>

Procedure for unaccompanied children in Poland

In Poland, an unaccompanied child can declare to the border guard authority its intention to submit an application for international protection. The border guard authority, after accepting the declaration, will draw up a report and inscribe this declaration in the register.⁶⁵ The border guard must also immediately apply to the guardianship court with a request for appointing a guardian to represent the child in the procedure for granting international protection. Alternatively the guard may request application of the Dublin procedure to transfer a minor to another Member State under Regulation 604/2013,⁶⁶ providing social assistance and providing assistance in voluntary return to the country of origin.

The court can also be requested to place the child in foster care. It is the court's duty to appoint the guardian immediately, but not later than within three days from the date of receipt of the border guard's application.⁶⁷

When the court has appointed the guardian, the border guard should register the application for international protection that was submitted on behalf of an unaccompanied child by the guardian immediately and no later than three working days from the date the guardian was appointed by the court. The same is true for the application to place the unaccompanied child in foster care, as this should be examined immediately and not later than within 10 days from the date of its submission.⁶⁸

If it becomes clear during the international protection procedure that the applicant is an unaccompanied minor, the Head of the Office submits a request for placing the child in foster care. Immediately, the Head of the Office immediately also starts to look for their relatives.

The border guard places the unaccompanied child in a professional foster family. This family acts as a family emergency or an emergency-type care and educational facility until a judgment is issued by the guardianship court.⁶⁹

The Head of the Office for Foreigners pays for the costs of the stay of the unaccompanied minor in foster care and in emergency type care facility, and the costs of medical care, from the date of submitting the application for international protection to the final decision of the asylum procedure for granting international protection.⁷⁰

If a negative decision is issued in the child's asylum case, the unaccompanied minor will stay in the facility until they can be handed over to the authorities or organizations of the country of origin. The border guard authority will in this case cover all of the costs.⁷¹

>> Challenges/comments:

This procedure was said to have worked especially well in the past. However, with regard to the recent situation at the borders with Poland and Belarus, children have been pushed back to Belarus without implementing any procedures. Poland's parliament passed legislation in mid October 2021 that according to the Poland's Human Rights Ombudsman and the Organization for Security and Cooperation in Europe's (OSCE) Office for Democratic Institutions and Human Rights, does not guarantee effective recourse for people - migrants or refugees - seeking international protection.⁷²

Judgement on placement of children into mainstream child protection in Bulgaria

There is no common practice of placing (unaccompanied) children in mainstream protection yet,⁷³ although a judgment from 2017 before the District Court of Ihtiman ruled that an unaccompanied child registered as an asylum seeker should be placed in the mainstream child protection services. In

⁶⁵ Article 61 (1) Act on granting protection to foreigners on the territory of the Republic of Poland

⁶⁶ Dublin procedure is in place to follow criteria established in the Dublin Regulation on which EU Member State will be responsible for the person's asylum application. See: Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)

⁶⁷ article 61 (2) the Act on granting protection to foreigners on the territory of the Republic of Poland and the Act on supporting family and foster care system: <https://www.gov.pl/web/udsc-en/unaccompanied-minors>

⁶⁸ Article 61 (7) Act on granting protection to foreigners on the territory of the Republic of Poland

⁶⁹ Article 62 (1) Act on granting protection to foreigners on the territory of the Republic of Poland

⁷⁰ Act on granting protection to foreigners on the territory of the Republic of Poland

⁷¹ Article 67 Act on granting protection to foreigners on the territory of the Republic of Poland

⁷² Justyna Pawlak and Anna Włodarczyk, *Poland passes legislation allowing migrant pushbacks at border*, Reuters, October 14 2021, available at <https://www.reuters.com/world/europe/poland-passes-legislation-allowing-migrant-pushbacks-border-2021-10-14/>.

⁷³ The number of children placed in mainstream child protection services is still very low: in 2021 only 5 children were placed in mainstream child protection service. It is thus hard to speak about a practice, but rather exceptions from unfortunately a negative trend.

this case, the court stated that the **Bulgarian legislation is applicable to all children residing in the country** and in this sense appropriate protection measures under the Law on Child Protection should be taken. The court also said that in this case there was no other option to protect the child and that there was real danger for his life and health because of the absence of parental care and supervision. Therefore, in respect of his right to proper physical, emotional and intellectual development, the court placed the child in the mainstream child protection services.⁷⁴

2.3 Other alternatives to detention used for adults

There are currently a number of other alternatives to detention, widely used, that involve various levels of coercion. The most common ones are listed in this section.

According to the available studies and examples, community/engagement-based alternatives, such as those listed above may be more likely to comply with human rights law and standards than the following alternatives to detention. However, these measures nevertheless typically provide less coercive models than immigration detention for children.

These include:

- Residential facilities
- Regular reporting
- Supervision
- Bail, bond, guarantor, or surety
- Assigned residence
- Return houses
- Sponsorship schemes
- Deposit of travel documents

2.3.1 Residential Facilities

In residential facilities, children are generally not subject to detention. However, risks linked to sub-standard and dangerous conditions in such facilities remain. Such alternative must be human rights compliant, including by ensuring effective access to essential services and procedural safeguards. It should entail at least elements of case management, in order to be most effective.

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216. Residential accommodation, or residential care facilities, are small group living arrangements in specially designed or designated facilities typically organised to resemble, as much as possible, a family or small-group situation. Residential facilities are generally expected to take on a temporary care role while efforts are made to identify a more stable community based or family-based arrangement.
217. Residential accommodation can include “any non-family-based group setting, such as places of safety for emergency care, **transit centres** in emergency situations, and all other short and long-term residential care facilities, including **group homes**.”⁷⁵
218. **Shelters** are a particular form of residential accommodation that may include heightened security due to the safety and/or security of the inhabitants – for example, shelters may be used in the case of trafficking victims or domestic workers fleeing abusive employers. They are not intended to be long-term solutions, but may be appropriate until a more permanent solution can be found in the individual case.

Independent living apartments, safe zones and hotels in Greece

The main available alternative to detention in Greece is the accommodation in one of the available accommodation facilities, which include shelters, supported Independent Living apartments, Safe Zones and hotels.⁷⁶

Shelters for unaccompanied children⁷⁷ include long-term and short-term accommodation facilities for unaccompanied children. This type of shelter is accommodating the majority of the unaccompanied

⁷⁴ District Court of Ihtiman, Bulgaria, Case no. 745/2016, Judgment of 15 January 2017.

⁷⁵ General Assembly, *Guidelines for the Alternative Care of Children*, A/RES/64/142, 18 December 2009, para. 29 (c)(iv).

⁷⁶ Source: Base-line study for the CADRE project, by Greek Council of Refugees in 2021

⁷⁷ AIDA Country Report, *Greece 2020 update*, p. 191, available at: https://asylumineurope.org/wp-content/uploads/2021/06/AIDA-GR_2020update.pdf

minors living in Greece. They are managed by civil society entities and charities as well as and with the support of International Organization for Migration (IOM). There is only one shelter, operating by a non-profit, public institution established as a legal person governed by private law and supervised by the Ministry of Education, Research and Religious Affairs, the Youth and Lifelong Learning Foundation (INEDIVIM).

“Supported Independent Living for unaccompanied minors” is an alternative housing arrangement for unaccompanied children aged 16 to 18 launched in 2018. The program includes housing and a series of services (education, health etc.) and aims to enable the smooth coming of age and integration to Greek society.

Safe zones in temporary accommodation centers are designated supervised spaces within temporary open accommodation sites dedicated to unaccompanied children. They should be used as a short-term measure to care for unaccompanied minors in light of the insufficient number of available shelter places, for a maximum of three months. Safe zone priority is given to unaccompanied children in detention as well as other vulnerable children.

Finally, hotels are emergency accommodation spaces being used as a measure to care for unaccompanied children in light of the insufficient number of available shelter places. Priority is given to children in Reception and Identification Centers (RIC).

>> Challenges:

In Greece, accommodation facilities are close to their full capacity⁷⁸ and there are still unaccompanied children who remain homeless and without secure shelter. As a result, they are exposed to risks, especially in urban centres. Among the positive steps to face this situation, UNHCR Greece together with the Special Secretary for the Protection of Unaccompanied Minors of the Ministry of Migration and Asylum, in collaboration with four NGOs, launched a Mechanism⁷⁹ to rapidly identify unaccompanied children who are homeless or living in insecure conditions. The basic aim of this mechanism, that started operations in 2021, is the transfer of the children to safe accommodation in the country and it provides a 24/7 telephone hotline for identifying and tracing children in need.

Safe area for unaccompanied children in Bulgaria

The International Organization for Migration, in collaboration with the Bulgarian State Agency for Refugees, has opened a safe area for unaccompanied children that are waiting to be granted international protection in Sofia. In this area, 24-hour care and specialized services are provided in an environment that meets some of the needs of children. The maintenance of the facilities however is project-bound.⁸⁰

2.3.2 Regular Reporting

Regular and periodic reporting is one of the most widely used alternatives to detention in EU countries today. This alternative obliges people to report to the police or immigration authorities at regular intervals, and is one of the more frequent alternatives to detention found in national legislation. Reporting duties on a daily, bi-weekly, weekly or even less frequent basis may also be imposed as an additional requirement to the obligation to reside in a specified area or location.⁸¹

This alternative should be applied with caution in a reasonable and proportionate way, and only if there is a particular risk of absconding. It must not be burdensome and should be rather flexible in cases of changes in the personal situation. Regular reporting requirements should be always tailored to each individual case, taking into account various factors, such as family situation, employment, and financial means.

Although it does by itself entail coercion, regular reporting may be an acceptable intermediate step when moving from detention to case management and community placement. In order to minimise the risk of interference with on human rights, weekly reporting should be preferred to daily. Unaccompanied minors should be reporting to a guardian rather than to the police or other immigration or law enforcement authorities.

⁷⁸ See indicatively, *Situation Update: Unaccompanied Children (UAC) in Greece*, 15 November 2021, p. 2, available at: https://www.ekka.org.gr/images/STATISTIKA/EN_EKKA_Dashboard_20211115.pdf

⁷⁹ UNHCR, Greece launches national tracing and protection mechanism for unaccompanied children in precarious conditions, Joint Press Release, 6 Apr 2021, available at <https://www.unhcr.org/gr/en/18899-greece-launches-national-tracing-and-protection-mechanism-for-unaccompanied-children-in-precarious-conditions.html>.

⁸⁰ Base-line study for CADRE project on Bulgaria, by Foundation for access to rights, 2021. The number of children placed in mainstream child protection services is still very low: in 2021 only 5 children were placed in mainstream child protection service. It is thus hard to speak about a practice, but rather exceptions from unfortunately a negative trend.

⁸¹ FRA, Alternatives to detention for asylum seekers and people in return procedures, October 2015, p. 2, available at https://fra.europa.eu/sites/default/files/fra_uploads/fra-2015-alternatives-to-detention-compilation-key-materials-2_en.pdf

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220. Reporting conditions are among the most frequently applied alternatives to immigration detention in Europe,⁸² and consist of an obligation to present oneself regularly to the competent authorities including police, immigration officers or other contracted agencies, such as child protection or welfare agencies.⁸³ Reporting can also be undertaken by telephone (“telephonic reporting”) to avoid lengthy or expensive travel. The frequency of reporting can vary from daily to monthly (or less) and can also be scheduled to coincide with other official immigration appointments so as to lessen the reporting burden on those engaged in asylum or migration procedures.

2.3.3 Supervision

Although it avoids detention, this alternative should be used in a proportionate way, only if necessary.

This alternative can be an intrusive measure to ensure compliance. Supervision may, for example, include unannounced and/or frequent visits to the place of residence of the person concerned. In most cases supervision undermines the right to privacy and to private and family life.

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224. Community supervision arrangements involve the individual being allowed to reside freely in the community subject to supervision by the State or a designated representative, such as a non-governmental organisation, community or religious organisation. The supervision may take place via periodic home visits or check-ins by the State authorities or their designated representative, and may also include providing support for access to work, accommodation, education, legal assistance and/or other services or direct provision of goods.

225. Supervision should be distinguished from reporting obligations, where the responsibility is on the individual to report to a designated State agency. It should also be distinguished from case management, which is provided by a neutral party, whereas supervision will be conducted by the State itself, or a designated representative, usually with an enforcement function.

2.3.4 Bail, bond, guarantor or surety

The provision of bail, bond, guarantor or surety allows persons to be released from detention either on payment of a financial deposit, a written agreement between the authorities and the individual, or a guarantee provided by a third person, NGOs or other religious organisations. This is per se unacceptable since it is discriminatory and contrary to international human rights law guarantees of non-discrimination and the right to liberty.

The bail is inherently discriminatory, disadvantaging those with less financial means. If used, it must be ensured that the amount fixed is reasonable in all circumstances.

Steering Committee on Human Rights (CDDH), Council of Europe, Practical Guidance on Alternatives to Immigration Detention: Fostering Effective Results, June 2019

228. The provision of bail, bond, guarantor or surety allows persons to be released from detention either on:

- a) payment of a financial deposit by themselves or a guarantor;
- b) a written agreement between the authorities and the individual, often alongside a deposit of financial surety;
- c) a guarantee provided by a third person, NGOs or other religious organisations vouching that the individual will comply with the procedure.

Any financial surety provided is forfeited in case of absconding or non-compliance by the individual. Release could be to a family member, another individual, non-governmental, religious or community organisation.

⁸² EMN, *Synthesis Report*, 2014, p. 34; Communication from the Commission to the Council and the European Parliament on EU Return Policy, COM(2014) 199 final, 28 March 2014, p. 15.

⁸³ Alice Bloomfield, Evangelia Tsourdi and Joanna Pétin, *Alternatives to Immigration and Asylum Detention in the EU*, 2015, p. 89-90.

Bail requirements in Poland

According to the law in Poland, it is also possible to require bail in the amount specified in the decision, not lower than twice the minimum wage.

This amount is unacceptably high and necessarily discriminatory.

2.2.5 Assigned Residence and Return houses

An assigned or designated residence is an alternative to detention which is commonly used in Europe.⁸⁴ It risks being an alternative form of detention, as has been suggested by recent research, particular when it entails deprivation of liberty or arbitrary limitations on freedom of movement.

When combined with curfews or other practical limitations on freedom of movement or is situated in physically remote or isolated locations, designated residence may amount to an alternative form of detention and amount to arbitrary deprivation of liberty or unlawful restrictions on freedom of movement. People may face destitution and/or serious psychological and social consequences if they do not have any means to support themselves, work or access to financial or other kind of State mechanisms for survival.

Return houses should be combining case management support and a requirement to stay in a designated place while preparing for voluntary return. These can very easily rather be an alternative form of detention as opposed to alternative to detention (see the bad practice example of return houses in Belgium below).

Steering Committee on Human Rights (CDDH), Council of Europe, Practical Guidance on Alternatives to Immigration Detention: Fostering Effective Results, June 2019

221. It entails the authorities designating a particular region or location where the individual is required to live. This measure may take various forms, including residence within a particular geographical area in the country, at a private address of the person or a guarantor, at an open or semi-open reception or asylum centre, or in a State-funded or State-run facility. In some cases, overnight absences from the place of designated residence are only permitted with prior approval of the migration authority, while other regimes allow for more flexibility and self-selection of the address or place of designated residence.
222. This alternative is distinct from registration with the authorities and/or release on one's own recognizance, which impose no restrictions on where an individual may reside within the boundaries of the State, so long as they remain in good standing with the relevant asylum or migration procedure. Designated residence should also be distinguished from open or semi-open centres where individuals are not required to reside, but may choose to reside of their own volition.
223. Designated residence may be used in conjunction with many of the other alternative placement options, such as supported accommodation, residential care or open centres for example, when the place of designated residence is the same as the location of the alternative placement. (...)
227. Return houses are an alternative to immigration detention that ideally combines case management support with the requirement to reside at a designated location in preparation for voluntary or enforced departure. Failed asylum seekers or people in return procedures are placed in open facilities and provided with individual coaches or counsellors to inform and advise them about their options and to help prepare them for departure.

„Return houses“ in Belgium

In Belgium, the FITT-units or also called (open) return houses are available for families with minor children since October 2008.

These houses or flats are “community-based”, located in the village centre of municipalities.⁸⁵ The houses are set up “to meet the basic needs of families.”⁸⁶

Although the return houses were first seen as very promising and even a good practice, more re-

⁸⁴ EMN, *Synthesis Report*, 2014, p. 34.

⁸⁵ *Ibid.*

⁸⁶ Platform kinderen op de vlucht, *Les maisons de retour en Belgique. Une alternative à la détention à part entière, efficace et respectueuse des droits de l'enfant ?*, January 2021, p. 12.

cently an evaluation report has shown that these return houses **do not meet the conditions to be considered a real alternative to detention**.⁸⁷

First, there are restrictive measures in place in the units, such as limited visiting rights, aside from those of family members; the fact that one adult must always stay in the house; and that return officers can freely enter the home between 8am and 8pm without a notification, which limits their privacy. As most families in the units are being placed under a detention order, this legal status also indicates that the return homes are not a real alternative to detention.

Regarding the respect for rights of children, there are further gaps such as the lack of best interests of the child determination.⁸⁸ The return houses also risk impairing the child's access to education, to play and leisure activities.⁸⁹

Furthermore, families seeking international protection upon arrival are being placed in the return houses,⁹⁰ but their automatic detention is unlawful.⁹¹

Another problematic aspect is the double role of the return officers as they are at the same time servants of the Immigration Office and supervisors who accompany the families in the return houses. This leads to a confusion of their roles and presents an obstacle to building trust with these families.

The return homes are thus not a real alternative to detention, but rather an alternative form of detention.⁹² A report from the 'Platform voor kinderen op de vlucht' concludes that it does not seem to be feasible to transform the return houses into a full and effective alternative to detention in the short term. It finds that a paradigm shift would be necessary to achieve such change. According to the report, this paradigm shift needs to include an approach that aims to find a sustainable solution through holistic and intensive case management with independent case managers, working with the concerned families, in an environment familiar to the families.⁹³

⁸⁷ Platform kinderen op de vlucht, *The Belgian return houses. A full-fledged, child-friendly, and effective alternative to detention?* Executive summary and recommendations, January 2021, p.3.

⁸⁸ Platform kinderen op de vlucht, *Les maisons de retour en Belgique. Une alternative à la détention à part entière, efficace et respectueusedes droits de l'enfant ?*, January 2021, p. 71.

⁸⁹ *Ibid*, p. 71.

⁹⁰ Platform kinderen op de vlucht, *The Belgian return houses. A full-fledged, child-friendly, and effective alternative to detention?* Executive summary and recommendations, January 2021, p. 6.

⁹¹ Platform kinderen op de vlucht, *Les maisons de retour en Belgique. Une alternative à la détention à part entière, efficace et respectueusedes droits de l'enfant ?*, January, 2021, p. 18.

⁹² *Ibid*, p. 71.

⁹³ Platform kinderen op de vlucht, *The Belgian return houses. A full-fledged, child-friendly, and effective alternative to detention?* Executive summary and recommendations, January 2021, 4.

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