



ALTERNATIVES TO DETENTION

MODULE 5 — Reception arrangements for children



UNHCR
The UN Refugee Agency





TABLE OF CONTENTS

CHAPTER 1 Learning objectives and module structure	3
CHAPTER 2 Asylum-seeking children and their needs	4
CHAPTER 3 International legal obligations in relation to children: the United Nations Convention on the Rights of the Child	5
CHAPTER 4 Rule of non-detention of children	8
CHAPTER 5 Best interests of the child	11
CHAPTER 6 Importance of child-sensitive screening and referral procedures	14
CHAPTER 7 Human rights standards in reception and alternatives to detention for children	28
CHAPTER 8 Reception arrangements and alternatives to detention for children and families: introduction	31
CHAPTER 9 Care arrangements for unaccompanied or separated children	33
CHAPTER 10 Care arrangements for children with families	39
CHAPTER 11 Compliance of national arrangements for children with international standards	41
CHAPTER 12 How to carry out a child needs assessment for reception or ATD in individual cases?	45
CHAPTER 13 Points to remember	50
CHAPTER 14 Further reading	52



ALTERNATIVES
TO DETENTION

MODULE 5



CHAPTER 1

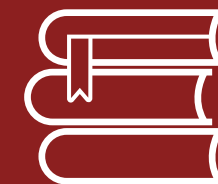
LEARNING OBJECTIVES AND MODULE STRUCTURE

✓ BY THE END OF THIS MODULE, YOU WILL BE ABLE TO:

- Explain international standards on reception and care arrangements for children;
- Demonstrate specialized knowledge about child care arrangements in the reception context; and
- Explain how to carry out a child needs assessment for reception and care arrangements in individual cases.

Please read the following materials carefully and complete the assignments.

This module should take you 75 minutes to complete.



ALTERNATIVES
TO DETENTION

MODULE 5

CHAPTER 1

CHAPTER 2

CHAPTER 3

CHAPTER 4

CHAPTER 5

CHAPTER 6

CHAPTER 7

CHAPTER 8

CHAPTER 9

CHAPTER 10

CHAPTER 11

CHAPTER 12

CHAPTER 13

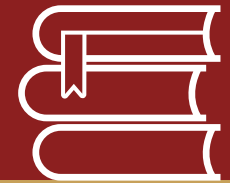
CHAPTER 14

CHAPTER 2

ASYLUM-SEEKING CHILDREN AND THEIR NEEDS

What are the reception and care arrangement options for children in asylum and immigration procedures?

Watch [this short video](#), the story of a young boy and girl forced to flee their home. Think about all possible measures available to avoid their detention. Do you think they are applicable in your context/country/operation?



ALTERNATIVES
TO DETENTION

MODULE 5

CHAPTER 1

CHAPTER 2

CHAPTER 3

CHAPTER 4

CHAPTER 5

CHAPTER 6

CHAPTER 7

CHAPTER 8

CHAPTER 9

CHAPTER 10

CHAPTER 11

CHAPTER 12

CHAPTER 13

CHAPTER 14



INTERNATIONAL LEGAL OBLIGATIONS IN RELATION TO CHILDREN: THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD



ALTERNATIVES
TO DETENTION

MODULE 5

CHAPTER 1

CHAPTER 2

CHAPTER 3

CHAPTER 4

CHAPTER 5

CHAPTER 6

CHAPTER 7

CHAPTER 8

CHAPTER 9

CHAPTER 10

CHAPTER 11

CHAPTER 12

CHAPTER 13

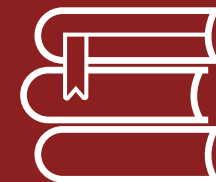
CHAPTER 14

This module presents rights and principles relevant to the protection of children who may be at risk of detention. The main legal framework for the protection of children is set by the Convention on the Rights of the Child (CRC), which was adopted in 1989 and is, to date, the most widely ratified treaty.

While in most countries detention of unaccompanied and separated children is increasingly understood as unacceptable and therefore used less and less often, detention of families still occurs and is in fact a common practice. This raises concerns from a human rights perspective. In terms of care arrangements, the solution for children in families might be different from arrangements for separated or unaccompanied children. However, as we will see below, most international standards apply to children whether they are with – or without – a family in the asylum country.

The CRC provides for a number of standards and principles that should always be considered when deciding on care arrangements for children (see [UNHCR Detention Guidelines](#), Guideline 9.2):

- The best interests of the child shall be a primary consideration in all actions affecting children, including asylum-seeking and refugee children (Article 3 in conjunction with Article 22, CRC).
- There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinions, national, ethnic or social origin, property, disability, birth or other status, or on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians or family members (Article 2, CRC).
- Each child has a fundamental right to life, survival and development to the maximum extent possible (Article 6, CRC).
- Children should be assured the right to express their views freely and their views should be given ‘due weight’ in accordance with the child’s age and level of maturity (Article 12, CRC).



ALTERNATIVES TO DETENTION

MODULE 5

CHAPTER 1

CHAPTER 2

CHAPTER 3

CHAPTER 4

CHAPTER 5

CHAPTER 6

CHAPTER 7

CHAPTER 8

CHAPTER 9

CHAPTER 10

CHAPTER 11

CHAPTER 12

CHAPTER 13

CHAPTER 14

- Children have the right to family unity (inter alia, Articles 5, 8 and 16, CRC) and the right not to be separated from their parents against their will (Article 9, CRC). Article 20(1) of the CRC establishes that a child temporarily or permanently deprived of his or her family environment, or, in whose own best interests, cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

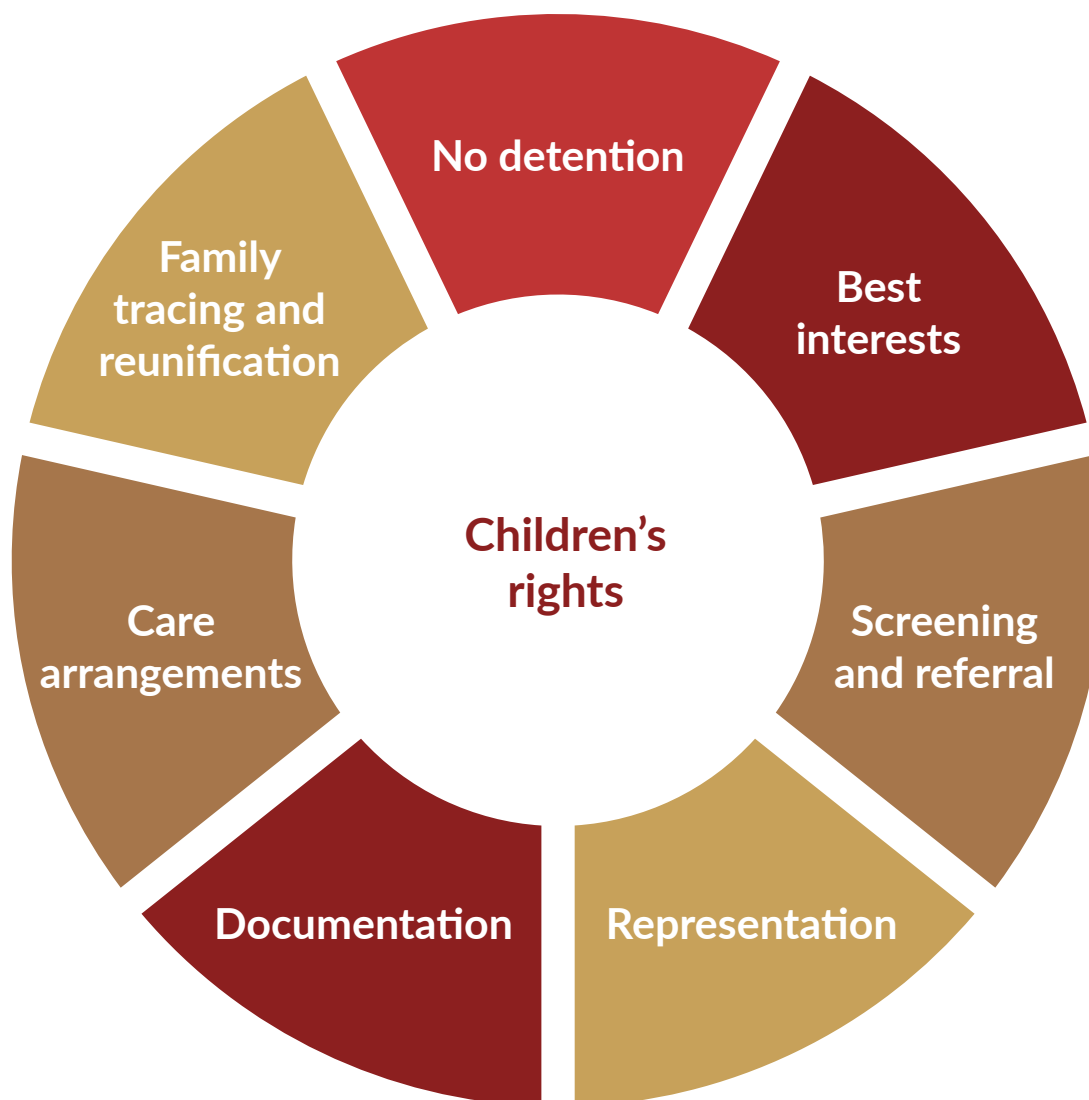
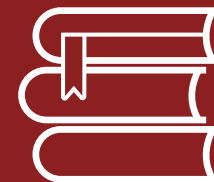
- Article 20(2) and (3) of the CRC require that States Parties shall, in accordance with their national laws, ensure alternative care for such a child. Such care could include, inter alia, foster placement or, if necessary, placement in suitable institutions for the care of children. When considering options, 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.

- Article 22 of the CRC requires that States Parties take appropriate measures to ensure that children who are seeking refugee status or who are recognized refugees, whether accompanied or not, receive appropriate protection and assistance.

Detention of children cannot be justified based solely on the fact that the child is unaccompanied or separated or on the basis of his or her migration or residence status (see more on [UNHCR's position on the detention of children](#)). Furthermore, children should never be criminalized or subjected to punitive measures because of their parents' migration status (see [UNICEF's advocacy brief](#)). Therefore, children should not be detained for immigration-related purposes, irrespective of their legal/migratory status or that of their parents, and detention is never in their best interests. In all circumstances, the extreme vulnerability of a child takes precedence over their status of an 'illegal alien'. Overall, an ethic of care – not enforcement – needs to govern interactions with asylum-seeking children, including children in families, with the best interests of the child the primary consideration. This clear position is reiterated in:

- The [Joint General Comment](#) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration (CMW/C/GC/4/CRC/C/GC/23); and

- The [Joint General Comment](#) 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/3/CRC/C/GC/22).



CHAPTER 4

RULE OF NON-DETENTION OF CHILDREN

International standards regarding the immigration detention of families with children are moving from an initial ultima ratio approach towards an absolute ban on immigration detention of children. You may wish to consult the Joint General Comments [on the on the general principles regarding the human rights of children and on State obligations regarding the human rights of children in the context of international migration](#).

There is strong evidence that detention of children has a profound and negative impact on children's health and development, regardless of the conditions in which children are held and even when they are detained for short periods of time or with their families. Children held in detention are at risk of suffering depression and anxiety. They frequently exhibit symptoms consistent with post-traumatic stress disorder such as insomnia, nightmares and bedwetting. Because children are often detained with unrelated adults, the risk of exposure to other forms of harm, including sexual and gender-based violence, is also significant in many detention contexts. Furthermore, there is no evidence that detention of children serves the aim of deterring refugee or asylum-seeker movements or irregular migration.

In view of the detrimental effects of detention on children, alternatives to detention need to be applied, preferably through family-based alternative care options or other suitable alternative care arrangements as determined by the competent childcare authorities.

Detention of children in relation to their or their parent's migration status is contrary to international law and standards. As briefly discussed in the Fundamentals of Immigration Detention e-Learning, children should not be detained because:

- A. Such detention is never in their best interests;
- B. It exceeds the requirement of necessity of detention and is grossly disproportionate (and thus arbitrary);
- C. There are other less harmful alternatives; and
- D. It may constitute torture, inhuman or degrading treatment.

A. UN Committee on the Rights of the Child [noted](#) that “[t]he detention of a child because of their or their parent's migration status constitutes a child rights violation and always contravenes the principle of the best interests of the child. In light of this, States should expeditiously and completely cease the detention of children on the basis of their immigration status”.

UNHCR also [underlines](#) that the best interests of the child is a primary consideration for all actions affecting the child and measures implemented by States and adds that, as a result, unaccompanied or separated children and families should not be detained. Instead, appropriate care arrangements and community-based programmes need to be in place to ensure their adequate reception.



ALTERNATIVES
TO DETENTION

MODULE 5

CHAPTER 1

CHAPTER 2

CHAPTER 3

CHAPTER 4

CHAPTER 5

CHAPTER 6

CHAPTER 7

CHAPTER 8

CHAPTER 9

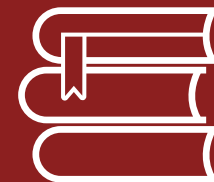
CHAPTER 10

CHAPTER 11

CHAPTER 12

CHAPTER 13

CHAPTER 14



ALTERNATIVES TO DETENTION

MODULE 5

CHAPTER 1

CHAPTER 2

CHAPTER 3

CHAPTER 4

CHAPTER 5

CHAPTER 6

CHAPTER 7

CHAPTER 8

CHAPTER 9

CHAPTER 10

CHAPTER 11

CHAPTER 12

CHAPTER 13

CHAPTER 14

B. The detention of migrant children with parents with irregular migration status was criticized by Juan Méndez, the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. In his [report](#), he noted that “within the context of administrative immigration enforcement, it is now clear that the deprivation of liberty of children based on their or their parents’ migration status is never in the best interests of the child, exceeds the requirement of necessity, becomes grossly disproportionate and may constitute cruel, inhuman or degrading treatment of migrant children.” He further explained that “the principle of ultima ratio that applies to juvenile criminal justice is not applicable to immigration proceedings. The deprivation of liberty of children based exclusively on immigration-related reasons exceeds the requirement of necessity because the measure is not absolutely essential to ensure the appearance of children at immigration proceedings or to implement a deportation order. Deprivation of liberty in this context can never be construed as a measure that complies with the child’s best interests”.

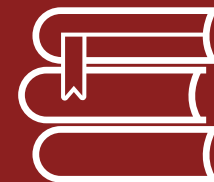
C. The Inter-American Court of Human Rights discussed this issue in its [2014 advisory opinion](#). The Court stated that in the immigration context “States may not resort to the deprivation of liberty of children who are with their parents, or those who are unaccompanied or separated from their parents, as a precautionary measure in immigration proceedings; nor may States base this measure on failure to comply with the requirements to enter and to remain in a country, on the fact that the child is alone or separated from her or his family, or on the objective of ensuring family unity, because States can and should have other less harmful alternatives and, at the same time, protect the rights of the child integrally and as a priority”.

D. The European Court of Human Rights found a violation of Article 3 of the European Convention on Human Rights (prohibition of torture, inhuman and degrading treatment) with respect of children in a number of cases, including the detention of mothers with babies, toddlers and adolescents (e.g. the cases [Muskhadzhiyeva and Others v. Belgium](#), [Kanagaratnam and Others v. Belgium](#) and [Popov v. France](#)).



© UNHCR/Gabor Kotschy

Child protection first: Because children should never be detained for immigration-related purposes, UNHCR advocates the availability of appropriate care arrangements for children and families. To reflect the primacy of child protection over immigration concerns, the use of the wording ‘appropriate care arrangement’ is largely preferred to the wording ‘alternatives to detention’ for children. The use of such terminology also calls for competent child care authorities to be involved in finding solutions for this vulnerable group.



ALTERNATIVES TO DETENTION

MODULE 5

CHAPTER 1

CHAPTER 2

CHAPTER 3

CHAPTER 4

CHAPTER 5

CHAPTER 6

CHAPTER 7

CHAPTER 8

CHAPTER 9

CHAPTER 10

CHAPTER 11

CHAPTER 12

CHAPTER 13

CHAPTER 14

CHAPTER 5

BEST INTERESTS OF THE CHILD

According to international standards, every effort should be made to base decisions affecting children on their best interests regardless of their migration status, taking into account their age, gender, background and any particular vulnerabilities.

Article 3(1) of the CRC states that “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”.

The Human Rights Committee reiterates that the child’s best interests is a threefold concept: a right, a principle and a rule of procedure.

Right

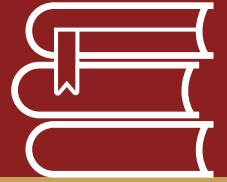
It is a substantive right for a child to have his or her best interests assessed and taken as a primary consideration when different interests are considered in order to reach a decision on the issue at stake.

Principle

It is a legal principle, meaning that the interpretation which most effectively serves the child’s best interests should be chosen.

Rule of procedure

It is a rule of procedure: the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child or children concerned.



ALTERNATIVES TO DETENTION

MODULE 5

CHAPTER 1

CHAPTER 2

CHAPTER 3

CHAPTER 4

CHAPTER 5

CHAPTER 6

CHAPTER 7

CHAPTER 8

CHAPTER 9

CHAPTER 10

CHAPTER 11

CHAPTER 12

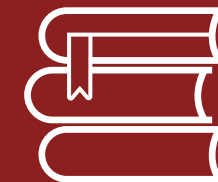
CHAPTER 13

CHAPTER 14



The concept of the child's best interests is complex. It is flexible and adaptable because best interest must be determined on a case-by-case basis. It should be adjusted and defined on an individual basis, according to the specific situation of the child or children concerned, taking into consideration their personal context, situation and needs (see para. 32 of the CRC's [General Comment No. 14](#)). The 'voice of the child' is 'an important part' of realizing a child's best interests. It must include both short- and long-term considerations. The determination of a child's best interests must be conducted by well-trained multidisciplinary professionals, specialists and experts who work with children.

In the context of immigration detention and alternatives to detention, best interests of the child in decision making is relevant both for unaccompanied and separated children and those in families and shall be considered throughout the reception process, from identification to the achievement of a durable solution for the child.



ALTERNATIVES TO DETENTION

MODULE 5

CHAPTER 1

CHAPTER 2

CHAPTER 3

CHAPTER 4

CHAPTER 5

CHAPTER 6

CHAPTER 7

CHAPTER 8

CHAPTER 9

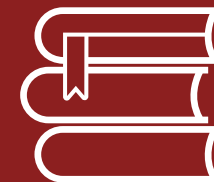
CHAPTER 10

CHAPTER 11

CHAPTER 12

CHAPTER 13

CHAPTER 14



Best Interests Procedures

UNHCR calls its child protection case management process as Best Interests Procedures. UNHCR's use of the term Best Interests Procedures refers to its long-standing practice of assessing and determining children's best interests through a rights-based procedure.

Best Interests Procedures are operationalized through two main components, a Best Interests Assessment (BIA) and a Best Interests Determination (BID). Whereas the BIA is a part of the standard case management process where a child's overall situation and well-being is assessed, the BID is triggered when particular, long-lasting or life-changing decisions are to be made on behalf of a child.

A BIA is an assessment tool implemented by trained child protection professionals. They interview the child, his or her caregivers and other relevant people who play a role in the child's life. The BIA includes information on the child's living situation, family composition, history and background as well as specific protection concerns. A BIA should be conducted as soon as a child has been identified to be at risk, and is essential before any action is taken affecting an individual child of concern to UNHCR. The BIA is not a stand-alone tool and should be followed by a case plan that outlines actions to be taken to mitigate or resolve identified protection concerns. A BID is a formal procedure for determining the child's

best interests, with a high level of procedural safeguards. Decisions are evaluated against the possible impact that they have and with the child's best interests as the primary consideration. For this reason, a BID is only undertaken in specific situations of children including: durable solutions for unaccompanied children, separation of a child from his or her caregivers and complex cases including unresolved custody, family reunification and temporary care arrangements. The procedural safeguards within the BID process include a multidisciplinary panel; an established format for documenting the decision and recommended follow-up actions; and a procedure for ensuring that the child's views are taken into account, including informing him or her of the decision.

Additional information about Best Interests Procedures is available in the following resources:

- UNHCR, *Guidelines on Determining the Best Interests of the Child*, 2008, pp. 22–24; and
- UNHCR and UNICEF, *Safe & Sound: What States can do to ensure respect for the best interests of unaccompanied and separated children in Europe*, 2014, pp. 19–23.

IMPORTANCE OF CHILD- SENSITIVE SCREENING AND REFERRAL PROCEDURES



Procedures to employ for addressing the needs of asylum-seeking children include several steps that authorities are mandated to undertake by international law:

STEP 1

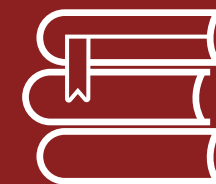
- Identification
- Documentation

STEP 2

- Guardianship
- Legal representation

STEP 3

- Placement
- Referral to services
- Family tracing/ reunification

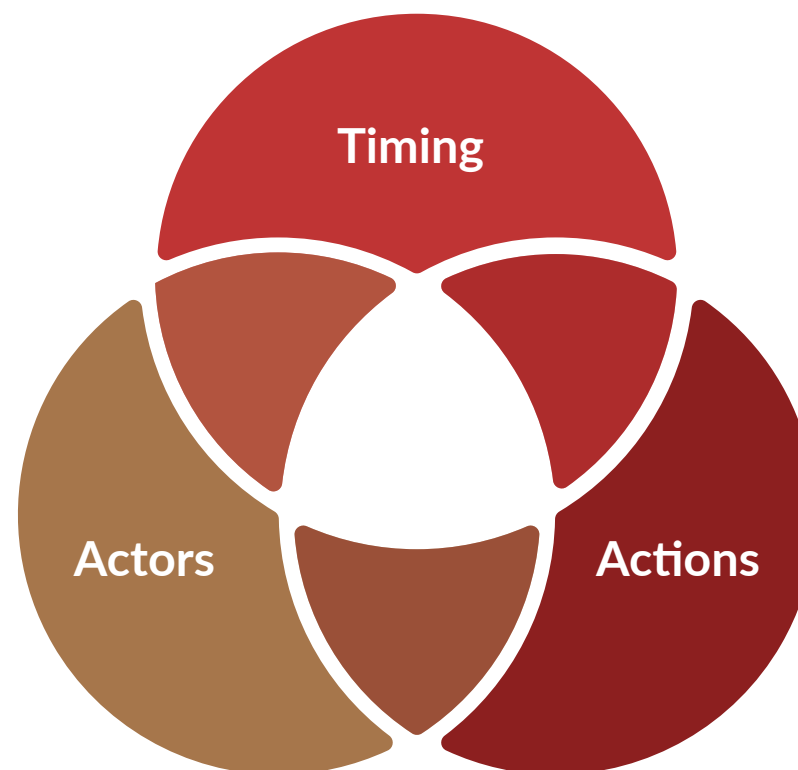


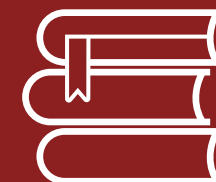
STEP 1: IDENTIFICATION AND DOCUMENTATION PROCEDURES

Identifying asylum-seeking children is the first step towards their effective protection. Appropriate identification leads to an assessment that takes into consideration any specific needs or vulnerabilities of the child. It 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, and it must be performed by qualified professionals who are trained in age- and gender-sensitive interviewing techniques (for good practices, see: UNHCR, [Options Paper 1](#)) Those having the first contact with a child should explain to him or her the purpose and process of the interview, and should determine whether a child is unaccompanied/separated, or with a family.

Please read pp. 8–9 of UNHCR's [Vulnerability Screening Tool](#) to better understand how to identify risk of harm.

There are three interdependent elements required for properly identifying asylum-seeking children. We will now explore each of them.





ALTERNATIVES TO DETENTION

MODULE 5

CHAPTER 1

CHAPTER 2

CHAPTER 3

CHAPTER 4

CHAPTER 5

CHAPTER 6

CHAPTER 7

CHAPTER 8

CHAPTER 9

CHAPTER 10

CHAPTER 11

CHAPTER 12

CHAPTER 13

CHAPTER 14

Timing: When does identification take place?

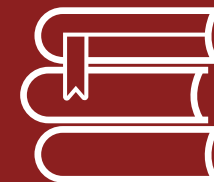
Identification takes place immediately upon arrival or first contact with the child!

The CRC (see CRC's [General Comment No. 6](#)) underlines that States have a duty to identify children as children, and also whether they are separated or unaccompanied, as soon as their presence in the country becomes known to the authorities. While in its [Advisory Opinion OC-21/14](#) the Inter-American Court of Human Rights noted that the determination of whether a child is unaccompanied or separated from parents or legal guardian must be conducted immediately upon arrival due to the child's heightened vulnerability and to ensure they receive the protection they need.

Actors: Which actors are involved?

Identification may involve those who are in first contact with a child, whether UNHCR personnel, people working for various NGOs, border guards, police, migration or asylum authorities. Professionals of the national child protection agency should be involved in this first identification.

Good practice – Argentina: Child protection actors such as the Public Defender's Office, the National Commission for Refugees, 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 organization from the moment a child with international protection needs is identified until a durable solution could be implemented. Detention is not a possibility under this Protocol (see [UNHCR Options Paper 1](#)).



Actions: What information does an identification procedure gather?

The identification procedure should capture the following information:

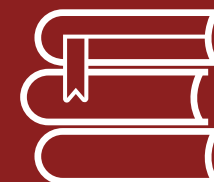
- Basic data: name, age and gender; nationality or statelessness; country/place of origin; ethnic, religious, cultural and linguistic background
- Is the child unaccompanied, separated (with family members) or accompanied (with parent or immediate family members such as grandparent/maternal/paternal uncle/aunt).
- Specific vulnerabilities (such as physical, mental, intellectual or sensory impairments, health/medical needs, special dietary requirements, etc.); Any evidence of persecution, being at risk or victim of trafficking or survivor of torture or trauma
- Protection needs and status (refugee, asylum-seeker, no ongoing procedure, stateless)

Note that age assessment procedures should be carried out only in case of doubt regarding the child's age and as a measure of last resort. All methods used for age assessment must be safe and respect human dignity at all times. It is important to allow for a margin of error. If the age cannot be established with certainty, the benefit of the doubt should be given. Finally, the level of emotional and mental maturity – not only physical appearance – must be considered. This is because no method can determine age definitively. Most experts agree that age assessment is not a determination of chronological age but an estimated guess (see [UNHCR observations on the use of age assessments in the identification of separated or unaccompanied children seeking asylum](#)).

Age assessments are never to be used as a matter of routine. If age assessments are used, unaccompanied and separated children should have a guardian appointed to support them through the whole age assessment procedure. The guardian also has a key role in ensuring that the child's views are heard and that she or he fully understands the process (see more in UNICEF's [technical note on age assessment](#), especially standard 2 and 5).

Documentation

Upon arrival and identification, authorities are to provide asylum-seeking and refugee children with individual documentation evidencing their special status as asylum-seekers. Access to appropriate documentation ensures their legal stay and helps avoid arrest and detention situations. Appropriate documentation also supports access to all services during children's stay in the community.



ALTERNATIVES TO DETENTION

MODULE 5

CHAPTER 1

CHAPTER 2

CHAPTER 3

CHAPTER 4

CHAPTER 5

CHAPTER 6

CHAPTER 7

CHAPTER 8

CHAPTER 9

CHAPTER 10

CHAPTER 11

CHAPTER 12

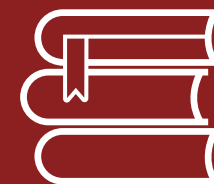
CHAPTER 13

CHAPTER 14

A child-friendly approach to age assessment

This is an excerpt from UNHCR's briefing note on child-friendly procedures.

- Age assessment procedures should be undertaken taking the best interests of the child as a primary consideration. They should be initiated with the genuine and primary aim of ensuring protection of separated children.
- A holistic assessment of capacity, vulnerability and needs that reflects the actual situation of the child or young person is preferred to reliance on age assessment procedures aimed at estimating chronological age.
- Age assessment procedures should be undertaken as a measure of last resort, where (a) the age of the child is relevant for the determination of the claim, (b) there are grounds for serious doubt and (c) other approaches (e.g. attempts to gather documentary evidence) have failed to establish the individual's age. Age assessment should never be a default procedure or used as a matter of routine.
- A multi-disciplinary approach to age assessment shall be adopted. Procedures applied should balance physical, developmental, psychological, environmental and cultural factors. Examinations should never be forced or culturally inappropriate. The least invasive options should be selected, and the child's dignity should be respected at all times.
- Age assessment procedures should be undertaken by independent professionals with appropriate expertise and who are familiar with the individual's ethnic and cultural background.
- Medical age assessment methods are highly contested and are subject to a high margin of error. Furthermore, medical age assessment methods continue to raise many questions about whether they adequately consider safety, child- and gender-sensitivity, human dignity and cultural sensitivity.
- If an age assessment is thought necessary, informed consent must be gained from the individual.
- In cases of doubt, before and/or pending age assessment procedures, the person claiming to be under eighteen should be treated as a child.
- The child's independent guardian should have oversight of the age assessment procedure and be present if asked to attend by the individual concerned.
- The procedure, outcome and consequences of the age assessment should be explained to the individual in a language that she or he understands.
- Age assessment should be undertaken in a timely fashion, considering the child's perception of time.



ALTERNATIVES TO DETENTION

MODULE 5

CHAPTER 1

CHAPTER 2

CHAPTER 3

CHAPTER 4

CHAPTER 5

CHAPTER 6

CHAPTER 7

CHAPTER 8

CHAPTER 9

CHAPTER 10

CHAPTER 11

CHAPTER 12

CHAPTER 13

CHAPTER 14

Examples of identification procedures

Mexico

All unaccompanied and separated children arriving in a detention facility are supported by child protection officers 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 organizations, including UNHCR. They are charged with conducting age-appropriate interviews with unaccompanied and separated children to gather data on their identity, nationality, immigration status and whereabouts of their family, and to screen for protection, medical or psychological needs, including for access to asylum procedures. The information gathered is used by authorities as a part of a best interest assessments (UNHCR, [Options Paper 1](#)).

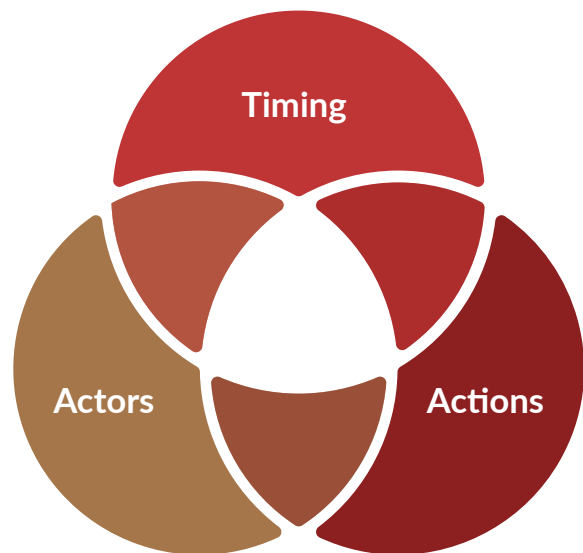
Argentina

A uniform screening procedure to determine whether a child is unaccompanied or separated and what his or her protection needs are takes 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 child protection actors (when relevant, with support of local child protection agencies), the national commission for refugees and the migration authorities (UNHCR, [Options Paper 1](#)).

The Netherlands

Nidos – an 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 care 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 unaccompanied or separated child is a potential victim of human trafficking. Upon arrival, unaccompanied or separated children over age 13 are sent directly to the asylum-seekers' application centre in Ter Apel; those under 13 and other vulnerable children are placed in foster families. Where there are clear indications that a child is a victim of or at risk of human trafficking, Nidos contacts the Immigration and Naturalization Service and the Aliens Police to discuss and triangulate information and assess risks. Where risks are present, Nidos, the Immigration and Naturalization 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 (UNHCR, [Options Paper 1](#)).

STEP 2: GUARDIANSHIP AND LEGAL REPRESENTATIVE APPOINTMENT PROCEDURES



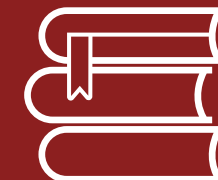
Timing: When does appointment of the guardian and legal representative take place?

Click on the circles 'actors' and 'actions' to learn more on the responsibilities and functions of a guardian and legal representative.

A guardian should be appointed for every unaccompanied or separated child as soon as possible after his or her arrival or identification. Guardianship should be maintained until the child has either reached the age of majority or has permanently left the territory and/or jurisdiction of the State (see para 41 in the [Report of the Special Rapporteur on the human rights of migrants](#)).

Delays in appointing guardians may negatively impact children's access to education, information and support. While hearing the opinion of the child is important in any decision regarding children, it is also the case that, because of their physical, emotional and cognitive development, children are often unable to identify and advocate their own rights and best interests. These limitations – legal, physical and psychosocial – are filled by the child's parent, or, in the case of unaccompanied or separated children, their guardians. Guardians need to be able to understand and communicate well with children from culturally and linguistically diverse backgrounds. To avoid a conflict of interest and ensure that the guardian is concerned primarily with the best interests of the child, guardians need to be independent of State migration authorities (see IDC, [Captured Childhood](#), pp. 65–66).

Children who are the principal applicant, or unaccompanied or separated children, 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 reception arrangement. Therefore, a legal representative must be appointed. Under Article 16 of the 1951 Refugee Convention and Article 37(d) of the CRC there should also be full access to lawyers and legal counsel, to have the right to access legal and other appropriate legal assistance.



ALTERNATIVES TO DETENTION

MODULE 5

CHAPTER 1

CHAPTER 2

CHAPTER 3

CHAPTER 4

CHAPTER 5

CHAPTER 6

CHAPTER 7

CHAPTER 8

CHAPTER 9

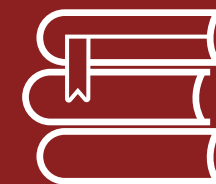
CHAPTER 10

CHAPTER 11

CHAPTER 12

CHAPTER 13

CHAPTER 14



ALTERNATIVES TO DETENTION

MODULE 5

CHAPTER 1

CHAPTER 2

CHAPTER 3

CHAPTER 4

CHAPTER 5

CHAPTER 6

CHAPTER 7

CHAPTER 8

CHAPTER 9

CHAPTER 10

CHAPTER 11

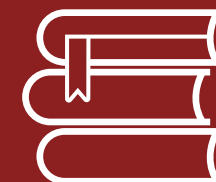
CHAPTER 12

CHAPTER 13

CHAPTER 14

Actors: Which actors are involved?

Guardian To ensure the best interests of the child is considered in all decisions	Legal representative To represent the child in asylum or migration proceedings, and, where needed, challenge detention or placement decisions	Lawyer/legal counsel To advise and provide legal assistance
<p>A guardian is as a rule appointed by state authorities dealing with child protection in cooperation with migration and asylum authorities. The guardian acts as a statutory representative of the child in all proceedings in the same way that a parent represents his or her child (see FRA's handbook 'Guardianship of children deprived of parental care').</p> <p>He or she looks after the child's best interests and general well-being, supporting the child's access to all services. The guardians also provide information on all stages of proceedings and must ensure that the best interests of the child is fully taken into account in these proceedings.</p> <p>A guardian is not required to be a lawyer and his/her role is more that of a caretaker for unaccompanied or separated children.</p> <p>Note that a guardian is usually not the same person as a legal representative. The latter provides advice on different procedural and legal aspects and represents an individual in front of various state institutions (e.g. migration authorities or courts).</p>	<p>A legal representative refers to a lawyer or other person qualified to provide advice on different procedural and legal aspects and represent an individual in front of various state institutions (e.g. migration authorities or courts).</p> <p>The legal representative provides legal assistance to and informs the child during the asylum proceedings and in relation to contacts with the authorities on legal matters.</p> <p>In cases where a child is referred to an administrative or judicial procedure involving the determination of his or her best interests, she or he should be provided with a legal representative, in addition to a guardian or representative of his or her views, when there is a potential conflict between the parties in the decision. When the child is detained, the role of the legal representative is to challenge the detention decision and ensure that the best interests of the child are fully considered.</p> <p>Compared with a guardian, a legal representative must have legal knowledge and qualifications (in particular in the field of refugee and migration law) to intervene in court and before other authorities.</p>	<p>A lawyer or legal counsel is a person qualified to provide legal assistance. It could be a person working for a non-governmental or governmental entity.</p> <p>This person does not necessary represent a child in front of the relevant authorities and may provide legal assistance only on an ad hoc basis.</p>



Actions: Content of guardianship

A guardian is an independent professional with specialized skills who looks after the child's best interests and general well-being. Procedures for the appointment of a guardian must not be less favourable than the existing national administrative or judicial procedures used for appointing guardians for children who are nationals in the country. However, cultural, gender and linguistic background should be considered. A guardian should be a legally recognized person or body with legal responsibility for the child. She or he should have specialized knowledge and expertise.

A guardian must be appointed when parents are absent or not in a position to make day-to-day decisions in the child's best interests. The guardian has legal responsibility for a child, which may entail full parental responsibility, including the care of a child, or designated responsibilities related to making legal decisions (see more in UNHCR, [Options Paper 1](#)).

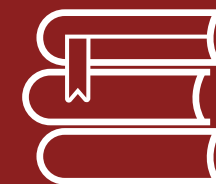
A guardian should be consulted and informed about all actions taken in relation to a child. She or he should have the authority to be present in all planning and decision-making processes, including immigration and appeal hearings, care arrangements and all efforts to search for a durable solution (see in particular para. 33 of the [Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment](#)).

Functions of the guardian

The guardian is responsible for comprehensive support, such as coordinating and ensuring:

- Social support, including accommodation arrangements (e.g. in local children's shelters) and subsistence;
- Regular health checks;
- Access to language classes and education (primary, secondary and beyond); and
- For children age 16 and older, access to employment opportunities including assessing the appropriateness of the work; and enjoyment of age-appropriate recreational activities.

If age assessment is carried out, the guardian shall provide support to an individual throughout the age assessment procedure. The guardian has a key role in ensuring that the child's views are heard and that the child fully understands the process.



ALTERNATIVES TO DETENTION

MODULE 5

CHAPTER 1

CHAPTER 2

CHAPTER 3

CHAPTER 4

CHAPTER 5

CHAPTER 6

CHAPTER 7

CHAPTER 8

CHAPTER 9

CHAPTER 10

CHAPTER 11

CHAPTER 12

CHAPTER 13

CHAPTER 14

Examples of guardianship and legal representation safeguards

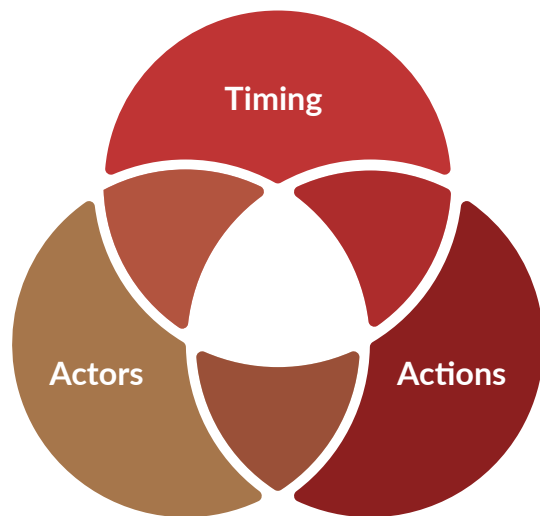
Argentina

Once the National Commission for Refugees is aware of a potential unaccompanied or separated child, the Commission is immediately notified and assumes guardianship of the child within 48 hours. It has several purposes: (i) it appoints a legal guardian for every unaccompanied or separated child seeking asylum to accompany the child throughout various procedures while searching for a durable solution; (ii) it helps the child obtain temporary documentation; and (iii) it assesses the child's vulnerability and the existence of risk factors (physical and mental health), and coordinates appropriate follow-up (see UNHCR, [Options Paper 1](#)).

Uruguay

The Law on the Status of Refugees foresees that when an application for asylum is submitted by an unaccompanied child or adolescent (who can present a submission independently without legal representation), the Permanent Secretariat of the Refugee Commission must 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 that has taken place without the presence of counsel is considered null and void, according to the law (see UNHCR, [Options Paper 1](#)).

STEP 3: PLACEMENT AND REFERRAL TO SERVICES



Timing: When is the decision on placement be taken and referral to services made?

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, to meet their needs relating to care, safety, education and health as soon as possible (see UNHCR, [Options Paper 1](#)).

Actors: Which actors are involved?

Placement decisions and referral procedures are implemented at the border or by the immigration and asylum authorities in cooperation with wide range of stakeholders. Apart from the relevant national child protection authorities, competent local authorities, community leaders and duly authorized civil society organizations are important stakeholders to be engaged when designing care/placement and reception options (see UNHCR, [Options Paper 1](#)).

Actions: content of placement decision and referral procedures

Referral procedures involve providing information to newly arrived children, gathering information on the welfare and best interests of the child to undertake appropriate action, establishing a preliminary profile for each child, and counselling and referring the child to the relevant entities or procedures that best meet his or her needs (see UNHCR, [Baseline Report – Detention situation as of end 2013](#)).



ALTERNATIVES TO DETENTION

MODULE 5

CHAPTER 1

CHAPTER 2

CHAPTER 3

CHAPTER 4

CHAPTER 5

CHAPTER 6

CHAPTER 7

CHAPTER 8

CHAPTER 9

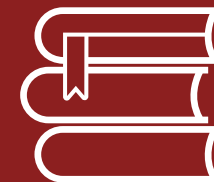
CHAPTER 10

CHAPTER 11

CHAPTER 12

CHAPTER 13

CHAPTER 14



Examples of placement and referral procedures

Ireland

When immigration officers encounter an unaccompanied or separated child, they must 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 (see UNHCR, [Options Paper 1](#)).

Family tracing and reunification

Searching for a child's family members or primary legal or customary caregivers and bringing them together to establish or re-establish long-term care should take place as soon 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. Children's best interests need to be taken into consideration. Child asylum-seekers shall not be returned to their countries of origin for the purposes of family reunification until their asylum application has been finalized, and such reunification is determined to be in their best interests. Cooperation with UNHCR, ICRC and other international agencies and organizations may facilitate these matters.

Placement decisions should be based on individual assessment of a child's best interests. Small group care or family-based care should be prioritized over institutional or residential care. The Committee on the Rights of the Child notes that when considering the range of accommodation options available to such children, "the particular vulnerabilities of such a child, not only having lost connection with his or her family environment, but further finding him or herself outside of his or her country of origin, as well as the child's age and gender, should be taken into account. In particular, due regard ought to be taken of the desirability of continuity in a child's upbringing and to the ethnic, religious, cultural and linguistic background as assessed in the identification, registration and documentation process" (see para. 40 of the [General Comment No. 6](#)).

Furthermore, placement decisions, once taken, need to be systematically monitored and followed up at regular intervals for all children depending on their individual protection needs. Monitoring should consider the quality of care provided, access to services including health and education, as well as any child protection risks or discrimination (see UNHCR's [Brief on Alternative Care](#)).

INTERIM ASSIGNMENT

Watch a [short video](#) about unaccompanied children arriving in Italy and identify and list their main needs.



Identified needs	
1.	
2.	
3.	
4.	
5.	

[CLICK HERE TO SEE THE LIST OF IDENTIFIED NEEDS.](#)



ALTERNATIVES TO DETENTION

MODULE 5

CHAPTER 1

CHAPTER 2

CHAPTER 3

CHAPTER 4

CHAPTER 5

CHAPTER 6

CHAPTER 7

CHAPTER 8

CHAPTER 9

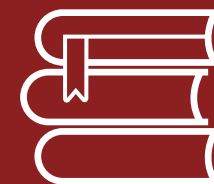
CHAPTER 10

CHAPTER 11

CHAPTER 12

CHAPTER 13

CHAPTER 14



ALTERNATIVES TO DETENTION

MODULE 5

CHAPTER 1

CHAPTER 2

CHAPTER 3

CHAPTER 4

CHAPTER 5

CHAPTER 6

CHAPTER 7

CHAPTER 8

CHAPTER 9

CHAPTER 10

CHAPTER 11

CHAPTER 12

CHAPTER 13

CHAPTER 14

Identified needs

1. Access to psychological assistance due to trauma suffered in the country of origin and on the way in Italy. There is also a feeling of hopelessness in the country of asylum.
2. Access to guardianship and legal representation. There is a mistrust towards the Italian authorities and lack of understanding of the asylum system of the host country and of migration law.
3. Access to adequate food.
4. Access to proper housing arrangements.
5. Access to education and vocational training.
6. Access to medical assistance and rehabilitation (both physical and psychiatric rehabilitation).
7. Access to recreational activities.
8. Access to family tracing procedures.

HUMAN RIGHTS STANDARDS IN RECEPTION AND ALTERNATIVES TO DETENTION FOR CHILDREN

In whichever model that is applied by States for reception or alternatives to detention for children, certain human rights standards must be observed. The Convention on the Rights of the Child lists several rights and safeguards such as:

- The right to a standard of living adequate for the child's physical, mental, spiritual, moral and social development (Article 27);
- Access to alternative care arrangements, including foster care (Article 20);
- Appropriate protection and humanitarian assistance (Article 22);
- The right to education (Articles 28, 29(1)(c), 30 and 32);
- The right to the highest attainable standard of health (Article 24);
- Protection or treatment of mental and physical health (Article 25) and social reintegration and recovery (Article 39);
- Special assistance for mentally and physically disabled children (Article 23);
- The right to an adequate standard of living (Article 27);

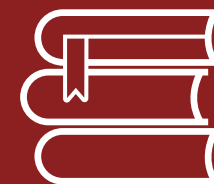
- The right to benefit from social security (Article 26); and
- The right to rest and leisure (Article 31), and enjoyment of the child's own culture, practices and religion (Article 30).

Housing

The Committee on the Rights of the Child **notes** that asylum-seeking children, whether they are accompanied by a parent or parents or unaccompanied or separated, need to be accommodated in a place that is safe and secure. There are also other safeguards to be met:

- Children should be accommodated in a stable environment and relocate to another place only if this is in their best interests;
- Siblings should be kept together; children with adult relatives arriving with them or who already reside within the host country, should be able to stay with those relatives (as long as it is in their best interests);
- Regular assessment of children's physical and psychosocial health, including protection against domestic violence and exploitation;
- Access to education and vocational training; and
- Access to full information about the care arrangements being made for them.





Education

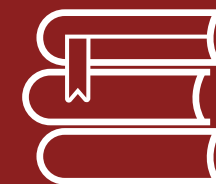
States shall ensure that child asylum-seekers, irrespective of status, have full access to appropriate education and training in the country that they have entered; this should follow the child's age and experience and the amount of time that the child is within the State's jurisdiction. States should ensure that access to education is maintained during all phases of the displacement cycle. The Committee on the Rights of the Child **highlights** that education is not only important for the learning opportunities it generates, but also because it assists in maintaining a sense of normality for adolescences, and in maintaining good mental health. Some children may be willing to engage in employment, but there is a need on the part of States to ensure that such children are not exploited.

Health care

Children who are asylum-seekers, like all children, have the right to the "highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health". **According to the Committee on the Rights of the Child**, when ensuring unaccompanied or separated children's access to health care "States should take into account the fact that unaccompanied children have undergone separation from family members and have also, to varying degrees, experienced loss, trauma, disruption and violence." UNHCR **adds** that children should have access to the essential services of a health system, including the national health services of the host country.

Physical, social and emotional needs

Beyond the immediate concern of providing a safe and secure environment, community placement arrangements must ensure that refugee, asylum-seeking and migrant children have their basic physical, social and emotional needs met. The term 'psychosocial well-being' is used to reflect the intimate relationship between psychological and social factors. Consequently, protecting and promoting the psychosocial well-being of asylum-seeking children has two main thrusts. First, it involves, as a preventive measure, enhancing all those factors that promote the well-being of children. Second, it includes providing the special remedial assistance necessary to ensure that children who have been harmed or have special needs are provided assistance to ensure a full recovery (see UNHCR, **Refugee Children: Guidelines on Protection and Care**). This requires that minimal standards of care and services are available for children in community settings. The Committee on the Rights of the Child **notes** that these threshold reception resources will be different in different countries and regions, depending on the wealth and development of the country, whether it is a transit or destination country, and whether the children are accompanied or not. In general, however, refugee, asylum-seeking and migrant children should at least have access to the same level of support as local children in their host communities.



ALTERNATIVES TO DETENTION

MODULE 5

CHAPTER 1

CHAPTER 2

CHAPTER 3

CHAPTER 4

CHAPTER 5

CHAPTER 6

CHAPTER 7

CHAPTER 8

CHAPTER 9

CHAPTER 10

CHAPTER 11

CHAPTER 12

CHAPTER 13

CHAPTER 14

Material needs

Children on the move often live in absolute destitution, with very little or no financial resources. Their journey can be expensive, so they are at risk of exploitation and theft. Often, they cannot afford the means of material survival, risking malnutrition and other physical and psychological illness. States should ensure that separated and unaccompanied children have a standard of living adequate for their physical, mental, spiritual and moral development. As provided in Article 27(2) of the CRC and **affirmed by the Committee on the Rights of the Child States** shall in particular provide material assistance and support programmes with regard to nutrition, clothing and housing.

Recreational, religious and cultural activities

All children, including asylum-seekers, have the right to rest and leisure, to engage in play and recreational activities appropriate to their age. They have the right to participate freely in cultural life and the arts and enjoy their own culture, profess and practise their own religion and use their own language. States must provide opportunities for asylum-seeking children to participate in recreational, cultural and religious opportunities within both their cultural and religious roots, but also within the host community (see IDC, **Captured Childhood**). In the context of care arrangements, according to Article 20(3) of the CRC, every effort must be made to place children in foster families or groups of similar ethnic, cultural, linguistic and religious background.

Read more about the standards and their implementation modalities in IDC, **Captured Childhood**, pp. 69–75.

RECEPTION ARRANGEMENTS AND ALTERNATIVES TO DETENTION FOR CHILDREN AND FAMILIES: INTRODUCTION

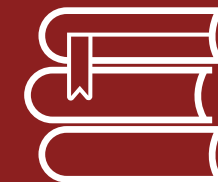
As elaborated in the previous chapters, UNHCR's position is that children should not be detained for immigration-related purposes, irrespective of their legal/migratory status or that of their parents, and that detention is never in their best interests. In this context, it is fundamental that appropriate care arrangements and community-based programmes are in place to ensure adequate reception of children and their families.

In the immigration context, the term reception arrangements for children and families refers to a set of measures related to the treatment of asylum-seekers from the time they arrive in the country, while their asylum claims are being determined and until a final decision is taken on the substance of the claims. These measures include adequate reception conditions upon arrival at the border, access to legal counselling, freedom of movement, accommodation, and adequate means of subsistence; they also include access to education and medical care, as well as special arrangements to cover the specific needs of

people in situations of vulnerability and risk. Reception conditions must be secure and safe and allow for children's participation. Moreover, children's stay in a reception centre should be as short as possible, and community-based reception arrangement should be prioritized.

You may wish to consult the following documents related to the reception of children:

- UNHCR, *The 10-Point Plan in Action*, Update 2016
- UNHCR, *Global Consultations on International Protection/Third Track: Reception of asylum-seekers, including standards of treatment, in the context of individual asylum systems*, 4 September 2001, EC/GC/01/17,
- UNHCR, *Conclusion on reception of asylum-seekers in the context of individual asylum systems*, 8 October 2002, No. 93 (LIII), 2002,
- UNHCR's Brief on Child-Friendly Procedures.



ALTERNATIVES
TO DETENTION

MODULE 5

CHAPTER 1

CHAPTER 2

CHAPTER 3

CHAPTER 4

CHAPTER 5

CHAPTER 6

CHAPTER 7

CHAPTER 8

CHAPTER 9

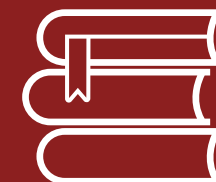
CHAPTER 10

CHAPTER 11

CHAPTER 12

CHAPTER 13

CHAPTER 14



ALTERNATIVES TO DETENTION

MODULE 5

CHAPTER 1

CHAPTER 2

CHAPTER 3

CHAPTER 4

CHAPTER 5

CHAPTER 6

CHAPTER 7

CHAPTER 8

CHAPTER 9

CHAPTER 10

CHAPTER 11

CHAPTER 12

CHAPTER 13

CHAPTER 14

In this context, the term care arrangements emphasizes that any reception arrangement for children (unaccompanied, separated or in family) needs to consider the vulnerability of the child first, and ensure appropriate care is provided. As per their international obligations (UN Convention on the Rights of the Child), States should ensure reception and care arrangements are available for non-national children. Because every child's circumstances are unique, the best care arrangement for each child will be different.

Under this framework, it is thus improper to refer to these reception measures as alternatives to detention for children, because children should not be detained. If a legitimate ground for detention therefore fails to exist, children's deprivation of liberty would be arbitrary and contrary to international law.

In practice, however, States and other stakeholders still refer to the use of alternatives to detention for children and families as terminology that many times straightforwardly describes reception or care arrangements (with or without conditions or restrictions on freedom of movement in place). This is a dangerous confusion that needs to be addressed through advocacy and legal intervention on a case-by-case basis.

Setting up appropriate care arrangements for children calls for the competent child care authorities to be involved in finding solutions for this vulnerable group. It is the responsibility of the State to ensure reception and care arrangements for non-national children. The role of national child protection bodies is therefore essential.

Because every child's circumstances are unique, the best care arrangement for each child will vary (see more in the [Field Handbook on Unaccompanied and Separated Children](#)). Child-care arrangements also depend on whether a child is unaccompanied or separated or within his/her family. Therefore, the arrangements analysed in the following chapters will be split into two categories (a) those applicable to unaccompanied or separated children and (b) arrangements for children in families.

CARE ARRANGEMENTS FOR UNACCOMPANIED OR SEPARATED CHILDREN

Care arrangements for unaccompanied or separated children can be grouped into three broad categories: family-based care, community-based placement and residential care.



Family



Community



Residential

Priority should be given to family- and community-based solutions, in accordance with the national child protection system. Residential care should only be used as a last resort and for the shortest period of time necessary. Care within a child's own community should be encouraged, because it provides continuity in socialization and development.

Because unaccompanied or separated children are at heightened risk of abuse and exploitation, monitoring and specific support within the different care options should be foreseen to ensure their protection. The establishment of clear standards and procedures is vital to ensuring care arrangements protect children and do not cause harm. In particular, all entities and individuals engaged in providing alternative care for children should receive authorizations to do so from a competent authority and be subject to regular monitoring and review by this authority. Appropriate criteria for assessing the professional and ethical fitness of care providers and for their accreditation, monitoring and supervision should be developed.

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





FAMILY-BASED CARE ARRANGEMENTS

Family-based care arrangements should be prioritized. These include foster care and kinship care.

Foster care

Foster care placements mean that a child who cannot be cared for by their parents is placed by the competent authority with a family other than the child's own family. The foster family is selected, qualified and approved for providing such care and is supervised by the authorities responsible for child welfare. Foster care families can provide a stable foster home and support and encouragement to help the child feel safe and secure. Foster care is usually understood to be a temporary arrangement. In most cases, the birth parents retain their parental rights and responsibilities.

Foster care may include:

- Informal fostering (or spontaneous fostering), where the child is taken into the care of a family or other household that may or may not be related to the child's family; and
- Formal fostering (or arranged fostering), where a child is taken into the care of a family as part of an arrangement made by the assigned authority.

As a general rule, fostering should follow national legislation and policies. If and when it is possible and in the best interests of the child, child protection staff should seek to involve local authorities. Fostering as a permanent placement (or adoption) of an asylum-seeking child into a family – whereby the rights and responsibilities of the biological parents (or legal guardians) are legally transferred to the adoptive parent(s) – should be discouraged.

There are some important rules to respect when placing a child with a foster family. Family-based care can be organized 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). It is important to place the child with carers who have a similar background, because children do well when they are placed with a foster carer of the same language, religion and culture.

UNHCR **notes** that adoption, if in the best interests of the unaccompanied child, may be carried out. However, this should occur only if the child expresses such a wish and when there is no hope for successful family tracing and family reunification.

You may wish to consult the following documents:

- UNHCR, **Child Protection Issue Brief: Alternative care**, January 2014, p. 2.
- UNHCR, **UNHCR Policy on Adoption**, August 1995, pp. 1–2.



ALTERNATIVES TO DETENTION

MODULE 5

CHAPTER 1

CHAPTER 2

CHAPTER 3

CHAPTER 4

CHAPTER 5

CHAPTER 6

CHAPTER 7

CHAPTER 8

CHAPTER 9

CHAPTER 10

CHAPTER 11

CHAPTER 12

CHAPTER 13

CHAPTER 14



COMMUNITY-BASED CARE ARRANGEMENTS

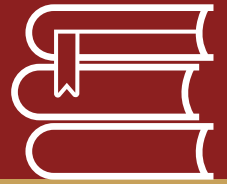
Community-based care arrangements include supervised independent living and child-headed households. It is crucial that care arrangements in the community are adequately resourced not to leave the unaccompanied or separated child vulnerable and insufficiently supported, particularly during the period of time where their refugee claim is being assessed – a state of considerable heightened anxiety and limbo (see IDC, *Captured Childhood*).

Supervised independent living is a living arrangement whereby an adolescent child or group of adolescent children lives 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.

Child-headed household is a form of independent living, where unaccompanied and separated children live in a child or peer-headed household, where they are cared for by an older sibling or by unrelated older children.

Yemen

In the urban suburb of Basateen in Aden, Yemen, UNHCR worked closely with the refugee leaders in designing a community-driven alternative care system. In addition to supporting family reunification and family-like alternative care arrangements, for some children who could not be immediately reunited with relatives a supervised independent living arrangement was implemented. Small group homes were rented (with a capacity of six to eight children) next to neighbouring families who were nominated by the community leaders and who agreed to play a formal supervisory role over the children. Each child in alternative care arrangements received regular home visits by the child protection partner and community outreach workers (source: [UNHCR's Brief on Alternative Care](#)).



ALTERNATIVES TO DETENTION

MODULE 5

CHAPTER 1

CHAPTER 2

CHAPTER 3

CHAPTER 4

CHAPTER 5

CHAPTER 6

CHAPTER 7

CHAPTER 8

CHAPTER 9

CHAPTER 10

CHAPTER 11

CHAPTER 12

CHAPTER 13

CHAPTER 14



RESIDENTIAL CHILD-CARE ARRANGEMENTS

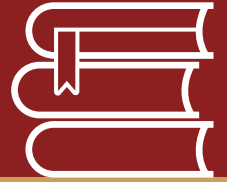
Residential or institutional care is care provided in non-family-based group settings. This includes transit/ interim care centres, children's homes, orphanages, children's villages/cottage complexes, and boarding schools used primarily for care purposes.

Residential or institutional care should always be a last resort. It should only be considered as a temporary measure until family-based care can be ensured or where family-based care is not in the best interests of the child, and then only for the shortest time possible.

In emergency contexts, the [UN Guidelines for the alternative care of children](#) recommends prohibiting the establishment of new residential facilities structured to provide simultaneous care to large groups of children on a permanent or long-term basis.

A form of residential care which is strongly preferable to other forms of institutional care, where family-based care or independent living is not possible or advisable, is group care/homes. Small group care is where children are placed in a small group home that is run like a family home, whereby groups of six to eight children or young people are cared for by consistent caregivers within the children's community. In some cases, adolescents may prefer small group care to family-based care because it provides more independence. However, very young children should be prioritized for family-based care. The safety of children should be closely monitored in such care arrangements, as we can see from the example of the group home for unaccompanied or separated children in Gothenburg, Sweden (below).

You may wish to consult UNHCR's [Brief on Alternative Care and Options Paper 1](#).



ALTERNATIVES TO DETENTION

MODULE 5

CHAPTER 1

CHAPTER 2

CHAPTER 3

CHAPTER 4

CHAPTER 5

CHAPTER 6

CHAPTER 7

CHAPTER 8

CHAPTER 9

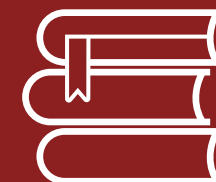
CHAPTER 10

CHAPTER 11

CHAPTER 12

CHAPTER 13

CHAPTER 14



ALTERNATIVES TO DETENTION

MODULE 5

CHAPTER 1

CHAPTER 2

CHAPTER 3

CHAPTER 4

CHAPTER 5

CHAPTER 6

CHAPTER 7

CHAPTER 8

CHAPTER 9

CHAPTER 10

CHAPTER 11

CHAPTER 12

CHAPTER 13

CHAPTER 14

Ethiopia: Small group care

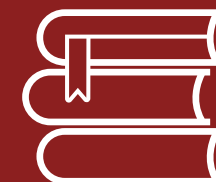
In recent years, in the Shire operation in Ethiopia has seen an average of around 100 unaccompanied or separated children arrive per month. Sheer numbers dictated that as a last resort, small group care would have to be an interim option pending efforts to place children in family-based care and reunification with family members. The unaccompanied or separated children live side by side with families who agree to support the children, in communities of eight shelters facing each other, with communal space in the middle of the camp to facilitate social interaction (source: [UNHCR's Brief on Alternative Care](#)).

Sweden: Group home for unaccompanied children in Gothenburg

Unaccompanied children are hosted in several group homes across Sweden. They can stay there with similar-age peers, and with children of similar cultural background. They develop self-reliance and responsibility for themselves through independent living. However, [according to Human Rights Watch](#), there are several problems related to this type of care arrangement. These is (a) harassment of girls who have been placed within a boy-dominated group home; (b) bullying of younger children by older ones; (c) relocation from home to another; and (d) general safety concerns related to the children. This is why the group homes must meet certain standards of safety, gender-specificity and longevity.

Indonesia

In Indonesia, the Church of the World Service, a local NGO, runs different shelters for unaccompanied or separated children, in cooperation with authorities. With fully equipped rooms, the shelters accommodate between four to six children, depending on size. Children can cook for themselves in a common kitchen. Residents are provided a weekly stipend to cover the cost of basic necessities and food (US\$20). Educational programmes, basic necessities, psychosocial counselling, medical care, language and computer classes and recreational activities are provided. Case management is implemented with a consultative approach with the unaccompanied or separated children and with refugee community support. Children can also participate in community charitable activities with locals, such as park clean-up campaigns.



ALTERNATIVES TO DETENTION

MODULE 5

CHAPTER 1

CHAPTER 2

CHAPTER 3

CHAPTER 4

CHAPTER 5

CHAPTER 6

CHAPTER 7

CHAPTER 8

CHAPTER 9

CHAPTER 10

CHAPTER 11

CHAPTER 12

CHAPTER 13

CHAPTER 14

Belgium

All unaccompanied or separated children identified by the Guardianship Service without any distinction based on administrative status (asylum-seeker or migrant) – including those identified at the border as well as those living irregularly in the territory – are first received in the Orientation and Observation Centre, a transit centre. This is run by the Belgian Federal Agency for the Reception of Asylum-seekers (Fedasil). Children stay at the centre for a period of two to four weeks. The Centre is a small-scale protective and open reception centre that is adapted to the needs of children. It can accommodate up to 50 newly arrived children who are supervised by social workers specialized in the reception, observation and orientation of unaccompanied or separated children. During the children's stay, the Guardianship Service confirms the child's identity and his/her status as unaccompanied or separated. Centre staff have expertise in 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 organized at 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 or 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 organized via increased protective measures, medical and psychological follow-up (residential or external), and psychosocial activities (art therapy). (See UNHCR, [Options Paper 1](#)).

Israel

From 2008–2014, in Israel, unaccompanied or separated children aged 14–17 were accommodated in residential schools called 'youth villages' together with Israeli youth. Israeli youth opting for this kind of secondary education were mainly from migrant backgrounds or youth facing socioeconomic difficulties. Unaccompanied or separated children were placed in small groups in these youth villages, which gathered up to 300 young people (the number of unaccompanied or separated children generally constitutes a maximum of 10 per cent of the total school population). Children were divided in the youth village by age group and gender and lived together with Israeli youth in the same groups. Emphasis was 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 psychosocial staff as needed, as well as such as national service volunteers. Children were 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 and accommodation, sports and other social activities, pocket money, psychological counselling if needed, etc.). Wherever possible, Israeli host families were matched with the unaccompanied or separated children to host them during vacation periods (UNHCR, [Options Paper 1](#)).

CHAPTER 10

CARE ARRANGEMENTS FOR CHILDREN WITH FAMILIES

Care arrangements for children in families differ from those applicable to UASC. Foremost the family, if protected and assisted, provides the child with a proper environment for growth and development. Secondly, there is no need to appoint a guardian nor legal representative. Unaccompanied, separated or with parents, children on the move should be provided with proper reception arrangements.

UNHCR **position** on the detention of children also applies to children with families. It is not in the best interests of the child to be detained for immigration related purposes even with parents or family members. Instead appropriate care arrangements and community-based programmes should be in place.

The main issue which raises serious human rights concerns is the separation of children from their family members (who are placed in detention). Some States often detain men (fathers, grandfathers) while children and women (mothers, grandmothers) are placed in the open accommodation centres. International law and standards, however, mandate that families must be kept together (see Articles 5, 8 and 16 of the CRC, right to family unity, family relations and protection against unlawful interference with their privacy and family) and “[r]eception arrangements should allow for the unity of the family as present within the territory (...)” (see UNHCR **ExCom Conclusion No. 93**). It is always in the best interests of the child not to be deprived of liberty. Moreover, his/her family relations should be preserved. This imperative extends to all family members, meaning that the unity has to be maintained by providing alternatives to detention for the whole family, not only to some members of the family (see the **report** of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment which refers to the jurisprudence of the Inter-American Court of Human Rights).



ALTERNATIVES TO DETENTION

MODULE 5

CHAPTER 1

CHAPTER 2

CHAPTER 3

CHAPTER 4

CHAPTER 5

CHAPTER 6

CHAPTER 7

CHAPTER 8

CHAPTER 9

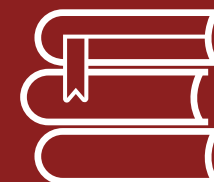
CHAPTER 10

CHAPTER 11

CHAPTER 12

CHAPTER 13

CHAPTER 14



ALTERNATIVES TO DETENTION

MODULE 5

CHAPTER 1

CHAPTER 2

CHAPTER 3

CHAPTER 4

CHAPTER 5

CHAPTER 6

CHAPTER 7

CHAPTER 8

CHAPTER 9

CHAPTER 10

CHAPTER 11

CHAPTER 12

CHAPTER 13

CHAPTER 14

Hong Kong SAR (China): living in the community with caseworker support

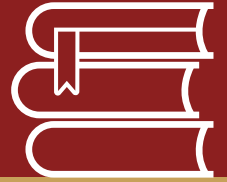
Since 2006, the International Social Service – Hong Kong (ISSHK), a government-funded NGO programme, has provided support to refugee claimants and torture claimants released from detention, during the processing of their claim, including families and children. In addition to the general support, children 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 (see UNHCR, [Options Paper 1](#)).

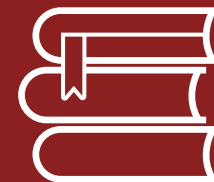
Belgium

All children and their families liable to be detained (asylum-seekers and returnees) are placed in open housing units. In these housing units families enjoy freedom of movement and are supervised by a coach designated by 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 (see [Odysseus's Network Report](#) and UNHCR, [Options Paper 1](#)).

COMPLIANCE OF NATIONAL ARRANGEMENTS FOR CHILDREN WITH INTERNATIONAL STANDARDS

The assessment of compliance of national arrangements for asylum-seeking children with international standards can be made in several steps by verifying the following aspects:





ALTERNATIVES TO DETENTION

MODULE 5

CHAPTER 1

CHAPTER 2

CHAPTER 3

CHAPTER 4

CHAPTER 5

CHAPTER 6

CHAPTER 7

CHAPTER 8

CHAPTER 9

CHAPTER 10

CHAPTER 11

CHAPTER 12

CHAPTER 13

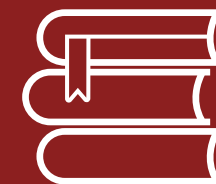
CHAPTER 14

Availability of mechanisms refers to identification, best interests assessment, referral and guardian/lawyer appointment mechanisms in the country. Detailed questions about these mechanisms are presented in the checklist below.

Decision making refers to the ways how decisions on care/placements are made in the country. Detailed questions about decision making are presented in the checklist below.

Access to rights refers to the assessment of human rights standards applied for unaccompanied or separated children in care/placement arrangements or children in families to whom alternatives to detention are applied. Detailed questions about access to rights are presented in the checklist below.

Oversight/monitoring refers to monitoring and review of child care and placement. Care and placement should be supervised by national or local child welfare services (as long as they have guidelines to follow in case of abuse, exploitation or neglect) to ensure that they receive care that meets at least the minimum standards provided for national children (see UNHCR, Refugee Children Guidelines on Protection and Care). Detailed questions about oversight are presented in the checklist below.



Steps to consider (checklist)

Answer the following questions to assess care arrangements for children. Refer to Module 4, Annex 1.

Questions	Comment
Assessment of mechanisms	
Are there identification and referral mechanisms in the country?	
Are unaccompanied or separated children appointed a qualified guardian? Is the guardian appointed in a timely manner as soon as possible after identification?	
Is there a mechanism/methodology/standard operating procedure to ensure that the best interests of the child are a primary consideration in decision making related to the child?	
Are unaccompanied or separated children provided with a qualified legal representative? Is this free of charge? At what stage of the process is this legal representation provided (provision of legal aid up front, during reception, only at the appeal stages)?	
Is family tracing (if in the best interests of the child) carried out as soon as possible and until the time when the child can be reunited with family members?	
Decision making	
Are care placements made based on an individual assessment of the child's best interests?	
Are small group care or family-based care prioritized over institutional or residential care?	

ALTERNATIVES TO DETENTION

MODULE 5

CHAPTER 1

CHAPTER 2

CHAPTER 3

CHAPTER 4

CHAPTER 5

CHAPTER 6

CHAPTER 7

CHAPTER 8

CHAPTER 9

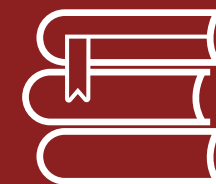
CHAPTER 10

CHAPTER 11

CHAPTER 12

CHAPTER 13

CHAPTER 14



ALTERNATIVES TO DETENTION

MODULE 5

CHAPTER 1

CHAPTER 2

CHAPTER 3

CHAPTER 4

CHAPTER 5

CHAPTER 6

CHAPTER 7

CHAPTER 8

CHAPTER 9

CHAPTER 10

CHAPTER 11

CHAPTER 12

CHAPTER 13

CHAPTER 14

Are asylum claims of unaccompanied or separated children and children in families prioritized?

Assessment of human rights standards

Are unaccompanied or separated children informed of their rights (including on how to contact UNHCR) in a child-friendly manner?

Do children (unaccompanied or separated children and those in families) have access to the following basic rights:

- Right to education
- Right to family life
- Right to practise their religion
- Right to psychosocial and medical assistance, adequate material support (accommodation, food, clothing, non-food items), legal advice

Are children provided with documents (such as an identity document and legal residence status)?
If in families, are caregivers also provided with documents?

Oversight mechanisms

Is effective oversight of an ATD or care arrangement in place? (Effective oversight could include review of child's placement, inspections of the child care arrangement, vetting, training and supervision of staff.)

HOW TO CARRY OUT A CHILD NEEDS ASSESSMENT FOR RECEPTION OR ATD IN INDIVIDUAL CASES?

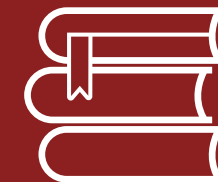
Any decision affecting a child's care arrangements should only be made after consideration of their individual best interests. There is no one-size-fits-all solution and the role and capacity of the State, community and partners will determine the care options available. However, in most situations, whether in a sudden emergency or a protracted crisis, separated or unaccompanied children are spontaneously cared for by other community members and it is important to promote and support existing local arrangements (while at the same time being aware of and monitoring these arrangements) rather than replace them (see [UNHCR's Brief on Alternative Care](#)).

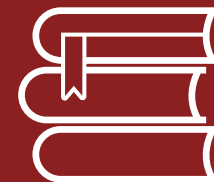
Certain basic rules should guide the assessment for placement:

Decisions shall be based on individualized assessment of best interests

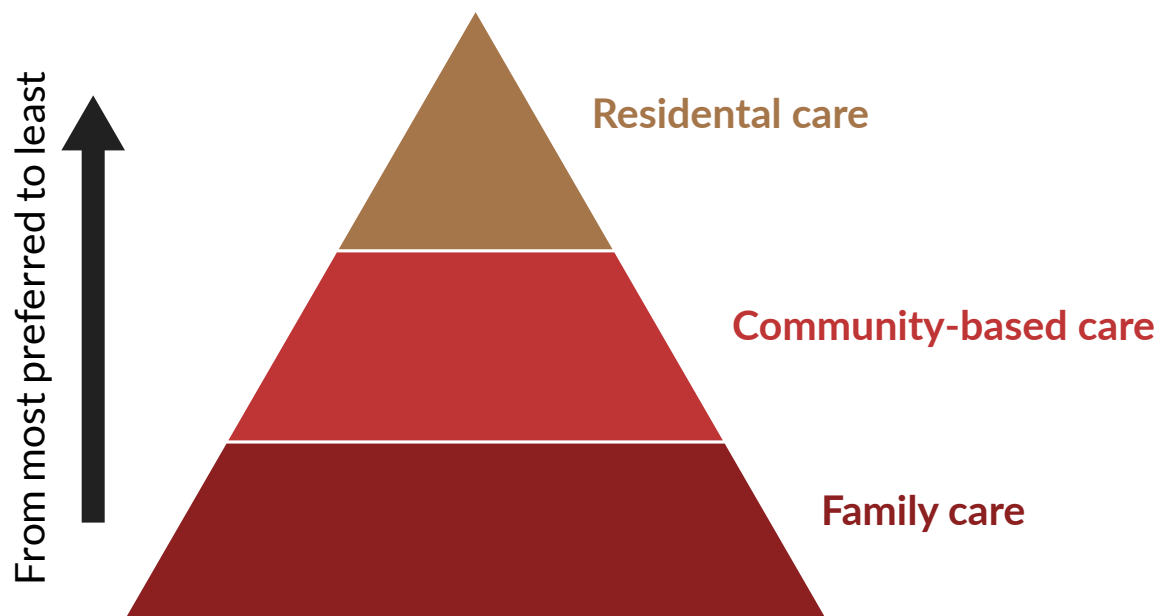
Prioritization (see below): family-based/small group care arrangements over community and institutional care. The latter should be used only in very limited circumstances

Factors to be considered: vulnerability, age, gender, self-reliance, experience, cultural, religious, linguistic backgrounds, needs and risks

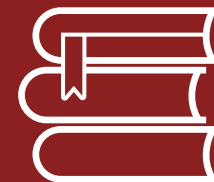




Priority scheme for child-care arrangements:

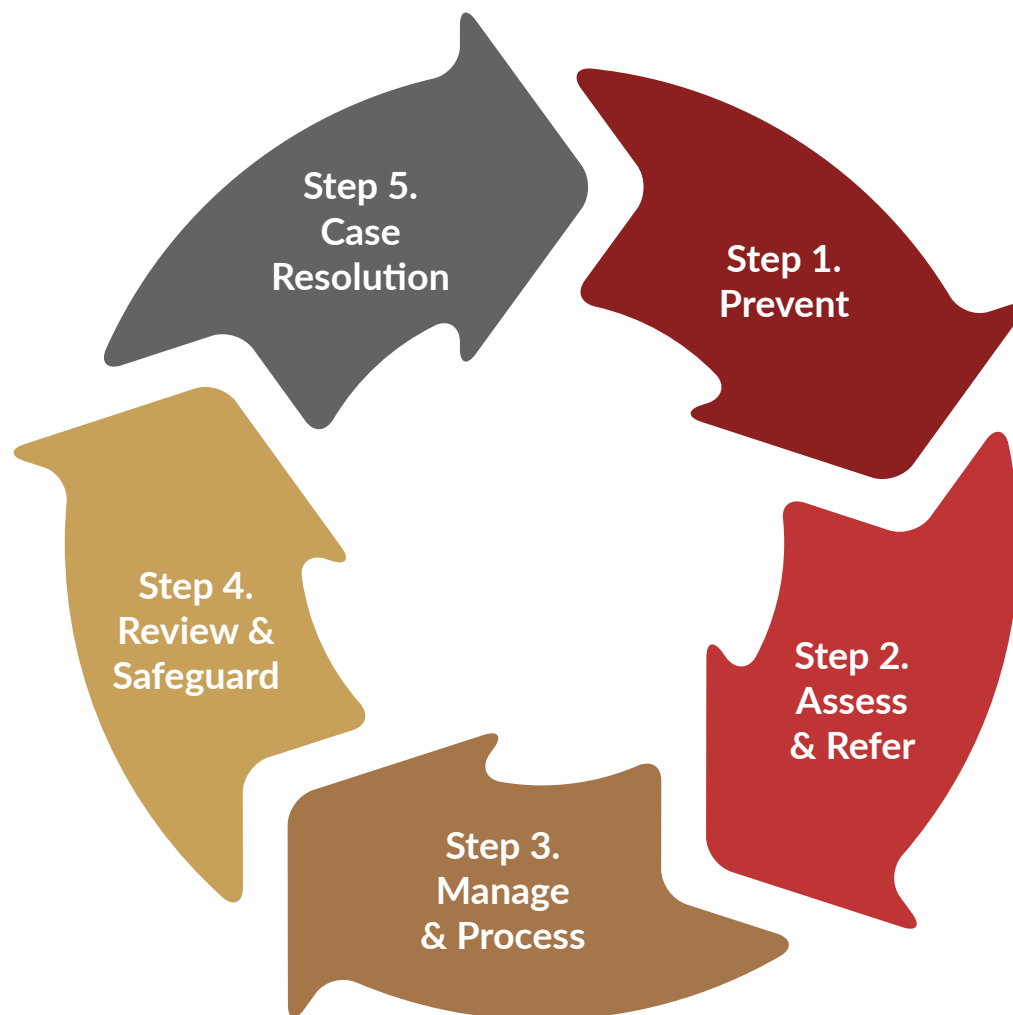


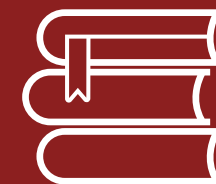
Now you will explore the model on decision making on child placement which was developed by the International Detention Coalition and which is described in IDC, *Captured Childhood*, pp. 56–87).



Five-step Child-Sensitive Community Assessment and Placement model (CCAP)

CCAP is designed to be applicable from the time that a child or a person who is potentially a child is discovered by authorities – whether at the border or within a State’s territory – until the very end of any process where a child is either allowed to remain within the State or expected to leave.





Step 1. Prevent

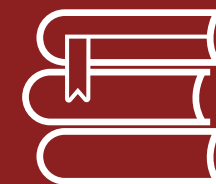
Children should not be detained. It applies to any children who are refugees, asylum-seekers or migrants.

Step 2. Assess & Refer

To prevent detention of an asylum-seeking child, several processes shall be triggered at the moment of interception which are specifically designed to ensure the interests and well-being of children. Within hours of the interception of a child, States shall undertake an assessment of the needs of the child and refer him or her to an age, gender, culturally appropriate community placement. This must take place within hours of a child being discovered at the border of or within a State's territory. It includes the assignment of a guardian to unaccompanied or separated children, the assignment of a case manager to all children, an intake assessment and the placement of the child or family into a community setting. The case manager ('coacher') is a person who supports and manages the asylum-seeker's situation while their status is being resolved, with a focus on informed decision making, timely and fair status resolution and improved coping mechanisms and well-being on the part of asylum-seeker (UNHCR, Options Paper 2).

Referral to an appropriate community placement requires:

1. Screening;
2. The appointment of a guardian to unaccompanied or separated children;
3. The assignment of a case manager (in order to assess, oversee, advise, support and manage the case throughout the process of awaiting a final migration outcome);
4. An intake assessment and referral (the immediate needs and risks associated with the child are assessed. This assessment will inform a decision on the most appropriate accommodation and support required to meet basic needs and protect the child); and
5. Placement in the community.



Step 3. Manage & Process

This is the substantive component of the child-sensitive assessment and placement model. It involves ‘case management’ processes, including exploring all options available to children and families and assessing the protection needs of children and/or their families with regard to their asylum or migration procedure.

Research indicates that case management is an essential and effective way to work with individuals awaiting final migration outcomes in the community, because it encourages cooperation and compliance and improves well-being. Case managers should be appointed at an early stage of the asylum or immigration process and continue until status is resolved. Case managers are generally social workers, psychologists or other human services professionals with experience in working with people in situation of vulnerability or risk and within the asylum and migration process. Case managers who work with refugee, asylum-seeking and migrant children should have the expertise and skills to work sensitively and effectively with children from different cultural backgrounds. For more about case management, refer to Module 4.

Step 4. Review & Safeguard

This involves ensuring that the rights of children and their best interests are safeguarded. It includes legal review of various decisions taken regarding children and their families – including decisions about where they are accommodated and about their legal status. It also includes an opportunity on the part of States to review the conditions accompanying the child or family’s placement in the community following a final immigration status decision. Decisions should be subject to administrative and judicial oversight. Whether they are about guardians, case workers and the casework process, placement in the community or the legal status of refugee, asylum-seeker and migrant children, decisions should be reviewable in light of merit and lawfulness.

Step 5. Case Resolution

This is the realization of sustainable migration solutions. If a child is allowed to remain on the territory of the host State as a consequence of the protection or humanitarian determination process, or because of the pre-removal risk assessment, then the State should ensure the child’s welfare, including accommodation and health. The State should facilitating family reunification if appropriate.

In all decisions, the best interests of the child shall be a primary consideration

Detention is never in the best interests of the child

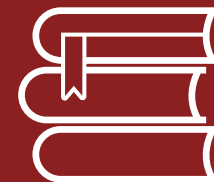
Child-sensitive screening and referral procedures should be in place and cover:

- identification/age assessment
- appointment of guardian/legal
- placement
- referral to services

Childcare arrangements must respect human rights standards, such as:

- Housing
- Education
- Health care
- Material, psycho-social and emotional needs
- Recreational, religious and cultural activities





ALTERNATIVES TO DETENTION

MODULE 5

CHAPTER 1

CHAPTER 2

CHAPTER 3

CHAPTER 4

CHAPTER 5

CHAPTER 6

CHAPTER 7

CHAPTER 8

CHAPTER 9

CHAPTER 10

CHAPTER 11

CHAPTER 12

CHAPTER 13

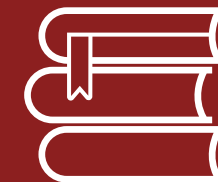
CHAPTER 14

Assessment for placement shall consider:

- individualized best interests
- prioritization
- vulnerability
- age and gender
- culture
- other factors

Childcare arrangements may include family, community and residential ones, but family-based care needs to be prioritized

Childcare arrangements for unaccompanied or separated children differ from those applicable to children in families as ATDs



Captured Childhood: Introducing a new model to ensure the rights and liberty of refugee, asylum seeker and irregular migrant children affected by immigration detention, IDC, 2012,

<http://idcoalition.org/wp-content/uploads/2012/03/Captured-Childhood-FINAL-June-2012.pdf>

Alternatives to Immigration and Asylum Detention in the EU: Time for Implementation, Odysseus Network, January 2015, pp. 96-113,

<http://odysseus-network.eu/wp-content/uploads/2015/02/FINAL-REPORT-Alternatives-to-detention-in-the-EU.pdf>

UNHCR Guidelines on Determining the Best Interests of the Child, May 2008,

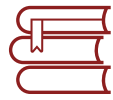
<http://www.unhcr.org/4566b16b2.pdf>

Field handbook on unaccompanied and separated children, Inter-agency working group on unaccompanied and separated children, Inter-agency Working Group on Unaccompanied and Separated Children, pp. 198-221,

<https://www.iom.int/sites/default/files/HANDBOOK-WEB-2017-0322.pdf>

Alternative care in emergency toolkit, Save the Children, 2013, pp. 56-65, 129-149,

https://www.unicef.org/protection/files/ace_toolkit_.pdf



Alternatives to Detention



UNHCR
The UN Refugee Agency



This material was developed within the project 'Global Technical Assistance and Capacity Building Programme to Prevent Detention of Children and to Protect Children and Other Asylum-Seekers in Detention' funded by the European Union.

The views expressed herein can in no way be taken to reflect the official opinion of the European Union.