

# Promoting child-friendly approaches in the area of migration



Standards, guidance  
and current practices



COUNCIL OF EUROPE



CONSEIL DE L'EUROPE



# **PROMOTING CHILD-FRIENDLY APPROACHES IN THE AREA OF MIGRATION**

Standards, guidance  
and current practices

*The opinions expressed in this work are the responsibility of the author(s) and do not necessarily reflect the official policy of the Council of Europe.*

French edition: *Promouvoir des approches adaptées aux enfants dans le domaine des migrations: normes, orientations et pratiques actuelles*

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**F**our international experts carried out research and developed this publication on the basis of their expertise in children's rights and migration, under the auspices of the Office of the Secretary General's Special Representative on migration and refugees.

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# List of acronyms

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CJEU	Court of Justice of the European Union
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
EASO	European Asylum Support Office
ECSR	European Committee of Social Rights
FRA	European Union Agency for Fundamental Rights
GRETA	Council of Europe Group of Experts on Action against Trafficking in Human Beings
IOM	International Organization for Migration
PACE	Parliamentary Assembly of the Council of Europe
UASC	Unaccompanied and separated children
UNCRC	United Nations Convention on the Rights of the Child
UNHCR	United Nations High Commissioner for Refugees



# Foreword

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**W**e all have a responsibility to play our part in protecting the rights of the child. International legal instruments and the national legal frameworks of our 47 member states provide a sound basis for the general protection of children in Europe. However, refugee and migrant children remain exposed to particular and heightened risks. Sometimes accompanied by their families, sometimes traveling alone, these are vulnerable young people who have often experienced great hardship and trauma where they came from, and whose journeys have exposed them to additional dangers. In recent years, a greater number of these children have come to Europe in light of events in our neighbourhood. On arrival, they deserve a co-ordinated approach that upholds their human rights.

The effective protection of refugee and migrant children remains a priority of the Council of Europe. The Strategy for the Rights of the Child (2016-2021) and the Action Plan on Protecting Refugee and Migrant Children (2017-2019) reflect the Organisation's comprehensive response to the various challenges identified. These include ensuring access to rights and procedures, protection from different forms of violence, and the integration of those who will stay in Europe. We continue to prioritise support for Council of Europe member states in promoting children's access to their rights throughout migration and asylum-related processes. A child-friendly and human-rights-compliant approach is required for them to achieve this.

Through this publication, the Council of Europe also aims to help apply legal standards through practical, procedural guidance. This spans everything from identification and registration upon arrival, to what it means to properly consider the child's best interests and how to find sustainable solutions to the sometimes complex issues that the children face. In this way, we support policy makers, legal professionals and front-line service providers in implementing a child-rights-based approach to migration.

Empowering children to access their rights through child-friendly approaches is also central to our approach. It results in better protection from all forms of violence, abuse and exploitation. It is, quite simply, the right thing to do.



Marija Pejčinović Burić

Secretary General of the Council of Europe

Strasbourg, 4 November 2019



# Introduction

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Since 2013, hundreds of thousands of children have arrived in Europe, many travelling unaccompanied and separated from their families. Although, the total number of children arriving decreased by almost 70% between 2016 and 2018, the number of unaccompanied and separated children increased by 31% during this period.<sup>1</sup> Some countries received more children than others – but in Europe, Italy is known to have received the majority of refugee and migrant children.

Refugee and migrant children are highly vulnerable, more so without parental care. The level of vulnerability varies among boys and girls, and is especially acute among young children and adolescents. At the same time, refugee and migrant children may also display adaptive capacities and resilience in overcoming the hardship, difficulties and trauma they experienced in their home country, during the journey to a safer place and when integrating into the host community.

The Council of Europe has been concerned with the situation of refugees and migrants over many years and it has paid significant recent attention to the protection of refugee and migrant children. In particular, building on its human rights standards, in 2010, the Council of Europe Committee of Ministers adopted the Guidelines on child-friendly justice, recognising that “specific protection and assistance may need to be granted to more vulnerable children, such as migrant children, refugee and asylum-seeking children.”<sup>2</sup> In 2016, the Secretary General of the Council of Europe identified a series of immediate priority actions to protect children affected by the refugee crisis<sup>3</sup> and appointed a Special Representative on migration and refugees with a special mandate on the protection of refugee and migrant children. In 2017, based on the findings of the Special Representative of the Secretary General on migration and refugees<sup>4</sup> the Committee of Ministers of the Council of Europe adopted an organisation-wide Action Plan on protecting refugee and migrant children in

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1. UNHCR, UNICEF and IOM, *Refugee and migrant children in Europe. Overview of trends 2017, 2018*.
  2. Council of Europe, *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*, (Adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers’ Deputies) (“Guidelines on child-friendly justice”), Section III. D, paragraph 2.
  3. Council of Europe, Secretary General’s proposals for priority actions *Protecting children affected by the refugee crisis: a shared responsibility*, SG/Inf (2016)9 final, 4 March 2017.
  4. Council of Europe, Special Representative of the Secretary General on migration and refugees, *Thematic Report on migrant and refugee children*, SG/Inf(2017)13, 10 March 2017.

Europe (2017-19), with the purpose of improving children's access to their rights and to child-friendly procedures, of providing children with effective protection from different forms of violence and of enhancing the integration of children who are to remain in Europe.<sup>5</sup>

This compilation contributes to the implementation of the Action Plan objectives by bringing together international and European standards on child-friendly practices in the context of migration with illustrations from practice of the kind of initiatives, programmes and procedures that serve to implement these standards. It presents evidence that in most if not all areas of migration practice, international and European instruments exist to guide and inform how migration procedures promote children's rights. In particular, the compilation addresses a wide range of issues, including the standards that must be applied to: the child's registration and age determination, the child's treatment in the migration decision-making process and measures that promote their rights – to protection, family care and to education. The compilation also highlights the imperative of finding a durable solution to what can often be a highly precarious situation for the child, whether accompanied or not, and makes clear that the child should be kept out of security or custodial settings while measures are taken to ensure that he/she is safely housed and provided with protection or is returned to their country of origin or resettled in their new home, after an appropriate assessment of the child's best interests. What the compilation illustrates is the range and depth of standards currently set out in international and European law, both in European Union (EU) law and Council of Europe treaties and recommendations, and as set out it provides detailed guidance for states as to how best to promote child-friendly practices in the migration process.

## A child-friendly approach

The United Nations Convention on the Rights of the Child (UNCRC)<sup>6</sup> has been ratified by all Council of Europe member states. In addition, a range of UN non-binding instruments and standards provide further guidance as to how children's rights are to be protected. In particular, the UNCRC recognises rights to which all children are entitled and is the first international instrument to acknowledge the unique needs of refugee and asylum-seeking children. The UNCRC makes special provision for migrant children in various situations including children without parental care (Article 20) and children requiring refugee protection (Article 22). The UN Committee on the Rights of the Child has noted that the UNCRC rights are not limited to citizen children but must be available to all children – including asylum-seeking, refugee and migrant children – irrespective of their nationality, immigration status or statelessness.<sup>7</sup> Therefore, migrant and refugee children must be afforded adequate protection by states parties to the UNCRC regardless of their status or circumstances.

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5. Council of Europe, Committee of Ministers, *Action Plan on Protecting Refugee and Migrant Children in Europe (2017-2019)*, CM(2017)54-final, Nicosia, 19 May 2017.

6. United Nations Convention on the Rights of the Child, 20 November 1989.

7. UN Committee on the Rights of the Child ("CRC Committee"), *General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, 1 September 2005, CRC/GC/2005/6, paragraph 7 ("General Comment 6").

## General principles of the UNCRC

Article 2: the non-discrimination principle

Article 3: the requirement that the child's best interests are a primary consideration in all actions affecting the child

Article 6: the right to life survival and development

Article 12: the right of the child to have his/her views taken into account in all matters affecting the child

In line with the UNCRC general principles, states have a legal obligation to ensure that migrant and refugee children's basic needs are met, that their child's best interests are a primary consideration, that they have a right to be heard and enjoy their rights without discrimination. States must adopt a child-specific approach to migration practices, policies and decision making.<sup>8</sup>

This approach is reinforced by Council of Europe standards such as the Guidelines on child-friendly justice. The goal of a child-friendly approach is to embed children's rights in migration processes and procedures and to ensure that a child's rights are protected. Such an approach demands that those who work with and for migrant and refugee children are suitable and appropriately trained, treat children with care and respect, with services and systems that are independently monitored. According to the Guidelines, a child-friendly justice system is one that guarantees "the effective implementation of all children's rights at the highest attainable level".

**A child-friendly approach** is "accessible, age appropriate, speedy, diligent, adapted to and focused on the needs and rights of the child, respecting the rights of the child including the rights to due process, to participate in and to understand the proceedings, to respect for private and family life and to integrity and dignity".

## Purpose of this compilation

While there are many projects, initiatives, programmes and interventions offered by states and non-governmental bodies across Europe that support the vindication of the rights of refugee and migrant children, these are not always available; nor are they consistently applied. One barrier that exists to wider application of child-friendly approaches is a lack of awareness of good practice.

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8. Joint general comment No. 3 (2017) of the UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the CRC Committee on the general principles regarding the human rights of children in the context of international migration, CMW/C/GC/3-CRC/C/GC/22, 16 November 2017 ("CRC Committee General Comment 22").

In recognition of these challenges, the Action Plan on protecting refugee and migrant children in Europe (2017-19), identified for 2018-19 the preparation of a compilation of good practices on migration-related procedures that are child-friendly. To this end, the aim of this compilation was to identify good practices in the area of refugee and migrant children so that learning could be shared among stakeholders and the rights of refugee and child migrants better protected in practice. In illustrating examples of everyday practices that meet the needs of children, the compilation aims to support the legal professionals, policy makers and front-line professionals who seek to implement or advocate for a child-rights-based approach to migration. The compilation is intended to complement the HELP training course on refugee and migrant children,<sup>9</sup> which is also part of the Council of Europe's Action Plan in this area.

The compilation is divided into four themes as follows:

1. Entrance, identification, reception and access to fundamental rights
2. Asylum and other migration-related processes
3. Special protection measures and deprivation of liberty
4. Durable solutions, including repatriation, resettlement and integration

Each section begins with the relevant international and European standards, including the UN instruments with global application and those adopted by European bodies like the EU and the Council of Europe that have regional application. EU law clearly only applies to EU member states, but given their relevance and importance they are nonetheless included here.

Council of Europe instruments have wider scope in that they apply to all 47 member states of the Council of Europe (which includes the 28 EU member states). In particular, the European Convention on Human Rights<sup>10</sup> and the jurisprudence of the European Court of Human Rights are binding on member states. Similarly, the European Social Charter,<sup>11</sup> monitored by the European Social Rights Committee, recognises social and economic rights. Many of the Council of Europe's other instruments, such as specialised conventions concerning action against trafficking, violence against women and sexual abuse and exploitation of children, as well as guidelines and recommendations adopted by the Parliamentary Assembly and the Committee of Ministers, provide useful guidance to member states in a range of relevant and important areas and are referenced in the relevant sections of the compilation. Following on from the standards in each section, the chosen examples of good or promising practices illustrate how the standards can be put into practice.

The themes are interconnected and various elements under one chapter are equally relevant and applicable in the context described in other chapters. For example, the principle of *non-refoulement* is essential in respect of border procedures but also crucial in the context of durable solutions. Similarly, elements such as access to information, guardianship, legal representation and best interests of the child are pertinent to all themes. While durable solutions are covered in the last chapter,

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9. HELP stands for the European Programme for Human Rights Education for Legal Professionals. For more about this course and others see: <http://help.elearning.ext.coe.int/>.
  10. Convention for the Protection of Human Rights and Fundamental Freedoms, ETS No. 005 (1950) and its Protocols.
  11. ETS No. 035 (1961) and the European Social Charter (revised), ETS No. 163 (1996).

their consideration is integral to the decision-making process put in motion from the moment of arrival. For this reason, the standards and practices exemplified under the different chapters of this compilation should be read in an interconnected manner.

## Methodology

The methodology followed was twofold. First, desk research was undertaken to identify international and European standards relevant to a child-friendly approach to migration. This was complemented with relevant academic and grey literature in the area. This helped to shape an understanding of the approaches and practices most likely to ensure a child-rights approach to the treatment of child refugees and migrants. Second, the Council of Europe issued a call for practices from member states, civil society organisations and others working in the area of child migration, seeking information on good or promising practices and methods and tools used to make migration procedures (more) child-friendly. According to the terms of the call, the practices could relate to the procedures used by institutions or organisations covering all stages of the migration process within Europe. In total, there were over 160 submissions across almost all areas, from 36 countries, covering almost all aspects of the migration process experienced by children in Europe.

Not all submissions could be included in the compilation, either because the information submitted was incomplete or it was not possible to determine whether the practice presented was indeed child-friendly. The process to select the practices to be included therefore sought to determine those that appeared to align most closely with the child-friendly approach insofar as they reflected the following “child-friendly” elements: the child’s best interests; respect for dignity, integrity, identity and private life; inclusion; non-discrimination and gender equality; participation; child-friendly information; appropriate assistance/representation; accessibility; appropriate environments; a multidisciplinary approach, etc. In selecting the examples to be included in the compilation, preference was given to those that appeared to have been given effect in practice, rather than those that were presented in the abstract or in terms of law and policy, although promising examples of legislation have been retained too. While every care was taken to ensure that the practices included were accurately described, it was not always possible to verify entirely the practice in question. In this respect, the team takes no responsibility for any errors or omissions. Almost all examples cite lessons learned from the contributors’ experience. The contributors kindly provided their contact details, which have been presented in the selected examples to enable peer exchanges or facilitate access to further information.

## Key findings

Research underpinning this compilation suggests that there is often a gap between the standards set by the various instruments and the refugee and migrant children’s lived experiences. Children suffer serious jeopardy by virtue of their status as children, migrants or refugees and sometimes unaccompanied by a parent or another

responsible adult or family member. This places them in a most precarious and vulnerable position, where they are denied both substantive and procedural rights.

In order to address this gap, the compilation illustrates a number of good and promising practices that implement these standards.<sup>12</sup> The number and diversity of the practices submitted highlights the scale of determined effort being invested in many jurisdictions by both state authorities and non-governmental organisations to promote children's access to justice. There was an absence or scarcity of examples of practices received, for example, in respect of family reunification, alternatives to detention, resettlement and returns. It is difficult to understand these gaps, as other Council of Europe publications have succeeded in collecting promising practices in some of those areas. By highlighting good and promising practices, this compilation could underpin support for the existing programmes and interventions that are child-friendly, while prompting action in other areas and jurisdictions to follow the good examples set out here.

## Definitions

For the purposes of this compilation, the following definitions are used:

- ▶ Child: "every human being below the age of 18 years unless under the law applicable to the child majority is attained earlier".<sup>13</sup>
- ▶ Migrant children: children crossing borders for whatever reason.
- ▶ Asylum seekers: "individuals who are seeking international protection".<sup>14</sup>
- ▶ Unaccompanied children: "children ... who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so".<sup>15</sup>
- ▶ Separated children: "children ... who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members".<sup>16</sup>

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12. For other examples of practices see Eurochild and SOS Children's Villages International (2017), *Let children be children*; UNICEF (2019), *Building on promising practices to protect children in migration across the European Union*.

13. Article 1, UNCRC. In EU law, a similar interpretation is applied under Article 2(l) EU Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection ("EU Asylum Procedures Directive").

14. Convention relating to the Status of Refugees (adopted 28 July 1951) 189 UNTS 137 and Protocol relating to the Status of Refugees (adopted 31 January 1967) 606 UNTS 267.

15. CRC Committee, General Comment 6, paragraph 7; see also UNHCR, Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum, February 1997, p. 1; UNHCR, Refugee Children: Guidelines on Protection and Care, February 1994, p. 121 ("UNHCR Guidelines 1994").

16. CRC Committee, General Comment 6, paragraph 8.

## Theme 1

# Entrance, identification and access to fundamental rights

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**T**his chapter addresses the aspects encountered by refugee and migrant children at their first contact with the authorities of a member state, such as border procedures, identification and registration, age determination, reception, as well as associated rights such as education and health care. Various elements of this chapter are relevant to subsequent chapters, like the principle of *non-refoulement*; while elements discussed in the following chapters – like access to information, guardianship, legal representation – should be seen as equally pertinent to practices and processes described here.

### 1.1. Non-refoulement

Both EU law and the European Convention on Human Rights (“the Convention”), as interpreted by jurisprudence, prohibit the rejection at the border of persons at risk of persecution or other serious harm (principle of *non-refoulement*).<sup>17</sup> Accordingly, as soon as a child arrives at the border and has contact with the competent authorities, measures should be taken to permit the child to enter, to identify the child and to ensure that his/her fundamental rights are protected.<sup>18</sup>

Allowing a child access to a state’s territory is a prerequisite for the initial assessment process.<sup>19</sup> Border controls have to be carried out in full respect for human dignity and refugee and migrant children should not be discriminated against on the basis of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.<sup>20</sup> Particular care is required with respect to unaccompanied children in this context.

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17. European Union Agency for Fundamental Rights (“FRA”) and Council of Europe (2015), *Handbook on European law relating to asylum, borders and immigration*.

18. CRC Committee, General Comment 6, paragraph 31.

19. *Ibid.*, paragraph 19.

20. Article 6, Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders.

One of the most important safeguards is the principle of *non-refoulement*, which prohibits states parties from transferring or removing individuals, regardless of their status, from their jurisdiction when there are substantial grounds to believe that the person would be at risk of irreparable harm upon return.<sup>21</sup>

According to the European Court of Human Rights (“the Court”), depending on the circumstances of the case, the transfer or removal of an individual from territory may violate the right to life (Article 2 of the Convention) or constitute torture or cruel, inhuman and degrading treatment (Article 3 of the Convention).<sup>22</sup> To fall within the scope of Article 3 of the Convention, the Court has held that ill-treatment must attain a minimum level of severity, which assessment is relative and depends on all the circumstances of the case, such as the duration of the treatment and its physical or mental effects and, in some instances, the sex, age and state of health of the victim. The Court has found that children have specific needs that are related to their age and lack of independence and that the requirement of “special protection” of asylum seekers is particularly important when the persons concerned are children, in view of their specific needs and their extreme vulnerability. This applies even when the children seeking asylum are accompanied by their parents.<sup>23</sup>

In view of the above, children must never be sent back to a country where they face a real risk of persecution or serious harm. This includes pushbacks at sea and land borders.<sup>24</sup> Article 11 of the UNCRC makes clear that states are obliged to take measures to combat the illicit transfer of children abroad. Therefore, internal and external return must always be in the best interests of the child and never constitute illicit transfer. The duty on states parties to ensure that a child is protected throughout all stages of the displacement cycle apply also to return procedures.<sup>25</sup> Accordingly, the CRC Committee has encouraged states parties to give greater consideration to the initiation or improvement of such return programmes. In line with the principle of *non-refoulement*, which is set out in the 1951 Refugee Convention and reiterated in Article 22 of the UNCRC, states shall not return a child to a country where there are substantial grounds for believing that there is a real risk of irreparable harm to the child, either in the country to which removal is to be effected or in any country to which the child may subsequently be removed. Such *non-refoulement* obligations apply irrespective of whether serious violations of those rights guaranteed under the UNCRC originate from non-state actors or whether such violations are directly intended or are the indirect consequence of action or inaction. According to the CRC Committee,

the assessment of the risk of such serious violations should be conducted in an age and gender-sensitive manner and should, for example, take into account the particularly serious consequences for children of the insufficient provision of food or health services.<sup>26</sup>

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21. See UNHCR, *The principle of non-refoulement under international human rights law*, <https://perma.cc/8TSQ-G4WY>.
  22. *Vilvarajah and Others v. the United Kingdom*, (30 October 1991), Series A No. 215; *Chahal v. the United Kingdom*, (15 November 1996), *Reports of Judgments and Decisions 1996-V*; *Soering v. the United Kingdom*, (7 July 1989), Series A No. 161; *Saadi v. Italy* [GC], No. 13229/03, ECHR 2008.
  23. *Tarakhel v. Switzerland* [GC], No. 29217/12, 4 November 2014, paragraphs 94, 99, and 119.
  24. For example, *Hirsi Jamaa and others v. Italy* [GC], No. 27765/09, ECHR 2012, paragraph 134.
  25. CRC Committee, General Comment 6, paragraph 19; more on return procedures in section 4.5.
  26. *Idem*, paragraph 27.

This makes clear that the concept of *non-refoulement* must be construed differently in terms of children, as what constitutes persecution for a child may not amount to persecution for an adult.<sup>27</sup> Particular safeguards should apply in terms of the principle of *non-refoulement* including a requirement to ensure: effective access within the national legal framework to the right to be heard; protection mechanisms against health, gender and nationality-based profiling; the right to appeal within a reasonable time frame; the right to stay prior to removal when an appeal is pending.<sup>28</sup> Host jurisdictions must adequately ensure that they uphold the principle of *non-refoulement* effectively at all times, acknowledging that this principle is applicable to migrant children.

## 1.2. Identification and registration

Children should be identified promptly during border controls and other migration-control procedures; anyone claiming to be a child should be treated as such and should be promptly referred to child protection authorities and other relevant services, and appointed a guardian, if unaccompanied or separated.<sup>29</sup> Children should be prioritised in all border-related procedures and receive adequate support from specialised staff in the process of identification and registration.<sup>30</sup>

On arrival, the child needs to be registered promptly by means of an initial interview conducted in an age-appropriate and gender-sensitive manner, in a language the child understands, by professionally qualified people. The collection of bio-data and social history should be used to ascertain the identity of the child, including, wherever possible, identity of both parents, other siblings, as well as the citizenship of the child, the siblings and the parents. The CRC Committee also notes that further information should be recorded in order to meet the specific needs of the child including: the reasons for being separated or unaccompanied and an assessment of his/her particular vulnerabilities, including health, physical, psychosocial, material and other protection needs, including those as a result of trauma or trafficking.<sup>31</sup>

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27. UNCHR, *Guidelines on international protection: Child Asylum Claims under Articles 1(A) 2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, Geneva, 22 December 2009, (“UNHCR Guidelines 2009”), paragraphs 2-4 and 15-18.

28. Save the Children (2017), *Keeping children at the centre: time for EU solidarity in protecting migrant and refugee children's rights*, p. 17. See more on effective remedies against *refoulement* in section 4.5. on return procedures.

29. CRC Committee, General Comment 22, paragraph 32 (h).

30. Joint General Comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, CMW/C/GC/4-CRC/C/GC/23, 16 November 2017 (“CRC Committee, General Comment 23”), paragraph 17; European Commission Communication to European Parliament and European Council on the protection of children in migration, 12 April 2017, section 3 (“EC Communication 2017”).

31. CRC Committee, General Comment 6, paragraph 31. More on child-friendly information in section 2.5.

## Standard Operating Procedures (SOPs) for migrants and refugees

**Institution:** UNICEF Serbia (international organisation) in support to the Ministry of Labour, Employment, Veteran and Social Affairs (Serbia, state authority)

**Funding:** UNICEF

**Context:** In 2015, the Republic of Serbia, as one of the countries on the Balkan route, faced a significant increase in the influx of refugees and migrants who passed through or stayed in the country before reaching an EU country. The circumstances demanded an urgent response due to the extreme health and social risks faced by the children, with a special focus on UASC's vulnerabilities.

**Summary of the practice:** Standard Operating Procedures (SOPs) for migrants and refugees were developed within the Child Protection Working Group co-ordinated by the Ministry of Labour, Employment, Veteran and Social Affairs (MoLEVSA) and adopted by the ministry in 2016. They define the roles, responsibilities and procedures for making decisions about refugee and migrant children and provide a common basis for all stakeholders as to how to identify and determine priorities for child protection response and support, making sure assistance provided to children is framed within the MoLEVSA national child protection framework. The purpose of the SOPs is to ensure that all stakeholders have the same understanding of the risks children face in emergency situations and to ensure that children receive adequate support in all situations, when necessary, starting from the front-line workers up to the state case managers. Used initially as guidance for front-line professionals, from civil society actors and outreach workers supervised by MoLEVSA, the SOPs aim primarily to protect children's physical and emotional security, prevent the separation of children from parents and families, mitigate and reduce risks of harm and injury to children, and facilitate fast identification and adequate protection. They seek to harmonise the roles and activities of various stakeholders, make the protection system more flexible and better adapted to respond to mass migration, both at the moment of entry into Serbia and while making arrangements for short- and medium-term protection supporting the national system. The SOPs are based on the alignment of existing regulations and procedures of Serbia's social protection system with international regulations and standards on child protection, especially in humanitarian settings, and the integration of good practices of the UN agencies and international and national NGOs specialised in working with children.

**Child-friendly elements:** The SOPs are designed with the aim of facilitating the detection and identification of vulnerable children within the shortest time possible. They define the procedures, assessment instruments and evidence-based tools for rapid screening. They also highlight indicators for quick identification, communication lines and steps in the procedure for determining the best interests of the child and for providing assistance and support. Promoting a common interagency understanding on the identification of children, another child-friendly dimension is that the SOPs ensure alignment of the MoLEVSA

national regulations with international standards on child protection and integration of good practices.

**Lessons learned:** The main challenges in the implementation are linked to staff fluctuations that require close monitoring and flexible capacity building. Furthermore, procedures need to be updated based on field experience/assessment.

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**Link:** [www.unicef.org/serbia/en/reports/standard-operating-procedures](http://www.unicef.org/serbia/en/reports/standard-operating-procedures)

### 1.3. Age assessment

Age is used to determine the access by refugee and migrant children to child-friendly supports and services and to ensure that all those under 18 years have their rights protected as children<sup>32</sup> and are not wrongly treated as adults. In some situations, however, the age of a person entering a territory is unknown: they may appear older than their age and lack necessary documentary evidence.<sup>33</sup>

Age-assessment procedures should be used only when there is substantial doubt and any person who goes through age assessment should be presumed to be a child unless determined otherwise.<sup>34</sup> Council of Europe treaties provide that when the age of a victim of sexual exploitation and sexual abuse or of a victim of trafficking is uncertain and there are reasons to believe he/she is a child, the protection and assistance measures provided for children shall be accorded to that person pending verification of his or her age.<sup>35</sup>

Where an age-assessment process is used, it must be consistent with respect for the rights and dignity of the child, be child-centred and be carried out in a child-friendly manner.<sup>36</sup> The best interests of the child should be a primary consideration throughout the age-determination process.<sup>37</sup>

Certain age-assessment methods can be frightening and traumatising for children and may even amount to inhuman and degrading treatment.<sup>38</sup> To ensure maxi-

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32. CRC Committee, *N.B.F. v. Spain*, No. 11/2017, 27 September 2018.

33. See European Asylum Support Office (EASO) (2018), *Practical Guide on age assessment*, pp. 16-17.

34. UNHCR Guidelines 2009, paragraphs 75-76; CRC Committee, General Comment 6, paragraph 31; CRC Committee, General Comment 23, paragraph 4.

35. Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, (2007, CETS No. 201) ("Lanzarote Convention"), Article 11(2); Council of Europe Convention on Action against Trafficking in Human Beings (2005, CETS No. 197), Article 10(3).

36. CRC Committee, General Comment 23, paragraph 4; see also the ongoing drafting process on Human Rights Principles and Guidelines on age assessment for children in the context of migration by the Council of Europe Ad hoc Committee on the Rights of the Child, <https://tinyurl.com/yxgn2zpy>.

37. CRC Committee, *N.B.F. v. Spain* (2018).

38. Council of Europe Parliamentary Assembly (PACE) Resolution 2195 (2017), on child-friendly age assessment for unaccompanied migrant children, paragraph 5. For children's views on age assessment, see Council of Europe (2019), *We are children, hear us out!*, Report on consultations with unaccompanied children on the topic of age assessment, <https://tinyurl.com/y6elnrvv>.

mum protection of the rights of the child, age assessment should be conducted in a scientific, safe, fair and child- and gender-sensitive manner with due respect for human dignity. Age-assessment methods should adopt a multidisciplinary approach based on a consideration of physical, psychological, developmental, environmental and sociocultural factors.<sup>39</sup> The CRC Committee advises states to refrain from using medical methods based on, *inter alia*, bone and dental examination analysis, which may be inaccurate, with wide margins of error, and can also be traumatic and lead to unnecessary legal processes.<sup>40</sup> The European Committee for Social Rights (ECSR) found that the use of bone testing as a main method to determine a person's age violated the child's rights to legal, social and economic protection under Article 17(1) of the European Social Charter, finding that testing can have serious consequences for children and that its use is inappropriate and unreliable.<sup>41</sup>

Age assessment should be carried out in a culturally appropriate manner with due regard for the child's physical and psychological integrity. It should be conducted by professionals who are skilled and specially trained in child development and who operate in line with relevant professional standards and guidance.<sup>42</sup> Children should be informed about the purpose and process of the procedure in a language they understand.

Children should have independent representation before and during the age assessment takes place in order to ensure that the process takes account of the child's best interests<sup>43</sup> and as an essential guarantee of their rights.<sup>44</sup> Documentation should be considered genuine unless there is proof to the contrary, and statements by children and their parents must be taken into account with the benefit of the doubt given to the individual being assessed.<sup>45</sup> Determinations of age should be capable of appeal or review by a suitable independent body.<sup>46</sup>

According to EU law, unaccompanied children must be informed prior to the examination in a language they understand or are reasonably supposed to understand, of the possibility that their age may be determined by medical examination. This shall include information on the method of examination, its possible consequences, as well as the consequences of refusal to undergo medical examination. Unaccompanied children and/or their representatives must give their consent to the medical examination.

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39. See Council of Europe (2017), *Age assessment: Council of Europe member states' policies, procedures and practices respectful of children's rights in the context of migration*, <https://tinyurl.com/y4d2cusw>; EASO (2018), *Practical Guide on age assessment*, <https://tinyurl.com/y4zlfaje>.

40. CRC Committee, General Comment 23, paragraph 4.

41. ECSR, *EUROCEF v. France*, Decision of 24 January 2018, No. 114/2015, paragraphs 102-113.

42. CRC Committee, General Comment 23, paragraph 4 and the ongoing drafting process on Human Rights Principles and Guidelines on age assessment for children in the context of migration by the Council of Europe Ad hoc Committee on the Rights of the Child.

43. UNHCR Guidelines 2009, paragraph 75. See also the ongoing drafting process of guidelines on effective guardianship for unaccompanied and separated children in the context of migration, by the Council of Europe Ad hoc Committee on the Rights of the Child, <https://tinyurl.com/y3v5drsa>.

44. CRC Committee, *N.B.F. v. Spain* (2018).

45. *Idem*.

46. CRC Committee, General Comment 23, paragraph 4.

Moreover, the decision to reject an application when a child has refused to undergo medical examination cannot be solely based on that refusal. However, the fact that the unaccompanied child has refused to undergo medical examination shall not prevent the determining authority from taking a decision on the application of the child. Any medical examination shall be performed with full respect for the child's dignity, shall be the least invasive examination and shall always be carried out by a qualified medical professional.<sup>47</sup>

The European Court of Human Rights has determined that procedural safeguards must be in place when conducting invasive physical examinations of children, such as ensuring the informed consent of a child, the appropriate choice of the practitioner's gender and respect for the sensibilities of the child.<sup>48</sup> Children's extreme vulnerability in such circumstances may be decisive as to whether age assessment is compatible with the Convention and circumstances – such as detention in an adult facility pending the outcome of age assessment – may have a cumulative harmful effect that reaches the threshold of Article 3 (prohibition of inhuman or degrading treatment) of the Convention.<sup>49</sup> A number of cases currently pending before the Court may provide further guidance on what protection measures are required in such circumstances to comply with the Convention.<sup>50</sup> More specifically, these cases question whether the radiographic examination of the left wrist aimed at assessing the age (Greulich-Pyle method) was compliant with the Convention due to its margin of error and its reliance on outdated population research.

#### Age (and isolation) assessment procedure

**Institution:** Ministry of Justice (France, state authority)

**Funding:** National and local budget

**Context:** The national French legal framework is implemented locally by 96 metropolitan departments in the light of their decentralised mandatory missions for the protection of children at risk. To do this, the departments use either their own staff or authorised staff from another sector. The procedure is governed both by laws and interministerial circulars. In 2017, nearly 50 000 age assessments were carried out in France.<sup>51</sup> About 17 022 individuals were identified as children in 2018, representing 30% of the persons assessed. Before the creation of a personal biometric file<sup>52</sup> under Law No. 2018-778 of 10 September 2018/ Decree No. 2019-57 of 30 January 2019, a person whose age was disputed in

47. EU Asylum Procedures Directive, Article 25(5).

48. *Yazgöl Yılmaz v. Turkey*, No. 36369/06, 1 February 2011.

49. *Abdullahi Elmi and Aweys Abubakar v. Malta*, nos. 25794/13 and 28151/13, 22 November 2016.

50. See *Darboe and Camara v. Italy*, No. 5797/17, communicated on 14 February 2017; *Dansu and Others v. Italy*, No. 61145/16, communicated on 20 March 2017; *Bacary v. Italy*, No. 36986/17, communicated on 5 July 2017.

51. Data of the Ministry of Justice (National Mission for Unaccompanied Minors and Unaccompanied Youth Judicial Protection) and the Assembly of French Departments (ADF).

52. Verification of the Eurodac and Visabio fingerprint files, although unaccompanied children in France are not required to submit an asylum application.

one department could undergo age assessment in another department hoping to be recognised as a child (procedural nomadism).

**Summary of the practice:** Under domestic law, any person who declares himself/herself a child must be sheltered immediately until an age assessment is carried out. Age is determined based on a combination of elements (set of clues) and not only on physical appearance, through interviews carried out based on national guidelines, in a language spoken and understood by the child, by qualified staff using a multi-disciplinary approach. Moreover, the objectives of the assessment must be clearly explained to the child. In the assessment procedure, the results of the interviews have the same value as the verification of the authenticity of the child's documents; only the bone age is subsidiary. Sexual maturity tests are prohibited, even in case of persistent doubts in line with good practice. However, forensic radiographic examinations remain authorised, under the supervision of a judge and with the consent of the child. The judge maintains the discretion of taking into account the margin of error of these examinations. If doubts persist after medical examination, the benefit will fall to the child concerned in line with law. At all levels of the assessment procedure, the person is entitled to challenge the civil and administrative courts' decisions and, for this purpose, is entitled to free legal assistance.

**Child-friendly elements:** Indeed, any person who declares him- or herself a child must be sheltered immediately until his/her age can be assessed. This legal provision is intended to implement a presumption of minority status for unconditional accommodation under Child Welfare.<sup>53</sup> The migrant child is therefore considered first and foremost as a child. In addition, the age-assessment procedure is based on a multidisciplinary approach with the possibility of appealing the decision, obtaining legal assistance, while respecting human dignity. The express prohibition of sexual maturity tests is also an important element.

**Lessons learned:** There are territorial disparities with regard to implementation in practice.<sup>54</sup> The Secretary of State for Child Welfare announced in March 2019 the launch of a national consultation on child protection to "ensure harmonisation of practices" within the framework of a shared policy between the state and the departments requiring "multiple and complex cooperation to obtain and above all to maintain over time".<sup>55</sup>

**Source:** Law No.2018-778 of 10 September 2018; Decree No. 2019-57 of 30 January 2019.

## 1.4. Reception and accommodation

On arrival, reception arrangements and conditions create particular challenges for protecting the rights of refugee and migrant children. Article 27(3) of the UNCRC requires states parties to take appropriate measures to assist parents to implement

53. Article L223-2 of the French Code of Social Action and Families.

54. French Ombudsman position, reflected in ECSR, *EUROCEF v. France* (2018), paragraphs 102-113.

55. French Secretary of State for Child Welfare, press release of 29 March 2019.

the child's right to an adequate standard of living by providing "material assistance and support programmes, particularly with regard to nutrition, clothing and housing". Where, as in the case of refugee and migrant children, parents or guardians are not in a position to provide the child with adequate housing, states parties must take on that responsibility.

Children face high risks when it takes time to refer them to a special facility or when they are accommodated together with unrelated adults in the first reception facility. It is therefore vital to take into account these considerations and provide them with sufficient safety measures and with appropriate and child-friendly accommodation. Unaccompanied children, in particular, should be provided with separate bedrooms and not reside in the same facility as adult applicants. It is also necessary to ensure sufficient security measures for children in this kind of accommodation to avoid any risk of abuse.<sup>56</sup>

The European Court of Human Rights has considered that the failure to provide shelter or leaving a child on the streets to fend for him- or herself may constitute a violation of Article 3 of the Convention.<sup>57</sup> The ECSR has found that in order to prevent homelessness, states parties were required, under Article 31(2) of the Revised Social Charter, to provide adequate shelter to children unlawfully present in their territory for as long as they are in their jurisdiction, whatever their residence status.<sup>58</sup> Evidently, the right to housing is closely linked to other rights, such as the right to health (Article 11), the right to social and medical assistance (Article 13), the right to appropriate social, legal and economic protection for the family (Article 16) and the right of children and young persons to social, legal and economic protection (Article 17).<sup>59</sup>

The EU revised Reception Conditions Directive provides guidance to member states in supplying shelter, housing and accommodation to asylum seekers, recognising the importance of both the best interests of the child and family unity.<sup>60</sup> According to EASO, the Directive should be applied throughout all stages and types of procedures and in all locations and facilities for the accommodation of refugees and migrants, and "foster care is an adequate and often preferable and cost-effective setting for accommodating unaccompanied children".<sup>61</sup>

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56. EASO (2018), *Guidance on reception conditions for unaccompanied children: operational standards and indicators*.

57. *M.S.S. v. Belgium and Greece* [GC], No. 30696/09, 21 January 2011; *Rahimi v. Greece*, No. 8687/08, 5 April 2011; *Khan v. France*, No. 12267/16, 28 February 2019.

58. ECSR, *Defence for Children International v. the Netherlands*, Complaint No. 47/2008, Decision on the merits, 20 October 2009, paragraphs 44 and 64.

59. FRA and Council of Europe (2015), *Handbook relating to European law on asylum, borders and immigration*.

60. Articles 9, 17, Directive 2013/33/EU of the European Parliament and the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast) ("EU Reception Conditions Directive"); Article 32, Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) ("EU Qualification Directive").

61. EASO (2018), *Guidance on reception conditions for unaccompanied children*, p. 11.

## EASO Guidance on reception conditions for unaccompanied children<sup>62</sup>

### *Allocation*

- ▶ Specific and objective reasons (e.g. age, maturity and special needs) linked to the individual situation of unaccompanied children, the specific care offered by the reception facility and the type of facility and possibilities of non-institutionalised forms of care are taken into account when allocating unaccompanied children.
- ▶ Ensure that family unity is respected, in line with the principle of the best interests of the child.
- ▶ Ensure that special needs are taken into account when (re)allocating a particular housing to unaccompanied children.

### *Day-to-day care*

- ▶ The day-to-day care is organised according to a specific method for the care of unaccompanied children.
- ▶ Unaccompanied children are prepared to become autonomous and to live an independent life later on.
- ▶ Support and follow up the mental and social development of unaccompanied children through a standardised care plan.

### *Health care*

- ▶ Ensure access to medical screening and health assessment and the prevention of health-related issues at an early state of the reception process.
- ▶ Ensure access to mental health care, rehabilitation services and qualified counselling for unaccompanied children who suffer from psychological difficulties and/or have been victims of any form of abuse, neglect, exploitation, torture or cruel, inhuman and degrading treatment, or who have suffered from armed conflicts, by developing and implementing SOPs on Mental Health and Psychosocial Support (MHPSS).

### *Education*

- ▶ Ensure effective access to the education system under similar conditions as nationals and no later than three months after the application for international protection was lodged.
- ▶ Ensure access to vocational training when mainstream classes are not considered in the best interests of the child.
- ▶ Food, clothing and other non-food items, and allowances
- ▶ Ensure that unaccompanied children have access to sufficient and adequate food.
- ▶ Ensure that unaccompanied children have access to potable water 24/7.
- ▶ Ensure that unaccompanied children possess sufficient clothing.

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62. A selection of standards of the EASO Guidance is presented here, which are most relevant in the context of this compilation.

- ▶ Ensure that unaccompanied children have access to sufficient and adequate personal hygiene products.
- ▶ Ensure that unaccompanied children enrolled in school or other education arrangements are provided with adequate clothing and school utensils enabling them to fully participate in all educational activities.
- ▶ Ensure that an adequate daily expenses allowance is provided.

#### *Housing*

- ▶ Ensure effective geographic access to relevant services, such as public services, school, health care, social and legal assistance, a shop for daily needs, laundry, and leisure activities.
- ▶ Ensure respect for the privacy and safety of the children in collective housing.
- ▶ Ensure that the inside and outside infrastructure of a housing designated to house unaccompanied children with reduced mobility is adapted to their needs.
- ▶ Ensure sufficient security measures.
- ▶ Ensure the safety and proper functioning of the housing facilities through regular maintenance.

#### *Communication*

- ▶ Ensure that unaccompanied children have adequate access to a telephone to maintain contact with family, carry out calls concerning procedural, legal, medical and educational issues.
- ▶ Ensure that unaccompanied children have adequate access to the internet.
- ▶ Ensure unaccompanied children have the possibility to charge their devices for communication.

### **Mixed model for reception of unaccompanied children in Belgium**

**Institution:** Flemish Agency of Youth Welfare, Minor-Ndako and other actors of youth care (Belgium)

**Funding:** Federal government funds the large-scale reception centres. Youth Care provides funding for Youth Care organisations. There are joint activities with funding from both.

**Context:** Belgium evolves towards a mixed model for the reception of unaccompanied and separated children. Most unaccompanied children – asylum-seeking or not – are sheltered by federal government in large-scale facilities (40 to 60 UASC) conceived to cover basic needs. The Flemish community has developed additional small-scale living units (with a maximum number of 15 residents) with diverse forms of help and care provisions adapted to individual needs. The Youth Care initiatives focus on the younger and most vulnerable UASC. Youth Care offers foster care, residential, semi-residential or ambulatory care for UASC. The provision of small-scale alternatives for the most vulnerable UASC is definitely a good practice. Minor-Ndako is a youth care provider with 25% of its capacity

open to the local population and 75% to UASC. It is a perfect example of Youth Care involvement in the reception of UASC because it covers the whole range of activities provided to this group.

**Summary of the practice:** Minor-Ndako has a wide range of facilities for UASC. There are five small-scale reception units for UASC in different age groups with a total of 53 places. Every unit is staffed with six to eight persons who have several roles, including individual counselling, group coaching and night shifts. A second approach is immediate foster care. The youngest UASC (under 14) are given the opportunity to be placed in foster families, as soon as possible. In the first months, the family gets intensive support and coaching from Minor-Ndako. If everything goes well, after three months regular foster care services undertake to supervise the placement. If it does not go well, the UASC can return to the residential unit where his or her bed is reserved for this period. Minor-Ndako provides training and coaching in five cities to young adult UASC who start living on their own. Minor-Ndako provides a helpdesk to spread know-how and goodwill to other agencies. Other projects are co-housing of students and UASC, sports and mentorship.

**Child-friendly elements:** High-quality reception and care facilities are provided to the UASC. There are procedures to develop agency within all children, who can participate in organisational and other aspects of their daily life in the unit where they are sheltered. During the first year UASC attend language classes and in the second they go to regular school, together with children from the neighbourhood.

**Lessons learned:** An important challenge is the access of UASC with a disability to appropriate help. The situation depends on the kind of disability, but in most cases there are considerable waiting lists (for national residents as well as UASC). A second problem is that for youngsters with a mental disability, access depends on testing to define the kind and scale of disability. As these tests are not available in other languages, the young person needs to have a certain knowledge of Dutch in order to complete the test, so UASC have to stay for a long time in reception centres or Youth Care before receiving adequate assistance.

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### **New reception model for unaccompanied children in the Netherlands**

**Institution:** Dutch Ministry for Justice and Security, Central Agency for the Reception of Asylum Seekers (COA) and the Nidos Foundation (the Netherlands)

**Funding:** Government-funded (the COA is an independent governmental body and the Nidos foundation is 100% subsidised by the state).

**Context:** The new reception model for UASC entered into force in the Netherlands in 2016. According to this model, UASC are housed as much as possible in small, child-friendly locations. Depending on their age and residence status, there are different categories of housing and care facilities for them.

**Summary of the practice:** UASC who are younger than 15, or those who are deemed to be particularly vulnerable, are housed in foster families as much as possible. Nidos supports foster care families. These are usually families that have a similar migration background to the UASC. A financial compensation is given to them to cover the cost of support of the UASC. Children over 14 years of age are housed in small, child-friendly locations, depending on their residence status. Those who have received a residence permit are housed by the Nidos foundation in small living arrangements for a maximum of 12 children, with assistance from 4-24 hours per day, depending on their age and needs. Those who are awaiting a decision on their application for a residence permit and those whose application has been rejected are housed by the COA in small living arrangements for a maximum of 20 children, with 24-hour assistance present, unless the children need less assistance. All employees of COA and Nidos working with UASC receive training on issues such as safety, the legal position of UASC, privacy, dealing with sexuality, aggression or radicalisation. The support provided by the youth workers to the UASC is aimed towards either integration of UASC in the Netherlands or return to the country of origin, depending on their status.

Education is mandatory. Access to education is usually arranged within one month after arrival in the Netherlands. For the first three months up to the first two years after arrival in the Netherlands children will receive education in special transitional classes, where the focus lies on learning Dutch and learning about Dutch culture, before entering the regular education system. Schools are sometimes based in a reception centre, but most of the time they are located in the municipality where the children are staying. Some locations for UASC have made arrangements with sports facilities (gyms, football clubs) in the municipality. Other locations have a gym room on site, where all kinds of sports classes are organised.

**Child-friendly elements:** Upon arrival in the central reception centre all UASC in the Netherlands are appointed a guardian. The guardian visits the UASC once a month. All UASC are housed as soon as possible in the accommodation matching their age and residence status. The model is aimed at getting UASC into the right place as quickly as possible. Children are housed in small child-friendly locations, where they are free to decorate and personalise their rooms. Children are encouraged to socialise and take part in recreational activities. Several NGOs organise recreational activities for children. Education is mandatory with gradual integration into the mainstream education system.

**Lessons learned:** Good support of UASC towards adulthood is important and challenging. Most UASC arrive around the age of 16-17 and mentors and guardians only have a limited amount of time to help the UASC be prepared to live independently (either in the Netherlands or in the country of return) from the age of 18 onwards.

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## **Integrated approach to welcoming unaccompanied children and young adults aged 18-25 in the Hérault department**

**Institution:** Ministry of Interior, General Directorate for Foreigners (France, public authority)

**Funding:** The project has benefited from European funding from the Asylum Migration and Integration Fund (AMIF) of 50% for a period of three years (from 1 October 2015 to 31 October 2017) and 50% by the departmental council of Hérault.

**Context:** The project was implemented in Montpellier (Hérault department). Around 144 UASC and young adults have benefited from it. An experimental project was launched in October 2015, in partnership with the association A Roof to Learn (UTOA) which hosts unaccompanied children and young adults. The Hérault Departmental Council has signed an agreement with the association. It acts as lead partner with the association as a partner in the implementation of the project.

**Summary of the practice:** The work carried out by UTOA consists of organising and supervising French language training adapted to the levels of young people and cultural and sports outings, prior to school or professional support according to the profile of the beneficiaries. The project concerns five aspects of the support of these young people: 1. Primary needs: care and follow-up, food and clothing; 2. Daily support, with the intervention of a head of the education department, an administrative assistant, two night watchmen, three specialised educators, a social and family economy counsellor and three social and family intervention technicians; 3. The teaching of French with a refresher course carried out on the association's premises by French as a foreign language teachers (12 hours of classes per week) and integration into the ordinary school system; 4. Educational, social and cultural integration, with educators accompanying young people to facilitate their integration and lead them towards autonomy in all aspects of daily life (mobility, sport, culture, learning social codes, room maintenance, etc.); 5. The constitution of civil status and administrative regularisation: procedures with embassies so that each young person can have in his or her possession a passport or consular card as part of the documents required when applying for a residence permit.

**Child-friendly elements:** Multilevel support.

**Lessons learned:** The action requires personalised support for young people and a number of professionals, adapted accordingly, for which long-term funding is hard to secure.

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### **Pilot programme regarding foster care for unaccompanied children seeking asylum or beneficiaries of international protection**

**Institution:** HFC “Hope for Children” CRC Policy Centre (Cyprus, NGO)

**Funding:** From December 2016 to December 2017, funded by the EU Asylum, Migration and Integration Fund (AMIF) of the European Funds Unit of the Ministry of Interior (90%) and the Republic of Cyprus (10%). As of January 2018, the programme is fully funded by the Social Welfare Services (SWS) of the Republic of Cyprus and applies to all children that are under the care of the SWS, i.e. local and unaccompanied children.

**Context:** The project is being implemented nationwide, including suburban and rural areas.

**Summary of the practice:** The project dealt with the design and implementation of a pilot foster care programme for UASC asylum seekers/beneficiaries of international protection. The aim of the programme was to attract, inform, educate and evaluate prospective foster parents. The programme was implemented in close co-operation with the Social Welfare Services who are the guardians of the unaccompanied children. The evaluation procedure of the prospective foster parents included socio-economic and psychological evaluation, before the decision of their approval/rejection could take place. The training (based on the Model Approach to Partnerships in Parenting – MAPP Model) included theoretical and practical sections on issues such as parenting skills, the characteristics and background of unaccompanied children and their legal rights. There were two categories of prospective foster parents: persons coming from the same country of origin of the UASC, who sometimes were members of the extended family of the children, and those who were not related to them at all, including local families. Training took place in 15 members’ groups, some of which were Arabic-speaking persons and interpreters were used. Each workshop was composed of psycho-education as well as practical exercises, discussions, case studies, role plays, etc., in order to engage candidates in the training. Finally, the concept of Human Library was adopted in which candidates had the chance to meet former unaccompanied children and discuss their needs, challenges and thoughts as a way for them to understand better the profile of those children. After placing unaccompanied children with approved foster parents with the approval of the Welfare Services, provision was made for monitoring the family and the child, while continuing the education of foster parents and supporting them any time it was needed. In 2017, 57 UASC were placed with foster families during the implementation of the pilot project. A total of 63 interested families were evaluated for this purpose. Currently, over 100 children have been placed.

**Child-friendly elements:** This programme promotes foster care, underdeveloped in Cyprus, in the local community. Many children were placed in families instead of being in institutions. In this way, they had the opportunity to receive care according to their individual needs and characteristics. During this procedure, the opinion of the child was always taken into consideration. The response to

children's needs was carefully examined and both the foster family and the unaccompanied child were continuously supported.

**Lessons learned:** In order to evaluate the degree of satisfaction with the services provided, questionnaires were delivered to Greek and Arabic participants after each project stage. The degree of satisfaction of the foster parents was evaluated through open- and closed-ended questionnaires and showed very positive responses.

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## 1.5. Education and training

Education is a fundamental right for all children and, accordingly, the UNCRC requires that states make primary and secondary education available and free to all children, requiring other measures to be adopted to promote vocational education and training as appropriate. UNHCR has estimated that globally refugee children are five times more likely to be out of school: in 2017, 61% of refugee children were enrolled in primary school, compared to 92% globally and at secondary school level the figure was 23%, compared to 84% globally. This means that nearly two thirds of refugee children who go to primary school do not receive the opportunity to continue into secondary school.<sup>63</sup>

According to the CRC Committee, states parties should ensure that “access to education is maintained during all phases of the displacement cycle”<sup>64</sup> Furthermore, the CRC Committee has recommended that the unaccompanied or separated child should be registered with appropriate school authorities as soon as possible to get assistance in maximising learning opportunities at the appropriate level of age and development. Unaccompanied or separated children should be provided with documentation indicating their level of education, in particular in preparation of relocation, resettlement or return<sup>65</sup> and children should be provided with special support and resources when transitioning from their original country of origin to their new school environment, particularly in terms of language and teaching methods. These rights are also enshrined in EU law<sup>66</sup> and in Council of Europe recommendations.<sup>67</sup> Beyond formal education, the important role of informal education and youth work initiatives, combined with cross-cultural approaches, should be highlighted. These experiences can foster children's integration into their new communities.<sup>68</sup>

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63. UNHCR (2018), *Turn the tide: refugee education in crisis*.

64. CRC Committee, General Comment 6, paragraph 41.

65. *Idem*, paragraph 42.

66. EU Reception Conditions Directive, Article 14.

67. Council of Europe, Committee of Ministers, Recommendation CM/Rec(2008)4 of the Committee of Ministers to member states on strengthening the integration of children of migrants and of immigrant background.

68. Partnership between the European Commission and the Council of Europe in the field of youth (2018), *Step by step together*, Strasbourg, p. 23.

In 2017, the Council of Europe launched the European Qualifications Passport for Refugees as a pilot initiative and in 2018 the project was continued for another two years. The European Qualifications Passport for Refugees is a document providing an assessment of the higher education qualifications based on available documentation and a structured interview. It also presents information on the applicant's work experience and language proficiency. The document provides reliable information for integration and progression towards employment and admission to further studies. The second phase of the pilot also includes recognition of high school education.<sup>69</sup>

### First-line schooling in a first reception centre in France

**Institution:** Departmental public establishment "Le Charmeyran" (France, local public service)

**Funding:** Department funding, either through the reception centre (70%) or allocated additionally (30%)

**Context:** Since the beginning of 2016 until January 2018, the first reception centre has been faced with the arrival of a significant number of UASC under the age of 15.<sup>70</sup> Consequently, the already existing internal school system has had to adjust itself to this new situation: increasing its reception capacity and adapting the pedagogical methods.

**Summary of the practice:** As soon as the children were sheltered, during the age-assessment process and without regard to the results, the children and teenagers were integrated into an internal schooling system (within 48 hours of arrival). By that means, they could prospectively be waiting to be relocated<sup>71</sup> and, if not, be assigned to a mainstream school. They were welcomed by full-time or part-time trainers, depending on the number of pupils, with the objective to allow everyone to benefit from at least a half day of classes daily. Specific academic materials and tools have been designed and implemented to meet individual needs. By using adapted tools and supports, children quickly became part of a learning dynamic. The courses were mainly focused on learning French as a foreign language and mathematics, but also other subjects such as history and geography, sport and creative activities. In addition, external activities and/or role-playing activities have been set up: libraries, museums, practical life, transcultural conversation workshops and professional discovery internships.

At the same time, the regulatory process of assigning students to mainstream schools has been adapted. The duration has been reduced by half (to two months). To cope with the large flow of requests, a specific partnership with the National Education Department has been established with the aim to adapt the

69. For more on the project see: [www.coe.int/en/web/education/recognition-of-refugees-qualifications](http://www.coe.int/en/web/education/recognition-of-refugees-qualifications).

70. Until January 2018, this facility sheltered unaccompanied children under 15 years of age. Older children were sheltered by an NGO funded by the public authorities. Since then, the local authorities have decided to modify the reception conditions for unaccompanied children. As a result, this establishment discontinued the provision of shelter to UASC.

71. 20% of the total number, one or two months after their arrival.

procedures. The process of individual counselling and interviews in the information and orientation centres was replaced with special commissions which examine student applications on the basis of the primary evaluations carried out by the trainers.

**Child-friendly elements:** The rapid start of schooling meets one of the first demands often expressed by these young people. It immediately puts them in a positive dynamic, both in terms of schooling (being a student, learning, enriching their knowledge and preparing their future) and in terms of building their personality (being considered again as a developing person after an often trying and traumatic migratory journey, being part of a dynamic movement/project, stimulating their cognitive processes and mobilising their potential). Without waiting for the age-assessment results, this first-line schooling led to a significant decrease in anxiety disorders in facing “the future threat”. According to young people, trainers and teachers, this initial period is an important step that reassures the child and prepares him/her to become a pupil (knowledge of the French school system and codes). As a result, integration into mainstream schools is facilitated. Although preparatory language classes are generally available in EU schooling systems, it seems less common to access first-line schooling without delay, before age-assessment results, with the aim of strengthening access to the mainstream educational system and integration into the host society.

**Lessons learned:** Some areas for improvement have been identified:

The number of students per group depends on the resources available (human and material).

The duration of this initial period of schooling should be flexible. Thanks to the effective partnership with the National Education Services, some students have been enrolled in ordinary schools with very short delays, so that they were not always able to take advantage sufficiently of the benefits of this transitional schooling. The situation might be different for students who have attended school previously, for whom waiting too long can generate concern and disinvestment.

It seems appropriate to maintain support (tutoring, homework help and specialised academic support) for secondary school students even after they leave the first-line school system, especially during the holidays.

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### Language to Go – Summer intensive language learning courses

**Institution:** Ministry for Education and Employment, Migrant Learners’ Unit (Malta, public authority)

**Funding:** The courses are part of the LLAPSI+ project (Language Learning and Parental Support for Integration), which is financed through the EU Asylum,

Migration and Integration Fund (75%) and the Ministry of Education and Employment (25%).

**Context:** The practice targets newcomer migrant school-aged children who are in need of additional support in communicative English and Maltese.

**Summary of the practice:** Malta has two official languages – English and Maltese. The Language to Go course offers students the opportunity to consolidate their language learning during the summer holidays. Learners aged from 6 to 15 years can register. In the summers of 2017, 2018 and 2019 the course was offered in four centres across Malta to facilitate ease of access to service users. Tutors engaged to deliver this programme are warranted educators.

**Child-friendly elements:** The number of participants per class is relatively small with a maximum of 14 students. This allows greater individual attention and facilitates the active participation of learners. The setting of the classrooms is informal with a focus on audiovisual material to encourage learners to feel engaged with their learning. The Language to Go courses are being presented as a good practice since they support the newcomer's integration process. Competency in the language/s of the host country is invariably pointed out as being probably the single most important factor in the integration of migrants within the host society. Applicants for this course are referred by the school and can be newly registered migrant learners as well as learners who are already established in Malta and therefore attending mainstream or induction classes. These courses are offered on a no-charge basis.

**Lessons learned:** In the past years, the following limitations have been identified. One was finding the required number of educators to provide their services during this particular time of the year. Another difficulty is related to climate conditions. During this time of the year temperatures can be quite high in Malta and although every effort is made to house the courses in adequate venues, participants might find it difficult to keep their concentration at times. Some students might not attend all sessions since their parents/guardians might decide to travel during the summer. Lastly, parents may at times find it difficult to take their children to the sessions due to work commitments.

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<https://migrantlearnersunit.gov.mt/en/Pages/About%20us/about-us.aspx>, <https://education.gov.mt/en/Pages/educ.aspx>

## 1.6. Health care

Refugee and migrant children are entitled to adequate health care under Article 24 of the UNCRC. UNICEF has highlighted that access to health-care services by refugee and migrant children is restricted in most European countries, determined

to a large extent by their legal status, rather than their health or developmental needs.<sup>72</sup> The CRC Committee has also recognised the difficulties experienced by migrant children accessing health care and highlighted the importance of ensuring that unaccompanied and separated children have the same access to health care as children who are nationals.<sup>73</sup>

Article 13 of the European Social Charter provides for the right to social and medical assistance, while Article 17 of the revised European Social Charter protects in a general manner the right of children and young persons, including unaccompanied children, to care and assistance. Limited access to medical assistance for unaccompanied children and to children of illegal migrants has been found in violation of Article 17 of the revised European Social Charter, suggesting that children should have adequate access to mental assistance at all times.<sup>74</sup>

The EU Reception Conditions Directive provides for necessary health care, including at least emergency care and essential treatment for illness, as well as necessary medical or other assistance for those who have special needs.<sup>75</sup> The EU Return Directive similarly states that: “Particular attention shall be paid to the situation of vulnerable persons. Emergency healthcare and essential treatment of illness shall be provided to those whose removal has been suspended or who have been given time to depart voluntarily.”<sup>76</sup> Moreover, recognised refugees and those with subsidiary protection are entitled to equal access to health care as the member state’s own nationals.<sup>77</sup>

### Alternative care for unaccompanied children in Athens

**Institution:** SOS Children’s Villages Greece as part of SOS Children’s Villages International Emergency Response Programme (Greece, NGO)

**Funding:** SOS Children’s Villages International; EU Asylum, Migration and Integration Fund (AMIF)

**Context:** SOS Children’s Villages has supported children without parental care and families at risk in Greece for 70 years. Since late 2015, the organisation’s commitment to children in need also includes a programme supporting refugee and migrant children. The practice presented here focuses on providing care and accommodation to separated and unaccompanied children through a psycho-pedagogical approach, promoting and defending

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72. UNICEF (2017), *Advocacy Brief. Refugee and migrant crisis in Europe – Is health care accessible*, p. 1. For more see: K. Byrne et al. (2016), *The legal entitlements of refugee and migrant children in 33 European states*, UNICEF, Geneva.
  73. CRC Committee, General Comment 6, paragraph 46.
  74. ECSR, *International Federation of Human Rights Leagues (FIDH) v. France*, Complaint No. 14/2003, Decision on the merits of 8 September 2004, paragraphs 32-38.
  75. EU Reception Conditions Directive, Article 19.
  76. Article 16(3), Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (“EU Return Directive”).
  77. EU Qualification Directive, Article 30.

the best interests, the personal development, and the unique skills of every child. Two facilities for unaccompanied and separated children were created by SOS Children's Villages (CV) in Athens, one addressing up to 25 boys and the other up to 12 girls.

**Summary of the practice:** Unaccompanied and separated children supported through this SOS CV programme are provided with accommodation and psycho-social, educational and health support. In addition to accommodation, services provided to the children include assessment of educational needs and creation of personalised supportive classes, language lessons according to individual needs in cases of family reunification, psychotherapeutic support in one-to-one sessions and participation in self-empowerment groups for all children, life-skills training and preparation for semi-autonomous living, re-establishing or maintaining communication with families, preparation for employment, including children's participation in a summer internship programme in a multinational corporation, involvement of the children in programmes in the local community to facilitate exchange with the local population (e.g. soup kitchens, food distribution, sports activities, recreational classes), voluntary work for children in organisations supporting vulnerable populations, issuance of necessary documentation (Social Security Number) for all children, etc. All children are assisted with enrolment and to attend school together with other local children. Zero dropout rate in formal education has been reported, despite the lack of preparation classes in some public secondary schools.

Staff members, including teachers, caretakers, social workers and psychologists, receive regular supervision from experienced specialists in child mental health in a support group setting in order to address daily challenges, prevent burnout and enhance the quality of services. In addition, staff receive training on child protection and the protection needs and vulnerabilities of unaccompanied and separated children.

**Child-friendly elements:** All unaccompanied children staying in SOS CV shelters have regular private meetings with psychologists and social workers, with whom they discuss their personal plans and receive counselling. All children participate in weekly group meetings/assemblies, in which they discuss their experiences, plans, challenges and difficulties. They exchange opinions and take decisions about sharing responsibilities, forming common rules and resolving possible conflicts. Children are asked about the daily programme, their environment, their educational challenges and their social and cultural interests. Children also participate in internal evaluation discussions, offering their views on the quality of the services provided.

**Lessons learned:** Even though the operation of the shelters for unaccompanied boys was reported to be successful (with low rates of children leaving the house, high rates of children attending school and engaging in legal procedures), the facilities terminated their operation in December 2018 and June 2019 due to challenges in securing continuity of funding. Nevertheless, in order to focus on the inclusion of unaccompanied children in the local community, a number of children have been transferred to regular long-term SOS CV programmes, which

provide opportunities for refugee and Greek children to interact and get to know each other within a stable and caring family-like environment.

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## Theme 2

# Child-friendly asylum and migration processes

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**T**his chapter covers processes concerning the determination of asylum and migration applications, assessment and determination of the best interests of the child in migration processes, general procedural safeguards, but also specific safeguards such as guardianship and legal representation, child-friendly information and interviews, as well as remedies and complaints mechanisms. For reasons of scope, this chapter does not purport to deal with the entire asylum process from a children's rights perspective. Rather it focuses on key safeguards that are applicable to processes covered in other chapters too, as they are central to the protection of children's rights in general and not only to the processing of their asylum claims.

### 2.1. Procedural safeguards

In all determinations concerning migration and asylum, the right to guardianship and legal representation are important child-specific procedures. Mechanisms – like interviews and decision-making processes – aim to ensure that the rights of children are protected. More general rights, such as the right to remedies and to appeal, are also important in ensuring the rights of refugee and migrant children are protected and should be available for children to exercise separately from accompanying adults. Other aspects of the process – such as the Dublin procedures, family reunification procedures or procedures that protect from expulsion – are as important to children as to adults, although special adaptation may be required to ensure children's rights are fully protected.<sup>78</sup>

Under Article 12 of the UNCRC, children have the right to have their views taken into account in all matters affecting them, those views being given due weight in accordance with the child's age and maturity. Under Article 3 of the UNCRC, the best interests of the child must be a primary consideration in all actions taken by domestic authorities. The importance of these principles in the migration context has been reinforced by the CRC Committee.<sup>79</sup>

The Council of Europe Guidelines on child-friendly justice provide for procedural safeguards in the determination of all matters affecting the child, including the best

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78. See FRA Opinion on the impact on children of the proposal for a revised Dublin Regulation (COM(2016)270 final; 2016/0133 COD).

79. CRC Committee, General Comment 22.

interests determination, guardianship, the appointment of a legal representative and access to information and child-friendly interview techniques. According to the European Commission, appropriate safeguards must be applied to all children at all stages of the asylum procedure. Access to information, legal representation and guardianship, the right to be heard, the right to an effective remedy and multidisciplinary and rights-compliant age assessments have been identified as key protection measures. Moreover, children need to be informed of their rights in a child-sensitive and age- and context-appropriate manner, and provided with information about the procedures and services that are available for their protection.<sup>80</sup>

## 2.2. Determination of asylum and migration applications

The asylum process is the means by which a person's entitlement to remain in a state party is determined. The decision-making process has a number of elements that require a child-friendly approach where migrant and refugee children are concerned. In order to enjoy the right to participation in an asylum procedure, states must provide all children access to the procedure in a child-sensitive and age-appropriate manner, having due regard for the age and evolving capacities of the child.<sup>81</sup> Under the EU Asylum Procedures Directive, children may make an asylum application on their own behalf, if they have legal capacity in the relevant member state.<sup>82</sup> Otherwise, the child may make an application through his/her parents, adult family members or other responsible adult or through a representative.<sup>83</sup>

Immigration proceedings should be conducted by a specialised official or judge. A child also needs effective access to communication with consular officials and assistance. More specifically, as noted above, refugee children need access to the territory, regardless of their documentation, in order to ensure they enjoy procedural safeguards.<sup>84</sup> As noted in the previous chapter, the assessment of what constitutes persecution for a child may differ and may not even amount to persecution for an adult.<sup>85</sup>

In an assessment of a child's right to international protection, the CRC Committee has recommended that the following criteria be taken into account:

- ▶ the safety, security and other conditions, including socio-economic conditions, awaiting the child upon return;
- ▶ the availability of care arrangements for that particular child, the views of the child, the child's level of integration in the host country and the duration of absence from the home country;
- ▶ the child's right to preserve his or her identity, including nationality, name and family relations; and

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80. EC Communication 2017, pp. 9 and 14.

81. CRC Committee, General comment 22, paragraph 35.

82. EU Asylum Procedures Directive, Article 7(3); see for an overview of minimum age limits FRA, <https://tinyurl.com/yy2h8bsm>.

83. EU Asylum Procedures Directive, Article 7(2)(3)(5).

84. CRC Committee, General Comment 23, paragraph 17.

85. UNHCR Guidelines 2009, paragraphs 2-4; 15-18; see more on *non-refoulement* in section 1.1. above.

- ▶ the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.<sup>86</sup>

Girls seeking asylum face particular protection concerns, distinct from those faced by boys. In particular, girls may be fleeing gender-based violence, including forced marriages, of female genital mutilation and face greater risk of sexual harassment and exploitation. At the same time, they may be unable or unwilling to disclose relevant information during a refugee determination process that does not respect cultural sensitivities.<sup>87</sup> The Council of Europe Convention on Preventing and Combating Violence against Women provides for states' obligation to introduce gender-sensitive procedures and guidelines in the asylum process.<sup>88</sup>

The internal flight or relocation alternative is increasingly considered by decision makers in refugee status determination. Although there is no precise definition, the concept is understood to refer to the relocation or return to a specific area of the country where there is no risk of a well-founded fear of persecution and where, given the particular circumstances of the case, the individual could reasonably be expected to establish him-/herself and live a normal life.<sup>89</sup> The consideration of the internal flight alternative for a child requires an assessment of whether such an inquiry is relevant (if the proposed area is accessible practically, safely and legally) and an assessment of whether the proposed area is reasonable. The child's best interests should inform both assessments. In addition, every decision for this purpose should also factor in the protection risks in the place of relocation, depending on the child's age and coping capacity, availability of care arrangements (by family members or state care and assistance), as well as the long-term life prospect of such care arrangements (conditions in facilities, social perception). What is merely inconvenient for an adult might well constitute undue hardship for a child, particularly in the absence of any friend or relation.<sup>90</sup> According to the UNHCR, the protection safeguards applicable to children in case of return are applicable by analogy to the internal flight alternative.<sup>91</sup>

The European Court of Human Rights follows a similar approach, requiring in addition to the assessment of the risk of *refoulement* certain guarantees as a precondition for an internal flight alternative: that the person to be removed must be able to travel to the area concerned, gain admittance and settle there, failing which an issue under Article 3 of the Convention may arise, the more so if in the absence of such

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86. CRC Committee, General Comment 6, paragraph 84.

87. UN Committee on the Elimination of Discrimination Against Women (CEDAW), General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, 5 November 2014, CEDAW/C/GC/32.

88. Council of Europe Convention on Preventing and Combating Violence against Women (2011, CETS No. 210), ("Istanbul Convention"), Article 18; see also Chapter 3 and Council of Europe (2019), *Protecting the rights of migrant, refugee and asylum-seeking women and girls*, Factsheet, <https://tinyurl.com/y5uukssc>.

89. UNHCR, *Guidelines on International Protection No. 4: "Internal Flight or Relocation Alternative" Within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, 23 July 2003, paragraph 6.

90. UNHCR Guidelines 2009, paragraphs 53-57.

91. See UNHCR Guidelines 2009, paragraph 55 with reference to CRC Committee, General Comment 6. See more on returns in section 4.5.

guarantees there is a possibility of the person ending up in a part of the country of origin where he/she may be subjected to ill-treatment.<sup>92</sup>

### **Identifying asylum motives of accompanied children in the Netherlands**

**Institution:** The Dutch Council for Refugees (the Netherlands, NGO)

**Funding:** Funding by the EU Asylum, Migration and Integration Fund (AMIF) and by the Dutch Council for Refugees

**Context:** The practice originates from expert meetings in 2015 and 2016 during which various actors, including lawyers, scientists and children rights experts, stressed the importance of identifying the asylum motives of accompanied children. Since its national implementation, after a test phase in a reduced geographic area, the practice is now addressed to accompanied children who reside in one of the reception facilities in the Netherlands.

**Summary of the practice:** In order to increase the visibility of accompanied children in asylum procedure, the legal assistance provided by the NGO – before, during and after the asylum application – pays special attention to their own asylum motives. The identification of asylum motives is mainly carried out by discussing both with parents and children in a private conversation about their reasons for fleeing from their country of origin and the risks for the children upon return. For the time being, the NGO mainly speaks with children aged 15 and over. In respect to children under 15, the NGO collects information on their interests and asylum motives through their parents but, if necessary and in consultation with the parents and the child him-/herself, the child may also be invited to attend the discussion in the presence of the parent. Moreover, if a child asks for an appointment, they will also make this possible. In case the family members have already been heard by the Dutch Immigration Service, the NGO's staff will also use those interviews to identify the child's asylum motives. The analysis relies on a broad interpretation of persecution, taking into account all the rights codified in the UNCRC. Depending on the outcome, the NGO may collect country-specific information and other relevant documents to further support the child's case. Finally, they get in touch with the family's lawyer to inform him/her of their findings and to discuss the possibilities for submitting the child's claims in the asylum procedure.

In order to equip the NGO's employees responsible for the identification of asylum motives with the necessary knowledge and skills, training on communication with children and teenagers, as well as on the legal framework concerning a child's asylum application are provided. Moreover, a working document providing guidelines and specific materials for the identification process has been developed. Examples of such materials are, among others, a list with child-friendly questions on the reasons for flight and a list with questions to be asked to parents. Additionally, the NGO is working on information materials for asylum-seeking families presenting further explanation on the relevance of and possibilities for

92. *J.K. and Others v. Sweden* [GC], No. 59166/12, 23 August 2016, paragraph 82.

submitting an accompanied child's asylum motives. Moreover, in every step of the procedure, the staff ensure the consent of the parents and/or child.

**Child-friendly elements:** This practice attempts to give accompanied children, who sometimes only appear to be a shadow of their parents, an opportunity to express their views and to have their interests taken into account in a procedure that significantly impacts them. Indeed, a rigorous identification of children's motives may truly contribute to a stronger and more effective legal position for an accompanied child in the asylum procedure. Furthermore, the NGO aims to guarantee a child-friendly approach by specifically training staff and using child-friendly materials.

**Lessons learned:** The NGO has noticed that those working with asylum-seeking families can become less attentive towards the interests of accompanied children after the project's initial implementation phase. To address this, continuous awareness raising among team managers is necessary and this can be achieved by disseminating reminders and integrating the topic into ongoing training and working documents. Similarly, more widespread awareness raising is important to promote greater attention among lawyers and the Immigration Service to ensure that the NGO's findings on children's asylum claims are followed up. It has also been a challenge to convince staff of the relevance of the practice, especially with respect to very young children. There is also some hesitation about discussing with children directly, because of concerns that conversations about traumatic events may cause children more harm than good.

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[www.vluchtelingenwerk.nl/forrefugees/belangrijke-informatie-je-eigen-taal?language=en](http://www.vluchtelingenwerk.nl/forrefugees/belangrijke-informatie-je-eigen-taal?language=en) (information in several languages)

### 2.3. Best-interests assessment and determination

The best interests of the child must be a primary consideration in the asylum assessment process and it must be taken into consideration in all phases of the immigration procedure, including with respect to the reception of the child, granting and refusing applications on entry or residence in a country, decisions regarding family unity, child custody and integration, and the possible return of a child to the country of origin. Systematic best-interests assessments and determination procedures are vital as part of, or to inform, migration-related and other decisions that affect migrant children. A best-interests determination must also inform decisions about the child's care, including separation from or reunification with family members, in the context of either temporary or durable solutions.<sup>93</sup>

93. CRC Committee, General Comment 22, paragraphs 27-33. More on return safeguards in section 4.5.

The Guidelines on child-friendly justice require that in assessing the best interests of the child, the child's views should be taken into account, the child's other rights (such as dignity and liberty) should also be taken into account and a comprehensive approach should be taken to take due account of all interests at stake, including psychological and physical well-being and the legal, social and economic interests of the child. The guidelines provide that the best interests of all children involved in the same procedure or case should be separately assessed and balanced with a view to reconciling possible conflicting interests of the children. States should, where necessary, make concerted efforts to establish multidisciplinary approaches with the objective of assessing the best interests of children in procedures involving them.<sup>94</sup> Regard should be had to the child's substantive UNCRC rights in determining the child's best interests including the right to family-based care, to protection from harm and to education and health care.

Under EU law, the best interests of the child should be a primary consideration of member states when applying the EU Asylum Procedures Directive.<sup>95</sup> The best interests of the child has also been found to be important in broader decisions about residence in the EU.<sup>96</sup>

The European Convention on Human Rights recognises that states parties must strike a proportionate balance between the various interests and rights involved in the asylum process including the rights of the parties applying for asylum and the interests of immigration control. In its case law, the European Court of Human Rights has highlighted the importance of taking the best interests of the child into account and has found violations of the Convention where insufficient attention was given to the child's best interests. For instance, in *El Ghatet v. Switzerland*, the Court found a violation of Article 8 of the Convention, as the best interests of the child had not been sufficiently placed at the centre of the domestic court's reasoning in respect of family reunification.<sup>97</sup> In the case of *Popov v. France* the Court found that the best interests of the child do not solely require families to be kept together, but also require authorities to do everything in their power to limit the detention of families with young children in order to effectively preserve their right to respect for family life.<sup>98</sup> Finally, in *Jeunesse v. the Netherlands*, the Court found that insufficient weight had been given to the best interests of the children, making clear that domestic authorities should, "in principle, advert to and assess evidence in respect of the practicality, feasibility and proportionality of any removal of a non-national parent in order to give effective protection and sufficient weight to the best interest of the children directly affected by it"<sup>99</sup>

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94. Guidelines on child-friendly justice, Section III.B, paragraph 4.

95. See for example EU Fundamental Rights Charter, Article 24(2); see also EU Asylum Procedures Directive, Articles 25 and 33.

96. CJEU, 10 May 2017, C-133/15 (*Chavez-Vilchez*), paragraphs 77 and 78.

97. *El Ghatet v. Switzerland*, No. 56971/10, 8 November 2016, paragraph 53.

98. *Popov v. France*, nos. 39472/07 and 39474/07, 19 January 2012, paragraph 147.

99. *Jeunesse v. the Netherlands* [GC], No. 12738/10, 3 October 2014, paragraph 109.

### Best interests of the child (BIC) management team

**Institution:** Migration Office of the Ministry of Interior (Slovak Republic, public authority)

**Funding:** From the Children's House budget

**Context:** This practice is implemented in Medzilaborce, District of Prešov, in the Children's House where UASC are accommodated when they are identified. Children are placed in three specialised groups in separate flats, two for boys and one for girls. The house has a total capacity for 24 children and has a pleasant family-like environment. Reception conditions, children's asylum applications, health care, education and the determination of their best interests are part of the complex asylum system. Child protection, children's rights and access to substantive rights are important aspects that are thoroughly considered. A BIC management team gets involved in the first 48 hours after the UASC placement in the Children's House.

**Summary of the practice:** The BIC management team consists of social workers, psychologist, guardian, director, nurse, special needs teacher, interpreter and head of care department. The aim of the first BIC management meeting is to get acquainted with unaccompanied children, to analyse their current health and psychological condition and to determine the children's opinions/ideas about their current life situation. The BIC team attempts to find out the child's opinion on their situation, as well as to determine and prevent possible further threats (trafficking, abuse, conflicts, etc.) and to become familiar with the possibility of their further stay in Slovakia. During the meeting, the BIC team sets a work plan for every UASC in order to achieve a long-term solution in their best interests. After this identification process (first meeting with the child), some members of the BIC team are in touch daily with the child (social worker, director of the Children's House, nurse and special needs teacher), while the rest of the team meet with them on a regular basis. In the children's facility, there is an education centre assisting UASC to learn the Slovak language and social workers try to devise a lot of activities with them. When possible, UASC go to school with Slovak children.

**Child-friendly elements:** All BIC team members meet several times to ensure that the agreed long-term aim, which is in line with the best interests of the child, is being fulfilled.

**Lessons learned:** Gradually, a number of UASC have been reunited with their biological families in the EU, some have been repatriated and the average staying time in the Children's House has increased. The main challenge is still to decrease the absconding rate, as the Slovak Republic is a transit country. Other challenges are the constant improvement in working methods and conditions, as well as special training for employees.

**Contact details:** Monika Pavlovová, State Advisor, Migration Office of the Ministry of Interior of the Slovak Republic, [monika.pavlovova@minv.sk](mailto:monika.pavlovova@minv.sk)

### Social worker's statement about child's interests during application for a residence permit in Finland

**Institution:** Finnish Immigration Service (Finland, public authority)

**Funding:** State of Finland

**Context:** The practice was implemented in 1 May 2004 in respect of all migrant and refugee children during residence permit procedure in Finland.

**Summary of the practice:** When authorities process an application in respect of a child, a social worker may be required to provide a statement about the child's interests. A social worker's statement is always required if there are indications of domestic violence, an ongoing custody dispute or if the applicant is in care. In any case, the social worker must explain what the child's interests are from his/her point of view, how he/she sees the family's situation in general and the other factors that might affect the decision. The law does not specify which criteria should serve as a basis for the preparation of such a statement; the criteria were developed by administrative practice.

**Child-friendly elements:** The social worker's statement provides a better understanding of the real situation in the family and what the child's best interests are. In this way, the interests and rights of the child can be protected regardless of the parents' situation.

**Lessons learned:** The quality of the statements varies from one social worker to another, depending on how well the social worker knows the family.

**Contact:** Finnish Immigration Service, [migri@migri.fi](mailto:migri@migri.fi); [www.migri.fi/en](http://www.migri.fi/en)

**Source:** Finnish Aliens Act (301/2014) section 63.

## 2.4. Legal representation and guardianship

International standards recognise the importance to migrant and refugee children of two distinct procedural safeguards – guardianship and legal representation. The appointment of a guardian is a particularly important safeguard for the unaccompanied and separated child and he/she plays a vital role in complementing the child's limited legal capacity,<sup>100</sup> in vindicating and safeguarding the child's rights, including preventing the child's disappearance into trafficking or exploitation. Separately from guardians, and more generally, ensuring that a child has legal representation is vital to the protection of the rights and interests of all children in asylum and migration processes.

100. The ongoing drafting process of guidelines on effective guardianship for unaccompanied and separated children in the context of migration, by the Council of Europe Ad hoc Committee on the Rights of the Child, <https://tinyurl.com/y3v5drsa>.

Under the EU Asylum Procedures Directive, children should be informed of arrangements with regard to their guardianship and legal representation at all times, and their opinions should be taken into account.<sup>101</sup>

## Guardianship

A guardian is understood as an independent person who safeguards the child's best interests, complementing the child's limited legal capacity.<sup>102</sup> The CRC Committee has specified that

[a] guardian's role and mandate includes the best interests of the child and ensuring an unaccompanied child's well-being, development, and exercise of rights at all stages of the asylum process. Guardians should assess children's best interests by evaluating and balancing all the elements necessary to make a decision in the specific situation of a specific child, or group of children.<sup>103</sup>

A guardian should be well placed to speak on behalf of the child in legal matters and also protect their interests, regardless of whether the child is seeking asylum. They must be accessible to unaccompanied children at all stages of the asylum procedure.<sup>104</sup>

An effective system of guardianship takes into account the specific needs and circumstances of unaccompanied and separated children in migration, in order to protect and promote their rights and secure their best interests. It includes an appropriate legislative and regulatory framework ; steps to ensure that a guardian is appointed to a child without delay and the necessary resources and powers to safeguard the rights and interests of the child.<sup>105</sup>

In addition to protecting the child's interests, a guardian can also play a role in safeguarding the child from human rights abuses. In particular, without a guardian, a child may be prevented from exercising his or her procedural rights, such as seeking family reunification or appealing effectively against a measure of detention in violation of Articles 3, 5 and 8 of the European Convention on Human Rights.<sup>106</sup> Similarly, if a guardian is not appointed or is appointed too late, a child may be exposed to serious protection rights, contrary to the child's right to legal, economic and social protection under Article 17 of the European Social Charter.<sup>107</sup>

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101. EU Asylum Procedures Directive, Article 25(3)(b).

102. See the ongoing drafting process of guidelines on effective guardianship for unaccompanied and separated children in the context of migration, by the Council of Europe Ad hoc Committee on the Rights of the Child, Section II.

103. CRC Committee, *General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration* (Article 3, paragraph 1), CRC/C/GC/14, 29 May 2013, paragraph 47; see also CRC Committee, General Comment 6, paragraphs 37 and 71.

104. See FRA (2015), *Guardianship systems for children deprived of parental care in the European Union*.

105. See the ongoing drafting process of guidelines on effective guardianship for unaccompanied and separated children in the context of migration, by the Council of Europe Ad hoc Committee on the Rights of the Child, Section III.

106. *Rahimi v. Greece*, No. 8687/08, 5 April 2011, paragraphs 88-94 and 120.

107. ECSR, *EUROCEF v. France* (2018), paragraph 88.

## **Guardianship for foreign unaccompanied children: implementing and monitoring the new voluntary guardianship system in Italy**

**Institution:** Independent Authority for Children and Adolescents (Italy, public authority)

**Funding:** Selection and training of voluntary guardians, to the extent that it lies within the competence of the Authority for Children and Adolescents, are funded by the European Asylum Support Office.

**Context:** In a context marked by an unprecedented increase in the number of arrivals of migrants and refugees in Italy, Law No.47/2017 on “Provisions on protective measures for foreign unaccompanied children in Italy” was adopted on 7 April 2017 and entered into force on 6 May 2017. It regulates all aspects relating to the protection of foreign unaccompanied children in Italy. The law codifies already existing principles, such as the prohibition of forced return, and formulates new rules, such as the establishment of lists of voluntary guardians for foreign unaccompanied children within youth courts. On 22 December 2017, Legislative Decree No. 220 modified it.

**Summary of the practice:** Article 11 of Law No. 47/2017 places the voluntary guardian at the centre of the Italian protection and reception system of foreign unaccompanied children. It is considered “a goal as well as a tool” aimed at increasing the integration of children who arrive alone in Italy. It promotes bottom-up integration for foreign unaccompanied children. According to the law, the security authorities must immediately communicate the presence of a foreign unaccompanied child to the competent youth court in order to proceed with the appointment of a voluntary guardian. Depending on the region (or autonomous province), candidates are selected and trained by the respective ombudspersons for children. In regions where there is no ombudsperson, the Italian Independent Authority for Children and Adolescents (“the Authority”) carries out this task based on guidance developed in the framework of the National Conference for the Rights of the Child – a body which gathers all the children’s ombudspersons of the regions and autonomous provinces and which is chaired by the Authority. According to Article 11 of Law No. 47/2017, civil society organisations with expertise in children in migration, as well as local institutions, professionals’ associations and universities, support ombudspersons and the Authority in these tasks. The Authority is responsible for monitoring the implementation of the voluntary guardianship system at national level. For the purpose of monitoring and supporting the system at national level, the Authority drew up a project financed by the EU Asylum, Migration and Integration Fund (AMIF).

**Child-friendly elements:** The new law acknowledged the key role held by the voluntary guardian from the point of the child’s arrival in the country, including in the course of age-assessment procedures. The law institutionalises the activity of the voluntary guardian while making use of volunteer efforts to guarantee the protection of foreign unaccompanied children arrived in Italy. The voluntary

guardian, appointed by the competent youth court, is a guarantee for an effective protection of children's fundamental rights.

**Lessons learned:** Like all systems involving volunteers, it is crucial that the personal skills and motivation of volunteers are scrutinised and their performance monitored. It is also crucial to strengthen the co-operation among all the relevant stakeholders, in order to realise an effective network.

**Contact details:** Autorità garante per l'infanzia e l'adolescenza, [segreteria@garanteinfanzia.org](mailto:segreteria@garanteinfanzia.org) Telephone: +39 06 6779 6551; Fax: +39 06 6779 3412

**Links:** [www.garanteinfanzia.org](http://www.garanteinfanzia.org); Report of the section and training of volunteer guardians (2018): <https://tinyurl.com/y5vgmztw>; Report to the Parliament (2019): <https://tinyurl.com/y538a68h> (both in Italian).

**Source:** Law No. 47/2017 on "*Provisions on protective measures for foreign unaccompanied minors in Italy*" was adopted on 7 April 2017 and the Legislative Decree No. 220 of 22 December 2017.

### **Cultural mediation and strengthening guardianship of unaccompanied asylum-seeking, refugee and migrant children in Serbia (Belgrade)**

**Institution:** UNHCR representation in Serbia

**Funding:** United Nations High Commissioner for Refugees (UNHCR)

**Context:** In 2015, the Republic of Serbia, one of the countries on the Balkan route, faced a significant increase in the influx of refugees and migrants as they passed through or stayed in the country en route to an EU country. In close co-operation with Belgrade City Social Welfare Centre, the local think tank IDEAS and UNHCR, a pilot project was launched in October 2017.

**Summary of the practice:** The project aims to develop an effective and flexible guardianship model for unaccompanied children and to improve cultural mediation services for children. The model includes the creation of a pool of guardians who are carefully selected, trained, supervised and fairly remunerated for their work. Guardians are officially appointed and supervised by social welfare centres. In co-operation with the civil society organisations, guardians are provided with expert supervision and mentoring, including, *inter alia*, burnout prevention. Guardians are in direct contact with UASC on a daily basis, developing a relationship of trust, advocating for their rights and ensuring their best interests are respected by all relevant institutions and service providers. Guardians represent a direct link between the child and the social welfare and other systems. Within the pilot project, a Handbook for Guardians was developed ("Handbook for guardians working with unaccompanied refugee and migrant children"). Guardians co-ordinate service provision and ensure access to rights, including also participation and provision of information to children they are appointed to in a child-friendly and culturally sensitive way. Child-sensitive cultural mediation represents the second objective of the project aimed at the development of a model for improving the quality of

cultural mediation focusing on children. It includes training, selection of cultural mediators, development of a handbook, as well as supporting social welfare services and schools with mediators to sensitise and assist them in adjusting services to the needs of asylum-seeking, refugee and migrant children.

**Child-friendly elements:** The child-friendly interests of the practice are numerous but the transcultural approach is particularly important. Indeed, in partnership with UNHCR and local authorities, the think tank IDEAS has worked on the development of cultural competences of guardians placing a special focus on education (“Cultural mediation and cultural competence – Development and institutionalisation of cultural mediation service in social protection and education”).

**Lessons learned:** Co-ordination between different competent institutions and actors is essential and thus needs to be formalised and to include clear descriptions of roles and responsibilities. Lack of such procedures can impact the effectiveness of protection, as well as create additional burdens for guardians who then fill in various gaps at the field level to ensure protection of a particular child and facilitate their access to rights and services. In addition, supervision of the guardian by a psychologist in order to prevent burnout is proven to be one of the very important project activities.

**Contact details:** Marko Milanovic, Executive Director, IDEAS, [marko.milanovic@ideje.rs](mailto:marko.milanovic@ideje.rs)

**Links:** [www.unhcr.rs](http://www.unhcr.rs); Handbook for guardians: <https://tinyurl.com/yy5g53nd>; Standards and legal procedures in Serbia for guardians: <https://tinyurl.com/yy5lcnp2>; Cultural mediation and cultural competence: <https://tinyurl.com/y6o8noco>

### **Support of guardians by social experts and by senior experienced employee-guardians and by social experts through the coaching project in Belgium**

**Institution:** Guardianship Service, Ministry of Justice (Belgium, public authority)

**Funding:** State of Belgium

**Context:** There are different types of guardians for unaccompanied children in Belgium: private persons who can be volunteers or self-employed guardians, and employee-guardians who are employed by an NGO that receives subsidies to organise guardianship for UASC. In general, the guardian is appointed once the child has moved from the Observation and Orientation Centre for Unaccompanied Children (OOC) to the second reception facility (usually after about one month). A guardian is appointed from the area in the vicinity of the accommodation centre. Nevertheless, when the child is considered to be particularly vulnerable, a guardian is appointed immediately. Children with specific vulnerabilities or possible victims of trafficking are represented by a guardian,

with specific training to deal with children in such circumstances and to identify a durable solution for them.

**Summary of the practice:** To strengthen the guardianship mechanisms, the Belgian Guardianship Service has implemented a coaching project for the French-speaking guardians (by Caritas International) since June 2017 and for the Dutch-speaking guardians (by the Flemish Red Cross) since September 2018.

The coaching project consists of:

1. a helpdesk for guardians: guardians can call or email the helpdesk with questions about UASC, either practical or legal;
2. individual coaching: guardians can meet with the employee-guardians for advice concerning individual cases;
3. coaching course for new guardians: new guardians will meet four times a year in small groups to exchange experience and best practices;
4. training: the coaching project offers training on current topics (in addition to the other training for guardians that the Guardianship Service offers).

In addition, every guardian is assigned a contact person from among the social experts of the Guardianship Service. The contact person can assist the guardian with any questions related to guardianship and UASC and can discuss with the guardian individual cases. The contact person ensures the further follow-up of the guardian's legal duties under the Guardianship Law and can discuss with children any questions, remarks or complaints they may have concerning their guardians.

**Child-friendly elements:** Although the practice is directly addressed to guardians it benefits children by ensuring that guardians are better supported to promote the child's interests and rights. The coaching project provides support to voluntary guardians in fulfilling their missions adequately. It also allows children to discuss their concerns or questions in respect of their guardians.

**Lessons learned:** The role of the Guardianship Office and of the guardian is not always clear to or understood by children. To address this issue, the Guardianship Office sought to reinforce the guardianship system, with AMIF European funding, by updating the brochures of the Guardianship Office (that already exist in 15 different languages) and by making them child-friendly (with the use of pictograms, for example). The social experts of the Guardianship Office will also go regularly to the reception centres to talk with the children in groups in a child-friendly way (for example, by playing a board game), to inform them about the missions of the guardian and the role of the Guardianship Office. The Guardianship Office is also working on a methodology on how to follow up a guardian and how to handle a complaint. It already has internal guidelines, but they will be updated and more detailed.

**Contact details:** Philippe Pedé, attaché, Federal Public Service Justice, Guardianship Service, Belgium Ministry of Justice, [philippe.pede@just.fgov.be](mailto:philippe.pede@just.fgov.be); +32 2 542 74 31

**Links:** [http://justitie.belgium.be/nl/themas\\_en\\_dossiers/kinderen\\_en\\_jongeren/niet-begeleide\\_minderjarige\\_vreemdelingen/](http://justitie.belgium.be/nl/themas_en_dossiers/kinderen_en_jongeren/niet-begeleide_minderjarige_vreemdelingen/)

## Legal representation

According to the CRC Committee, all children, including those in parental care, should be appointed a legal representative to ensure representation at all stages in the proceedings and with whom they can communicate freely.<sup>108</sup> In line with the Guidelines on child-friendly justice, legal representation provided to children in migration proceedings must be accessible, age appropriate, multidisciplinary, effective and responsive to the legal and other needs of the child.<sup>109</sup>

The EU Asylum Procedures Directive provides that as a minimum asylum applicants have to be provided with free legal assistance and representation in appeals procedures. However, states may also provide asylum applicants with free legal assistance in the procedures at first instance. Unaccompanied children and their representatives shall be provided, free of charge, with legal and procedural information.<sup>110</sup>

### Child-friendly legal services and advocacy for migrant children and young people

**Institution:** Immigrant Council of Ireland (ICI) Independent Law Centre (Ireland, NGO)

**Funding:** 100% fundraised from small grants and philanthropic donations, received from the Public Interest Law Alliance (PILA), the Community Foundation of Ireland and the Law Centre for Children and Young People.

**Context:** Due to the lack of civil legal aid, ICI has decided since 2015 to provide free legal representation to migrants and their families living in Ireland, in particular those recognised as very vulnerable, such as unaccompanied refugee children and migrant youth in care/aftercare. These services are provided in Dublin but are available to all.

**Summary of the practice:** The Immigrant Council of Ireland provides free legal services to children on referral from social workers or other professionals working with and for them, such as youth advocates, foster parents, etc. Children and young people may also refer themselves to the services directly. The purpose of the services is to ensure timely access to legal advice and that appropriate applications are made on their behalf to obtain residence permission so that they have access to all necessary social protections to support their welfare and development. ICI also provides legal assistance with family reunification and applications for Irish citizenship in relevant cases, assisting with durable solutions and long-term integration. The service also ensures access to effective remedies where necessary. During the last three years, there have been around 100 direct clients. In addition to provision of legal services, ICI has undertaken research regarding the experiences of child migration in Ireland. This resulted in the publication of a report *Child migration matters* (2016), aiming to increase awareness among

108. CRC Committee, General Comment 23, paragraph 17(f).

109. Guidelines on child-friendly justice, Section III Fundamental principles and Section IV, paragraphs 1 and 17.

110. EU Asylum Procedures Directive, Articles 19-21 and 25.

policy makers and professionals on the need to address children's migration status and to support implementation of specific recommendations.

**Child-friendly elements:** Child participation and the voice of the child are central to ICI services. The young people are involved directly, attending all legal consultations and giving instructions about their case, using translators if required. To support the delivery of the service, the ICI lawyers receive training in child law and the provision of child-friendly services. Further, after direct consultation with the young people, the organisation produced user-friendly information guides on immigration registration and applying for citizenship.

**Lessons learned:** No core funding has been available to provide the service and the work has primarily been supported by way of small grants and philanthropic donations. This restricts the capacity of ICI to develop and deliver the services to more individuals.

**Contact details:** Catherine Cosgrave, Managing Solicitor, Immigrant Council of Ireland, [catherine@immigrantcouncil.ie](mailto:catherine@immigrantcouncil.ie); +353 1 6740202; [www.immigrantcouncil.ie](http://www.immigrantcouncil.ie)

### Legal assistance to UASC and children in families in Denmark

**Institution:** The Danish Refugee Council (Denmark, NGO)

**Funding:** Mainly by the State of Denmark

**Context:** With funding from the Danish Immigration Service, the Danish Refugee Council (DRC) provides legal aid to asylum seekers on the Danish national asylum procedures and to rejected asylum seekers with regard to return to their countries of origin. This includes counselling UASC and children in families in relation to the rights of the child and child-specific protection. Although this service has been available to children before, since 2014 the DRC has had a steady presence in the special housing facilities for UASC. The DRC is also providing such assistance directly in the Danish asylum centres across the country and in their offices in Copenhagen, via telephone, video conference and email.

**Summary of the practice:** A children's unit was set up in the DRC's Asylum Department with the aim of developing methods for child counselling and for addressing specific child-sensitive issues. The members of the team are selected on the basis of their competencies regarding child counselling and have different educational backgrounds. This multidisciplinary approach is used to ensure a holistic approach to the work with children. In order to provide complex information on the asylum procedure, the DRC has produced guidelines and materials to help staff communicate in a child-friendly way. Moreover, the DRC has a policy document on child counselling and specific written guidelines on the different forms of counselling. The guidelines contain specific methods of communication with children (such as interview techniques, but also child-sensitive ways of asking questions) and define the elements which need to be explained to children (such as the role of professionals, the duration of the meeting, expectations

from the meeting, a thorough conclusion of the meeting, and the meaning of confidentiality). The guidelines emphasise the need to pay attention to body language. The DRC provides legal advice to children hosted in the asylum centres for unaccompanied children and the asylum centres for families on a regular basis. The DRC also offers advice to the representatives of the unaccompanied children and to other individuals who are in contact with children.

**Child-friendly elements:** In order to address the children's vulnerabilities, especially when they are not accompanied, the DRC attaches great importance to the fact that children are treated in a child-friendly manner in all aspects of the asylum procedure. This includes access to legal aid during the asylum procedure that is free of charge as well as the provision, in a child-friendly way, of complex information on the asylum procedure. As mentioned, the DRC has developed specific tools (brochure, poster and app) to inform asylum seekers about the procedures they are concerned about.

**Lessons learned:** Effective communication with children through an interpreter depends a lot on the interpreter's skills of communicating to children, on the interpreter's ability to connect with children and on their personal attitude towards the interviewed child. This is why in order to establish a relationship of trust between the legal counsel and the child, the assessment of the interpreter's skills is important.

**Contact details:** The Danish Refugee Council, the Asylum Department, [advice@drc.ngo](mailto:advice@drc.ngo), +45 3373 5000, [www.drc.ngo](http://www.drc.ngo); <https://flygtning.dk/>.

## 2.5. Child-friendly information

Refugee and migrant children can be hampered in the protection of their rights by their linguistic, intercultural, psychological, familial/personal and procedural circumstances. Whereas child-friendly information can support children to understand their situation, make informed decisions and access supports, conversely the lack of information creates misunderstandings and anxiety.<sup>111</sup> For instance, in *Abdullahi Elmi and Aweys Abubakar v. Malta* the applicants complained that they received very little information from the Refugee Commissioner at the initial stages of the asylum procedure, arguing that they did not understand the written information provided and were not informed about the age-assessment procedure. The European Court of Human Rights noted that there were no measures taken to ensure that the children received proper counselling and educational assistance from qualified personnel and, accordingly, the Court found that the lack of any support mechanism for the children, as well as the lack of information concerning their situation, must have aggravated their fears. As a result of the cumulative effect of the conditions in this case, the Court found a violation of Article 3 of the Convention.<sup>112</sup>

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111. Council of Europe (2018), *How to convey child-friendly information for children in migration: a handbook for frontline professionals*, pp. 7 and 12.

112. *Abdullahi Elmi and Aweys Abubakar v. Malta*, nos. 25794/13 and 28151/13, paragraphs 83, 111, 114 and 115, 22 November 2016.

**Child-friendly information** is “information that is adapted to a child’s age, maturity, language, gender and culture”.<sup>113</sup> It should be provided as early as possible and continuously during procedures, in a language children understand (preferably mother tongue), adapted to children’s age, maturity and ability to understand, in a gender and culturally sensitive manner; should inform about rights, available procedures and services.

According to the CRC Committee states parties must ensure that the child in the migration system receives all necessary information and advice to make a decision in line with his/her best interests.<sup>114</sup> Children should be provided with full, accessible, diversity-sensitive and age-appropriate information about their right to express their views freely.<sup>115</sup> This requires an explanation of what is expected of the child (where and when the child is allowed to give an opinion, how will this be asked and in what setting) and an explanation of the content of the case concerned, the possible decisions that can be taken and the consequences of those decisions.<sup>116</sup> The provision of child-friendly information makes it possible for the child to reach a well-informed view.<sup>117</sup>

To this end, it is imperative that asylum-seeking and refugee children are provided with all relevant information concerning, for example, their entitlements, services available including means of communication, the asylum process, family tracing and the situation in their country of origin. Moreover, the information should be adapted to the level of maturity and understanding of the child.<sup>118</sup> Refugee children who are old enough to understand what is meant by status determination should be informed about the process, where they stand in the process, what decisions have been made and the possible consequences.<sup>119</sup> This requires trained professionals who are able to provide age-appropriate information in a way that is understandable to the child.<sup>120</sup>

Refugee and migrant children should be offered the possibility of being provided with a translator in order to express themselves fully, and/or to receive support from someone familiar to the child’s background (cultural/religious/ethnic). These professionals should be trained on the specific needs of children in the context of international migration, including gender, cultural, religious and other intersecting aspects.<sup>121</sup>

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113. Guidelines on child-friendly justice, Section IV, paragraph 2.

114. CRC Committee, General Comment 22, paragraph 35.

115. CRC Committee, *The right of the child to be heard*, General Comment 12, CRC/C/GC/12, 20 July 2009, paragraph 134(a).

116. *Idem*, paragraphs 25, 45, 47 and 48; Guidelines on child-friendly justice, Section IV, paragraph 1(a); UNHCR Guidelines 2009, paragraph 77; Pinheiro P. S. (2015), “Reflections on child-friendly justice” in Mahmoudi S., Leviner P., Kaldal A. and Lainpelto K. (eds), *Child-friendly justice: a quarter of a century of the UN Convention on the Rights of the Child*, Brill Nijhoff, Leiden, p. 27.

117. CRC Committee, General Comment 12, paragraphs 25, 34, 60 and 82; Guidelines on child-friendly justice, Section IV, paragraph 48.

118. CRC Committee, General Comment 6, paragraph 25.

119. UNHCR Guidelines 1994, p. 102.

120. CRC Committee, General Comment 12, paragraphs 34, 49, 134 (a) and 134 (g).

121. CRC Committee, General Comment 22, paragraph 36.

In 2018, the Council of Europe published the handbook *How to convey child-friendly information for children in migration*, as a practical guide for front-line professionals to support them to think critically about how to communicate with children at every stage of their journey: from arrival at the border to finding durable solutions towards integrating into the host country.<sup>122</sup> This handbook emphasises that all children, whether they are unaccompanied, separated or accompanied, have the right to receive age-appropriate and adapted information, irrespective of their immigration status. The right to information is a precondition for the effectiveness of all the rights of the child, because children in migration face additional barriers due to linguistic, cultural and other barriers. The handbook includes examples of promising practices on how to communicate with children in migration about their rights and the procedures affecting them, practical tips, questions for children and golden rules for child-friendly information.

### **“What happens now?” Information video for UASC in Sweden**

**Institution:** National Swedish Board of Health and Welfare (Sweden, public authority)

**Funding:** Swedish State budget

**Context:** Sweden is a final destination for refugees/migrants. In 2015, 70 000 out of 160 000 asylum seekers were children. About 50% of them were unaccompanied.

**Summary of the practice:** “What happens now?” is a video for UASC with information concerning their initial period in Sweden. The initial idea of the video was developed by the Norwegian Directorate for Children, Youth and Family Affairs in 2012. The video gives children an overview of what happens after they arrive in Sweden, which rights they have and who they will interact with. In the animated video, we follow an unaccompanied asylum-seeking boy from his arrival in Sweden to the day when he receives a decision on his application. There are two versions of the video, one for children placed in residential care homes for children and young persons and another for children in family homes. The videos are available in Swedish and 11 other languages. The videos are accompanied by three different guides for the adults who will show the videos to the children concerned. The guides contain, for instance, information on when it may be appropriate to show the video as well as information about and advice on how to speak to children about the asylum process.

**Child-friendly elements:** This practice gives newly arrived UASC in Sweden access to information, in accordance with Article 17 of the UNCRC, and provides a tool for the child to better understand his/her situation and rights. It is a useful tool, providing concrete information, and, as a result, contributing to the reduction

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122. Council of Europe (2018), *How to convey child-friendly information for children in migration: a handbook for frontline professionals*, <https://tinyurl.com/yxwtp3bd>.

of stress, anxiety and information insecurity. It also helps caretakers to provide guidance to the child in the exercise of his/her rights.

**Lessons learned:** Videos sometimes use complex terms that require additional explanations in a child-friendly manner.

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**Link to videos:** [www.socialstyrelsen.se/stod-i-arbetet/barn-och-unga/ensamkommande-barn-och-unga/filmer-informationsmaterial/](http://www.socialstyrelsen.se/stod-i-arbetet/barn-och-unga/ensamkommande-barn-och-unga/filmer-informationsmaterial/)

### **MIMNA project: non-linguistic welcome booklet for UASC in France**

**Institution:** University of Grenoble Alps – LIDILEM Laboratory; Savoy-Mont Blanc University –LIPS/PC2S Laboratory; Departmental public establishment “Le Charmeyran” – First reception centre; Socio-Educational Centre “La Plantaz” – Second reception centre (France)

**Funding:** Foundation of France, University of Grenoble Alps – LIDILEM Laboratory, Departmental public establishment “Le Charmeyran”, NeuroCog-Cognition Pole

**Context:** The MIMNA<sup>123</sup> project was developed based on the combined experience of sociolinguistics applied to mediation and psychopathology. It aims to help UASC (waiting in emergency facilities, often in a state of intense stress and vigilance, sometimes for several weeks) better understand their reception conditions, their administrative situation and the complexity of the measures taken in their respect.

**Summary of the practice:** The project consists of a non-linguistic welcome booklet to be used as an interactive mediation tool to support mutual understanding between professionals and UASC during meetings. It is designed to help professionals to provide children with information about the framework and procedures concerning them (accommodation, age assessment, relocation, child protection system, legal proceedings). The booklet also supports front-line professionals and social workers to communicate with children, enabling them to learn relevant information about the children’s country of origin, nationality, mother tongue, family tracing, reasons for leaving, health issues, material needs, as well as to provide children with information about human trafficking, abuse and exploitation with a view to preventing and combating them.

**Child-friendly elements:** By improving the children’s faculties to develop their empowerment and coping strategies (not depending on their language level, their cultural origin, the access to an interpreter), the booklet seeks to reduce stress, enable communication and indirectly improve how the children’s needs

123. Médiation de l’Information pour Mineurs Non Accompagnés – Information Mediation for Unaccompanied Minors.

and rights are addressed in the course of the immigration law procedures. The booklet provides informative social support with a Universal Design.<sup>124</sup>

**Lessons learned:** After a few months of distribution of the booklet, its effectiveness in reducing daily stress has not been tested yet. This is the next step in the project.

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## 2.6. Child-friendly interviews

Article 12 of the UNCRC requires states parties to enable children to be heard in matters that affect them and the CRC Committee has recommended that special attention be paid to this right in immigration, asylum and refugee procedures.<sup>125</sup>

In the case of asylum, the child must have the opportunity to present the reasons that led to the asylum claim.<sup>126</sup> The UNHCR Guidance provides that in order to fully understand the asylum procedure and to participate effectively in the process, the asylum interview needs to take into account the age, gender, cultural background and maturity of the child, along with the circumstances of the flight and mode of arrival. Useful non-verbal methods that can be applied include drawing, role-playing, storytelling, singing and playing. UNHCR has highlighted the importance of recognising that children are different from adults in such a way that, for example, they cannot be expected to provide adult-like accounts of their experiences, or that during the interview they might omit vital information or be unable to differentiate reality from fantasy. Accordingly, interviews need to take place in friendly, accessible settings so that the child feels safe.<sup>127</sup>

The interview should also be conducted by a professional trained in communicating with children.<sup>128</sup> It may also be important for children to be heard separately from their parents while their individual circumstances are included in the consideration of the family's case. Specific best-interests assessments should be carried out in those procedures, and the child's specific reasons for the migration should be taken into account.<sup>129</sup> Also, the child's right to be heard should be ensured in the immigration procedures concerning their parents, specifically when the decision could affect the rights of the child, such as the right to not be separated from parents.<sup>130</sup>

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124. As defined by the Council of Europe, the Universal Design is a strategy which aims to make the design and composition of different environments, products, communication, information technology and services accessible and understandable to, as well as usable by, everyone, to the greatest extent in the most independent and natural manner possible, preferably without the need for adaptation or specialised solutions.

125. See also CRC Committee, General Comment 22, paragraph 37.

126. CRC Committee, General Comment 12, paragraph 123.

127. UNHCR Guidelines 2009, paragraphs 71-72.

128. CRC Committee, General Comment 23, paragraph 17(c).

129. CRC Committee, General Comment 22, paragraph 37.

130. Idem, paragraph 38.

EU law requires that the applicant is given the opportunity of a personal interview on his/her application before a decision is taken by a determining authority. Member states may determine themselves whether children shall be given the opportunity of a personal interview and, as a result, practice in the member states varies as to whether a child is heard during the asylum procedure. According to the EU Asylum Procedures Directive, the interview must be conducted in a child-friendly environment, and if the child is unaccompanied, the interview must be conducted by someone who has the necessary knowledge of the special needs of children. More generally, the decision on the application of an unaccompanied child must be prepared by an official who has the necessary knowledge of children's special needs.<sup>131</sup>

### **Interviewing unaccompanied children by specially trained case workers in a child's place of stay and in the presence of a psychologist in Poland**

**Institution:** Office for Foreigners (Poland, public authority)

**Funding:** State of Poland

**Summary of the practice:** In asylum procedures, children are interviewed by a trained and experienced staff member who is sensitised to how to communicate in a child-friendly manner, in language that is understood by the child. Children are interviewed in their place of residence, so they do not have to travel to Warsaw and they are in a well-known place, which reduces stress and makes them feel safer. Staff members interviewing children must be qualified and specially appointed. They are obliged to undergo special training on interviewing children, which is provided by external partners, for instance psychologists from an NGO protecting children from abuse. EASO's training module "Interviewing children" is also used. The training covers: child development stages with particular emphasis on language skills and understanding abstract concepts (time, emotions, distance, etc.); interviewing children techniques; child-specific risks (influence of smugglers, pressure to support family in country of origin, LGBTQ, sexual abuse, etc.). The role of the psychologist is: to observe the child during the interview; to see if the child has some psychological problems or symptoms of trauma or stress; to support the child and interviewer if there are difficulties in establishing contact, if the child is afraid to participate; to prepare an opinion/report on the child's psychological condition or be able to suggest that further psychological assistance is needed.

**Child-friendly elements:** The importance of the presence of a psychologist during the interview must be stressed, both to assist the child and to assist the professional. In addition, interviews are conducted in an environment with which the child is familiar.

**Lessons learned:** The psychologists co-operating with the Office for Foreigners are external experts. There are not enough psychologists experienced in working with children who come from different cultures and countries to provide

131. EU Asylum Procedures Directive, Articles 14(1), 15(3)(e) and 25(3)(a).

this service. Most psychologists do not speak the native language of the child and have to communicate through an interpreter, while direct communication without an interpreter is more effective.

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## 2.7. Remedies and complaints mechanisms

Access to justice refers to “the ability to obtain a just and timely remedy for violations of rights”.<sup>132</sup> According to the CRC Committee, an effective remedy requires effective, child-sensitive procedures and in the migration context, administrative and judicial proceedings affecting the child’s own situation or that of their parents should be adapted to the needs and development of children.<sup>133</sup> Children must also have access to appeals mechanisms.<sup>134</sup> And in the context of refugee and migration, children should be notified of the existence of a proceeding, any decision made and of the possibilities and implications of appeal.<sup>135</sup>

According to the CRC Committee and the Council of Europe Guidelines on child-friendly justice, complaints mechanisms for children must be accessible. Children should be able to bring complaints before courts, administrative tribunals or other bodies at lower levels that are easily accessible to them, and should be able to receive advice and representation in a child-friendly manner by professionals with specialised knowledge of children and migration issues when their rights have been violated. There should also be equal access for unaccompanied, separated children and undocumented children.<sup>136</sup>

The European Court of Human Rights noted in *Popov v. France* that children should be able to avail themselves of available remedies. In particular, the Court found a violation of Article 5(4) of the Convention because, while the parents had had the possibility to have the lawfulness of their detention examined by the French courts, the children “accompanying” their parents had found themselves in a legal void, unable to avail themselves of such a remedy.<sup>137</sup> In *Rahimi v. Greece*, the provision of incomplete information on procedures for complaining about conditions in detention centres and in a language the child could not understand, combined with the absence of a guardian or a legal representative, made the available remedy inefficient, contrary to Articles 5(4) and 13 of the Convention.<sup>138</sup>

132. UN Human Rights Council (2013), *Access to justice for children. Report of the United Nations High Commissioner for Human Rights*, UN Doc. A/HRC/25/35, paragraph 4.

133. *Idem*, paragraphs 14-15. See also Guidelines on child-friendly justice, Section IV, paragraph 34.

134. CRC Committee, General Comment 12, paragraphs 46-47.

135. CRC Committee, General Comment 23, paragraph 17.

136. CRC Committee, General Comment 22, paragraph 36; CRC Committee, General Comment 23, paragraph 16; Guidelines on child-friendly justice, Section III.E, paragraph 3.

137. *Popov v. France* (2012), paragraphs 122-125.

138. *Rahimi v. Greece* (2011), paragraph 79.

In addition, children, like adults, should have access to an effective remedy against a removal decision which may expose them to the risk of *refoulement* or to other violations of their rights.<sup>139</sup> The effectiveness of the remedy for the purposes of Article 13 of the Convention requires imperatively that the appeal be subject to close scrutiny by a national authority, that there be independent and rigorous scrutiny of a claim, that there exist substantial grounds for fearing a risk of treatment contrary to Article 2 or 3 of the Convention, and that the procedure be carried out with reasonable promptness. In such a case, effectiveness also requires that the person concerned should have access to a remedy with automatic suspensive effect.<sup>140</sup> By contrast, where removals are challenged on the basis of alleged interference with private and family life, it is not imperative, in order for a remedy to be effective, that it should have automatic suspensive effect.<sup>141</sup>

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139. See more on *non-refoulement* in section 1.1. and on return procedures in section 4.5.

140. *Khlaifa and Others v. Italy* [GC], No. 16483/12, ECHR 2016, paragraphs 275-279.

141. *De Souza Ribeiro v. France* [GC], No. 22689/07, ECHR 2012, paragraph 83.



## Theme 3

# Special protection measures and deprivation of liberty

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**T**his chapter refers to protection measures which need to be provided by states in order to address the particular needs of refugee and migrant children, especially those unaccompanied or separated, victims of trafficking, domestic violence, sexual abuse or sexual exploitation. The chapter also refers to adequate measures necessary to avoid the children's detention for immigration purposes.

### 3.1. Special protection measures

States are required to provide special protection to children in the migration system, whether unaccompanied and separated children or irregular migrants. In particular, states are required to comply with “the obligation to establish national legislation; administrative structures; and the necessary research, information, data compilation and comprehensive training activities to support [protection] measures”. Such legal obligations are both negative and positive in nature, requiring states not only to refrain from measures infringing on such children's rights, but also to take measures to ensure the enjoyment of these rights without discrimination. According to the CRC Committee,

[t]he positive aspect of these protection obligations also extends to requiring states to take all necessary measures to identify children as being unaccompanied or separated at the earliest possible stage, including at the border, to carry out tracing activities and, where possible and if in the child's best interest, to reunify separated and unaccompanied children with their families as soon as possible.<sup>142</sup>

A child's own account of his/her experience is often essential for the identification of their individual protection requirements and, in many cases, the child will be the only source of this information.<sup>143</sup> Therefore, every effort must be made to provide a child with the opportunity to personally identify their individual protection requirements. A migrant child's right to participation must be respected to the same extent as that of any other child involved in administrative proceedings.

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142. CRC Committee, General Comment 6, paragraph 13.

143. UNHCR Guidelines 2009, paragraph 70.

### **Irish model of care and protection for unaccompanied and separated children seeking asylum**

**Institution:** Tusla Child and Family Agency (Ireland, state agency)

**Funding:** State

**Context:** Prior to the implementation of the Equity of Care Principle in Ireland, there was a two-tiered care system in place which saw children seeking international protection being denied the resources made available to indigenous children in care (allocated social workers, care plans, care placements), thus denying them access to services and comparable outcomes.

**Summary of the practice:** Since 2010 the Equity of Care Principle was developed and implemented in Ireland, insisting that all children in the care of the state are entitled to the same standards of care and protection under Ireland's child protection legislation regardless of immigration status or residency permission. All UASC see a social worker on the day of referral and an initial assessment takes place. A multidisciplinary care plan is developed and, if appropriate, an application for asylum is made on behalf of the child. All newly arriving separated children under 12 years or with extraordinary vulnerabilities are placed on arrival in foster care. Those over 12 years are placed in one of the four short- to medium-term residential intake units in Dublin that are registered children's homes with no more than six children in any home. Children are accommodated in these units on average for three to six months while a welfare and needs assessment or a family reunification assessment is carried out. After the initial assessment period, children are placed in the most appropriate placement option depending on their assessed needs. The most prevalent form of placement is with a foster family but supported lodgings care is also used for older and more independent young people. For some children who would struggle in a family setting, there is also the option to transition to one of three long-term children's homes. During the last eight and a half years, over 900 UASC have received care by the Service.

**Child-friendly elements:** Levelling the playing field has ensured that UASC are seen as children first.

**Lessons learned:** The phenomenon of migration is ever-changing so it is difficult to plan for resource needs and then when they are identified, it can take months or even years to secure the funding.

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**Links:** [www.tusla.ie](http://www.tusla.ie), [www.tusla.ie/services/alternative-care/separated-children/](http://www.tusla.ie/services/alternative-care/separated-children/)

## **3.2. Support for especially vulnerable children**

Refugee and migrant children are exceptionally vulnerable to traffickers and may have suffered extreme forms of abuse, exploitation and deprivation in their country

of origin, during their journeys and sometimes even after arrival in Europe.<sup>144</sup> For this reason, it is of utmost importance that an early trauma tracing is set in place and that there is a focus on social or health issues, so the children and their families can get the appropriate support and treatment by professionals.

The UNCRC recognises the rights of children to protection from harm and exploitation under Articles 19, 32, 34 and 36. UN Special Rapporteurs have identified situations of conflict and humanitarian crisis as being particular causes of the trafficking and sexual exploitation of children. As one of the main destinations for children on the move, Europe is said to be at the heart of the sale of, trafficking in and other forms of exploitation of children. High rates of trafficking in and exploitation of children have been documented on the central Mediterranean route from North Africa to Italy.<sup>145</sup>

Forms of exploitation that have been identified include: the sexual exploitation of children, child and forced marriage, the labour exploitation of children, forced begging, drug smuggling and domestic servitude.<sup>146</sup> The Council of Europe Convention on Action against Trafficking in Human Beings provides under Article 5(5) that states parties should take “specific measures to reduce children’s vulnerability to trafficking, notably by creating a protective environment for them”.<sup>147</sup>

The **Anti-Trafficking Convention** provides some detailed provisions on the protection of child victims of trafficking:

- ▶ A victim of trafficking is presumed to be a child where his or her age is uncertain and there are reasons to believe that he/she is a child.
- ▶ Such presumed victims of trafficking are to be accorded special measures of protection pending verification of age (Article 10(3)).
- ▶ A representative shall be appointed for unaccompanied child (and presumed child) victims of trafficking to act in the best interests of that child (Article 10(4)(a)).
- ▶ States parties are required to take the necessary steps to establish the child’s identity and nationality (Article 10(4)(b)).
- ▶ States parties are required to make every effort to locate the child’s family when this is in her/his best interests (Article 10(4)(c)).
- ▶ The details allowing the identification of child victims of trafficking must not be made publicly known, except in exceptional circumstances in order

144. UNICEF (2016), *Uprooted: the growing crisis for refugee and migrant children*, New York, p. 2.

145. UN Special Rapporteur on trafficking in persons, especially women and children, Report, UN Doc. A/HRC/38/45, 14 May 2018; Joint report of the UN Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material and the UN Special Rapporteur on trafficking in persons, especially women and children, UN Doc. A/72/164, 18 July 2017; see also UN Global Report on Trafficking in Persons, 2018.

146. Council of Europe, Group of Experts on Action against Trafficking in Human Beings (GRETA), 6th General Report on GRETA’s activities (2017), Thematic section on trafficking in children.

147. Council of Europe Convention on Action against Trafficking in Human Beings (2005, CETS No. 197).

to facilitate the tracing of family members or otherwise secure the well-being and protection of the child (Article 11(2)).

- ▶ States parties are required to ensure that when providing assistance to child victims of trafficking, in terms of accommodation, education and appropriate health care, due account is taken of the special needs and rights of children (Article 12(7)).
- ▶ Child victims are to have access to education (Article 12(1)(f)).
- ▶ Considerations of the best interests of the child victim shall govern the issuing and renewal of residence permits by states parties, when legally necessary (Article 14(2)).
- ▶ Child victims are not to be returned to a state if there is an indication, following a risk and security assessment, that such return would not be in their best interests (Article 16(7)).
- ▶ Special protection measures must be afforded to child victims during and after the investigation and prosecution of perpetrators, taking into account their best interests (Article 28(3)).

As part of its monitoring work, GRETA has been providing recommendations to member states and taking stock of promising practices put in place as follow-up to its recommendations.<sup>148</sup> For example, in its 6th General Report, GRETA has highlighted some positive practices from countries which have set up specialised shelters for child victims of trafficking.<sup>149</sup>

The EU Trafficking Victims Directive<sup>150</sup> aims to set out minimum rules for the definition and sanctioning of human trafficking-related offences (Article 1). The Directive includes several child-specific provisions relating to assistance and support of child victims of trafficking and protection in criminal investigations (Articles 13-16), such as a specialist assessment of each individual victim (Article 14(1)), appointment of a guardian to represent the child's best interests (Article 14(2)) and provision of support to the family of the child (Article 14(2)). During criminal proceedings, children have the right to a representative, free legal counselling, and the right to be heard in adequate locations and by trained professionals (Article 15(1)-(3)). Further protection measures include the possibility to conduct hearings without the presence of the public and the possibility to hear the child indirectly via communication technologies (Article 15(5)).

With regards to sexual violence against children, the Council of Europe Lanzarote Convention stipulates that states should criminalise all forms of sexual abuse and

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148. GRETA, 6th General Report on GRETA's activities (2017), Thematic section on trafficking in children, 7th General Report on GRETA's activities (2018), 8th General Report on GRETA's activities (2019), plus country reports.

149. See 6th General Report on GRETA's activities (2017), pp. 54-55.

150. Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.

child sexual exploitation.<sup>151</sup> The Lanzarote Convention regulates in detail the right of children to be protected from sexual abuse and the rights and safeguards of victims involved in criminal proceedings. This Convention also requires states to take legislative or other measures to prevent sexual abuse of children, by organising awareness-raising campaigns, training specialist staff, informing children on the risks of abuse, and providing specialist help to individuals who risk committing child abuse crimes. In 2017, the Lanzarote Committee carried out an urgent monitoring round to map the ways in which the risks of sexual exploitation and sexual abuse of children arising in the context of the refugee crisis are being dealt with. The Special Report resulting from this urgent monitoring round provides specific recommendations on steps to improve or reinforce the protection of children affected by the refugee crisis against sexual exploitation and sexual abuse and highlights a number of promising practices from state parties.<sup>152</sup>

The **Lanzarote Committee** urged state parties:<sup>153</sup>

- ▶ to effectively screen, all persons, in line with Article 5 of the Convention, who by their professions have regular contact with children affected by the refugee crisis for convictions of acts of sexual exploitation or sexual abuse of children in line with their internal law;
- ▶ to take the necessary measures to avoid risks that the child may be abused or exploited in case of family reunification;
- ▶ to ensure that child victims of sexual exploitation and sexual abuse affected by the refugee crisis may benefit from therapeutic assistance, notably emergency psychological care;
- ▶ to encourage the co-ordination and collaboration of the different actors who intervene for and with children affected by the refugee crisis to ensure that appropriate support may be provided immediately after the disclosure of sexual exploitation and sexual abuse;
- ▶ to make use within the context of the refugee crisis of the specific co-operation tools already available in the framework of Europol/Interpol which are specifically aimed at identifying victims of sexual exploitation and sexual abuse.

The EU Directive on combating the sexual abuse and sexual exploitation of children and child pornography<sup>154</sup> reflects the approach of the Lanzarote Convention in seeking to harmonise minimum criminal sanctions for various child sexual abuse

151. Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, (2007, CETS No. 201) (“Lanzarote Convention”).

152. Council of Europe Lanzarote Committee, Special Report, *Protecting children affected by the refugee crisis from sexual exploitation and sexual abuse* (3 March 2017).

153. See more on follow-up given by state parties to the implementation of these recommendations: [www.coe.int/en/web/children/urgent-monitoring-round-follow-up-to-the-special-report-recommendations](http://www.coe.int/en/web/children/urgent-monitoring-round-follow-up-to-the-special-report-recommendations).

154. Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA.

offences between member states. The Directive provides for increased penalties if the acts are committed by persons in a position of trust against particularly vulnerable children and/or through the use of coercion. The Directive also includes provisions on child-friendly proceedings and ensures the protection of child victims in courts.

Refugee and migrant girls face particular protection concerns, distinct from those faced by boys. In addition to the specific risks which determined them to flee their country of origin, they also face challenges and may be subjected to severe forms of violence against women in accommodation, reception and detention facilities throughout Europe. The Istanbul Convention establishes the obligation to provide protection to all victims from any acts of further violence, to provide safe accommodation, and to afford child victims or witnesses of violence against women and domestic violence special protection measures, taking into account the best interests of the child.<sup>155</sup> According to the Istanbul Convention states parties shall introduce gender-sensitive procedures, guidelines and support services in the asylum process and ensure that victims of violence against women who are in need of protection, regardless of their status or residence, are not returned to any country where their life would be at risk or where they may be subjected to torture or inhuman or degrading treatment or punishment.<sup>156</sup>

According to the CRC Committee, states parties should take appropriate measures to prevent trafficking, including “identifying unaccompanied and separated children; regularly inquiring as to their whereabouts; and conducting information campaigns that are age-appropriate, gender-sensitive and in a language and medium that is understandable to the child. Adequate legislation should also be passed and effective mechanisms of enforcement be established with respect to labour regulations and border crossing”.<sup>157</sup>

Moreover, Article 32 of the UNCRC requires the child to be protected from economic exploitation and from performing any work that is likely to be hazardous, interferes with the child’s education, or is harmful to the child’s health or well-being. In light of the increasing number of missing children, adequate measures must be taken to prevent the disappearance of migrant and refugee children. A duty of care lies with the host jurisdiction to ensure that such vulnerable children are protected from further harm, either within the host jurisdiction or their country of origin. It is the responsibility of the host state to consider the eligibility of the child’s claim for refugee protection or an alternative form of complementary protection.<sup>158</sup> Article 39 of the UNCRC requires, in particular, that states provide rehabilitation services to children who have been victims of any form of abuse, neglect, exploitation, torture, cruel, inhuman and degrading treatment or armed conflicts. In order to facilitate recovery and reintegration, culturally appropriate and gender-sensitive mental health care should be developed and qualified psychosocial counselling provided.<sup>159</sup>

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155. Council of Europe Convention on Preventing and Combating Violence against Women (2011, CETS No. 210), (“Istanbul Convention”), Articles 18 and 56(2).

156. Istanbul Convention, Articles 60(2) and 61. For more details see Council of Europe (2019), *Protecting the rights of migrant, refugee and asylum-seeking women and girls*, Factsheet, <https://tinyurl.com/y5uukssc>; and CEDAW, General recommendation No. 32.

157. CRC Committee, General Comment 6, paragraph 52.

158. *Idem*, paragraph 53.

159. *Idem*, paragraph 48. See also CRC Committee, General Comment 23, paragraphs 43-44.

The revised EU Reception Conditions Directive recognises the vulnerability of migrant children, unaccompanied children, as well as disabled people, elderly people, pregnant women, single parents with children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation.<sup>160</sup> To transpose the Directive, states are expected to adopt special measures for such vulnerable groups.

### **Elaborating minimum standards for girls’ inclusive empowerment programming**

**Institution:** UNICEF Serbia Country Office + UNICEF partners in Serbia and Bulgaria

**Funding:** UNICEF and BPRM (the US Department of State’s Bureau of Population, Refugees, and Migration)

**Context:** This practice has been prepared and piloted in Serbia (Belgrade, Pirot, Novi Bečej) and Bulgaria (Sofia) with UNICEF partners, who all had a background in gender-based violence (GBV) response. The project attempted to address the needs of refugee, migrant and Roma<sup>161</sup> adolescent girls (aged 10-19) who face unique challenges, especially in emergencies. They are increasingly exposed to harmful gender norms and unbalanced power relations and are especially vulnerable to sexual exploitation, abuse and violence, due to unsafe transportation or lack of privacy. They are also characterised by poor reproductive health, early termination of education, as well as a vulnerability to early marriage.

**Summary of the practice:** The UNICEF Gender-Based Violence in Emergencies team in Serbia designed and implemented a programme with four core pillars of standards, including: 1) appropriate identification and outreach to the most vulnerable girls, 2) providing safe spaces for girls, 3) ensuring availability of GBV trained facilitators and 4) a tested and age-appropriate curriculum for developing their skills. These standards were tested through a girls-only safety and resilience programme, focused on providing safe spaces that are confidential and accessible to the refugee and migrant girls, as well as to girls of the Roma community, paying attention to the girls’ vulnerabilities by designing activities based on their different needs. The curriculum of the programme focused on developing important life skills through an assets-building approach, tailored to the girl’s context. It was proved crucial to provide opportunities and spaces where girls can relax and freely communicate their worries and concerns, handled in a respectful and confidential manner. In settings where public spaces are dominated by men and boys, “girls-only” safe spaces carve out a place for

160. EU Reception Conditions Directive, Article 21.

161. The term “Roma and Travellers” is used at the Council of Europe to encompass the wide diversity of the groups covered by the work of the Council of Europe in this field: on the one hand a) Roma, Sinti/Manush, Calé, Kaale, Romanichals, Boyash/Rudari; b) Balkan Egyptians (Egyptians and Ashkali); c) Eastern groups (Dom, Lom and Abdal); and, on the other hand, groups such as Travellers, Yenish, and the populations designated under the administrative term “Gens du voyage”, as well as persons who identify themselves as Gypsies.

adolescent girls where they can feel physically and emotionally safe, forget their daily burdens and focus on themselves, while accessing life-saving services. A Pocket-Guide on safety and resilience for girls has been elaborated with the assistance of adolescent girls. The whole approach supported by UNICEF and civil society partners was to put girls' concerns, needs and, above all, voices at the centre of the whole intervention, and on the design of the Pocket-Guide in line with the principle of child participation. An estimated 184 girls have been engaged in the programme, including almost 80% of the total girls accommodated in the refugees and migrant reception and asylum facilities in Serbia.

**Child-friendly elements:** The contents of the Pocket-Guide were decided based on the topics and activities that girls themselves selected and suggested during the different activities organised by partners. An important child-friendly element was the engagement of girls from different environments to make sure that the Pocket-Guide would be applied in different contexts (where refugee and Roma girls live and socialise) but also to streamline the idea that girls' rights need to be equally respected and promoted in different settings and contexts regardless of their legal status. Focus groups discussion was held with the girls themselves to understand their preferences and to ensure relevance of the Pocket-Guide. Pictures were selected with them and there was a lot of work on the choice of words and on the design to make sure this was child-friendly and represented their "world". The use of technical jargon was avoided on purpose, accompanying the text with affirmative and positive pictures in order to reflect girls' enthusiasm and energy.

**Lessons learned:** It was initially complex to challenge two beliefs: 1) Activities for children need to be inclusive and aggregate boys and girls together. This practice showed the importance of disaggregating activities for girls when it comes to adolescence and to discussing sensitive topics. 2) A girls-only programme encompasses cultural differences since girls' needs in emergencies are similar in Serbia, Bulgaria or in vulnerable areas of the Roma communities; hence the importance to develop minimum standards on safety and resilience for girls that could hold true in different contexts.

**Contact details:** Jadranka Milanovic, Communication Officer, UNICEF, [jmilanovic@unicef.org](mailto:jmilanovic@unicef.org),

**Link to Pocket-Guide:** [www.unicef.org/serbia/en/reports/my-safety-and-resilience](http://www.unicef.org/serbia/en/reports/my-safety-and-resilience)

### **Workbook to assist understanding the experiences of young people forced to move across borders**

**Institution:** National Society for the Prevention of Cruelty to Children (NSPCC) – Child Trafficking Advice Centre (CTAC) (the United Kingdom, NGO)

**Funding:** National Society for the Prevention of Cruelty to Children

**Context:** This workbook is a tool for practitioners to use when working with young people who have moved across borders. As the United Kingdom sees a steady flow of children arriving in the UK being dispersed to rural areas through

the National Transfer Scheme, the tool can support practitioners who may have limited experience of working with children forced into migration. This is an ideal tool for social workers to use when completing initial assessments for children forced into migration who have recently entered care.

**Summary of the practice:** The tool is designed in a “questions and answers” format and explores the experiences young people have had on their journeys. The questions are non-leading and worded in a way to minimise assumptions from professionals. The interactive format, including the opportunity to draw pictures, rate experiences on scales and circle images, makes the workbook appropriate to use with a wide age range of children. This is an important tool for practitioners, as it allows them to get to know a young person, while also exploring their experiences and the potential abuses they have been through on their journeys. By completing the workbook with children, concerns for trafficking can be identified in a child-friendly way, which can then support a child protection response from statutory agencies.

**Child-friendly elements:** The resource is interactive and encourages conversation between the child and practitioner. The workbook covers four stages (life at home, on the move, staying in camps in northern France and the future), allowing a holistic approach to looking at a child’s life experiences, not just their circumstances once they have reached the UK. The questions in the resource use simple English language which is translated easily into a range of other languages. The resource finishes with an empowering message, allowing the young person to think about how they could advocate for other young people in similar circumstances to them.

**Link:** <https://learning.nspcc.org.uk/research-resources/2018/uprooted-unprotected>

### **ReACT – Reinforcing Assistance to Child Victims of Trafficking**

**Institution:** ECPAT Germany/ECPAT France – End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes (Germany, France, NGOs)

**Funding:** European Commission 70%, donors 30%

**Context:** ReACT is a partnership project between ECPAT groups in Germany, the United Kingdom, France, Belgium, and the Netherlands, aiming to increase the capacity of representatives (guardians and lawyers) of child victims of trafficking to provide appropriate support and uphold the rights of trafficked children during legal proceedings in key trafficking destination countries. The practice is addressed to unaccompanied migrant children, to separated children or children in danger, to migrant children victims of trafficking and to migrant children who could be victims of trafficking. It is also addressed to child protection professionals and to professionals working with unaccompanied children.

**Summary of the practice:** Two kinds of child-friendly tools for child victims of trafficking have been elaborated: oral (video) and written (leaflets), in order to

inform children of their rights as children, and as child victims of trafficking. In order to adapt the content of tools to children's reality, child participation has been ensured during all the creation processes. In order to avoid secondary victimisation of the children, ECPAT France decided to collect the information by asking a general question. In this way, children were able to speak freely about stories, possibly theirs but possibly not. General videos are available in 13 languages. The ReACT video is common to five countries' partners. Information given to the children is general but reminds them of their fundamental rights as well as primary advice.

**Child-friendly elements:** The project involved the participation of children at risk and victims of trafficking in developing and delivering information and messages that are relevant for children. These tools provide a channel for child victims of trafficking to access peer information in their own language. Voices recorded are from children/youth in order to create a more child-friendly tool and a peer-to-peer approach.

**Lessons learned:** The child-friendly tools have been well received by a large variety of practitioners working in victims' centres, asylum-seeking centres, bar associations, and guardianship services in the different countries. However, the use of resources developed by other organisations is not easy. A lesson learned is that when introduced to professionals face-to-face (in meetings, workshops or training), the use of the tools increases. The integration of these tools into practice may have been greater if conceived with a large number of organisations who are expected to use them (in the different countries).

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**Links:** Leaflets in 11 languages: [www.ecpat.org/resources](http://www.ecpat.org/resources); ReACT videos in 13 languages: [www.youtube.com/channel/UC2FdnTMrLO1Tt3oiFUop3Fg](https://www.youtube.com/channel/UC2FdnTMrLO1Tt3oiFUop3Fg)

### 3.3. Deprivation of liberty

Article 37 of the UNCRC guarantees that no child shall be deprived of his or her liberty unlawfully or arbitrarily. Where deprivation does occur, children must be treated with humanity and in accordance with their needs and age. They should be provided with legal and other assistance and have the possibility of challenging the legality of their detention before a court. The CRC Committee has firmly stated that children must never be detained for reasons related to their parents' migration status and has recommended that states immediately cease the detention of migrant children, if applicable. Any kind of such detention should be forbidden by law and such prohibition fully implemented in practice.<sup>162</sup>

The CRC Committee has also emphasised that unaccompanied or separated children must never be deprived of their liberty. Detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory

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162. CRC Committee, General Comment 23, paragraph 5.

or residence status, or lack thereof.<sup>163</sup> The detention of any child on account of their own or their parents' migration status always constitutes a child-rights violation and contravenes the principle of the best interests of the child. The possibility of detaining children as a measure of last resort, which may apply in other contexts such as juvenile justice, is therefore not applicable in immigration proceedings as it would conflict with the best interests of the child and the right to development.<sup>164</sup>

Article 6 of the EU Charter of Fundamental Rights also recognises the right to liberty and EU law provides that a person cannot be detained for the mere fact of having applied for asylum or for being subject to removal. According to EU law, children, whether accompanied by their families or not, may be detained only as a measure of last resort and only after it has been established that other less coercive measures cannot be applied effectively; if applied, detention must be for the shortest period of time and all efforts must be made to release the detained children and place them in suitable accommodation.<sup>165</sup> EU law requires member states to provide for alternatives to detention in case of removal.<sup>166</sup>

According to the European Committee for the Prevention of Torture (CPT), immigration detention should be exceptional, proportionate and, by consequence, an individual measure necessary in order to prevent unlawful immigration.<sup>167</sup> Detention can take various forms, such as house arrest, confinement to an airport transit zone<sup>168</sup> or to a border area; placement in a ship;<sup>169</sup> and a stop and search by the police.<sup>170</sup> The Court has held that deprivation of liberty even for a very short duration may qualify as detention.<sup>171</sup>

Article 5(1)(f) of the European Convention on Human Rights allows detention for the purpose of preventing unauthorised entry or with a view to deportation. To be compatible with the Convention, immigration detention must be lawful and free from arbitrariness; must comply with national laws and be carried out in good faith, it must be closely connected to its purpose, the place and conditions of detention should be appropriate and the length of the detention should be reasonable.<sup>172</sup>

The European Convention on Human Rights does not explicitly prohibit the detention of refugee and migrant children. However, the case law of the Court provides detailed analysis of violations resulting from the detention of migrant children, accompanied

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163. CRC Committee, General Comment 6, paragraph 61.

164. CRC Committee, General Comment 23, paragraph 5.

165. See for example Articles 8 and 11 (2), EU Reception Conditions Directive; Article 15, EU Return Directive.

166. EU Return Directive, Recital 16; CJEU 28 April 2011, *El Dridi*, C-61/11, paragraph 39; FRA (2015), *Alternatives to detention for asylum seekers and people who are in return procedures*.

167. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Factsheet on immigration detention, CPT/Inf(2017)3.

168. *Amuur v. France*, 25 June 1996, paragraphs 43-49, Reports of Judgments and Decisions 1996-III.

169. *Khlaifia and Others v. Italy* [GC], (2016), paragraphs 65-71.

170. *Foka v. Turkey*, No. 28940/95, paragraphs 76-79, 24 June 2008.

171. *Nolan and K. v. Russia*, No. 2512/04, paragraphs 94-96, 12 February 2009.

172. *Saadi v. the United Kingdom* [GC], No. 13229/03, ECHR 2008, paragraphs 64 and 74.

and unaccompanied.<sup>173</sup> The Court has found violations concerning the lawfulness of the children's detention, safeguards concerning the judicial review of detention, the material conditions of detention, as well as the impact of detention on family life. In respect of the conditions of detention, the Court has found a violation of Article 3 of the Convention in particular on account of a combination of three factors: the child's young age, the length of the detention and unsuitability of the premises for the accommodation of children.<sup>174</sup> Even short delays of two days have resulted in violations in a number of cases.<sup>175</sup>

Any decision to detain should provide an assessment of the best interests of the child, which also requires keeping the family together.<sup>176</sup> When, exceptionally, children are held with their parents in administrative detention, the deprivation of liberty should be for the shortest possible period of time, and after having established that the placement of the family with children in administrative detention is a measure of last resort for which no alternative measures are available. All efforts should be made to release the detained children and place them in accommodation suitable for children.

Unlike in the case of adults, the immigration detention of children must be necessary in order to comply with Article 5(1)(f) of the Convention, which means that states are obliged to consider less invasive alternatives for accommodation.<sup>177</sup> In the case of *Mohamad v. Greece*, the applicant who was only two months away from his 18th birthday was kept in an adult detention facility until he reached the age of 18. The Court found a violation of Article 5(1)(f) of the Convention as the authorities "had not provided any explanation why, after the medical exam took place, they had upheld the applicant's detention ... instead of searching for alternative solutions of accommodation for children ... The government did not provide any evidence to support even the slightest communication to this effect with the relevant organisations."<sup>178</sup>

The Council of Europe *Twenty guidelines on forced return* states that detention, with a view to ensuring that a removal, can be applied when "compliance with the removal order cannot be ensured as effectively by resorting to non-custodial measures such as supervision systems, the requirement to report regularly to the authorities, bail or other guarantee systems."<sup>179</sup>

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173. See the regularly updated Factsheet *Accompanied migrant minors in detention*, [www.echr.coe.int/Documents/FS\\_Accompanied\\_migrant\\_minors\\_detention\\_ENG.pdf](http://www.echr.coe.int/Documents/FS_Accompanied_migrant_minors_detention_ENG.pdf) and *Unaccompanied migrant minors in detention*, [www.echr.coe.int/Documents/FS\\_Unaccompanied\\_migrant\\_minors\\_detention\\_ENG.pdf](http://www.echr.coe.int/Documents/FS_Unaccompanied_migrant_minors_detention_ENG.pdf).

174. *A.B. and Others v. France*, No. 11593/12, 12 July 2016, paragraph 109.

175. For example, *Rahimi v. Greece* (2011), *S.F. and Others v. Bulgaria*, No. 8138/16, 7 December 2017, paragraph 79.

176. *Popov v. France* (2012), paragraphs 141 and 147.

177. *Popov v. France* (2012), paragraph 91; *A.B. and Others v. France*, (2016), paragraphs 120-123.

178. *Mohamad v. Greece*, No. 70586/11, 11 December 2014, paragraph 84.

179. Council of Europe Committee of Ministers (2005), *Twenty guidelines on forced return*, guideline 6(1).

In 2014, the Parliamentary Assembly of the Council of Europe called upon member states to “acknowledge that it is never in the best interests of a child to be detained on the basis of their or their parent’s immigration status”. The Assembly recommended that states “introduce legislation prohibiting the detention for immigration reasons” and create alternatives to detention in order to meet the best interests of the child and to make sure that they can remain with their family or guardians in non-custodial contexts.<sup>180</sup> Moreover, in the End Immigration Detention of Children campaign the Assembly sought to combat detention of immigrant children in order to meet the best interests of the child.<sup>181</sup>

### 3.4. Alternatives to immigration detention

The consideration, and implicitly the development and use, of alternatives to immigration detention of refugee and migrant children is a requirement derived from the case law of the European Court of Human Rights. At the same time, there is no universally accepted definition of “alternatives to immigration detention”. There is broad consensus that alternatives to immigration detention are “non-custodial measures that respect fundamental human rights and allow individual options other than detention”.<sup>182</sup> Concerns about the use of detention for children have led to an expectation that non-custodial options will be preferred for refugee and migrant children, especially given that detention has a particularly negative impact on their mental health.<sup>183</sup>

The Council of Europe Steering Committee for Human Rights (CDDH) has identified a number of possible alternatives to immigration detention, which include children living in the community with their parents or guardians in designated open shelters or housing, the obligation to report to the police or immigration authorities at regular intervals or the use of a bail system. Moreover, an adolescent child or group of adolescent children that reside freely in the community can be entrusted to the care of an NGO, municipality or other organisation (“inclusion”). However, this should only be used if family-based or kinship care is not possible or not in the best interests of the child.<sup>184</sup>

The choice of the alternative should be influenced by an assessment of the child and his/her needs and must rely upon the least restrictive measure or combination of measures possible.

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180. PACE, Resolution 2020 (2014), *The alternatives to immigration detention of children*, 3 October 2014, paragraph 9.

181. PACE, The Parliamentary Campaign to End Immigration Detention of Children, [www.assembly.coe.int/stop-child-detention](http://www.assembly.coe.int/stop-child-detention).

182. Council of Europe, *Legal and practical aspects of effective alternatives to detention in the context of migration*, Analysis of the Steering Committee for Human Rights, adopted on 7 December 2017, (“CDDH Analysis on effective alternatives to immigration detention”), p. 17, <https://tinyurl.com/y68uxeuy>.

183. Council of Europe, *Immigration detention of children. Coming to a close?* Conference report, 25-26 September 2017, p. 10.

184. See CDDH Analysis on effective alternatives to immigration detention, paragraphs 203-230.

### Essential elements to secure effective implementation alternatives:

- ▶ using screening and assessment to address individual circumstances, including vulnerabilities and risks;
- ▶ providing clear and precise information about rights, duties and consequences of non-compliance;
- ▶ ensuring access to legal assistance from the beginning and throughout the process;
- ▶ building trust in asylum and migration procedures;
- ▶ upholding individualised case management services;
- ▶ safeguarding the dignity and fundamental rights of the persons concerned;<sup>185</sup>
- ▶ for children, providing an overall and comprehensive support and the involvement of the child protection system, trusted social workers and/or case managers.

### Ending the detention of children for immigration purposes

**Institution:** Home Office (the United Kingdom, public authority)

**Funding:** State

**Context:** In 2010, the United Kingdom Government announced it was to end the detention of children for immigration purposes. It set up a new process for the removal of families who had exhausted all rights to remain in the United Kingdom. This involved a three-stage process including the offer of assisted return, a required return stage and as a last resort, an ensured return stage.

**Summary of the practice:** As part of the new process, the Independent Family Returns Panel (IFRP) was set up. The Panel is multidisciplinary with expertise in education, children's services and safeguarding, trafficking, medicine and law enforcement. Its role is primarily to offer advice and challenge to the UK Home Office when it has been determined that a family must return home and the family refuses to go voluntarily. In these cases, a Family Engagement Manager (FEM) attempts to develop a good working relationship with a family (within the community) and draws up a plan for ensuring that the family leave. This plan is referred to the IFRP where it is assessed with the welfare of the children in that family at the forefront of that scrutiny. As part of each IFRP family case meeting, Panel members scrutinise the Family Welfare Form and directly question the FEM and arrest teams. Plans are often amended with recommendations made, and on occasion the Panel will advise deferral of removal pending clarification and/or resolution of any safeguarding or welfare concerns or recommendations made by the IFRP. The Panel also has a wider role where advice and challenge have extended to matters of policy and practice, performance and contract

<sup>185</sup>. CDDH Analysis on alternatives to immigration detention, paragraphs 179-202.

management and engagement with partner agencies including statutory Children's Services, Health, and Education (schools).

**Child-friendly elements:** The ending of detention of children, the placement of welfare, safeguarding and best interests of children at the centre of the return plan, with the expert input of a multidisciplinary team via the Independent Family Returns Panel and the establishment and embedding of child safeguarding and welfare considerations at all levels of the operational procedures.

**Lessons learned:** Review of implementation has revealed the following limitations:

- ▶ the slow pace of implementation of IFRP recommendations from Annual Reports;
- ▶ the nature of the enforced stage (giving 28 days' notice of arrest) may encourage families to abscond. Families absconding from their home and removing children from school and access to health services present multiple potential risks to children;
- ▶ a lack of flexibility in the mode of return.

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**Link:** [www.gov.uk/government/organisations/independent-family-returns-panel](http://www.gov.uk/government/organisations/independent-family-returns-panel), Home Office Guidance on Family returns process (published on 7 January 2019): <https://tinyurl.com/yydumxtm>.



## Theme 4

# Durable solutions

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**T**his chapter refers to durable solutions and in particular to integration, family reunification, resettlement and returns. There is a significant number of examples promoting integration, reflecting the effort to promote social inclusion of refugee and migrant children. At the same time, there are scarce examples concerning resettlement and returns, which may signal the need for practices to be developed in these areas.

### 4.1. Identifying a durable solution

According to the UNHCR durable solutions for refugees take the form of voluntary repatriation to the country of origin, resettlement in another country, when return is not possible, because of continued conflict, wars or persecution, and integration within the host community of those who are unable to return home.<sup>186</sup> Identifying the most appropriate durable solution as early as possible requires a careful balancing of many factors, including decisions on voluntary repatriation, resettlement or local integration which are likely to have a fundamental and long-term impact on the child.<sup>187</sup> The child's best interests and right to be heard are vital elements of any such determination, in line with international children's rights standards articulated in previous chapters.

The CRC Committee advises that the ultimate aim for migrant children is "to identify a durable solution that addresses all their protection needs, takes into account the child's view and, wherever possible, leads to overcoming the situation of a child being unaccompanied or separated".<sup>188</sup> The absence of certainty about their future and lack of security affect children, perhaps even more than adults, with negative consequences for their well-being. A secure and long-term residence status is vital to ensure that children in migration access all of their rights, including their rights to well-being and development.<sup>189</sup>

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186. UNHCR, [www.unhcr.org/solutions.html](http://www.unhcr.org/solutions.html).

187. UNHCR (2018), *Guidelines on assessing and determining the best interests of the child*, ("UNHCR Guidelines 2018") p. 71.

188. CRC Committee, General Comment 6, paragraph 79.

189. CRC Committee, General Comment 23, paragraph 18.

The Council of Europe Guidelines on child-friendly justice require that all decisions affecting the child must be in the child's best interests and as a result, the process used to identify a durable solution must be child-friendly.<sup>190</sup> In addition, the Council of Europe Committee of Ministers Recommendation (2007)9 introduced the concept of "life project" as a lasting solution in the form of a plan, drawn up and negotiated between the child and the authorities with a view of developing each child's capacities and potential, supporting the development of independence, responsibility and resilience, of enabling each young person to become an active contributor to society, whether ultimately he or she remains in the host country or returns to the country of origin in the host country.<sup>191</sup>

Within the EU context, the requirement to ensure that identification of durable solutions is consistent with the best interests of the child has also been reiterated by the Council of the European Union, which has advocated that "the best interests of the child must be a primary consideration in all actions or decisions concerning children and in assessing the appropriateness of all durable solutions; resettlement, integration or return depending on their specific situation and needs".<sup>192</sup> The Council additionally noted the importance of local communities in assisting with integration and long-term durable solutions as well as highlighting to member states the need to raise awareness among citizens of the necessity to protect migrant children when implementing durable solutions.<sup>193</sup>

The European Commission has also considered the importance of durable solutions for migrant children and identified several considerations for member states, as follows:

- a. provide equal access to inclusive, formal education, including early childhood education and care;
- b. ensure timely access to health care;
- c. provide support to enable children in the transition to adulthood (or leaving care) to access necessary education and training;
- d. foster social inclusion in all integration-related policies, such as prioritising mixed, non-segregated housing and inclusive education;
- e. increase resettlement to Europe for children in need of international protection;
- f. ensure that appropriate family tracing and reintegration measures are put in place to meet the needs of children who will be returned to their country of origin.<sup>194</sup>

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190. Guidelines on child-friendly justice, III.B, paragraph 1.

191. Council of Europe, Recommendation CM/Rec(2007)9 of the Committee of Ministers to member states on life projects for unaccompanied migrant minors. To learn more on how to implement life projects see Council of Europe (2010), *Life Projects for unaccompanied migrant minors: a handbook for front-line professionals*, <https://tinyurl.com/y6gd3hjf>.

192. Council of the European Union, *Conclusions of the Council of the European Union and the representatives of the governments of the Member States on the protection of children in migration*, 10085/17, Brussels, 8 June 2017, p. 3.

193. Idem.

194. EC Communication 2017, p. 14.

## 4.2. Integration

Once it has been determined that a refugee and migrant child will remain in the community, the relevant authorities should determine the appropriate long-term arrangements within the local community and other necessary measures to facilitate integration. In order for the child to settle comfortably within their new environment, effective measures must be taken to ensure the integration of such children. The CRC Committee has highlighted that local integration should be “the primary option” if return to the country of origin is impossible on either legal or factual grounds. It “should be based on a secure legal status (including residence status) and be governed by the UNCRC rights that are fully applicable to all children who remain in the country, irrespective of whether this is due to their recognition as a refugee, other legal obstacles to return, or whether the best-interests-based balancing test has decided against return”.<sup>195</sup>

Building on good practices in member states, the Council of Europe Committee of Ministers outlined in Recommendation CM/Rec(2019)4 a list of support measures for refugee children who arrived unaccompanied in Europe and who are in transition to adulthood.<sup>196</sup> The recommendation calls for the development of comprehensive interagency co-operation in areas such as child protection, youth, health, education, social protection or welfare, migration, justice and gender equality, including between national, local and regional authorities. It also highlights the importance of access to social services that provide them with support and assistance to enable effective access to their rights and to mainstream social services; access to education for young refugees in transition to adulthood; access to free and comprehensive health care, including mental health care. The recommendation notes that a holistic integration effort should rely equally on youth work, which should be recognised and supported.<sup>197</sup>

In addition, on a practical level, the Council of Europe has promoted the integration of refugees and migrants through multiple initiatives,<sup>198</sup> including projects concerning linguistic integration,<sup>199</sup> recognition of qualifications,<sup>200</sup> intercultural exchange,<sup>201</sup> intercultural activities for local authorities,<sup>202</sup> and integration through sport.<sup>203</sup>

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195. CRC Committee, General Comment 6, paragraphs 88-89.

196. Council of Europe, Recommendation CM/Rec(2019)4 of the Committee of Ministers to member states on supporting young refugees in transition to adulthood.

197. For more information on implementation projects of this recommendation: [www.coe.int/en/web/youth-peace-dialogue/youth.together](http://www.coe.int/en/web/youth-peace-dialogue/youth.together).

198. See, in particular, Council of Europe Committee of Ministers, Action Plan on Building Inclusive Societies (2016-2019) CM(2016)25, 2 March 2016, <https://rm.coe.int/16805c1a1f> and the third pillar of the Council of Europe Action Plan on Protecting Refugee and Migrant Children in Europe (2017-2019).

199. See more at: [www.coe.int/en/web/language-policy/home](http://www.coe.int/en/web/language-policy/home).

200. European Qualification Passport for Refugees project, for more information: [www.coe.int/en/web/education/recognition-of-refugees-qualifications](http://www.coe.int/en/web/education/recognition-of-refugees-qualifications).

201. For good practices on intercultural exchanges, see the Intercultural Cities Programme: [www.coe.int/en/web/interculturalcities/good-practice](http://www.coe.int/en/web/interculturalcities/good-practice).

202. For the activity of the Congress of Local and Regional Authorities on intercultural integration: [www.congress-intercultural.eu/en/](http://www.congress-intercultural.eu/en/).

203. For good practices of integration through sport, see the platform of the Enlarged Partial Agreement on Sport (EPAS): [www.coe.int/en/web/sport-migrant-integration-directory/about-the-platform](http://www.coe.int/en/web/sport-migrant-integration-directory/about-the-platform).

Several EU directives address integration issues, mostly in relation to equal treatment, access to employment, education, secure residence and the right to family reunification. Long-term residency status and family reunification have been traditionally considered in EU policy as key ingredients for successful integration.<sup>204</sup> At the same time, EU member states retain the primary responsibility for integration and can rely on EU support in terms of policy co-ordination, exchange of knowledge and financial resources.<sup>205</sup>

### Making Friends-Bringing Friends Club in Malta

**Institution:** Ministry for Education and Employment, Migrant Learners' Unit (Malta, public authority)

**Funding:** The clubs are part of the LLAPSI+ project (Language Learning and Parental Support for Integration), which is financed through the EU Asylum, Migration and Integration Fund (75%) and Ministry of Education and Employment (25%).

**Context:** The practice is addressed to the general population of school children (both migrant and local). Activities organised by the club are specifically designed for participants aged between 5 and 10.

**Summary of the practice:** Making Friends is an initiative that was launched by the Migrant Learners' Unit of the Ministry of Education and Employment in April 2018. The objective of this practice is to encourage active inclusion and integration between learners having a migrant background and Maltese learners. This objective is achieved through the formation of friendships between the participants in the Club. It is offered after school and each session lasts for two and a half hours. In this after-school environment, an informal and creative learning programme focusing on becoming friends through an appreciation (and thus better understanding) of cultural differences is offered to participants. Dialogue and respect are key to achieving this objective. The Making Friends activities also focus on facilitating peer learning under the supervision of specially trained teachers and other members of staff.

**Child-friendly elements:** The child-friendly approach is embedded in this practice specifically designed to encourage friendship among all learners. Indeed, the fact that it is being offered after-school hours allows members of staff to focus on the non-curricular and informal aspects of education. Activities focus on involving participants to work together in creative productions leading to a better understanding of cultural differences. These informal

204. Council of Europe, Special Representative of the Secretary General on migration and refugees, *Human rights aspects of immigrant and refugee integration policies*, (Issue paper, 2019), p. 17.

205. For more information on integration in the EU: [https://ec.europa.eu/home-affairs/what-we-do/policies/legal-migration/integration\\_en](https://ec.europa.eu/home-affairs/what-we-do/policies/legal-migration/integration_en).

sessions also have a reported positive impact on day school behaviour and learning.

**Lessons learned:** There is a felt need to extend this practice to the summer recess period.

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### TOGETHER project in Norway

**Institution:** SOS Children's Villages Norway (Norway, NGO)

**Funding:** Egmont Fonden and Imdi (Norwegian Directorate of Integration and Diversity)

**Context:** In 2015, more than 5 000 UASC came to Norway seeking asylum. These young people should feel part of their local community and become active participants like other residents. Making sure this happens is the whole community's responsibility. SOS Children's Villages in Norway (member of the SOS Children's Villages international federation) believes local Norwegian young people are key to making this happen.

**Summary of the practice:** The main goal of TOGETHER is to create an opportunity for UASC and local Norwegian youth to get to know each other. In the autumn of 2016, three (and later 12) pilot municipalities which had accepted UASC into their community started a collaboration with the NGO. The local administration in each municipality formed a working group consisting mainly of a project leader and an adult resource connected to the young people. An important aspect of the project is that the planning and execution is carried out locally by the municipality, where the young people live and where the local community can benefit from their involvement. Based on interests and hobbies, groups are formed of, for example, three UASC and three local Norwegian young people. They create and work on a project together over approximately nine weeks. The group decides about their project and develop it together. It all starts with a kick-off to get to know each other and ends with a certificate as proof of their participation. Since 2016, the project has involved 25 municipalities, 450 young participants and resulted in 60 groups which gained valuable experience and connections.

**Child-friendly elements:** This practice proposes a very rich and inclusive perspective, creating the conditions for meetings and exchanges between young people with different cultural backgrounds. Through meeting people of the same age and doing something collaboratively – where both parties equally contribute to the valuable exchange – the youth are part of something that

connects them and provides a sense of belonging. They take ownership of their chosen project and through co-operation break some cultural and social codes and prejudice. The projects contribute to a feeling of being important for their local communities and strengthen the youth's willingness to contribute to making it a good place for everybody to live in. Developing good relationships and networks is key for the success of this project.

**Lessons learned:** The implementation of the TOGETHER project in new municipalities has faced certain difficulties related to the identification of Norwegian young people interested in participating and a stable relationship between the local administration and the management on the project. These challenges have not hindered the expansion or development of the project.

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### **Professional mentoring programme for UASC living in network families in Sweden**

**Institution:** SOS Children's Villages Sweden (Sweden, NGO)

**Funding:** Private foundations, corporate sponsorships and some economic compensation from the municipality of Angered (Gothenburg)

**Context:** The programme was developed by SOS Children's Villages Sweden and implemented in January 2017 in Hammarkullen. Today, the programme enrolls 60 young people, both boys and girls. The young people participate in the programme for one year, but can be reassigned for another year depending on the youth's situation and needs. The programme is free and voluntary. Through the programme, the NGO has a close co-operation with the social services in Angered, which also refers the youth to them.

**Summary of the practice:** The mentoring activities support the accommodation of UASC/youths (16-21 years old) living in network homes. A network home designates the placement of young people, by the authorities, with a relative, family friend or simply a family that is already a part of the network. The programme was developed to address the individual needs of young people, based on their social context, their vulnerability and the availability of support for social inclusion they have in their families. That is why it varies from participant to participant. The mentors work to provide individual and tailored support in three essential areas: social orientation (leisure, culture and networking), as well as education and work. With the support of the mentor, the young person develops action plans and development goals in the described life areas. This is done in a structured and transparent way, encouraging young people to be proactive in their own development. The programme relies on the improvement

of individuals' abilities to enable them to reach their full potential, through their own driving force.

**Child-friendly elements:** The programme seeks to empower young people to develop themselves and to take decisions. It is also meant to create an environment for an independent and autonomous life and support them throughout their transition to adulthood.

**Lessons learned:** The programme engages with a very vulnerable social group of UASC/young people who have little time to establish themselves in Sweden before they turn 18, when they are expected to be independent and autonomous. They struggle with little knowledge of the Swedish language, have insufficient educational background and sometimes insufficient support from their network families. For this reason, the NGO intends to expand the programme in order to involve the network families as well, although long-term funding is yet to be secured.

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### Masir Avenir project in Belgium

**Institution:** Flemish Agency for Integration and Civic Integration (Belgium, public authority)

**Context:** The programme is carried out during the summer months in Brussels. It is addressed to the general population of children or young migrants and refugees aged between 15 and 19.

**Summary of the practice:** The project aims to create a good starting point in life for newcomers from non-European countries. The goal is to develop a personal, customised learning programme for each participant. The project also strives to optimise the offer of engaged partners to better cater to the needs of the target public. Masir Avenir is a threefold programme:

1. There is intensive social counselling with a focus on the social environment of the participants. The objective is to stimulate the autonomy of the participants by referring and guiding them to the services they need.
2. Courses in social orientation, customised to the needs and questions of young newcomers. These courses explain how the Belgian society works. Extra attention is paid to sexuality and relationships, intercultural communication, leisure activities, employment and possible future studies or vocational training.
3. Introductory courses in Dutch to provide participants with a basis in one of the national languages of Belgium. To further stimulate language acquisition, participants engage in extra school activities in Dutch.

**Child-friendly elements:** Beyond the major interest of organising such a programme during the holidays, additional to their study time, the programme and the counselling are adapted to the experiences, contexts and age of the

participants. The courses and counselling are given in the mother tongue or another language that the participants speak well. To reach this age group, the project makes use of the same social media as that of young people. This allows leaders to contact them more quickly. Furthermore, in order to better reach them, Masir Avenir also collaborates with relevant partners like schools, refugee centres, foster care and custody services. Appointments and meetings take place in locations that are easily accessible for the youngsters. Masir Avenir has services in schools and provides extracurricular activities after finishing the social orientation course. In this way, counsellors can continue monitoring the needs of the target group. The counselling itself is flexible and respects the pace of development of each participant. The counsellors give space and time to the youngsters to discover their perspectives in life and make sure the basic needs of the participants are met: housing, health, education, leisure activities, etc. A bond of familiarity and confidence is created between the counsellors and youngsters, as the counsellor knows all the important actors in the life of the young person: teachers, tutors and other assistants. The project aims to stimulate the feeling of belonging to a group by creating a “safe space” with a teacher and a social counsellor. To nurture this feeling of security, leaders employ group activities in an informal setting. This helps the youngsters to meet others in similar circumstances who struggle with the same problems.

**Lessons learned:** One of the main challenges is when a participant receives a negative answer to his/her asylum application and they cannot continue the programme. In addition, it is difficult to find accommodation in cities like Brussels for youngsters that are recognised as refugees. This prevents the development of a secure and familiar context: participants often need to start from zero and establish new connections in a new place.

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### OKAN project Antwerp province in Belgium

**Institution:** VDAB,<sup>206</sup> the public employment service of Flanders (Belgium, public authority)

**Funding:** VDAB's project resources and regular resources

**Context:** The OKAN<sup>207</sup> project is intended for young people who do not wish to pursue further education and seek to find employment through the Flemish Public Employment Services. The objective is to connect young people to a job as quickly and as smoothly as possible. The project focuses on assisting young

206. Vlaamse Dienst voor Arbeidsbemiddeling en Beroepsopleiding (VDAB).

207. Onthaalklas voor anderstalige nieuwkomers (OKAN) are the reception classes for non-Dutch speaking newcomers.

people with a migration background who follow OKAN classes in the year in which they turn 18.

**Summary of the practice:** The project consists of three main parts:

1. “Grow2work” career orientation is meant to identify the most appropriate pathway – educational, social or professional – and to help young people define their objectives with more clarity. It encourages them, in the first instance, to pursue an educational pathway. Young people who seek employment are provided with career orientation towards a realistic job target (internships, summer jobs, trajectories to work: workplace learning, training, professional internships, mediation to work). This package is integrated in the final year of secondary education by the public employment services, the agency for integration and the school that provides OKAN.
2. “Ready2work” is meant to facilitate the transfer to VDAB and integration into the labour market. It promotes access to employment services for young people without a high school diploma.
3. “Strengthening the search for work” aims to place hard-to-reach young people in control of their pathway to work or to meaningful time use and to help strengthen their network. The method is intended to fill in the “missing link” between target group and service providers; and between their multiple, complex problems and the fragmented service offer.

**Child-friendly elements:** The project aims to inform young people who are in the last year of OKAN classes about job opportunities as soon as possible and in connection to their pathway, background and languages skills. Promoting an individual and caring approach, the project developed materials tailored to the needs of each one, focusing on practical and inclusive intentions, namely exploring their own resilience, coping strategies, attitude training, qualifications and the way they deal with their cultural background.

**Lessons learned:** Young people really need to experience in practice what it means to be employed in a certain occupation. At the moment, the classes are still too theoretical. Young people need to step outside the school context to make the switch to employment.

Many organisations can be involved in the services provided to a young person. Nevertheless, it is important to have a good overview of these organisations in order to be able to create optimal co-operation and exchange. A screening is therefore desirable. Moreover, it is important that all parties concerned know each other’s functioning and the service that is offered in order to sustain close and effective co-operation.

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## Rising You project in Belgium

**Institution:** Rising You (Belgium, NGO)

**Funding:** 20% subsidies from Flemish government; 30% training fees from public employment services; 50% recruitment and coaching fees from (private) companies

**Context:** The project focuses on UASC arriving in Belgium, in Brussels, Ghent and Antwerp. By collaborating with several organisations, such as the Red Cross and Fedasil who welcome young refugees on arrival in Belgium, Rising You introduces them to the project and the sport of climbing at an early stage of their new life in Belgium.

**Summary of the practice:** Rising You guides young refugees to jobs involving work at heights (for example, painter of high-voltage towers, telecom technicians, solar panel installers, maintenance technician on windmills). Rising You provides active guidance to employers who are looking for temporary or permanent staff for assignments at height. The project is an integrated process that makes passion work. This happens in two steps:

1. Young refugees aged 12 and above are welcome in the climbing club of the project in Antwerp, Brussels, Ghent or Leuven. The club climbs weekly in a climbing gym or outdoors, on rocks. It offers a solid sporting framework and informally develops employability skills: attitudes that will soon offer more opportunities to the climbers in the labour market. With Buddy2Climb in Antwerp and Ghent the aim is to guide young refugees to the climbing sport in order to give them meaningful leisure time, but also to let them taste the warm atmosphere of the sport, the human contact, the trust in each other and the adrenalin rush of height.
2. Climbers who want to make their hobby their profession and who have developed the right attitudes are invited to a professional training in rope access. In co-operation with the public employment service of Flanders, partners and private companies, an additional training to different professions is offered.

**Child-friendly elements:** Rising You introduces their climbers to companies looking for motivated and well-trained climbers. Providing assistance and accompaniment to both climbers and companies, Rising You aims to obtain sustainable and decent jobs. Beyond training and relevant employment opportunities, the activities proposed are made to fit young participants, and are offered in a safe and open environment in which they can discover their own talents and feel integrated into Belgian society. The idea of using sports in order to develop language proficiency, employability skills and provide accompaniment towards vocational training and employment must be underlined as a positive point. Furthermore, if necessary, the Belgian climbers also help and guide young people with other issues they might have by supporting them and bringing them into contact with relevant people and/or organisations.

**Lessons learned:** The biggest challenge still is finding and motivating young refugees and making them aware of what the project could offer them. Managers

are still looking for the best format in which to promote their activities and find their target audience. With language still being a barrier, the usefulness of flyers and websites is limited. The best practice until now has been collaborations with school classes for newcomers (OKAN) and close collaborations with refugee organisations and asylum centres who can arrange visits to the climbing club.

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### Parenthood in Sweden project

**Institution:** PLUS Framtid Stockholm, Social Services administration in the Municipality of Stockholm City (Sweden, local public authority)

**Funding:** Framtid Stockholm, Socialförvaltningen in Stockholm municipality, with co-funding by the County Administrative Board in Stockholm

**Context:** The Swedish Government has adopted a national strategy that entitles all parents to support in child rearing until the child reaches the age of 17. Local authorities face difficulties in reaching foreign-born parents with existing support programmes and with important child-related information.

**Summary of the practice:** Parenthood in Sweden is about providing foreign-born parents with information about Swedish society. During five group sessions, led by trained group leaders, parents discuss parenting and family life and receive information and facts about certain areas that are important for family life in Sweden, based on research and the UNCRC. They include: how society in Sweden has changed, being a family in a new country; the importance of children's free time; how parents can support their children when they go to preschool and school; and whether boys and girls are treated the same or differently.

The aim of the project is to empower parents through knowledge and to give them an opportunity to discuss important matters concerning family life and child rearing in a new country, which will benefit the children's well-being. Information about where and how parents and families can seek and receive more support if needed, from both official and civil society, is an important part of Parenthood in Sweden. Group leaders are obliged to hand out an overview of local activities/practices on parental support (where to turn if parents are interested in more support in parenting); leisure activities for children (with an emphasis on the ones that are free of charge); and where to seek help if your child needs mental health care.

Based on an agreement of co-operation with the organisation Bris (Children's Rights in Society), Parenthood in Sweden will be extended to other parts of the country outside of Stockholm county. Bris, which is a consultative body for legislative actions that affect children and young adults, will train group leaders and administer all Parenthood in Sweden activities outside of Stockholm, in close

co-operation with the owners of the practice (PLUS/Stockholm municipality and the County Administrative Board in Stockholm).

**Child-friendly elements:** Parents are the most important protective factor for children living at home. This makes parenting a great responsibility and parents are entitled to support. There is mutual benefit in reaching out to foreign-born parents whose participation in society often has a positive impact on the children's prospects and school achievements. For refugee families in Sweden, it is often difficult to understand and navigate the complicated social system. During group meetings, parents discuss topics relevant for the well-being of children in Sweden and receive information based on the UNCRC.

**Lessons learned:** Group leaders are trained about culture and intercultural awareness to be able to respond to parents expressing values and lifestyles that are different from their own. The goal is to create a curious and open-minded group climate. In training, group leaders learn about how parents and children often have separated integration processes after moving to Sweden. Due to school, children often become active in society earlier than their parents; they learn about society and traditions in Sweden before their parents, leading to an imbalance in responsibility within the family.

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[www.stockholm.se/Fristaende-webbplatser/Fackforvaltningssajter/Socialtjanstforvaltningen/Oppenvardsinsatser-for-barn-unga-och-familjer/PLUS/](http://www.stockholm.se/Fristaende-webbplatser/Fackforvaltningssajter/Socialtjanstforvaltningen/Oppenvardsinsatser-for-barn-unga-och-familjer/PLUS/) (parent training/parental support groups)

### The Young Journalists project in Greece

**Institution:** Network for Children's Rights (Greece, NGO)

**Funding:** EU Directorate General for European Civil Protection and Humanitarian Aid Operations (DG ECHO) (60%) and Network for Children's Rights (40%). The printing of the newspaper is also supported by the Rosa Luxemburg Stiftung-Office in Greece, funded by the German Ministry of Economic Cooperation. Supported by UNICEF.

**Context:** The project was implemented in 2016 and takes place in the National Library of Athens. It has involved so far over 100 adolescents. Currently, the project team consists of seven members (four full-time and three part-time).

**Summary of the practice:** In 2016, a group of teenage refugee girls in Schisto camp in Athens decided to take matters into their own hands. It was time for the world to find out how tough life is for people living in reception centres for refugees and migrants. Supervised by the Network for Children's Rights (NCR)

they created the multilingual newspaper *Migratory Birds* (with texts in Farsi, Arabic, Urdu, English and Greek), which is published every two months as a supplement to *I Efimerida ton Syntakton*, a Greek daily newspaper. Reports are also transmitted on the web radio Dandelion, which is broadcasted every 15 days on NCR's YouTube channel and the European School Radio platform. Currently, the Young Journalists' team consists of both boys and girls who come from a variety of countries, such as Afghanistan, Syria, Pakistan, Iraq, Iran and Greece. Adolescents, aged 14-18 write articles, make recordings, take photographs, and produce their own unique content. The adolescent participants are encouraged to present issues and articles that are important to them, varying from the situation inside the camps, social news, sports, international news, arts and entertainment, etc. Also, part of the project are one-hour biweekly journalism courses carried out by the project team and four-hour biweekly Saturday editorial meetings. The participants have the possibility of visiting the premises of other busy daily newspapers and are able to discover in practice how a newspaper is published, while interacting with professionals in a specific field such as journalists, photographers, editors, etc. The *Migratory Birds* newspaper is also translated into Spanish, while the whole material is further disseminated via various platforms, such as MEDIUM and Narratio. A smartphone application has also been created, while many of the *Migratory Birds* articles are being republished by several media, such as Refugees Deeply.

**Child-friendly elements:** This project aims at transferring the principles and values of journalism while offering adolescents the opportunity to tell their stories and promote intercultural dialogue. It is an opportunity for children to exercise their fundamental rights, such as freedom of expression, freedom of speech, freedom of thought and the right to participate in communities. In addition, a big part of the integration process relies on the understanding of and active participation in the political and cultural life of the host country. The access to media is a strong tool that can empower a population at risk of marginalisation and provide a platform from which they can communicate their problems and worries but also their hopes and aspirations. It also allows them to demonstrate strengths and abilities and acquire new skills. Interaction with other children and adults, outside the limited space of the camps and selected neighbourhoods, furthers integration in society and understanding of the urban web which they will eventually be an active part of.

**Lessons learned:** The lack of resources in terms of personnel was the most important challenge the project team faced during its implementation. Since the project has grown in size, the number of participants has gradually increased and more languages are now used, which has resulted in significant challenges regarding the co-ordination of all project activities. Some technical problems came up during the recordings of the radio shows, due to the four languages used simultaneously (Farsi, Arabic, Urdu and Greek).

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### MUYU social harmonisation project in Turkey

**Institution:** Directorate General of Migration Management (Turkey, public authority)

**Funding:** State of Turkey and international organisations' budgets (BMMYK, IOM, UNICEF)

**Context:** Turkey is currently hosting over 3.6 million refugees, which is the largest refugee population in the world. Over 46% of these are children.

**Summary of the practice:** The purpose of MUYU social harmonisation project is to facilitate the harmonisation (integration) of thousands of migrant children in Turkey and enhance social cohesion. The project aims to increase local children's awareness about the potential problems and needs of migrant children. The philosophy behind this project is to mutually recognise cultures and to foster exchanges between children. MUYU is a child character created to facilitate communication with and among children. Various materials were developed based on the MUYU character. Storybooks, painting books, storybooks with painting and pattern colouring books were developed in Turkish, Arabic and English languages (150 000 copies were distributed in cities in Turkey). Three painting contests related to migration and refugees were organised for primary and secondary school children. A board game "MUYU entertainment box" was designed to engage local and migrant children in joint leisure activities. The website of MUYU was launched on 21 May 2019 to raise awareness among children on migration and to strengthen the communication between Turkish and foreign children. It was designed to allow children to play and learn while having fun. The website, which is available in Turkish, English and Arabic languages, includes entertaining sections such as MUYU games, MUYU music, MUYU book and MUYU truck. A social harmonisation truck project has been launched to support the social harmonisation between Turkish and foreign children, especially in regions highly populated by migrant children. It includes a mini library, tablets, notebooks and e-book readers and screens, animation and movies. The aim of the project is to enable communication and access to information, as well as language education.

**Child-friendly elements:** The creation of a child character is a good communication method to reach out to children, both local and foreigners. The materials and resources developed based on the character are multilingual and reflect the two-way nature of integration.

**Lessons learned:** Beyond the budgetary restraints (the impossibility of printing a sufficient number of materials), it is difficult to follow up the distributed books and to assess their impact by getting feedback from the children, parents or teachers that use them. In addition, in the absence of adequate training, teachers, facilitators or parents are not always informed how to use all materials effectively.

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## Celebration-integration campaign at the reception camp of Eleonas in Greece

**Institution:** Ministry of Education, Research and Religious Affairs (Greece, public authority)

**Funding:** UNICEF 70%, the Municipality of Athens 15%, IOM 15%

**Context:** The Ministry of Education, the Ministry of Migration and the Municipality of Athens organised in May 2018 a big celebration in the open reception centre of Eleonas, with the support of UNICEF and IOM. The main participants were school-age children from 5 to 15 and their parents living in the centre as well as their Greek classmates, their parents and teachers from the 15 public schools around Athens, which the children of Eleonas attend. The purpose of this project was to pilot an integration activity that could be replicated in all camps. About 1 000 people attended the celebration lasting four hours.

**Summary of the practice:** The celebration began with workshops on painting, henna, theatre, dancing and cooking. The workshops were organised by the NGOs operating within the camp and the refugees living there. Afterwards, the main event was a show of about one and a half hours of small presentations (5-7 minutes each) prepared by Greek and migrant/refugee children from the schools of Eleonas and the surroundings. At the end, there was food, music and dancing for everybody. It was one of few events where the refugee community of the centre became the hosts and the hosting community (Greek children, parents, teachers) their guests. For the preparation of the event, a group of Greek and migrant/refugee children worked together for four months in each public school. An organising team from the Ministry of Education (Department for the Co-ordination and Monitoring of the Refugee Education) provided assistance with the organisation of the event by visiting the schools, talking to parents, teachers and children, trying to inspire and support the organisation of the celebration. The aim was to support the networking between the schools and the centre by strengthening relationships. The team also co-ordinated the NGOs who operate in the centre to organise the different workshops. Moreover, the organisation of the event was also supported by around 50 volunteer students of the National Kapodestrian University of Athens.

**Child-friendly elements:** This project facilitated contact between the host and refugee communities and promoted the process of social integration of the refugee/migrant children and their families in local society by fighting against unfamiliarity, prejudices and sometimes fears. The preparation process of this event cultivated and strengthened the relationships between children, parents (both Greek and refugee) and teachers. Reports from schools show that the project mainly fostered the relationships and friendships between children. In addition, it helped refugee/migrant children to be more open, trusting and active in the class. It brought out their talents and empowered them through publicly expressing themselves in front of the whole school community. Moreover, it

improved the relationships of the schools with the parents accommodated in the centre.

**Lessons learned:** The most important challenge, especially at the beginning, was to motivate overworked teachers and Greek parents to visit the centre and actively participate in the process of organising the event and to later attend it. For the migrant/refugee parents, the main challenge was to co-operate both among themselves and with the NGOs in order to organise workshops. Finally, the continuous challenge was to co-ordinate all the stakeholders for such a big event.

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### 4.3. Family reunification

For the implementation of a durable solution – in the host country or in the country of origin – protection and care professionals will need to explore the possibility of family reunification or of restoring family links, to restore a stable and nurturing care environment for the child. Article 10 of the UNCRC requires that applications by a child or his/her parents to enter or leave a state party for the purpose of family reunification shall be dealt with “in a positive, humane and expeditious manner” and should a child remain in a different jurisdiction to that of their parents or guardians, then the child should be automatically entitled to remain in direct contact with those persons. Thus, it is essential that host jurisdictions initiate tracing and assess if family reunification is feasible for the child as early as possible in order to reduce the length of time in which the child will remain apart from their family.

To ensure that a child is not separated from his/her parents against their will, all efforts should be made to return an unaccompanied or separated child to his or her parents except where further separation is necessary for the best interests of the child.<sup>208</sup> The UNHCR advocate that where feasible, family reunification should generally be regarded as being in the best interests of the child.<sup>209</sup> Prior to reunification, an assessment should be carried out in order to confirm that such a decision is in fact in the best interests of the child (see also section 2.3. on best interests of the child). This should be prompt so as to avoid delay in reunification. The UNHCR has advised caution with respect to the assessment of a child’s feelings towards family reunification taking special account of any reluctance on the part of the child to be reunited. Painful memories of the separation, feelings of anger at abandonment, or fear of having to live with persons with whom the child is not familiar (where a parent has remarried, for instance) should be given careful consideration.<sup>210</sup>

208. CRC Committee, General Comment 6, paragraph 81.

209. UNHCR Guidelines 2018 , p. 74.

210. Idem, p. 101.

In some circumstances, the tracing of and reunification with the family or relatives is not possible or not in the child's best interests. Where information becomes available to suggest that tracing or reunification could put the parents or other family members in danger, where it risks or actually exposes the child to harm (for example, because the child has been subjected to abuse or neglect, and/or where parents or family members may be implicated or have been involved in their persecution), or when it is opposed by the child or the parents, then great care should be taken with this process.<sup>211</sup>

Family reunification can occur either by returning the child to the country of origin or by allowing the child's family to join him or her in the host country or in a third country. Therefore, in addition to the assessment of best interests of the child in reuniting with parents or family members, an assessment of the situation in the country of origin will also be necessary and it will include similar elements as for returns: safety, security and other conditions, availability of care arrangements and level of integration in the host society.<sup>212</sup> If return to the country of origin is impossible, under certain EU law and national law, family reunification may occur by allowing the child's family to join him or her in the host country. It should however be noted here that the legal regime of family reunification for persons granted international protection is different from migrants in general, based on the assumption that refugees face insurmountable obstacles to returning in their country of origin to resume family life, while other groups of migrants generally are assumed to not face obstacles such as persecution upon return.<sup>213</sup>

Under the European Convention on Human Rights, family reunification is seen from the perspective of the right to family life (Article 8). Although mostly often invoked in the context concerning the preservation of family life (against measures aimed to remove a family member), Article 8 of the Convention, in certain circumstances, may place on states the positive obligation to allow entry of family members in order to reunify their families in the host country. To conduct the balancing exercise between the competing individual interest to family life with the state interest to maintain immigration control, the European Court of Human Rights has analysed, among others, the existence of substantial family ties, obstacles in returning to the country of origin, the possible hardship to exercise family life in the country of origin, the age of children, the legal status or level of integration of the family members in the host country.<sup>214</sup> In such cases, the state has a wide margin of appreciation to determine eligibility for family reunification.<sup>215</sup>

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211. *Idem*, pp. 83-84; UNHCR Guidelines 2009, paragraph 68.

212. CRC Committee, General Comment 6, paragraphs 82-83. For returns see paragraphs 84-90, and section 4.5. of this compilation.

213. For more on the different legal regimes applicable to refugees, beneficiaries of subsidiary protection and migrants, see Council of Europe Commissioner for Human Rights (2017), *Realising the right to family reunification of refugees in Europe*, Issue paper, <https://tinyurl.com/y75ep8aq> and Council of Europe (2019), *Family reunification for refugee and migrant children: standards and promising practices*.

214. *Şen v. the Netherlands*, No. 31465/96, 21 December 2001; *Tuqubo-Tekle and Others v. the Netherlands*, No. 60665/00, 1 December 2005; *Jeunesse v. the Netherlands* [GC], No. 12738/10, 3 October 2014; *I.A.A. and Others v. the United Kingdom (dec.)*, No. 25960/13, 8 March 2016.

215. *Gül v. Switzerland*, 19 February 1996, Reports 1996-I.

In the EU context, the Family Reunification Directive provides for a substantive right to family reunification to members of the nuclear family, that is, the spouse and children, including adopted children of either the sponsor or the spouse.<sup>216</sup> Under Articles 5(5) and 17, the Directive obliges member states to have due regard for the best interests of the child and to conduct an individual examination in applications for family reunification. The Directive provides for general conditions for family reunification but also calls for more favourable conditions for family reunification for refugees and contains exemptions for refugees from requirements concerning income, health insurance and accommodation.<sup>217</sup> In addition to this specialised legal framework, the EU Reception Conditions Directive highlights the requirement for member states to take the best interests of the child into account including having regard to family reunification possibilities.<sup>218</sup>

The effective exercise of the right to reunite with one's family faces a number of legal and practical obstacles, such as restrictive policies concerning the definition of family and the time limits for making application for family reunification, limited access to legal assistance, administrative fees related to issuing documents or travel, and difficult access to embassies.<sup>219</sup> For this reason, examples of good or promising practices, as a rule, address ways to overcome these legal and practical barriers. A detailed discussion of standards and of such promising practices is available in the Council of Europe handbook *Family reunification for refugee and migrant children: standards and promising practices*.

#### 4.4. Resettlement

Resettlement to a third country may offer a durable solution for an accompanied or separated child who cannot return to their country of origin and for whom no durable solution can be envisaged in the host country. According to UNHCR, resettlement is the transfer of refugees from an asylum country to another state that has agreed to admit them and ultimately grant them permanent settlement.<sup>220</sup>

In the EU context, resettlement involves the selection and transfer of eligible refugees from a country outside the EU to an EU member state and is a core aspect of the external dimension of the EU asylum policy. In 2018, the three European countries accepting the most refugees as part of resettlement programmes were the United Kingdom, France and Sweden.<sup>221</sup>

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216. European Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, Article 4.

217. *Idem*, Chapter V Family reunification for refugees.

218. EU Reception Conditions Directive, Article 23(2).

219. For more information on obstacles and recommendations to overcome them, see Council of Europe Commissioner for Human Rights, *Realising the right to family reunification of refugees in Europe*, (Issue Paper, 2017) and UNHCR (2018), *Families together: family reunification in Europe for refugees*, <https://tinyurl.com/y69ajp2z>.

220. UNHCR, [www.unhcr.org/resettlement.html](http://www.unhcr.org/resettlement.html).

221. UNHCR, *Resettlement at a glance* (January-December 2018), [www.unhcr.org/5c594ddf4](http://www.unhcr.org/5c594ddf4).

Resettlement of children has historically concerned unaccompanied children,<sup>222</sup> however it may equally be relevant to the protection needs of a child within a refugee family.<sup>223</sup> A decision to resettle an unaccompanied or separated child must be based on an updated, comprehensive and thorough best-interests assessment, taking into account, in particular, ongoing international and other protection needs. Resettlement is particularly relevant if it is the only means to “effectively and sustainably protect a child against refoulement or against persecution or other serious human rights violations in the country of stay”.<sup>224</sup>

The CRC Committee has highlighted the criteria relevant to the best interests determination where a child will be resettled:

the envisaged duration of legal or other obstacles to a child’s return to his or her home country; the child’s right to preserve his or her identity, including nationality and name, the child’s age, sex, emotional state, educational and family background; continuity/discontinuity of care in the host country; the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background; the right of the child to preserve his or her family relations and related short, medium and long-term possibilities of family reunion either in the home, host, or resettlement country.<sup>225</sup>

As part of this assessment, the process of family tracing or of clarification of custody rights is initiated, and the short-term care and protection needs are addressed.<sup>226</sup> When assessing applications for resettlement, it is essential to also recognise the disproportionate impact of displacement on women, the violence and discrimination women and girls may experience at every stage of the displacement cycle, and the limitations on their economic options.<sup>227</sup>

In the EU context, resettlement should not be confused with relocation, which refers to the movement of persons in need of international protection from one EU member state to another EU member state, where a similar level of protection can be granted or where their asylum application will be further processed. Unlike resettlement, relocation is a process within EU borders, in which states help one another to cope with the pressure of receiving a rapid increase of arrivals.<sup>228</sup> So far, the implementation of relocation schemes was done based on EU relocation decisions, national laws, bilateral agreements or even ad hoc arrangements.<sup>229</sup> Relocation is not a durable

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222. For guidance on settlement programmes for children and youth see UNHCR, *Refugee resettlement: an international handbook to guide reception and integration*, September 2002, [www.unhcr.org/refworld/docid/405189284.html](http://www.unhcr.org/refworld/docid/405189284.html).

223. UNHCR (2011), *Resettlement handbook*, pp. 284–285.

224. CRC Committee, General Comment 6, paragraph 92.

225. *Idem*, paragraphs 84, and 92–93.

226. UNHCR Guidelines 2018, pp. 44, 47–48, and 92–94.

227. UNHCR (2011), *Resettlement handbook*, p. 184.

228. European Commission (2017), *Relocation and resettlement: sharing responsibility and opening legal pathways to Europe*, <https://tinyurl.com/y6h5bymr>.

229. European Council Decisions 2015/1523 and 2015/1601, the United Kingdom Section 67 Amendment to the Immigration Act (“the Dubs amendment”, March 2016), bilateral agreement on relocation between Portugal and Greece (November 2018) and ad hoc arrangements for refugees and migrants on board ships refused disembarkation in several Mediterranean states since summer 2018.

solution in itself. However, it may result in decisions granting protection status<sup>230</sup> and may be a prerequisite to family reunification or integration. Decisions on relocation must follow similar safeguards and considerations as resettlement decisions.

The practices included in this section, although not in the context of resettlement, provide a useful illustration of how various elements of resettlement procedures may follow a child-friendly approach.

### **Dubs scheme – Relocation of unaccompanied children to the United Kingdom**

**Institution:** National Centre for Social Solidarity (EKKA), Ministry of Labour, Social Protection and Social Solidarity (the United Kingdom, public authority) in collaboration with UNHCR and IOM

**Funding:** Several sources

**Context:** In March 2016, the Dubs Amendment (Section 67 of the UK Immigration Act) was passed which required the government to make arrangements for the relocation to the United Kingdom and support a specific number of unaccompanied refugee children from other countries in Europe. For the implementation of the “Dubs scheme”, a memorandum of co-operation was signed between the Greek General Secretariat of Migration Policy, General Secretariat for Welfare through the National Centre of Social Solidarity and UNHCR. Through this partnership, a process of identification of eligible unaccompanied children as well as a best interests determination (BID) process have been set up in order to develop a comprehensive system of selection and also ensure the provision of appropriate care. In March 2017, the Dubs scheme was suspended.

**Summary of the practice:** The BID process is being implemented through BID panels. UNHCR provides the technical lead of BID procedures in accordance with international frameworks and guidance, and panel members include child protection officers from EKKA, UNHCR and IOM. Actions at different stages of the process include co-operation with the UK Home Office, the Greek Asylum Service and the public prosecutors in Greece. The United Kingdom under the Dubs scheme has allocated 110 places for unaccompanied children residing in Greece.

**Child-friendly elements:** The process of determining the best interests of the child activates a multi-stakeholder approach through BID panels with experts in child protection from different organisations. One of the key elements that are integral to the determination of a child’s best interests is the personal wishes and competencies of the child. The BID reports prepared by NGO caseworkers are reviewed in accordance with the UNHCR Guidelines on Determining the Best Interests of the Child (2008) and the Field Handbook for the Implementation of

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230. EU the relocation scheme was limited to nationals of countries with a 75% or higher EU-wide recognition rate, which in practice resulted in high rates of decisions granting protection status in destination countries. While the Dubs amendment was meant to provide a durable solution for the relocated children.

UNHCR BID Guidelines (2011) that delineate specific vulnerability assessment criteria. The process of referral, selection and final decision abides by non-discriminatory rules and adhere to universal child protection principles. The process of relocation under the Dubs scheme seeks to identify the most suitable placement for the child, taking into consideration any specialised needs so as to guarantee a durable alternative solution for the child.

**Lessons learned:** The initial Dubs scheme commenced in mid 2016 and during its pilot phase some challenges related to identification, referral and best interests determination had been identified; among other issues, the state authorities were not involved in a formal process of assessing and determining the best interests of the child. However, the re-enactment of the scheme foresaw the state as a co-ordinating actor and a multi-stakeholder approach in determining the best interests of the child, which resulted in more comprehensive procedures. In cases where significant vulnerability is considered, the challenge of promptly identifying the most suitable environment for the child was presented. Thus, in some cases unanticipated delays have been recorded in the process.

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### **Safeguarding the rights of UASCs and their effectiveness during the process of relocation/reorientation**

**Institution:** Foyer de l'Enfance Sud Isère, Dispositif d'Hébergement Résidentiel (France, public authority)

**Funding:** With the centre's own resources

**Context:** Since the beginning of 2016, the emergency first reception centre in Grenoble, Isère, has been faced with the arrival of around 220 UASC under the age of 15. According to French legal provisions, any UASC who declares him-/herself as such, to a public or approved private association, should benefit from a sheltering process organised at the convenience of each French department in connection with the centralised service for the protection of unaccompanied children.<sup>231</sup> During this phase, a social assessment is managed to determine the reality of isolation and minority status. Then, six to eight weeks after their arrival, the destination department is contacted to organise the reception of the young person. However, in most cases the young persons are not accompanied to the centre where they are relocated, and they have to travel alone. In this first reception centre a system of support was organised, in order to empower children on their way to relocation.

**Summary of the practice:** The day before their departure, the young people were received by the head of the first reception centre and given a personal folder containing copies of the documents that would be sent to the new reception

231. Mission Mineurs Non Accompagnés (MMNA).

centre. The folder contained a personal report (important dates, nature of the measures taken, etc.), useful for subsequent steps to obtain a residence permit or to open a nationality application, when they will come of age; an orientation sheet, giving the contact details of the people and services that cared for them in the first reception centre; a health link sheet, specifying the care provided and those which have yet to be provided, the vaccination schedule and other information requiring vigilance, copies of school reports, civil status papers (if they have them), all documents that concern them and a relevant booklet “What are your rights?” from the NGO ECPAT. The documents were viewed and read together, and explanations were provided.

**Child-friendly elements:** In addition to the information sent to the professionals of the reception centre to which UASC are relocated, this preparation for departure aims to ensure that the young people themselves acquire the important elements of their situation during their stay in the first reception centre. Information given to young people to help them understand and be able to act on their own about their situation is a sign of respect and aims to empower them towards more autonomy. In this way, the centre promotes the rights of UASC to express their views and be informed about the procedures to use for appealing the decisions that they would consider contrary to their best interests.

**Lessons learned:** The programme was discontinued in December 2018 and children were transferred to other public institutions. During implementation, it was difficult to explain in detail certain documents due to the children’s limited knowledge of the French language.

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## 4.5. Return procedures

Exceptionally, a return to the home country may be arranged, after careful balancing of the child’s best interests and other considerations, if the latter are rights-based and override best interests of the child and if in compliance with the principle of *non-refoulement*.<sup>232</sup> Any decision to return a child to his or her country of origin should be based on evidentiary considerations on a case-by-case basis and pursuant to a procedure with appropriate due process safeguards, including a robust individual assessment and determination of the best interests of the child. This procedure should ensure, *inter alia*, that the child, upon return, will be safe and provided with proper care and enjoyment of rights.<sup>233</sup>

Non-rights-based arguments such as those relating to general migration control cannot override best interests considerations. Among these considerations, the CRC Committee lists the safety, security and other socio-economic conditions awaiting the child upon return; the availability of care arrangements for that particular child;

<sup>232</sup>. See more on the principle of *non-refoulement* in section 1.1.

<sup>233</sup>. CRC Committee, General Comment 22, paragraph 33.

the views of the child and of the caretakers; the child's level of integration in the host society and duration of absence from the country of origin; the child's rights to preserve his/her cultural identity and family relations. In all cases return procedures must be conducted in "a safe, child-appropriate and gender-sensitive manner".<sup>234</sup>

Unaccompanied or separated children should be provided with documentation indicating their level of education, in particular in the preparation of relocation, resettlement or return<sup>235</sup> and children should be provided with special support and resources when transitioning from their original country of origin to their new school environment, particularly in terms of language and teaching methods.

The European Court of Human Rights has also required very weighty reasons to justify the removal of children, as well as procedural safeguards. Where parents or extended family members cannot provide the child with care, return to the country of origin should, in principle, not take place without putting in place advance and concrete arrangements regarding the child's care and custody.<sup>236</sup> The Court has also examined the level of hardship associated with the children's removal to the country of origin (for example, risk to psychological health and physical well-being from the change in environment, access to a particular type of health care or risk of isolation in a particular community because they do not speak the local language), rejecting cases where the level of hardship was low, hypothetical or unsubstantiated.<sup>237</sup>

An important procedural safeguard in respect of returns is the automatic suspensive effect of appeals against removal decisions, which is required under Article 13 of the European Convention on Human Rights when removal would expose the person to a real risk of *refoulement*, contrary to Articles 2 and 3 of the Convention. By contrast, where removals are challenged on the basis of alleged interference with private and family life, it is not imperative, in order for a remedy to be effective, that it should have automatic suspensive effect.<sup>238</sup> According to the Council of Europe *Twenty guidelines on forced return*, legal assistance should be granted before deciding to issue a removal order in the case of a separated child. Moreover, the authorities of the host state should be satisfied that the child will be returned to a family member, a nominated guardian or adequate reception facility.<sup>239</sup>

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234. CRC Committee, General Comment 6, paragraphs 84-87; UNHCR Guidelines 2018, pp. 99 *et seq*. See more on best interests assessment in section 2.3.

235. CRC Committee, General Comment 6, paragraph 42.

236. *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, No. 13178/03, ECHR 2006-XI, where a violation of Article 3 of the Convention was found because a 5-year-old unaccompanied child travelled alone and upon return to the Democratic Republic of Congo no family members or other care arrangements had been made.

237. *Fedele v. the United Kingdom* (No. 13078/87, Commission decision of 12 February 1990), and inadmissibility decisions in applications nos. 25297/94, 24865/94, 23938/94.

238. *Khlaifia and Others v. Italy* [GC], (2016) and *De Souza Ribeiro v. France* [GC], (2012). See more on effective remedies in section 2.7.

239. Council of Europe Committee of Ministers (2005), *Twenty guidelines on forced return*, guideline 2(5).

Additionally, states must also be alert to the risks associated with the return of previously trafficked children. The CRC Committee advises that children who are at risk of being re-trafficked should not be returned to their country of origin unless it is in their best interests and appropriate measures for their protection have been taken.<sup>240</sup> The UNHCR further add that the impact of reprisals by members of the trafficking network, social exclusion, ostracism and/or discrimination against a child victim of trafficking who is returned to his/her home country should also be assessed before a decision on return is taken and that such an assessment should be carried out in a child-sensitive manner.<sup>241</sup> The Council of Europe Anti-trafficking Convention provides that states parties should establish repatriation programmes, which should include enjoyment of the right to education and measures to secure adequate care or receipt by the family or appropriate care structures, and a risk and security assessment should take place to assess whether return is in the best interests of the child, to avoid revictimisation and re-trafficking.<sup>242</sup> Similarly, the Istanbul Convention requires states to ensure that victims of violence against women who are in need of protection, regardless of their status or residence, are not returned to any country where their life would be at risk or where they may be subjected to torture or inhuman or degrading treatment or punishment.<sup>243</sup>

Another specific situation refers to children previously involved in armed conflict. Children must not be returned to a country where there is a possibility of underage military recruitment.<sup>244</sup> The UNHCR note that it is important to bear in mind that “children who have been released from the armed forces or group and who return to their countries and communities of origin may be in danger of harassment, re-recruitment or retribution, including imprisonment or extra-judicial execution”.<sup>245</sup>

The EU Return Directive provides for certain safeguards with regard to return decisions and encourages the use of voluntary departures over forced removals and requires that states take due account of the best interests of the child, family life and the principle of *non-refoulement*.<sup>246</sup> Unaccompanied children can only be returned to family members, a nominated guardian or to adequate reception facilities (Article 10). Forced returns must be carried out with due respect for the dignity and the physical integrity of the person concerned (Article 8). Return decisions as well as re-entry ban decisions must be in writing in a language that the individual can understand, including information on available legal remedies. Third-country nationals must be afforded the right to an appeal or review of a removal decision before a competent judicial or administrative authority. The third-country national should have the possibility to obtain legal advice, representation and, if necessary, linguistic assistance – free of charge (Articles 12 and 13). Removal decisions have to

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240. CRC Committee, General Comment 6, paragraph 53.

241. UNHCR Guidelines 2009, paragraph 12.

242. Council of Europe Convention on Action against Trafficking in Human Beings, Article 16.

243. Istanbul Convention, Articles 60(2) and 61. See more details concerning victims of domestic violence in section 3.2.

244. CRC Committee, General Comment 6, paragraph 28.

245. UNHCR Guidelines 2009, paragraph 23.

246. EU Return Directive, Articles 5, 6, 7, 12 and 13.

be postponed if they would breach the *non-refoulement* principle and where persons are pursuing a remedy with suspensive effect. Removal may also be postponed due to reasons specific to the person, such as state of health, and for technical obstacles to removal (Article 9). At the same time, the Directive allows for the pre-removal detention of children, including unaccompanied children (Article 17), as a measure of last resort.<sup>247</sup>

### **Clarifying the rights and best interests of unaccompanied children regarding a sustainable return process**

(Project Barnets bästa vid återvändande/The best interests of the child – A more sustainable return process for unaccompanied minors)

**Institution:** Department of Future Development, Strömsund Municipality, co-operatively run with the Swedish Migration Agency and the County Administrative Board of Jämtland (Sweden, public authorities)

**Funding:** EU Asylum, Migration and Integration Fund (AMIF) (75%), Swedish Migration Agency (24%) and Strömsund Municipality (1%)

**Context:** The Swedish Migration Agency (SMA) holds the overall responsibility for unaccompanied children but seldom meets them in person. A lot of the communication is performed instead by professionals within the municipalities, who unfortunately often lack knowledge of the circumstances surrounding children in the asylum and return process, which could lead to a defective return process. This practice is addressed to UASC who are yet to receive a final refusal on their asylum application or have been refused asylum and therefore are currently in the process of being returned. The practice is implemented in the Strömsund Municipality, but the project also collaborates with and mentors pilot municipalities and organisations throughout Sweden.

**Summary of the practice:** The practice aims to increase knowledge and co-operation between authorities in order to develop a more sustainable return process for the child. It includes:

- ▶ facilitating training for professionals and guardians on legal framework, crisis management, PTSD, confidentiality and the asylum and return process;
- ▶ information and support to the child early and throughout the process, but also after refusal. Information presented in a child-friendly manner to help empower the child to find alternative goals;
- ▶ a manual on how to communicate with children, including how to present information in a child-friendly manner, best practices and tools. The manual focuses on important aspects of everyday talks, regular check-ups and crisis management at every stage of the asylum process;
- ▶ an interactive map for children of the asylum process as a tool to help visualise and better understand the steps and actors involved;

<sup>247</sup>. See more on alternatives to immigration detention in section 3.4.

- ▶ the practice also includes a model for co-operation between local and public authorities, professionals and guardians with emphasis on understanding roles, legal framework and confidentiality.

The practice is being shared at national level. The initiative is focusing on the child's best interests both during the asylum process and after a refusal by providing more information and support, presented in a child-friendly way. An advisory board, composed of representatives from UNHCR, UNICEF, the Children's Ombudsman, the SMA, Save the Children, the County Council of Stockholm, other competent national organisations, government officials and the police, provides expertise to the project. The project is working also on creating collaborative practice with organisations in return countries.

**Child-friendly elements:** Non-directive information and counselling is provided to UASC, empowering them to find alternative goals and create a better sense of inclusion in a difficult situation. There are signs of improved mental health, making children feel more included in their process and better aware of a possible refusal. The practice includes elements of child-friendly information and communication, including an interactive map of the asylum process ([http://begripligt.nu/Asylum\\_map\\_English.pdf](http://begripligt.nu/Asylum_map_English.pdf)) that is presented to the children in talks initially and throughout the asylum and return process. The practice is also described in a three-part manual (currently only available in Swedish, part one describing the model: <https://tinyurl.com/y299rttg>), part two on how to communicate with and inform children: <https://tinyurl.com/y3e6wxmc>) and part three on how to create a functional co-operative practice (<https://tinyurl.com/y6ajmae8>).

**Lessons learned:** Many municipalities report a lack of sufficient resources to provide training for professionals. It is challenging to achieve a functional co-operation between local authorities, public authorities and intergovernmental organisations, which is necessary for ensuring the child's best interests. It is also difficult to apply methods and information within an ever-changing legal framework and to ensure that all authorities, professionals and guardians are aware of and follow current laws and regulations.

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This compilation brings together international and European standards on child-friendly practices in the context of migration, with real-life illustrations of the kinds of initiatives, programmes and procedures that serve to implement these standards. Its purpose is to share existing knowledge on how migration-related processes can integrate a child-friendly approach. By doing this, the compilation contributes to meeting the objectives of the Action Plan on Protecting Refugee and Migrant Children in Europe (2017-2019). It addresses a wide range of issues, including the standards that must be applied to the child's registration and age determination, the child's treatment in the migration decision-making process and measures that promote their rights to protection, family care and education. What the compilation shows is the range and depth of standards currently set out in international and European law – both in EU law and Council of Europe treaties and recommendations – and it provides detailed guidance for states and civil society on how best to incorporate child-friendly practices in the migration process.

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