

## Roundtable on Reception and Care Arrangements for Asylum-Seeking Children

*Bangkok, Thailand, 10-11 October 2018*

### Summary of discussions

The Office of the United Nations High Commissioner for Refugees (UNHCR) convened the Roundtable on Reception and Care Arrangements for Children, in Bangkok, Thailand from 10-11 October 2018. This event forms part of project “*Global Technical Assistance and Capacity Building Programme to Prevent Detention of Children and to Protect Children and Other Asylum-Seekers in Detention*” co-funded by the European Union.<sup>1</sup>

The Roundtable follows the previous two global roundtables on detention held by UNHCR and OHCHR in [2011](#) (Geneva) and by UNHCR in [2015](#) (Toronto) acknowledged as landmark events in discussion of international standards on reception and alternatives to detention of asylum-seekers and refugees. Building on the foundation laid in those discussions, the Bangkok Roundtable has further advanced thinking and awareness on ways to develop, design and promote reception and care arrangements for children and families within asylum and migration systems without recourse to detention. The roundtable formed part of UNHCR’s *Global Strategy – Beyond Detention 2014-2019*,<sup>2</sup> which has the ultimate goal of supporting Governments to end the systematic or routine detention of asylum-seekers and refugees, and in particular to end the detention of children. The roundtable brought together 62 representatives and officials from Government, civil society/NGOs, international organisations, academia and other experts, drawn from 18 countries covering most regions of the world.

The roundtable comprised numerous panel discussions over the course of eight sessions where participants benefited from substantive discussions and expert insights into challenges and good practices, including on the Rights of Asylum-Seeking Children; Global/Regional Policy trends, Law and Standards in non-detention of children; Screening for Vulnerabilities and Risk; Community-based Care arrangements; Protection of Children at National Level; and Care for Unaccompanied or Separated Children (UASC).

This summary of discussions reflects broadly the themes, issues and understandings that emerged from the panel exchanges. Although it does not necessarily represent the individual views of particular participants, or of UNHCR, it aims to capture some of the innovative, practical and principled approaches, standards and good practices that were canvassed at the meeting.

### Overarching messages

- Seeking asylum is not an unlawful act. Irregular entry and stay, as well as other breaches of immigration rules should never be criminalised.
- International refugee and human rights law – notably the Convention on the Rights of the Child (CRC) – establish essential and mutually-reinforcing rights and standards applicable to children in the immigration context and for asylum-seeking children in particular.

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<sup>1</sup> The views expressed herein can in no way be taken to reflect the official opinion of the European Union.

<sup>2</sup> UNHCR, *Beyond Detention: A Global Strategy to support governments to end the detention of asylum-seekers and refugees, 2014-2019*, 2014, available at: <http://www.refworld.org/docid/536b564d4.html>. All documents related to the Strategy can be found at: [www.unhcr.org/detention](http://www.unhcr.org/detention).

- The right to liberty and security of person is a fundamental right of international human rights law that applies to all people at all times, including children, regardless of their migration, asylum or any other legal status. This right is recognized in all major international and regional human rights instruments.<sup>3</sup>
- The right to personal liberty requires detention to be an exceptional measure and, in all cases, strictly legal, necessary and proportionate to a legitimate State objective. Detention may under no circumstances be arbitrary.
- Open reception arrangements and freedom of movement for asylum-seekers and refugees are always the first option. Any conditions or restrictions on these may only be established in accordance with the law, for a legitimate purpose and in due consideration of the principles of necessity and proportionality.
- Children need to be treated first and foremost as children, regardless of their immigration status. An ethic of care and not of enforcement should prevail in all interventions concerning them.
- Specific care arrangements for children need always be in place in the immigration context, in particular when children are unaccompanied or separated. When children are traveling together with their parents or family members, care arrangements or other alternative solutions should extend to the entire family whenever it is in the best interests of the child to keep the family together.<sup>4</sup>
- Immigration detention is never in the best interests of the children and should not be resorted to, not even as a last resort.<sup>5</sup>
- At all times, the child's right to family life must be respected. Children should not be separated from their families except when such separation is necessary to protect the best interests of the child (such as when the child is in danger of experiencing imminent violence, harm or abuse), but this does not justify detention.<sup>6</sup> Families with children should benefit from alternative measures that respect the child's rights to liberty as well as family life, and that take due consideration for their particular needs. Alternative care arrangements and community placement should be considered and facilitated as alternatives to detention.

### **Main outcomes of discussions by session/theme**

Over the two days of panel deliberations a number of key discussion points were raised by panellists and experts. The following is a summary of these points:

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<sup>3</sup> Including: article 9 of the International Covenant on Civil and Political Rights, article 37 of the Convention on the Rights of the Child, article 6 of the African Charter of Human and Peoples' Rights, article 7 of the American Convention on Human Rights, article 14 of the Arab Charter on Human Rights, and article 5 of the European Convention on Human Rights.

<sup>4</sup> See, 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, 16 November 2017, CMW/C/GC/4-CRC/C/GC/23, paragraph 11, available at: <http://www.refworld.org/docid/5a12942a2b.html>

<sup>5</sup> CMW/C/GC/4-CRC/C/GC/23, paragraph 10. See also, UNHCR, *UNHCR's position regarding the detention of refugee and migrant children in the migration context*, January 2017, available at: <http://www.refworld.org/docid/5885c2434.html>

<sup>6</sup> UN Committee on the Rights of the Child (CRC), *General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)*, 29 May 2013, CRC /C/GC/14, paragraphs 58-70, available at: <http://www.refworld.org/docid/51a84b5e4.html>

## **Rights of children on the move, global and regional trends**

- There is a strong and widely recognised international legal framework to guide all actions regarding the protection of children on the move across international borders, starting with the universal signatory status and near universal ratification of the Convention on the Rights of the Child (CRC) and the transposition of its key protection principles into national law.
- International Refugee Law and International Human Rights Law establish important and mutually-reinforcing rights for asylum-seeking children.
- International organisations, UN human rights mechanisms and regional bodies have contributed to interpretation and reinforcement of the key child protection principles enshrined in international law. In addition to legal instruments, there is significant potential in non-binding texts and processes. These can contribute to dissemination of good practices and shared interpretations and approaches to application of binding norms.
- Regionally, important work is ongoing to interpret, apply and promote the creative use of existing legal standards and to identify and share good practices.
- While international law acknowledges states' sovereign authority to govern their borders (including suspected security risks) pursuant to national laws and regulations, these must always be consistent with the rule of law, human rights obligations and due process safeguards.
- Numerous States have adopted measures and/or legislation to prohibit or limit significantly the detention of children for immigration related reasons, or have established presumptions against detention of children. This is positive, where it is reflected in a declining number of children in detention in some countries/regions, but more needs to be done.
- States with limited capacity may need international support to develop facilities, expertise, mindsets and tools to implement open reception, reflecting international commitments to responsibility-sharing and support to host countries.
- The New York Declaration and Global Compacts recognize the importance of non-custodial measures to ensure the appropriate reception of children on the move and provide a crucial basis for further work to promote and develop alternatives and to work to end the immigration detention of children in line with international law.

## **Screening for vulnerabilities**

- Careful screening and assessments of vulnerabilities and risks, as well as best interests procedures, are important to inform decisions on reception arrangements, including placement and support options.
- A number of tools have been developed in different regions to facilitate the assessment of vulnerabilities; UNHCR and IDC continue to promote the dissemination and implementation of the jointly developed [Vulnerability Screening Tool](#).
- Continuous training of border and law enforcement officials is important to ensure they are equipped to carry out appropriate screening processes, identify people with specific needs and refer them to appropriate services and authorities.
- Screening for vulnerabilities is a process, not a fixed event that is complete at or immediately after initial contact with an individual. Therefore, it should be continued during the reception process and ensure it informs all relevant decisions including, in the case of children, in accordance with the child's best interests principle.

- Child-sensitive screening and referral procedures should be in place and encompass: identification and age assessment, appointment of a qualified guardian/legal representative, placement options, and referral to appropriate services, as well as other support as relevant to any specific needs of the child.
- Partnerships with civil society and the inclusion of a wide range of actors is essential to ensure that appropriate, holistic support options and access to services are readily accessible to children.

### **Protecting children and families in the immigration context, community support and other placement options**

- A holistic approach to the protection of the rights of the child is fundamental to their realisation.
- Education, play and support to address basic and any specific needs are crucial across the reception process.
- Youth have specific needs, distinct from those of adults/children – as well as distinct potential. This means that they can benefit from dedicated strategies to identify and address their needs and facilitate their participation in processes affecting them.
- Managing the views and values of families may be challenging. However, early engagement and adequate information play an important role in managing expectations.
- Coordination and consultations between different authorities and civil society partners is an important element in developing and maintaining comprehensive care support programmes; a multi-stakeholder approach is always recommended.
- Local communities and communities of refugees and asylum-seekers can also contribute significant experience and insights to strengthen the effectiveness of community-based reception arrangements.
- Civil society can play a leading role in community-based reception. Volunteers and local communities may also make valuable contributions and their engagement should be favourably explored.
- A range of placement options within the community, with adequate case management support, can further strengthen compliance with asylum and immigration procedures and further foster integration prospects (where relevant).
- For unaccompanied or separated children, foster family placement can be very beneficial – but requires careful selection, preparation and continuous support.
- Case management should be designed and delivered in a child-friendly manner to foster trust with the child and to ensure that their views are incorporated throughout the immigration or asylum procedure.
- Early registration and documentation of unaccompanied or separated children should be a priority and represents a best practice.
- Case-workers, support personnel and volunteers, border and law enforcement officials, as well as other state representatives working in relevant capacities, will benefit from specialised training and capacity-development to work with children.
- The impact of open and community-based care arrangements should be continuously evaluated to assess impact and record/document positive outcomes (on children's needs; continuous engagement and reduced absconding).

- While resources are an evident challenge in many settings, strategic investment over time in developing and testing successful models – of which there are several – are in states' interests and should be encouraged.

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