

## OPTIONS PAPER 1:

# Options for governments on care arrangements and alternatives to detention for children and families

### What are alternatives to immigration detention (ATD) for children and families?

Any legislation, policy or practice that allows children, whether accompanied or not, to reside in the community or, when unaccompanied or separated, in appropriate reception or care arrangements where protection and assistance are provided to meet their specific needs.

Alternatives to detention are non-custodial, and must not become alternative forms of detention. They should respect the principle of minimum intervention and fulfil the best interests of the child, along with his/her rights to liberty and family life.

Overall an ethic of care – and not enforcement – needs to govern interactions with asylum-seeking children, including children in families.

Liberty and freedom of movement for asylum-seekers are always the first options.

A **CHILD** means any person under the age of 18, unless under the (national) law applicable, majority is attained earlier (Art 1, Convention on the Rights of the Child (CRC)).

**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.

**SEPARATED CHILDREN:** Children separated from both parents, or from their previous legal or customary primary care-giver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.

Some unaccompanied or separated children may be **ORPHANS**, who are children both of whose parents are known to be deceased.

**UASC** = unaccompanied or separated child/ children who are asylum-seekers, refugees or other migrants.

# General guiding principles for policy- and decision-makers



Asylum-seeking, refugee and migrant children should not in principle be detained, any detention should be a measure of last resort and for the shortest possible period of time (Art 37(b), CRC). Best guaranteed in national legislation.



An ethic of care – not enforcement – should guide all interactions with asylum-seeking and migrant children (UNHCR Detention Guidelines, 2012).



The best interests of the child must be a primary consideration (Art. 3, CRC).



States are to take appropriate measures to ensure that children who are seeking refugee status or who are recognised refugees, whether accompanied or not, receive appropriate protection and assistance (Art. 22, CRC).



Seeking asylum is not an unlawful act and asylum-seekers shall not be penalised for irregular entry or stay. Nor should States criminalise irregular entry or stay. (Art. 14, Universal Declaration of Human Rights and Art 31(1), 1951 Refugee Convention).



Every child has the right to the highest levels of physical and mental health (Art. 24, CRC).



Family and child appropriate reception arrangements should be integrated into existing national systems. Parallel systems should be avoided.



Every child has a fundamental right to survival and development to the maximum extent possible (Art. 6, CRC).



Family-based care arrangements should be prioritised, with institutional care being used only in very limited circumstances.



Every child has a right to a standard of living adequate for the child's physical, mental, spiritual, moral and social development (Art. 27, CRC).



Alternative care arrangements need to cater for the child's proper development (both physical and mental) while longer term solutions are being considered (Art. 3(2), CRC).



Due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background (Art. 20, CRC).



Clear standards and procedures are vital to ensuring alternative reception and care arrangements protect children and do not cause harm.



The particular needs of girls and other groups at risk such as LGBTI, victims of trauma or torture, victims or potential victims of trafficking are to be taken into account throughout planning and implementation of alternatives (Art. 2, CRC; UNHCR, Age, Gender and Diversity Approach, 2012, para. 19; UNHCR ExCom Conclusion, No. 105 (LVII), 2006; UNHCR ExCom Conclusion, No. 107 (LVIII), 2007; UNHCR Detention Guidelines, 2012).



Asylum-seeking and migrant children shall not be co-mingled with other children in the juvenile justice system.



Every child has the right to education (Art. 28, CRC; Art. 22, 1951 Refugee Convention).



Child asylum-seekers are entitled to contact UNHCR (UNHCR Detention Guidelines 2012; UNHCR ExCom Conclusion, No. 85 (XLIX), 1998).



Every child has the right to rest, leisure and play (Art. 31, CRC) and to cultural life (Art. 30, CRC).

# 1. Managing the reception process for children

## Laws that prohibit the detention of children



➤ Children should in principle not be detained at all for immigration purposes. This is best guaranteed when enshrined in national legislation.

In **NICARAGUA**, the Refugee Protection Law provides for the non-detention of asylum-seekers with special needs, including unaccompanied or separated children, and requests their immediate referral for appropriate assistance.

## Identification procedures

Identifying asylum-seeking children is the first step towards their effective protection. Appropriate identification will lead to an assessment that takes into consideration any specific needs or vulnerabilities of the child and is the basis for making recommendations regarding care, services and referrals. This initial assessment procedure must be performed in a child friendly environment and provide guarantees of security and privacy, as well as be performed by qualified professionals who are trained in age and gender sensitive interviewing techniques.

➤ To avoid the risk of re-traumatization, multiple interviews should be avoided and appropriate child-friendly and safe environment provided, and breaks as needed. Interpretation is to be provided when interviewing the child.

➤ In order to respect the principle of confidentiality and data protection, protocols should be established on the sharing of information related to the child between State institutions.

### The following information should be captured:

- Is the child unaccompanied or separated, or with parent or immediate family (grandparent/maternal/ paternal uncle/aunt)?
- Name, age and gender
- Nationality or statelessness; country/place of origin
- Ethnic, religious, cultural and linguistic background
- Specific vulnerabilities (such as physical or psychological problems, health/medical needs, special dietary requirements, etc.)
- Protection needs and status (refugee, asylum-seeker, no ongoing procedure)
- Any evidence of being at risk or victim of trafficking, persecution, torture or trauma

### If in detention, this additional information should be recorded about the child:

- Duration of detention
- Date of the next detention review
- Clarify if he/she is detained alone or with parents or immediate family (siblings, grandparent/maternal/paternal uncle/aunt)



In its Advisory Opinion OC-21/14 of 19 August 2014, the Inter-American Court of Human Rights noted that the determination of whether a child is unaccompanied or separated from his/her parents or legal guardian must be conducted immediately upon arrival owing to the child's heightened vulnerability and so as to ensure they receive the protection they need.



In **MEXICO**, all UASC arriving in a detention centre (estaciones migratorias) are supported by Child Protection Officers (Oficiales de Protección a la Infancia or OPIs) from the National Migration Institute (INM). These officers receive training from the National System for Integral Family Development (DIF), the Mexican Family Welfare Agency and Child Protection Institution, the National Human Rights Commission (CNDH) and international organisations, including UNHCR. OPIs are charged with conducting age-appropriate interviews with UASC in order to gather data on their identity, nationality, immigration status and whereabouts of their family, as well as to screen for protection, medical or psychological needs, including for access to asylum procedures. The information gathered is used by authorities to conduct best interests assessments (BIA).

## Identification of victims and potential victims of human trafficking

Upon arrival in **THE NETHERLANDS**, UASC over 13 years old are sent directly to the asylum-seekers application centre in Ter Apel; those under 13 years and other vulnerable children are placed in foster families. Present in Ter Apel, Nidos – the independent guardianship authority – conducts intake interviews with each child shortly after arrival to: (i) collect personal details to file the (temporary) guardianship request; (ii) investigate the appropriate type of reception facility for the child, such as a protected reception centre, foster family, campus, or a living unit with a few other minors; and (iii) assess whether an UASC is a potential victim of human trafficking.

➤ States shall take all measures against all forms of physical or mental violence, neglect, maltreatment or exploitation, including sexual abuse (Art. 19, CRC), and other forms of exploitation or exposure to illicit drugs (Arts 33, 34, 35, 36, CRC). This applies in both detention and in non-detention settings. All appropriate measures are to be taken for physical and psychological recovery and social reintegration (Art. 39, CRC).

Where there are clear indications that a child is a victim of or at risk of human trafficking, Nidos contacts the Immigration and Naturalisation Service and the Aliens Police in order to discuss and triangulate information and assess risks. Where risks are present, Nidos, the Immigration and Naturalisation Service and the Aliens Police discuss the placement of the child in a safe house, a protected reception facility for victims of trafficking. During any criminal investigation, the child's guardian can apply for a residence permit for the child to stay in The Netherlands on temporary humanitarian grounds.

## Documentation

In **COSTA RICA**, legislation explicitly prohibits the rejection at the border of UASC as well as persons regarding whom there is no certainty of age. The immigration authorities at the border must report such persons immediately to the Children Protection Institute (PANI), the competent authority responsible for children without parents or legal guardians, including asylum-seeking and refugee UASC. PANI is then required to place the child at their nearest, suitable facility and to liaise with the Migration Authority's Refugee Unit for registration and the assessment of their asylum claim. A temporary document is issued upon registration.

➤ Every child has the right to identity documentation (Arts 7, 8, CRC; Art 27, 1951 Refugee Convention); any child born in detention shall be registered at birth (Art. 7, CRC; ExCom Conclusion No. 111 (LXIV), 2013).

➤ States are to provide asylum-seeking and refugee children with individual documentation evidencing their special status as asylum-seekers and refugees (Art. 27, 1951 Refugee Convention).

According to Costa Rican legislation, all children under the age of 18 years, including migrant-, asylum-seeker- and refugee- UASC, have universal access to education and health care.

## Appointment of guardian for UASC

A **GUARDIAN** is a legally recognised person or body holding legal responsibility for the child. A guardian is to be appointed when the parents are absent or not in a position to make day-to-day decisions in the child's best interests. This independent representative is a person who is given the legal responsibility for a child; this may entail full parental responsibility, including the care of a child, or designated responsibilities related to making legal decisions.



In **ARGENTINA**, child protection actors such as the Public Defender's Office (PDO), the National Commission for Refugees (CONARE), the National Migration Office, UNHCR, IOM, UNICEF and several NGOs, are part of the *Protocol for the Protection, Assistance and Search for Durable Solutions for Unaccompanied or Separated Children who Seek Asylum* (2008). The Protocol outlines the roles and responsibilities of each organisation from the moment a child with international protection needs is identified until they are able to realise a durable solution. Detention is not a possibility under the Protocol.

➔ Every unaccompanied or separated child shall be appointed a legal guardian as soon as possible after arrival.

A uniform screening procedure to determine whether the child is unaccompanied or separated and his/her protection needs is to be carried out. Such a screening is to take place regardless of whether the child is identified at the border or within the territory, and regardless of the way in which the child entered the country. This initial screening is coordinated between the PDO (when relevant, with support of local child protection agencies), CONARE and the migration authorities in Buenos Aires.

Once CONARE is aware of a potential UASC, the PDO is immediately notified and assumes guardianship of the child within 48 hours. The PDO has several purposes: (i) it appoints a legal guardian for every UASC seeking asylum in order to accompany the child throughout various procedures while searching for a durable solution; (ii) it helps the child to receive temporary documentation; and (iii) it assesses the level of vulnerability of the child and the existence of risk factors (physical and mental health), and coordinates appropriate follow-up.

The PDO-appointed guardian is responsible for comprehensive support, such as coordinating social support, including accommodation arrangements (e.g. in local children's shelters) and subsistence; regular health checks; access to Spanish classes and education (primary, secondary and beyond); for children of 16 years of age and older, access to employment opportunities including assessing the appropriateness of the work; and enjoyment of age-appropriate recreational activities. The Public Defender's Office must ensure that every refugee and asylum-seeker – regardless of their age – can be assisted and represented by a public defense attorney, free of charge.



In **KENYA**, child protection is organised by provinces and districts. At the district level, District Children's Officers (DCO) are responsible for children when they are in conflict with the law and other child protection issues, such as carrying out a best interests determination (BID), the appointment of guardians and the protection of refugee children. When a refugee child is identified in detention, the DCO in cooperation with UNHCR will ensure the child is released to a children's home run by the Department of Children's Services. Tracing of family members in Kenya is undertaken and reunification organised. In cases where reunification is not possible or available, foster families are identified.

## Legal representation and advice



The Law on the Status of Refugees of **URUGUAY** foresees that when an application for asylum is submitted by an unaccompanied child or adolescent (who can present a submission independently without persons exercising their legal representation), the Permanent Secretariat of the Refugee Commission is to ensure the appointment of a lawyer as a matter of priority. The Family Court will be immediately advised in order to adopt special measures. Any action having taken place without the presence of counsel is considered null and void, according to the law.

➔ Children who are the principal applicant or UASC are to be informed of their right to and given access to legal advice and representation, not only for asylum or immigration procedures, but also to challenge their detention or challenge the reception arrangement (Art. 16, 1951 Refugee Convention; Art. 37(d), CRC).



In **THE PHILIPPINES**, a Memorandum of Understanding between the Philippines' Public Attorney's Office (PAO) and UNHCR (2013, and extended in 2015) outlines the framework of cooperation with regard to access to free legal assistance, counseling and representation for refugees, stateless persons and asylum applicants, at all stages of administrative, judicial and quasi-judicial proceedings. Representation by PAO of an applicant starts from the denial of his/her refugee or stateless application at first instance. This MoU also applies to asylum-seeking UASC who benefit from legal aid through the endorsement of the Refugees and Stateless Persons Protection Unit (RSPPU). RSPPU ensures too that UASC are referred to appropriate government agencies and/or organizations for their care and welfare. UNHCR or through its local implementing partner may also facilitate referrals to PAO.

The PAO Operations Manual supplements these protective measures for asylum-seeking children, and provides for the coordination between the Department of Social Welfare and Development, the local social welfare officers and other concerned government agencies to procure the immediate release of the child in conflict with the law from detention or who is otherwise deprived of his/her liberty. While this provision is primarily intended for children in conflict with the law, PAO policy and practice is to extend the application of this provision to all child detainees.

## Best interests assessment

The UNICEF–UNHCR joint report *Safe and Sound, What states can do to ensure respect for the best interests of unaccompanied and separated children in Europe* describes best interests assessment (BIA) as a simple and ongoing procedure for making decisions about what immediate actions are in an individual child’s best interests. A BIA must take place prior to a decision to detain him/her, and should identify the immediate actions to be taken in the child’s best interests. All child-appropriate alternatives to detention – such as release to other family or relatives with residence in the country of asylum, foster care, supervised independent living, or residential homes – are to be considered.

In the detention context, given the very serious effects of detention on children, BIAs should be carried out both for UASC and children in families. They should be conducted respecting existing child protection systems of the State, in cooperation with other relevant agencies and partners. BIAs involve

interviewing the child and appropriate consultation with him/her, as well as additional information gathering, carried out by staff with relevant professional expertise in child welfare or protection. BIAs should consider the capacities and development of the child and be adjusted or revised over time.



- Child’s best interests shall be a primary consideration in decision-making (Art. 3, CRC).
- Children should be able to express their views freely and their views should be given “due weight” in accordance with their age and level of maturity (Art. 12, CRC).

**COSTA RICA**’s Children Protection Institute, in coordination with UNHCR, UNICEF and the Migration Authority, has elaborated a Protocol for UASC in a refugee and/or statelessness situation. The Protocol provides for a panel, comprised of the mentioned entities, to determine the best interests of the child and to institute tracing procedures, where necessary.

## Age assessments

Age assessments should only be carried out in cases when a child’s age is in doubt, and are part of a comprehensive assessment that takes into account the physical appearance, the psychological maturity of the individual and cultural factors. Age assessments are to be conducted in a safe, child- and gender-sensitive and fair manner with due respect for human dignity. If medical testing is considered necessary, the least invasive means should be applied. In the event of uncertainty of age, States should consider the individual as a child (UNHCR ExCom Conclusion No. 107 (LIII), 2007). Age assessments are an important safeguard against the detention of children.

## Early release and/or appropriate referrals

Mechanisms – including identity, health and other screening, and/or intake procedures and detention registers – need to be established to trigger appropriate assessment and referral mechanisms. Children should be referred to appropriate care arrangements without delay, in order to meet as soon as possible their needs relating to care, safety, education and health.



In **IRELAND**, when immigration officers encounter an UASC, they are to notify and refer the child to the Child and Family Agency (CFA) immediately, the latter incorporating a special team of the Health Service Executive, the “Social Work Team for Separated Children Seeking Asylum”. After referral, a child protection needs assessment is conducted by a professionally qualified social worker. The outcome of this assessment informs the child’s individualized, statutory care plan. A social worker, who is assigned to the child immediately following the intake assessment, is responsible for the management and implementation of the care plan.

## Family tracing and reunification

Lack of (apparent) family ties should not be a barrier to the release of a child from detention.

Searching for the child’s family members or primary legal or customary caregivers and bringing them together for the purpose of establishing or re-establishing long-term care should take place as early as possible. Procedures for restoring contacts need to have in place appropriate child protection safeguards in case children should not be reunited with their family members. Child asylum-seekers shall not be returned to their countries of origin for the purposes of family reunification until their asylum application has been finalised, and it is determined to be in their best interests. Cooperation with UNHCR, ICRC and other international agencies and organisations may facilitate these matters (Art 22(2), CRC).

- Children have the right to family unity (*inter alia*, Arts. 5, 8 and 16, CRC), to know and be cared for by their parents (Arts. 7(2), 18, CRC), and not to be separated from their parents against their will (Art. 9, CRC).
- A child temporarily or permanently deprived of his/her family environment, or in whose own best interests cannot be allowed to remain in that environment, is entitled to special protection and assistance (Art. 20, CRC).
- Requests for family reunification, including for parents to enter and stay to join the child, shall be dealt with in a positive, humane and expeditious manner (Arts. 10, 22, CRC).



The **FINNISH** authorities have a formal agreement with the General Secretariat of International Social Services (ISS), a non-governmental organisation, to carry out tracing of families or legal guardians of unaccompanied or separated children. Under the agreement, tracing is not pursued if it becomes apparent that the child or the family may be exposed to danger. The decision to discontinue tracing is taken under guidance from ISS, but also from the child and his or her legal representative and/or guardian.



In **ITALY**, family tracing and family assessments are carried out by the International Organisation for Migration (IOM) based on an agreement with the Ministry of Labour and Social Policy upon the child’s request and with the child’s informed consent and that of the family. Assessing whether the child can be reunited and reintegrated with his/her family members in the country of origin is designed in close collaboration with the child, his/her family, IOM and social services and is approved by the Ministry of Labour. *Note:* For asylum-seekers, any consideration of return procedures must wait until a final determination is made on their asylum application.





UNHCR and the International Committee of the Red Cross (ICRC) have a long history of cooperating in restoring family links (RFL) for refugee and other children of concern to UNHCR. RFL activities are carried out by the Family Links Network which includes the Central Tracing Agency of the ICRC, ICRC delegations and the tracing services of the 189 National Societies worldwide. The Central Tracing Agency of the ICRC acts as a coordinator and technical advisor to the Family Links Network. UNHCR and States regularly refer cases of refugees, stateless persons and asylum-seekers, who are looking for their loved ones, especially unaccompanied or separated children, to the ICRC and the National Societies for RFL services.

## Prioritised asylum processing and age-appropriate information

Priority processing means reduced waiting periods at each stage of the asylum procedure, including in relation to the issuance of a decision on the claim. However, before the start of the procedure, children require sufficient time in which to prepare for and reflect on rendering the account of their experiences. Legal representation is required. For UASC, their appointed guardian may be requested to be present throughout the procedure. The asylum procedure as well as the decision should be explained to the child in a manner and in a language he/she understands (e.g. picture books, video material).

➤ In the best interests of the child, child asylum claims should be prioritised for processing (ExCom Conclusion 107 (LVIII) – 2007).

➤ Child asylum-seekers are entitled to contact UNHCR (UNHCR Detention Guidelines 2012; UNHCR ExCom Conclusion, No. 85 (XLIX), 1998).



In **MEXICO**, the Mexican Refugee Commission (COMAR), the National Migration Institute (INM) and UNHCR developed an identification protocol to enhance access to asylum procedures for unaccompanied or separated children. Child Protection Officers (OPIs) of the INM are trained to improve the identification of children who are potential refugees, and channel them to COMAR, Mexico's asylum adjudication body. They use a video produced by UNHCR to inform children of their right to seek asylum in Mexico. The video uses animation and child-appropriate language.

According to the standard procedure, after viewing the video, the child is asked to explain in his/her own words the video's content. The OPI then clarifies any issue to the child and provides an overview of the asylum procedure. The OPI must communicate to COMAR in written form, and no later than 72 hours, whenever a child is interested in lodging an asylum claim, or if a child is considered to be in need of international protection as a refugee. In the latter case, COMAR must contact the child to learn more about his/her position and initiate asylum procedures. The National System for Integral Family Development (DIF) is also expected to participate in these matters, accompanying the child and providing emotional support.



This video is available at:  
<https://youtu.be/93OgdoQBMnE>.

## 2. Options for unaccompanied or separated children (UASC)

A range of alternative care options for emergency, short-term and long-term care should be available for UASC while their status is being resolved. Priority should be given to family- and community-based solutions, in accordance with the national child protection system. Alternative care should be viewed as an interim measure whilst family tracing is carried out and until the time when children can be reunited with family members, if applicable and appropriate. Family-based arrangements are to be considered first, with residential care only considered when family-based care arrangements are not possible or they are not in the child's best interests, and then only for the shortest time possible.

The establishment of clear standards and procedures are vital to ensuring alternative care arrangements protect children and do not cause harm. All entities and individuals engaged in the provision of alternative care for children should receive due authorizations to do so from a competent authority and be subject to regular monitoring and review by the latter. Appropriate criteria for assessing the professional and ethical fitness of care providers and for their accreditations, monitoring and supervision should be developed.

Apart from the relevant Ministries in charge of child care systems, competent local authorities, community leaders and duly authorized civil society organizations are important stakeholders to be engaged when designing care and reception options.

- Siblings with existing bonds should in principle not be separated by placements in alternative options unless there is a clear risk of abuse or other justification in the best interests of the child.
- Where possible, unaccompanied or separated children should be released into the care of family members, including asylum-seeking or refugee family members or others, who have residency in the asylum country.
- As unaccompanied or separated children are at heightened risk of abuse and exploitation, monitoring and specific support should be foreseen to ensure their protection.
- Alternative care arrangements should be made by the competent child care authorities, ensuring that the child receives appropriate supervision (UNHCR Detention Guidelines, para. 54).
- A child who has been placed by the competent authorities for the purposes of care [...] has a right to periodic review [of the treatment provided to him/her] and all other circumstances relevant to his or her placement (Art. 25, CRC, UNHCR Detention Guidelines, para. 47).

### Case management



In Quebec, **CANADA**, PRAIDA (Programme régional d'accueil et d'intégration des demandeurs d'asile) is mandated by the provincial Health and Social Services Ministry to respond to the needs of asylum-seekers, including UASC in the province. PRAIDA has an agreement with the Immigration and Refugee Board (IRB) to act as the "designated representative" for the majority of asylum-seeking UASC as well as for individuals who do not comprehend the nature of the proceedings. In the case of UASC, the designated representative is a social worker from PRAIDA whose role is to retain and instruct counsel if necessary, inform the child about the asylum process and accompany the child to the IRB procedures which may include both detention reviews (if applicable) and asylum hearings, to assist the child in gathering evidence in support of their case and in being a witness, and to inform and consult with the child to the extent possible when making decisions about their case.

A second social worker is also assigned by PRAIDA to deal with the psychosocial needs of the child, to refer

him/her to appropriate medical services, and also to connect with the organizations working on family tracing and reunification. PRAIDA also evaluates suitable host families. Both social workers involved interact in order to ensure a coherent approach to the child's needs.

PRAIDA generally gets involved as soon as the presence of an UASC is detected (usually at ports of entry) and remains in charge of the child until he/she turns 18 years old, or earlier in cases of children who are removed from the territory after having exhausted all legal avenues to remain. UASC who obtain permanent residence in Canada after they are granted refugee status are transferred by PRAIDA to the care of the Youth Protection Director (YPD) who oversees the application of the Youth Protection Act. The child may remain in the 'famille d'entraide' with its agreement otherwise the YPD has the duty to find a suitable form of accommodation until the UASC reaches majority. Social workers are also internally supervised and have a monthly clinical evaluation and benefit from professional support.

## Orientation and observation centre for UASC



In **BELGIUM**, all UASC identified by the Guardianship Service without any distinction based on administrative status (asylum-seeker or other migrant), including those identified at the border as well as being irregularly in the territory, are first received in an Orientation and Observation Centre run by the Belgian Federal Agency for the Reception of Asylum-seekers (Fedasil). They stay at the Centre for a period of 2-4 weeks. The Centre is a small-scale protective and open reception centre, adapted to the needs of children. The Centre can accommodate up to 50 newly arrived children who are supervised by social workers specialized in the reception, observation and orientation of UASC.

During their stay, the Guardianship Service confirms the child's identity and his/her status as an UASC. The Centre staff have expertise and follow procedures for detecting other vulnerabilities, such as potential victims of trafficking, physical, mental or psychological problems, or drug addictions. Both individual interviews and continuous observation are applied. Children participate in educational activities organised in the Centre, including orienting them to procedures and life in Belgium. After this observation phase, the child is referred to the most appropriate reception structure, according to his/her special needs (pregnant children, young children, children with psychological problems, potential victims of human trafficking), and attends Belgian school.

Specific support for the most vulnerable children is organised via increased protective measures, medical and psychological follow up (residential or external), and psychosocial activities (art therapy).

## Foster care

**FOSTER CARE:** where UASC or children who cannot be cared for by their parents are placed by the competent authority with a family other than the children's own family that has been selected, qualified, approved and supervised for providing such care.



In the **UNITED STATES OF AMERICA**, the Office of Refugee Resettlement (ORR), within the Department of Health and Human Services, is responsible for the long-term care of UASC, including the assignment of a sponsor. This family-based care can be organised within the child's extended family or with close friends of the family known to the child (kinship care) or in a household outside her/his family (foster care).

An "Individual Service Plan" is completed for each child prior to placement in foster care. Case managers screen children upon arrival to assess their particular vulnerabilities or special needs, identify any potential sponsors to whom the child could be placed, and the viability of the child's case for relief.

Children determined to be more vulnerable are prioritized for home assessment conducted by NGOs, contracted by ORR: A home study assesses the sponsoring family unit, evaluates the potential sponsor's ability to meet the child's needs, and educates and prepares the potential sponsor for meeting and receiving the child. Background checks on all adults living in the home of the potential sponsor, investigative interviews and a home visit are conducted.

Some UASC receive post-release follow-up services provided by a local social work agency contracted by ORR: The social worker provides the UASC with assistance and referrals in locating legal representation, verifying school enrolment, obtaining guardianship, connecting with medical, mental health and social services, and supporting attendance at legal proceedings.

Generally, the placement process should be completed within 30 days of the UASC entering ORR custody. These services may decrease over time, depending on the child's needs.

## Supervised independent living

**SUPERVISED INDEPENDENT LIVING** is a living arrangement where an adolescent child, or group of adolescent children, live independently. Older adolescents may also wish to live alone or with others of similar ages. Independent living arrangements must be monitored and the role of the community in supporting these children is crucial.

## Group care

**GROUP CARE** is where children are placed in small group homes that are run like a family home, whereby groups of six to eight children or young people are cared for by consistent caregivers within the community. Where family-based care or independent living is not possible or advisable, small group care is strongly preferable to other forms of residential care. In some cases adolescents may prefer small group care to family-based care as it provides more independence, however very young children should be prioritized for family-based care.

In **YEMEN**, a community-driven alternative care system was set up for asylum-seeking and refugee children by the local authorities and UNHCR, together with refugee leaders. Small group homes are rented (with a capacity of 6 to 8 children) next to neighbouring families who are carefully selected by the community leaders and who agree to play a formal supervisory role over the children. Each child in alternative care arrangements undergoes a BIA with regular home visits by the child protection partner and community outreach workers.

**RESIDENTIAL CARE** is care provided in non-family-based group settings. This includes transit/interim care centres, children's homes, orphanages, children's villages/cottage complexes, and boarding schools used primarily for care purposes. Residential care should be a last option, appropriate only where family-based or small group care arrangements are not possible or where family-based care is not considered to be in the best interests of the child.

## Residential care



In **ISRAEL**, based on a joint decision by an inter-ministerial committee led by the Ministry of Justice, UASC aged between 14 and 17 are integrated in residential schools called “youth villages” together with Israeli youth. Israeli youth opting for this kind of secondary education are mainly from migrant backgrounds or youth facing socio-economic difficulties.

UASC are placed in small groups in these youth villages gathering up to 150-300 young people (the number of UASC generally constitutes a maximum of 10% of the total school population). Each child that arrives from detention centres undergoes an intake and his/her situation is monitored by the staff in charge (usually a child and youth care worker/social worker). Children are divided in the youth village by age groups, boys and girls separately, and live together with Israeli youth in the same groups. Emphasis is on a community approach – e. g. where staff live with their families alongside the students. The staff includes directors, teachers, educators, child and youth care workers, social workers and other psycho-social staff as needed and also volunteers like national service volunteers. Children are provided with a safe environment, access to local school and all other comprehensive services in accordance with their developmental needs (health care, dental care, clothing, full board accommodation, sports and other social activities, pocket money, psychological counseling if needed, etc.). Wherever possible, Israeli “host families” are matched with the UASC for hosting them in vacation periods.

Children enjoy freedom of movement and are provided with identity certificates that are issued by each youth village separately. The Israeli immigration authority issues UASC living in youth villages a “conditional release” visa, similar to the visa all asylum-seekers receive in Israel. The youth villages are supervised and

financed by the Ministry of Education. From 2008-2014, more than 400 UASC from African countries were placed in the youth villages.



In **INDONESIA**, there are three shelters that are available for UASC who are refugees or who have applied for asylum. UNHCR Indonesia and its partner Church World Service (CWS) run two of these shelters, and the Government's Ministry of Social Welfare runs the third facility. Collectively, the shelters accommodate up to 124 children. CWS provides for basic necessities, health and psycho-social care, language and computer skills classes, and facilitates recreational activities. Social workers from the Ministry similarly look after the children in the Government-run shelter with support from UNHCR, IOM and other partners. The children in the facilities can also participate in community charitable activities, such as park clean-up campaigns. UNHCR is exploring ways with the Government and other partners to establish more accommodation arrangements for refugee and asylum-seeking children, as the need far exceeds the limited space available in existing shelters.



In **CANADA**, the Red Cross First Contact Program was first established by the Canadian Red Cross - Toronto Region in partnership with the City of Toronto's Refugee Housing Task Group. It has since expanded to other parts of Canada. This supportive programme for asylum-seekers also facilitates, in the Greater Toronto area, the release and referral of UASC of 16-17 years of age to shelters. Following an agreement with the Canadian Border Service Agency (CBSA), when an UASC arrives at an airport, the Red Cross is contacted by CBSA; and the First Contact Project locates a suitable shelter within the city that provides appropriate services for children.

Also at that point, CBSA contacts McCarthy Tetrault, an international law firm to request interest to act as a "designated representative" for the UASC at the port of entry examination. This proposed designated representative programme was established by UNHCR in co-ordination with CBSA, the Immigration and Refugee Board (IRB), the Red Cross, the Peel Children Aid's Society and McCarthy Tetrault. The designated representative is subsequently appointed to the child by the IRB and is responsible for protecting the interests of the child at IRB procedures, as well as explaining the asylum process to them. The designated representative has to decide whether to retain counsel and, if counsel is retained, instruct him/her or assist the child to instruct counsel.

A drop-in centre where refugees can access services and obtain information as well as a 24-hour emergency telephone service is also run by the Canadian Red Cross, allowing children, asylum-seekers and refugees already on the territory, to contact them at any time. The Project operates 7 days a week and allows new UASC seeking asylum in the city of Toronto to find immediate shelter upon arrival.

## 3. Options for families with children

- Children have the right to know and be cared for by their parents (Art. 7(1), CRC).
- Children have the right to family unity, family relations and protection against unlawful interference with their privacy and family (Art. 5, 8 and 16 CRC; ExCom Conclusion No. 93, 2002).
- A child can be separated from his/her parents against their will only when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary in the best interests of the child (Art. 9 (1), CRC). In any proceedings related to such separation, all interested parties shall be given an opportunity to participate in the proceedings and make their views known. (Art. 9 (1) and (2), CRC).
- Detention of families cannot be justified based solely on the parents' or guardians' immigration or other status. All appropriate measures have to be taken to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status [...] of the child's parents, legal guardians, or family members (Art. 2(2), CRC).
- Where the separation of a child from their parents is unavoidable in the context of detention, the child who is separated from one or both parents has the right to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests (Art. 9(3), CRC). In that context, both parents and child are entitled to essential information from the State on the whereabouts of the other, unless such information would be detrimental to the child (Art. 9(4), CRC).

### Living in the community with caseworker support



In **HONG KONG SAR (CHINA)**, since 2006, the International Social Service – Hong Kong (ISSHK), a government-funded NGO programme, has provided support to refugee claimants and torture claimants (“non-refoulement cases”) released from detention, during the processing of their claim, including families and children. In addition to the general support provided to other non-refoulement claimants, children are able to attend primary and secondary school and are supported with payment of any tuition fees, books, school meals and transport assistance. The Hong Kong SAR Immigration Directorate needs to approve sponsorship to university level as well as adult vocational training courses. Assistance is funded and monitored by the Social Welfare Department to guarantee the use of a casework management approach and access to government services as needed.



In **BELGIUM**, families with children below the age of 18 years arriving at the border as well as undocumented families intercepted on Belgium territory are accommodated in “open family units”, state-owned community based houses or apartments, albeit considered under Belgian law as a “place of detention”. Accommodation conditions respect privacy and are adapted to family life and children's needs. Families have to stay within the unit between 9 p.m. and 9 a.m. but otherwise enjoy freedom of movement. Children are enrolled in local schools and families are free to receive visitors at the units.

During their stay, families are supported by a “coach” from the Immigration Office. The daily presence of the coach accompanies families towards the resolution of their asylum or immigration case or their preparation for return. The coach facilitates all necessary appointments (doctor, school, pro-bono lawyer, etc.) and gives or facilitates daily logistical, administrative and medical support to the families. Related costs, including coupons to buy food and other items from the local supermarkets are borne by the Immigration Office and are partially subsidized through the EU Return Fund (in the future EU AMIF Fund).

## Family returns process and family returns panel



The **UNITED KINGDOM**'s Family Returns Process comprises four stages: decision-making, assisted return, required return and ensured return. The process aims to encourage families who have been found not to be in need of international protection to leave the country either at the assisted or required return stages and to avoid the need to take enforcement action to ensure return, which may involve detention. This is done through increased dialogue between the Home Office and the concerned family with a view to preparing them for their return and allowing them the opportunity to challenge legally their removal before enforcement action commences.

Where enforcement is required, independent advice and assistance is given to the Home Office in the form of the "Family Returns Panel" to help ensure that the best interests of the child is taken into account in the removal process. Panel members are independent of government and are professional experts from a variety of fields with child welfare expertise. The Panel is involved in, inter alia, assessing whether the use of detention is necessary and, where it is considered so, ensuring that it is kept to a minimum. Families undergoing enforced return can, as a last resort, be detained at the Cedars 'pre-departure' accommodation, a child and family-appropriate environment, for up to 72 hours, a period which may be extended with Ministerial authority to one week. The 'pre-departure' accommodation has been designed as a secure facility that respects the privacy and independence of children and their families.

The standards reflected in this Options Paper are drawn from UNHCR, *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, available at: <http://www.refworld.org/docid/503489533b8.html>

See, also, *UN Guidelines for the Alternative Care of Children*, A/RES/64/142, 24 February 2010, available at: <http://www.refworld.org/docid/4c3acd162.html>

For more care options, see UNHCR, *Child Protection Issue Brief: Alternative Care*, January 2014, available at: <http://www.refworld.org/docid/52f0e4f34.html>

UN Committee on the Rights of the Child (CRC), General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin, 1 September 2005, CRC/GC/2005/6, available at: <http://www.refworld.org/docid/42dd174b4.html>

UN Committee on the Rights of the Child (CRC), Report of the 2012 day of general discussion on the rights of all children in the context of international migration, September 2012, available at <http://goo.gl/rqnsBf>

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This Options Paper 1 is available at: <http://refworld.org/docid/5523e8d94.html>

*UNHCR, Option Paper 2: Options for governments on open reception and alternatives to detention 2015*, available at: <http://refworld.org/docid/5523e9024.html>

