INTRODUCTION

This chapter presents a new model for managing children and families in the community and thereby preventing the detention of children for immigration purposes. The model is not prescriptive. Rather, it presents a way in which states might design responses to the irregular movement of child refugees, asylum seekers and migrants that ensure that they are not detained.

The model articulated below builds upon the IDC’s Community Assessment and Placement (CAP) model. CAP combines mechanisms to prevent unnecessary detention with strategies for effective and humane case resolution in the community. CAP ensures governments have a clear understanding of the diversity within the population of asylum seekers and irregular migrants in order to make informed decisions on placement, support and management.

The model developed below provides a greater level of detail for policy-makers and legislators to actualise the CAP model for children. We have called this the Child-sensitive Community Assessment and Placement model (CCAP).

CCAP is represented in figure 6.1 below. This chapter describes the diagram in detail, making reference to state practice around the world to illustrate that the model presented is entirely achievable. In doing so, the chapter highlights good practice and refers to international opinion on various aspects of the model, including screening, age assessment, guardianship, best interest determination and implementation, addressing special needs, and the sorts of reception resources that are required to ensure that children can live safely and with dignity in a community setting while their immigration status is resolved. 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 states territories - until the very end of any process where a child either is allowed to remain within the state or is expected to leave. CCAP can also help in situations in which states experience capacity constraints in responding adequately to children who are irregular migrants.

CCAP involves five distinct steps that governments should take to ensure refugee, asylum seeker and irregular migrant children are not detained. All but one of the steps involves several components. These are discussed below.

Is a presumption against the detention of children. It occurs
A Sri Lankan family was forced to leave their country after which they were detained and children and the father were separated from their mother. © Jon Frank.jpg
CHILD-SENSITIVE CAP MODEL

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

- **Step 1** -
  Is a presumption against the detention of children. It occurs prior to the arrival at a state’s territory of any children who are refugees, asylum seekers or irregular migrants.

- **Step 2** -
  Takes place within hours of a child being discovered at the border of, or within, a state’s territory. Step 2 includes screening the individual to determine their age, the assignment of a guardian to unaccompanied or separated children, the allocation of a caseworker to children who are travelling with their families, an intake assessment and the placement of the child or family into a community setting.
- Step 3 -
Is the substantive part of the model. It involves ‘case management,’ including an exploration of the migration options available to children and families, a best interest determination, and an assessment of the protection needs of children and/or their families.

- Step 4 -
Involves ensuring that the rights of children and their best interests are safeguarded. It includes legal review for 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.

- Step 5 -
Involves the realisation of sustainable migration solutions.

* The asterisks in the diagram above represent places within the model where the voice of the child should be heard.
Fundamental to preventing the detention of children who are refugees, asylum seekers and irregular migrants is a prohibition, in law, against their incarceration. Laws, policies and practices ought to be based on the assumption that detention is not necessary when resolving an individual child’s migration status. According to the CAP, ‘Such a “presumption against detention” establishes each individual’s right to freedom of movement and helps to prevent immigration officials from resorting to confinement when other options may suffice.’

The expectation of liberty has a strong foundation in international law. The presumption against detention is consistent with this body of law, and in particular, the particular abhorrence in international law for the detention of children. International law’s predilection against detaining children reflects an understanding of the dire consequences associated with denying children their liberty. The presumption against detention is strengthened by the principle of treating minors as minors, prior to viewing them as migrants.

Further, the ends to which states detain children – for political, policy and practical reasons – are not achieved by their detention. Detention is expensive and ineffective, meaning that a presumption against detention is not only consistent with international law, in the interests of children themselves, but also more rational from a state’s perspective.

A number of states around the world, including Hungary, the Czech Republic, Ireland, Venezuela, Italy and Portugal have legislated to prohibit the detention of refugee, asylum seeker and irregular migrant children.
ESTONIA — Act on Granting International Protection to Aliens, Article 35

Article 35 of the Act on Granting International Protection to Aliens says that an applicant who is an unaccompanied minor shall be placed in the reception centre or a social welfare institution for the duration of the asylum proceedings, and welfare services appropriate to the age of the applicant shall be guaranteed to him or her. An applicant who is an unaccompanied minor may be placed with an adult relative or a social care family, if the host is appropriate for taking care of a minor. In placing an applicant who is an unaccompanied minor in the reception centre or social welfare institution, or with an adult relative or a social care family, the rights and interests of the minor shall be the main consideration. Unaccompanied minor sisters and brothers shall not be separated, if possible. The applicant who is an unaccompanied minor may be placed in the initial reception centre until the necessary procedures are conducted.  

PANAMÁ — Act on Granting International Protection to Aliens, Article 93

‘Panama’s legislation provides that the detention of migrants only applies to people over 18 years of age. According to Article 93, the National Immigration Service will provide short-stay shelters for housing foreign violators of the national immigration law.’
Avoiding detaining refugee, asylum seeker and irregular migrant children requires, at the moment of interception, several processes to be triggered to stream them into a process specifically designed to ensure the interests and well-being of children. Within hours of the interception of a child, states must have undertaken an assessment of the needs of the child and refer them to an age, gender, culturally appropriate community placement.

Referral to an appropriate community placement requires:
1. screening
2. the appointment of a guardian to unaccompanied and separated children
3. the assignment of a case manager
4. an intake assessment and referral
5. community placement
6. an age assessment in cases of serious doubt of actual age

**2.1 Screening and age assessment**

As soon as state authorities intercept a child - or someone who is potentially a child - officials should undertake an initial screening to determine the person’s age and if they ought to be placed immediately in a system most likely to protect the interests of children. Any person who claims to be a child should be assumed at this point of initial contact to be a child. Any person who looks or behaves as though he or she may be a child should be treated as a child. In undertaking this initial screening the benefit of the doubt should always fall in the child’s favour. This means that anyone who is potentially an unaccompanied or separated child should be appointed an interim guardian and a case manager and any family in which there is potentially a minor should be assigned a case manager, as detailed in 2.2 and 2.3 below.

Where there remains serious doubt about the age of a person who claims to be a minor or who appears to be a minor but claims to be an adult, that person may be engaged in an age assessment process. This process should occur after the appointment of the guardian and case manager so that the minor is appropriately supported throughout the age assessment process.

Assessing the age of minors is both a key issue for young people and states and a difficult task to perform well. Determining a young person’s age can have profound implications for whether or not they are detained, and, if they are, the length and location of their detention. A wrongful age assessment can place minors at risk of being incarcerated in conditions that are unsuitable for minors or unable to sponsor relatives for resettlement after their own visa grant. An incorrect age assessment can lead to children being detained with adults. Minors are due a range of entitlements reflecting their vulnerability and level of development as stipulated in international laws and norms.
Age assessment can be a difficult task in part because many refugee, asylum seeker and irregular migrant children do not have reliable documentation verifying their age. They may have given their documents to smugglers and not have them returned, they may have been instructed by their smugglers to destroy them, or they may never have possessed the relevant documentation because they come from countries that do not systematically record children's births. Children and young people may not know how old they are because they come from cultures where birth dates or the passage of time are not as important, or are marked differently from the way they are measured in more westernised norms. Some may have a general idea of the year of their birth, but not know the day or month of their birth.

Further, it can be difficult to elicit information from young people because they do not always understand or know what is relevant. Some may fear authority or seek to please adults, saying what they think adults want to hear. Some children and young people may have an interest in not disclosing their true ages. For example, children may assess that they are more likely to be able to work if they say that they are older than they actually are. For others, the prospect of being released early from detention may motivate some minors to inflate their age.

Conversely, younger adults may think that it may be beneficial to be minors – thinking that they may be released from detention sooner than adults, or not detained at all.

As an addition to the complex process of determining a young person's age, 'most age-disputed young people will have experienced a difficult and traumatic journey, as well as difficulties in their country of origin, resulting in mental trauma, which is often undiagnosed until much later. Some children may present as obviously vulnerable, whilst others will portray a lot of resilience and will find it hard to engage with professionals.'

Finally, a young person who turns 18 while still in a precarious status or asylum process should continue to be provided supports and allowed to reside in the community while awaiting a decision on their case.

**Age assessment processes**

States use a number of different age assessment mechanisms if the age of people claiming to be minors is in dispute, including documentary evidence, interviews and professional observation and medical assessments. Each has its challenges. Documentary evidence such as birth certificates or identity papers, if they exist, can be unreliable and difficult to verify. Interviews and other observational techniques – visual, cognitive, behavioural and psychological – can be highly subjective and dependent on the expertise and competence, including cross-cultural awareness, of those conducting the assessments.

Medical assessments – including Magnetic Resonance Tomography, bone and dental radiology, and examinations of sexual maturity – have been found to be inaccurate, with some experts suggesting a margin for error of five years either side of the assessed age. Such procedures may also be felt as an intrusion of physical integrity, and may be traumatic. According to the Separated Children in Europe Program (SCEP), age determination techniques 'often do not take into account ethnic variations, they are based on reference materials that for the most commonly used tests are out of date, and generate a margin of error that makes them too inaccurate to use.'

**Good practice**

The UN Committee on the Rights of the Child has offered guidance on both the mechanisms that ought to be used in assessing the ages of unaccompanied or separated minors, and the most appropriate processes by which such mechanisms might be employed. The Committee states that age assessments should include reference to the physical appearance of the person concerned as well as their psychological maturity. The assessment should be conducted in a scientific, safe, child and gender-sensitive and fair manner, avoiding
the risk of violating the child’s physical integrity and giving them due respect. If the determination process does not remove doubts as to the person’s age, then they should be considered a minor. 127

The European Agency for Fundamental Rights articulates its position on age determination thus:

Age assessment should only be used where there are grounds for serious doubts of an individual’s age. If medical examinations are considered essential, the child must give his/her informed consent to the procedure after any possible health and legal consequences have been explained in a simple, child-friendly way and in a language that the child understands. Age assessment should be undertaken in a gender appropriate manner by independent experts familiar with the child’s cultural background and fully respecting the child’s dignity. Recognising that age assessment cannot be precise, in cases of doubt, authorities should treat the person as a child and grant the right to appeal age assessment decisions.128

Age assessment processes can be resource intensive and because of this adequate systems can be prohibitive for many states. This is all the more the case for low-income countries, which are transit or host states for significant numbers of irregular child migrants. Whatever resources a state has at its disposal, the benefit of the doubt should be given to children, or people claiming to be children because the alternative is to risk treating minors as adults. This position is consistent with the principle treating refugee, asylum seeker and irregular migrant children first and foremost as children. Where the child’s year of birth is known, but the day and month are not, the date of birth should be determined in such a way as to provide the longest period of protection to the child as a minor. For example, where a child is believed to have been born in 2000, in the absence of any other information, their date of birth should be deemed to be 31.12.2000 rather than 1.1.2000 thereby providing an additional 12 months of protection, and in some cases an additional 12 months in which the child can seek to sponsor family members overseas for resettlement.

A number of tools and resources relating to age assessment, best interest determination and working with children in the community can be found at the IDC’s website: www.idcoalition.org

UNITED KINGDOM
- Age assessment

Following a 2003 court case known as ‘Merton,’ age assessments in the UK must be carried out by local ‘social services on the basis of their own assessment and not that of the Border agency; it cannot be determined solely on the basis of the youth’s physical appearance, but must be based on a complete assessment that include an individual interview and that considers the applicant’s experiences and past (family history, schooling, recent activities). The assessment must be carried out by experienced social workers, under conditions that guarantee a fair decision; in the event that the minority is rejected, their decision must be justified.129 Some authorities also rely on documents provided by young people, and some use medical examinations. In practice, however, significant problems remain in the way UK authorities conduct age assessment.130
Where there is doubt about a minor’s age, the Swedish Migration Board carries out an age assessment. An official meets with the young person and makes a decision based on his or her story, level of education, age of siblings and parents and, importantly, appearance and demeanour. If necessary, the official can seek further information from other people involved with the young person, including municipal officials. If doubt remains, the Migration Board’s decision maker can request wrist and dental x-rays, although there is no paediatric examination. The Migration Board acknowledges that the margin of error in bone examinations is three years for 17 to 18 year olds and that the margin be interpreted for the benefit of the young person. This means that the young person will only be declared an adult if both x-rays suggest an age of 21 or older.\footnote{131}

In summary, the age assessment process involves several steps. First, a cursory age assessment whereby anyone suspected or claiming to be a child is moved into a minor reception and determination stream. Where doubt remains about whether such a person is in fact a minor, they are subject to a more comprehensive age assessment process. The benefit of the doubt should fall in favour of the minor. Should the claimant be proven to not be a minor, they should have access to an appeal mechanism. If they are found to be an adult, they should be treated as such. Should they be found to be a minor, they should continue in the child-friendly stream. The voice of the child should be heard throughout the age assessment and determination processes.

2.2 Appoint Interim Guardian to Unaccompanied and Separated Children

Having determined, in the first instance, that a refugee, asylum seeker or irregular migrant is a child, and that they may be unaccompanied or separated from their families, states should immediately appoint a guardian. A guardian is an adult who is not the child’s parent (biological or legal) who may be both the primary caregiver, responsible for ensuring their basic needs are met, and the protector of the child’s rights.

While hearing the ‘voice of the child’ is important in any decision regarding children, it is also the case that minors, because of their physical, emotional and cognitive development are often unable to identify and advocate for their own rights and best interests. These limitations – legal, physical and psychosocial – are filled by the minor’s parent, or, in the case of separated or unaccompanied children, their guardians.

Guardianship is ‘the legally recognized relationship between a competent adult and a disadvantaged person who does not have the legal capacity to exercise some or all of her or his rights. A guardian has a range of powers, rights and duties,’ including exercising rights on behalf of the child and protecting the interests of the child.\footnote{132}

Unaccompanied and separated irregular child migrants are, by definition, without a parent or guardian to guide, support and advocate for their rights and interests. The United Nations Office of the High Commissioner for Refugees, Guidelines on Policies and Procedures in Dealing
with Unaccompanied Children Seeking Asylum stipulates that it is incumbent on states as soon as an unaccompanied or separated minor is identified or claims to be a minor, to appoint a competent and independent guardian. Guardians (and case managers, discussed below) need to be able to understand and communicate well with children from culturally and linguistically diverse backgrounds. 133

According to the Separated Children in Europe Program (SCEP) the responsibilities of guardians in such cases are to:

- Ensure that all decisions have the child’s best interests as a primary consideration;
- Ensure the child’s views and opinions are considered in all decisions that affect them;
- Ensure that the child has suitable care, accommodation, education, language support and health care provision and that they are able to practice their religion;
- Ensure the child has suitable legal representation to assist in procedures that will address protection claims and durable solutions;
- Explore, together with the child, the possibility of family tracing and reunification;
- Assist the child to keep in touch with his or her family where appropriate;
- Contribute to a durable solution in the child’s best interests;
- Provide a link, and ensure transparency and cooperation between the child and the various organizations who may provide them with services;
- Engage with the child’s informal network of friends and peers;
- Consult with and advise the child; and
- Advocate on the child’s behalf 134

It is the guardian’s role to advocate to ensure children’s rights and best interests, which includes preventing them from being detained. Given this, it is conceivable that the responsibilities of the guardian may be in conflict with the interests of state migration authorities.

In order to avoid a conflict of interests and to ensure that the guardian is concerned primarily with the best interests of the child, guardians need to be independent of state migration authorities. 135

Guardians in Belgium are entirely unrelated to immigration authorities. They are also independent from, but monitored by, the body charged with their administration, Guardianship Services. Where a conflict arises between a guardian and the Guardianship Services, courts determine whether or not another guardian should be appointed. The guardian’s role, taking the child’s view into account, is:

- To ensure the well-being of the child (which includes education, mental and physical health).
- To build a relationship of trust with the child.
- To help him/her with his/her asylum application and be present at every hearing/interview.
- To appoint a lawyer for the child and also find him/her accommodation.
- To assist the child in family tracing.
- To seek a durable solution for him/her.
- To explain the decisions and ensure the child understands all processes, manage his/her finances and provide reports on the child.” 136
The importance of the role of guardian in preventing the detention of migrant children is reinforced by the consequences of the lack of that role in practice. Children have been kept in detention for a lack of a competent guardian on the basis that it is in their best interests to remain within a detention environment – they are safer, more secure and more able to be cared for – than being released.

In other instances, children have been released from detention but without access to adequate reception resources or effective guardianship to advocate for their rights and interests, have been placed in situations not only of material deprivation, but also of physical and psychological harm.

Guardianship arrangements for unaccompanied or separated minors need to balance strong advocacy for and protection of the welfare of the minor with the flexibility to respond to the diverse needs and interests of children and adolescents. To some extent, this is true for all children: mature adolescents will not require the same level of daily care as younger children, although they do need monitoring and guidance. But there are further complicating factors for unaccompanied and separated refugee, asylum seeker and irregular migrant children and young people.

The experiences of unaccompanied and separated minors who are refugees, asylum seekers and irregular migrants – in their home countries and on their journeys beyond their home countries – can mean that such children and young people may be mature beyond their years and extraordinarily resilient, as well as particularly vulnerable. Some young people may have spent months or years living independently, gaining a worldliness, maturity and sense of responsibility beyond their age. Guardianship arrangements need to accommodate this lived experience, while at the same time being cognisant that physically and psychologically, the young people are still developing.

Conversely, traumatic experiences may mean that older young people need particular assistance and support beyond that which may be normally associated with their age. This means that the amount and type of assistance and support will vary from case to case. It also highlights the need for young people to be active participants – in accordance with their level of maturity – in the decisions that affect their lives. This requires that guardians are able to develop strong and meaningful relationships with the young people for whom they hold the duty of care.

The ‘voice of the child’ is ‘an important part’ of discovering a child’s best interests.

As Crock concludes:
What is clear is that each case ought to be dealt with individually, ensuring that the best interests of [the] child are kept paramount in every decision relating to the child. For older children the principle that children should be able to participate fully in any process affecting their lives is of equal importance.
PHILIPPINES – Guardianship arrangements for undocumented arrivals

Undocumented children located at the border are generally not detained, or if so are released as a matter of course following referral to the Department of Social Welfare and Development, who are delegated as the responsible guardians and provide social work, shelter and healthcare services.  

NETHERLANDS – Guardianship arrangements

Nidos is an organization commissioned by the Dutch authorities to be temporary guardians to unaccompanied minors who are refugees, asylum seekers or other migrants for whom return to their homelands is a realistic option. The organization employs social workers with specific expertise working with children cross culturally. Nidos is responsible for the minor’s reception, although the daily education and care is sourced to third parties under the supervision of the guardians. The ‘guardian is expected to focus on the promotion of the child’s best interests, his/her education, care and protection and the prevention of abuse, disappearances and an existence in illegality.’

2.3. APPOINT CASE MANAGER

Having identified a child refugee, asylum seeker or irregular migrant, whether accompanied, separated or within a family unit, the child or family should be appointed a case manager in order to assess, oversee, advise, support and manage the case throughout the process of awaiting a final migration outcome. The major part of the case management process occurs in step 3 and is discussed below. At this initial point of contact with the minor, the case manager’s role is to conduct an initial intake screening and to refer children and, where applicable, their caregivers to an appropriate community setting. Case managers should have the skills, expertise and supports to work sensitively and effectively with children from different cultural backgrounds. See section 3.1 for details.

2.4. INTAKE ASSESSMENT AND REFERRAL*

Following their appointment, the case-manager should undertake an ‘intake assessment’ where 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. According to the CAP, ‘Screening and assessment of the individual case are important tools in reducing unnecessary detention, as authorities can identify and assess levels of risk and vulnerability as well as the strengths and needs of each person.’ Four key areas of assessment include:

- legal obligations;
- identity, health and security checks;
- vulnerability;
- individual case factors.
Regarding children, the intake assessment should also consider whether the child has family who can care for the child and protect his or her best interests. The intake process will also assess whether the child is at risk of absconding or in danger of being exploited or abused, and apply conditions to the community-based placement, if required, to mitigate such risks. The intake assessment will determine the facilities into which the child will be placed in the immediate term. Ideally, these will be facilities that can accommodate the child beyond the short term, but it is also possible that as the child’s circumstances are better understood, the form of accommodation and types of support the child needs may alter.

An intake assessment should occur whether children are with their families or are unaccompanied or separated. It is a preliminary opportunity for case managers to assess the welfare of children in whatever context they present. Children’s voices must be heard at this point in the process. A ‘mobility map’ where the child represents through drawing significant people and places in their lives can be a useful tool to help to give children a voice and assist with the initial assessment process. Any ‘mobility map’ drawn at this time should be kept as it will become a useful resource to be used throughout the rest of the status and best interest determination processes.

2.5 COMMUNITY PLACEMENT*

The intake assessment, and the community resources available, will determine the best community-based accommodation in which refugee, asylum seeker or irregular migrant children should be placed. Minimum standards of reception of asylum seekers have been articulated by the international community and represent a useful benchmark for understanding what states should provide to refugee, asylum seeker and irregular migrant children outside of the detention environment. Minimum provisions include access to adequate housing, food and clothing, healthcare, education, legal advice, family reunion. Children’s wishes and needs should be taken into account in determining the nature of the community placement.

Housing

Community-based accommodation is central to preventing the detention of children for migration purposes. Refugee, asylum seeker and irregular migrant children, whether they are accompanied by a parent or parents, unaccompanied or separated, need to be accommodated in a place that is safe and secure. While it is inappropriate and contrary to international law and international norms that children be detained, it is also inappropriate for children to be homeless or at risk of homelessness. To be in such a position is to contravene the child’s best interests. Yet refugee, asylum seeker and irregular migrant children are particularly marginalised within society, meaning that their access to accommodation is severely limited. Often such children live in overcrowded and insecure conditions, as highlighted by Adan and Achak’s stories. Sometimes refugee, asylum seeker and irregular migrant children have nowhere to live but on the streets.

It is incumbent on states to ensure that refugee, asylum seeker and irregular migrant children have access to appropriate accommodation – whether short or long term. The Convention on the Rights of the Child specifies the rights of children ‘to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development’ and that

*States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.*

Commenting specifically on unaccompanied and separated children, 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.\textsuperscript{147} 

The Committee makes several further points, including that moving children to different places of residence should be limited and only when in the best interests of the child; that siblings should be kept together; that children with adult relatives arriving with them, or already within the host country, should be able to stay with those relatives unless it is contrary to their best interests; that children’s ‘physical and psychosocial health, protection against domestic violence or exploitation, and access to educational and vocational skills and opportunities’ be assessed regularly; and that children are informed and consulted about the care arrangements being made for them. \textsuperscript{148}

**ADAN, FROM SOMALIA, DETAINED IN GREECE AGED 17**

Adan escaped the conflict in Somalia and travelled though Turkey to Greece. He was detained on more than one occasion. Since being released, He was not working or drawing money. He was not attending school. He slept till late in the day, then came out in the afternoon. He then went to bed late. He lived in a room with 8 other people, and paid 70 Euros per month for the space. Friends of Adan’s said that they lived with 10 people to a room, others 12. One said he was sharing a room with 23 or 25 people. He said that it was difficult to breathe in there. Adan said that the owners of these rooms were exploiting them.

**ACHAK, FROM SUDAN, DETAINED TURKEY AGED 16**

After been imprisoned and tortured in Sudan, Achak fled to Turkey via Egypt and Syria. He was detained for a short period in Turkey and then released.

Achak now stays with a friend in a small room in the basement of an apartment. The room is a little bigger than a double bed. When it rains, the water comes in. It costs the pair TL120 per month. He said that he is ashamed of where he lives. If he sees friends, he will meet them anywhere but his room. Neither Achak nor his room-mate work. They do not have permission to work. They get TL100 from UNHCR – Achak is a recognized refugee awaiting resettlement as is his room-mate. Each pays half the rent. This leaves TL40 per month. Achak said that the situation in Turkey is ‘so difficult.’ He only eats breakfast. He visits some friends. If neither he nor they have food, he will just drink tea.

Achak said that if he did not have serious problems in Sudan, he would not remain in the situation in which he now finds himself, he would not have come to Turkey. He would not have come to Turkey to ‘live like this’.

The committee is concerned that rotating children between places of detention can cause children to lose their once-stable environment. Each relocation is another trauma that children are forced to endure.

There are a number of community placement options that states around the world use to accommodate children rather than to detain them.
Community models include open reception centres, accommodation within ethnic communities, shelters, as well as independent and supported accommodation. It is important that accommodation options take account of the experiences of refugee, asylum seeker and irregular migrant young people. Models of working should include an understanding of the resilience of refugee, asylum seeker and irregular migrant young people, but also of their vulnerabilities and the risks they continue to face, even in destination countries.

In other words, housing and support models need to be designed with full cognisance of the possibility or likelihood that the children involved may face adverse decisions on their protection or migration applications and that it is possible that they may have relatives and friends killed, arrested or subject to other grave human rights violations in their home communities. These are extremely difficult and potentially traumatic experiences to live with and require extensive support and understanding from workers. Anecdotal experience is that this is a time of increased stress for the child and young person where their usual ability to live and function independently is impaired due to the context of uncertainty and lack of durable safety. The risk of self harm or suicide under such stressful circumstances must be considered and protective mechanisms put in place to manage against this risk, such as rostered staff present or on call 24 hours a day for unaccompanied minors.

A gradually decreasing level on onsite staff support may be considered post status grant for separated or unaccompanied minors, however the lasting impact of trauma would need to be assessed and considered before any supports were removed.

Housing and accommodation in the community is different in various countries. These includes models run by the public service, such as open housing and reception centres in Belgium, Sweden and the New Zealand. In Australia and Hong Kong, partnerships between government and nominated welfare agencies and service providers arrange for private rental and shelter accommodation for eligible families. In the United States, foster care arrangements are used for unaccompanied minors.

In other countries civil society has played the key role in providing accommodation, often without government funding, which stretches the capacity of local groups and limits the services to vulnerable children and families. These are often small shelters, religious or community housing.

Whatever the model, it is crucial that the alternative arrangements in the community are adequately resourced so as to not leave the unaccompanied or separated minor 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.

Families with children may also be released with work rights, allowing for independent living arrangements, or children may be released to existing family members to provide for their living needs. Noting the specific vulnerabilities of the child, the state should take steps to confirm the identity of and relationship with the purported relative.

Depending on their circumstances, UAMs can also be accommodated temporarily in emergency shelters for homeless or vulnerable people and with host families. Some UAMs live alone in private housing with the rental contract signed by the guardian.

Similarly, unaccompanied and separated children are accommodated in a variety of circumstances. The accommodation options for such children include shelters, foster care, and independent and supported accommodation.

Beyond the immediate concern of providing a safe and secure environment, community placement arrangements must ensure that refugee, asylum seeker and irregular migrant children have their basic physical, social and emotional needs met. This requires that minimal standards of care and services are available for children in community settings. These threshold
reception resources will be different within 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, irregular child migrants should at least have access to the same level of support as local children in their host communities. Due to the particular experiences of irregular child migrants, some children may also require specialist resources beyond what local children may need.

HEALTH CARE

Children who are refugees, asylum seekers and irregular migrants, 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.’

Unlike many other children, however, refugee, asylum seeker and irregular migrant children often have lived in conditions of deprivation, danger and violence either in their countries of origin, or as part of their journeys, or both. These experiences may have been for short periods or may have extended over years. 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. Many such children, in particular those who are refugees, have further experienced pervasive violence and the stress associated with a country afflicted by war. This may have created deep-rooted feelings of helplessness.

BELGIUM – Housing options for UAMs in Belgium

A number of housing options exist in Belgium, including:

- collective reception facilities
- individual reception facilities (available to children who have been in the collective facilities for at least four months)
- living autonomously but with the assistance of guardians and other social support networks

TURKEY – Asylum seekers living in the community

In Turkey, asylum seekers may live freely in the community but must remain in an assigned city, where they receive basic welfare assistance and access the refugee status determination process. This program has generally been successful, with the incentive to remain in the program is that they lose access to welfare assistance if they leave the city- which is soon to be in 80 cities in Turkey.
The ARSIS reception centre in Athens is a rambling building which accommodates 15 male UAMs. It receives no state funding, although it is a member of the European Refugee Foundation. The residents do not pay for anything at the centre. They receive board, lodging, clothes, public transport tickets, phone cards, and toiletries. The service does not provide cash. The service provides access to psychologists and lawyers. Each resident gets a bed, a desk and a computer. The boys who come to the centre are:

1. assisted to gain documents to make their stay in Greece legal
2. provided with health screening and care
3. assisted to trace their families overseas
4. provided with education, initially doing English and Greek language with volunteer teachers and when they become proficient, they are enrolled in mainstream Greek schools.

Usually, the boys stay for 3-4 years, but some very young boys stay longer. Because of the enormous pressure on beds, the service usually accommodates 15-16 year olds. Younger children stay longer, meaning that the service must assist fewer people. Priority is given to torture survivors and to those with serious health conditions. There is always someone at the house – either him, or one of two security guys.

When the boys become 18, the service works to find them permanent jobs, and then after a year, a house in which they can live independently.

Different states have different capacities to respond to the health concerns of refugee, asylum seeker and irregular migrant children. Countries that do not have adequate capacity to respond to the health needs of irregular child migrants should engage with the international community to assist.

MEANS OF MATERIAL SUPPORT

Children who are refugees, asylum seekers and irregular migrants often live in absolute destitution. Often they leave their countries of origin with very little money. The journey can be expensive, and irregular migrants are at risk of exploitation and theft. Irregular child migrants and their families are ineligible for state support and often cannot work in the regular economy. Often they cannot afford the means of material survival, risking malnutrition and other physical and psychological illness.
Refugee, asylum seeker and irregular migrant children need the means of material survival. They need the capacity to meet their daily nutritional requirements and to be adequately clothed. This is consistent with Article 27 of the Convention on the Rights of the Child noted above, which stipulates that children have a right ‘to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.’  

The capacity of states to deliver adequate means of material support will differ. Where capacity is limited, the Committee on the Rights of the Child has specified that states should ‘accept and facilitate the assistance offered by UNICEF, UNESCO, UNHCR and other United Nations agencies within their respective mandates, as well as, where appropriate, other competent intergovernmental organizations or non-governmental organizations (art. 22 (2)) in order to secure an adequate standard of living for unaccompanied and separated children.’  

EDUCATION AND TRAINING

Refugee, asylum seeker and irregular migrant children, as children, have a right to education, to reach their full potential and to contribute to their culture and society.  

It is incumbent on states to ensure that this right is actualized. A state should ensure that while children who are refugees, asylum seekers and irregular migrants are in its jurisdiction, they have access to appropriate education and training–based on the child’s age and experiences and on the amount of time that the child is within the state’s jurisdiction. Education is not only important for learning opportunities it generates, but also because it assists in maintaining a sense of normality for young people, and in maintaining good mental health. Vocational training may also provide livelihood opportunities for those whose asylum claims are ultimately unsuccessful necessitating their return home.

Similarly, many children who are refugees, asylum seekers and irregular migrants express a desire to work and earn money. Some have debts to family or smugglers. Others have been charged with the task of earning an income in the destination country in order to send money home to support their families’ survival. There is a need on the part of states to ensure that such children are not exploited as noted by the International Labour Organization.
HUNGARY – Access to education

As minors, the residents of the UAM shelter are required by Hungarian law to attend school until they are 18 years old. Initially, the young people attend Hungarian classes provided on site. There have been challenges in getting these young people into the local school system. However, in partnership with a small NGO, the shelter has now developed a relationship with one of the local schools to create a class for UAMs with a dedicated teacher. The class focuses on Hungarian and maths; however, individual learning plans are developed to have these students work through the standardised exams used to graduate students through the first 8 years of school in Hungary. It is only after passing these exams that students can enrol in secondary school in Hungary. At the end of the 2008 school year, the first eight UAM students graduated in this way, allowing them to enter a secondary education scheme for refugees in Budapest.157

SPAIN – Access to education

Children living in an asylum seeker reception centre have access to the public education system. Social workers within the centre arrange for children to attend the local public school.158

RECREATIONAL, RELIGIOUS AND CULTURAL OPPORTUNITIES

All children, including those who are refugees, asylum seekers and irregular migrants, have the right to ‘rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts’159 and ‘to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.’160

Refugee, asylum seeker and irregular migrant children have had their childhoods disrupted by the requirement to leave their home communities and make the treacherous journey to another place. They may be in places that are culturally and religiously dissimilar to their homelands. As part of ensuring their development as full human beings, states must provide opportunities for refugee, asylum seeker and irregular migrant children to participate in recreational, cultural and religious opportunities within both their cultural and religious roots, but also within the host community. States should also ensure as far as practical that children are not moved between geographical locations (within the destination country) so far apart as to disrupt any community, social, religious, cultural or recreational connections they have established.
Step two in the child sensitive assessment and placement model is designed to direct refugee, asylum seeker and irregular migrant children into child-friendly processes in which their best interests will be served. It is expected that step two will take only a few hours. These steps require urgent action from the state to ensure that children are at the greatest chance of being protected. Given the possibility that the child’s journey has been dangerous and traumatic it is necessary as quickly as possible to establish a secure environment free from the features that led the child to leave their homeland (human rights violations, poverty, exploitation, fear etc) in which the child’s best interests can be determined.

The third step in the child sensitive assessment and placement model involves managing and processing young people within the community. Significantly, this involves a case management process. Case management regarding children should include a best interest determination process and an assessment of refugee, asylum seeker and irregular migrants’ legal basis for being in the country.

3.1 CASE MANAGEMENT

Research indicates that case management is an essential and effective way to work with individuals awaiting final migration outcomes in the community, encouraging cooperation, compliance and improving wellbeing. Case managers are generally social workers, psychologists or other human services professionals with experience in working with vulnerable individuals and the refugee and migration process. Case managers form working relationships with individuals and families to empower, enhance their wellbeing and problem-solving capacities, resolve outstanding issues, provide information on how to obtain services and resources in their communities, and work towards the protection of people who are not in a position to do so themselves, such as children and youth in need of care or persons experiencing mental illness. Case managers who work with refugee, asylum seeker and irregular migrant children should have the expertise and skills to work sensitively and effectively with children from different cultural backgrounds. Skilled, child-sensitive workers are best able to ensure that children’s voices are heard and taken seriously throughout the case management process.

The purpose of the case management process (and the case manager within this process) is to prevent children from being detained and to support, prepare and manage them throughout the migration process. Case management occurs throughout the entire time that the refugee, asylum seeker or irregular migrant child is being processed to determine whether or not they remain in the country.
CASE MANAGEMENT IN PRACTICE

Applied in the context of migration, case management is a strategy for supporting and managing refugees, asylum seekers and irregular migrants in the community or in detention, whilst their status is being resolved. The case manager role differs to that of an immigration officer, bureaucrat or guard. Case managers are not making decisions on immigration cases or enforcing issues of compliance. Rather, the case manager forms an essential link between the individual, authorities and the community.

The case manager may:

- **Promote informed decision making** by both the government decision maker and individual in question, by ensuring timely access to all relevant information, options, rights and responsibilities. Case managers ensure individuals have an understanding of their immigration status, legal and administrative processes, and the options available to them in their country of origin or another country. The more transparent the process, the more likely a person is to feel that all claims have been heard and considered, and understand what their options are and therefore will be more able to comply with any requirements placed on them.

- **Promote timely and fair case resolution.** Case management can assist in achieving faster and more sustainable immigration decisions, building confidence in the determination process and reducing unmeritorious appeals. This in turn can improve final immigration outcomes, such as integration as early as possible, to try and prevent the need for case review later. In addition, case management assists with clients being prepared and more likely to comply with immigration decisions including exploring departure options if protection is refused.

- **Promote coping and wellbeing** by facilitating access to community services and support networks. Where a person with an identified vulnerability, such as health concerns or having been exposed to torture, is supported during status determination, better outcomes for the individual, community and government are achieved, regardless of the immigration outcome. For example, if the person is granted refugee status or a visa, he or she may be more likely to be well enough to engage with, and make a meaningful contribution to, society, such as supporting themselves and their family. Alternatively, they may be in a better position to return home and be resettled if their case is refused.

- **Avoid unnecessary and wrongful detention** by ensuring case-by-case assessments of the risks, vulnerabilities and needs of individuals and exploring all options and supporting implementation of appropriate decisions. With reliable information, authorities can make informed decisions related to actual flight risk or vulnerabilities. In addition, where a person is determined not to be a refugee or eligible for any other visa, case managers can support the client to look at all remaining options, including departure.

### 3.2 BEST INTEREST DETERMINATION

A good deal has been written about the provision in Article 3 of the CRC that the ‘best interest of the child’ be the ‘primary consideration’ in all decisions relating to children. Because of the previous work on the subject, this paper will not examine the determination of the best interests of children in detail. However, it is worth noting some generally agreed positions regarding best interests determinations and how they might apply to preventing refugee, asylum seeker and irregular migrant children from being detained.

As well as the general principles that apply in the CRC, it is significant that the best interests of the child must include both short and long-term considerations. Given what we know about the impact of detention on minors, it is in neither their long term nor short term interests. The emphasis of the CRC on ensuring the best interests of the child – a positive requirement, and not only a passive one – means that it is incumbent on states to create environments and institutions in which children’s wellbeing is enhanced. Not only is detention contrary to this requirement, but it is consequential that children ought to have their liberty in contexts
where their rights and their physical, psychological and developmental interests and needs can be met. This points to a further important aspect of the notion of the best interests of the child: it applies both to the individual children and to children as a group.\textsuperscript{166} States are required to ensure the best interests of children as a group or constituency are reflected in legislation, policy and practice. States ought to legislate against the detention of minors – since it is in their best interests not to be detained – and to ensure this is also reflected in policy and practice.

Determining the best interest of the child must also occur at an individual level. The UNHCR has developed Guidelines on Determining the Best Interests of the Child.\textsuperscript{167} This is a comprehensive resource and is recommended by the IDC. More succinctly, the Separated Children in Europe Program has articulated a set of areas that need to be considered in determining the best interests of the child. These include:

- the child’s family situation;
- the situation in their country of origin;
- their particular vulnerabilities;
- their safety and the risks they are exposed to and their protection needs;
- their level of integration in the host country; and
- their mental and physical health, education and socio-economic conditions.\textsuperscript{168}

These must be understood within the context of the individual child’s gender, nationality, ethnic, cultural and linguistic background. Furthermore, the determination of a child’s best interests must be ‘a multi-disciplinary exercise involving relevant actors and undertaken by specialists and experts who work with children.’\textsuperscript{169}

SPECIAL NEEDS

According to the United Nations Convention on the Rights of People with Disabilities, it is incumbent on states ‘to ensure that people with disabilities on an equal basis with others:

(a) Enjoy the right to liberty and security of person;
(b) Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.\textsuperscript{170}

Children with special needs are a particularly vulnerable group of children. According to various British medical colleges, ‘Children with long-term conditions such as sickle cell disease, diabetes mellitus and children with disabilities are never fit for detention.’\textsuperscript{171} Refugees, asylum seekers and irregular migrant children who have special needs ought never be detained.\textsuperscript{172}

States need to provide irregular child migrants who have special needs with appropriate care and protection, whether they be in families, or unaccompanied or separated. This is consistent with the CRC which articulates the rights of ‘mentally or physically disabled’ children to enjoy ‘a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child’s active participation in the community.’\textsuperscript{173} Recognising this right, it is incumbent on states to ‘encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child’s condition and to the circumstances of the parents or others caring for the child.’\textsuperscript{174}
The best interests determination is an ongoing process whereby the caseworker, along with other key stakeholders including children and their guardians, seek to explore and set in place mechanisms to ensure a child’s best interests are realised. It may be the case that once a best interest determination process has begun, decisions made at the assessment and referral stage may need to be reviewed or changed.

3.3 PROTECTION NEEDS*

States must determine whether or not they have protection or other humanitarian obligations to refugee, asylum seeker and irregular migrant children within their territories. This process should be undertaken with the involvement of case managers, independent legal advisers, and, in the cases of unaccompanied and separated children, with the support of the guardian. Children’s voices should also be prominent in this process.

As established in chapter 2, irregular migration includes people who leave their homes for a whole host of reasons, including seeking protection. Refugee, asylum seeker and irregular migrant children leave their home communities and make precarious journeys for a reason. In some instances, they will engage a receiving state’s protection obligations. In others, they will not.

According to the UNHCR, ‘Children should be entitled to access to asylum procedures, regardless of their age.’ The Convention on the Rights of the Child stipulates that children who are asylum seekers or refugees should ‘receive appropriate protection and humanitarian assistance’ to enjoy their rights to international protection. Further, children are to be protected from sexual exploitation and abuse, trafficking and other forms of exploitation as well as from torture or other cruel, inhuman or degrading treatment or punishment and from capital punishment and life imprisonment. UNHCR has issued specific advice regarding determining the protection needs of child refugees and asylum seekers. The Committee on the Rights of the Child notes that in determining refugee status of children, assessment procedures need to be ‘child-sensitive’ and take account of the ‘child-specific’ nature of persecution. The Committee has written:

In particular, the refugee definition in that Convention must be interpreted in an age and gender-sensitive manner, taking into account the particular motives for, and forms and manifestations of, persecution experienced by children. Persecution of kin; under-age recruitment; trafficking of children for prostitution; and sexual exploitation or subjection to female genital mutilation, are some of the child-specific forms and manifestations of persecution which may justify the granting of refugee status if such acts are related to one of the 1951 Refugee Convention grounds. States should, therefore, give utmost attention to such child-specific forms and manifestations of persecution as well as gender-based violence in national refugee status-determination procedures.

States should be mindful of the difficulties children have in adequately representing their case for permanent status or protection. At the very time when a child’s psychological defences encourage repression of painful and traumatic experiences, the refugee determination process and interviews often requires the child to articulate their fears of persecution and the painful memories of their experiences that underpin the fear of return. The child is thus faced with an unenviable choice between repression and maintaining emotional equilibrium or bearing witness, reliving and exposing their vulnerability in testifying to the persecution they hope may assist in proving their case for asylum.

Further, according to the Committee, children who do not meet the definition of a refugee according to the 1951 Refugees Convention, but who nonetheless have protection concerns, should be granted complementary protection.

Where states are unable to establish and resource procedures to determine such concerns, they should engage with the international community for assistance.
LEGAL ADVICE AND ASSISTANCE AND INTERPRETERS

As well as having access to protection determination processes, refugee, asylum seeker and irregular migrant children should have access to independent legal advice and assistance and appropriate interpreters at all stages of their application process including judicial review. This is consistent with the Committee on the Rights of the Child which has written: ‘The unaccompanied or separated child should also, in all cases, be given access, free of charge, to a qualified legal representative…’ \(^{185}\) and ‘[w]herever the child is unable to communicate directly with the qualified official in a common language, the assistance of a qualified interpreter should be sought.’ \(^{186}\) Further, the Committee calls for unaccompanied and separated children in detention to be ‘provided with prompt and free access to legal and other appropriate assistance, including the assignment of a legal representative.’\(^{187}\) The absence of a parent or relative accompanying the child seeker should not be permitted to negatively impact the unaccompanied or separated child refugee or asylum seeker’s ability to pursue their claim through all levels. For example, the absence of an individual prepared to perform the function of a litigation guardian (against whom costs could be awarded in the event of an unsuccessful court action) at the judicial review level should not impede the child’s right to take their claim before the courts.
A Burmese boy detained for a month after fleeing his home © Jon Frank
Decisions regarding refugee, asylum seeker and irregular migrant children should be subject to administrative and judicial oversight. Whether they are about guardians, case workers and the casework process, community placement or the legal status of refugee, asylum seeker and irregular migrant children, decisions should be reviewable on the basis of merit and lawfulness. Such decisions can have far-reaching implications for the young people concerned and care should be taken to ensure the quality of decision making. Step 4 of the child sensitive assessment and placement model involves safeguarding and reviewing.

4.1 PERIODIC REVIEW

The community placement options in which refugee, asylum seeker and irregular migrant children are placed, whether alone or with family members, should be subject to review. While there should be flexibility regarding the timing of such review mechanisms – because the circumstances of young people can change due to a host of factors including relationship breakdown, the threat of domestic violence, opportunities to work or study – there are two important occasions after which a review of community placement conditions is necessary. The first is after a comprehensive Best Interest Determination (BID). According to the child sensitive assessment and placement model, the initial community placement occurs within hours of the child coming to the attention of state officials as a means of preventing the child’s detention.

Following a comprehensive BID, it may be determined that the child’s best interests will be served in an alternative placement setting. For example, it may be that the child needs more support than initially anticipated, and for this reason should be accommodated in a supported housing setting. Or it may be assessed that the child is older than first thought, and can live in a more independent context.

The second important time after which community placement conditions should be reassessed is following the determination of the child’s legal and protection status. Children found to be owed the state’s protection may exit the temporary accommodation and reception arrangements they were in during their legal status assessment and enter into a process that ensures their interests and well being in the longer term (see Step 5 below). Alternatively, it may be in their best interests to remain in the stability of the community setting they were in during the status determination process.

If a state finds, as a result of its protection or humanitarian determination process, that it does not owe a refugee, asylum seeker or irregular migrant child a migration solution within its territory, then the state may make preparations for the child to leave its territory. The decision not to allow a child to remain within a state changes the circumstances of the community placement. At this time, the community placement conditions established at Step 2 should be
reviewed. There may be a need for more stringent conditions to be put on the placement to ensure that the child complies with the decision of the state. According to the CAP,

If authorities remain concerned about the placement of an individual in the community, there are [sic] a range of additional mechanisms that can be introduced to promote engagement with authorities that do not place undue restrictions on freedom of movement.

These conditions include individual undertakings, monitoring, supervision, intensive case resolution, and negative consequences for non-compliance. These apply to minors as well as adults.

However, because the child has been engaged in effect counselling and support around the possible migration outcomes as part of the case management process (Step 3) the result from the protection or humanitarian determination process will not be surprising. Further preparations can be made with the child to facilitate their leaving the state.

4.2 PRE-REMOVAL RISK ASSESSMENT*

Given the serious potential implications arising from children leaving a state to which they have fled, whether to return to their country of origin or to a third country, and the vulnerability of children, there is a need for an assessment of any risks associated with children leaving the state. This may include concerns not discovered during the protection or humanitarian determination process. It may involve new information which opens up legal possibilities that have been closed until this point. Children’s voices must be heard during this stage.

Those children who cannot be removed safely and in their best interests ought to be allowed to remain in the state.

Regarding UAMs in particular, the Centre for Public Policy Priorities has written:

The decision to return an unaccompanied child to his country of origin—in a manner that secures his safety and rights and serves to curb the threat of repeated migration—is a matter of determining what is in the best interest of the child. No child should be returned to his country of origin without confirmation of a secure and sustainable plan for his safe placement in a family environment and a mechanism for ensuring that plan’s implementation. 188

Those who do not face any risk as a result of leaving the state ought to be expected to leave.

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CANADA’S
- Pre Removal Risk Assessment

Although not specifically designed to address the needs of children, asylum seekers whose cases have been rejected and who are expected to depart Canada can apply for protection under the Pre-Removal Risk Assessment process. This process takes into consideration a change in circumstances in asylum seekers’ countries of origin, new information demonstrating that asylum seekers will be at risk of persecution, torture or to cruel, inhuman or unusual treatment or punishment, or the possibility that asylum seekers’ lives may be otherwise endangered should they be compelled to leave Canada. The PRRA is not an appeal against earlier decisions and consideration is given only to new information or evidence. The PRRA decision is usually made on the papers. Only a very small percentage of applicants are granted the right to remain in Canada under the PRRA. 189
The final step in the child sensitive assessment and placement model is the realisation of the decision of the state either to allow the refugee, asylum seeker or irregular migrant child to remain, or to expect that they will leave the state. If the child is allowed to remain – either 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, health etc. and facilitating family reunification if appropriate. As the UNHCR has noted,

*Family reunion is the first priority and it is essential that unaccompanied children are assisted in locating and communicating with their family members... All attempts should be made to reunite the child with his/ her family or other person to whom the child is close, when the best interests of the child would be met by such a reunion. When family reunion takes place the family may have been separated for a long period of time. They must therefore be given time and support to re-establish family relationships.*  

Children should be supported to integrate into the local community. According to the Committee on the Rights of the Child, states should cooperate with the international community to protect refugee and asylum seeking children, including assisting tracing children’s families.

In the longer term, recognising the importance of a permanent solution for the child, the state should implement processes for the child to regularise his or her legal status to remain and build a future in the country.

Where the state determines that it has no obligations to a particular child, there are a number of options open to it and to the child. The state could facilitate a dignified, prepared and supported voluntary departure to the child’s country of origin or to a third country. The child’s best interests need to remain paramount throughout this process. The child’s best interests are most likely to be met if the child participates in a reintegration program in the destination country – whether that is their country of origin or third country. Such programs should offer a range of supports to assist the child to begin to rebuild their lives, including accommodation, welfare, education and training, health care, family reunion, etc.
BELGIUM – Avoiding detaining children in families pending return

Families with children who are required to leave Belgium are accommodated in individual open housing units, called return-houses.

“There are two categories of family in the return-houses: the families who were arrested on the territory and the families who asked for asylum at the border. Family unity is maintained even when children have turned 18 years old. Family members are allowed to exit the house, providing that one adult member of the family remains present in the unit. Children are allowed to attend school, even though it is sometimes difficult to ensure in practice (due to lack of available places in schools, short period prior to the return, etc). Families have access to health care in addition to an obligation to a medical check when entering the return-houses and to a fit-to-fly examination before return.

Within the return houses, families receive counselling from a return-coach, who works for the Foreigners Office. Each coach works with 3 to 4 families at a time and is in almost daily contact on behalf of the families with the authorities. The coach’s role is to prepare families for return whilst exploring the possibilities of them receiving a residence permit and supporting them in their current situation. They provide families with information and coordinate the involvement of other actors working with the family, for example, lawyers, and help children enrol in school. They also prepare families for regularisation of their stay. From October 2008 up to February 2011, 145 families with 268 children stayed in the return houses. Amongst them, 60 families returned to their country of origin or to a third country. In very few cases were coercive measures necessary for the return.”

GUATEMALA – Guatemalan Child Return and Reintegration Project (GCRPP)

KIND has partnered with The Global Fund for Children (GFC) to develop a pilot project to ensure that UAMs who do not have valid protection claims in the US can return safely to their homelands and to ‘address the conditions that caused them to make the dangerous journey to the United States alone.’ The Guatemalan Child Return and Reintegration Project (GCRPP) ‘works to ensure a safe return for unaccompanied children and provide support upon their arrival to Guatemala to access vital services.’
A further option available to states that determine that they do not have obligations to a particular refugee, asylum seeker or irregular migrant child is for the child (and their family, where applicable) to leave the state and return to it with a valid visa and other necessary documentation.

CASE STUDY: CASE MANAGEMENT WITH FAMILIES PENDING REMOVAL

Cecilia is a mother with two sons aged seven and 16. Five years ago, she came to Belgium from Brazil without documents to join her sister. In 2006, Cecilia was detained and sent back to Brazil; however, a month later she made her way back to Belgium intending to stay and work. Cecilia was refused legal residential status and she and her children were placed in the open family units pending their removal. Cecilia was assigned a case manager, and was initially assessed as a risk to abscond, as she was adamant on staying in Belgium.

The case manager sought legal advice for Cecilia to ensure all her options to remain in the country legally had been fully explored. They found that Cecilia would need to return to Brazil and apply for a visa in order to come back to Belgium and work legally. The case manager made sure Cecilia knew what steps to take to apply for a visa from Brazil. The case manager then engaged the International Organization for Migration to work with Cecilia to explore possibilities to support the family’s return to Brazil.

By working with the case manager Cecilia had the time to contemplate the future and make the best decision for her and her children. Cecilia finally agreed to return to Brazil.

It may also be possible for the child (and their family) to return to their country of origin but to relocate to another place within that country. In some circumstances this may be consistent with the best interests of the child.
PREPARING, SUPPORTING AND EMPOWERING INDIVIDUALS FOR A FINAL MIGRATION OUTCOME

International research shows that with case management support, asylum seekers and irregular migrants are prepared, supported and empowered throughout the migration process and are more likely to comply with decisions and are better able to cope with return or integration. The core principle of building trust, respecting and valuing each person as an individual with dignity and with specific skills and needs are fundamental. Providing a supportive role that is both realistic and sustainable, and also compassionate and consistent, for the period of time that the individual is awaiting a final outcome, is critical. Strategies used by case managers in working with individuals facing removal include exploring all legal options to remain, third country options, relocation to another area in the country of origin and repatriation assistance, along with flexibility to respond to barriers facing return, such as stabilising health conditions. 196
Should a child without a right to remain fail to return voluntarily, it is reasonable that a state seek to ensure that the child departs. However, physical force should not be used against children. Children should not be physically or chemically restrained. Rather, it is acceptable that a state enforce a mandatory return, but it must be based on the best interests of the child. According to the European Committee for Refugees and Exiles, mandatory return refers to persons who no longer have a legal basis for remaining in the territory of the host state and who are therefore required by law to leave the country. It also applies to individuals who have consented to leave, or have been induced to leave by means of incentives or threats of sanctions.

A study on “best practices in the field of the return of minors” was carried out by ECRE, in strategic partnership with Save the Children, on behalf of the European Commission in 2011. The study looked at legislation and practices regarding the return of children, either unaccompanied or within families, who return voluntarily or are forced to return because of their status as illegally staying third country nationals.

The checklist below from ECRE and Save the Children provides helpful guidance to states in developing an effective system for how to consider the return of children.

A CHECKLIST TO ACHIEVE GOOD PRACTICES WHEN CONSIDERING THE RETURN OF CHILDREN TO THIRD COUNTRIES: A TOOL FOR QUALITY PLANNING FOR MEMBER STATES.

1. DESIGNING THE RETURN PROCEDURE: GENERAL CHILD RIGHTS AND CHILD PROTECTION

1.1. National child protection provisions apply to the situation of children who are subject to a return procedure and appropriate child protection procedures are followed where necessary

1.2. Mechanisms exist to identify children who may be victims of trafficking or who are at risk of abuse, exploitation, neglect or violence

1.3. When designing the return procedure, specific safeguards must be introduced throughout the return process to ensure that the best interests of the child is a primary consideration and that appropriate respect is given to best interests throughout the process

1.4. When designing the return procedure, specific safeguards must be introduced to ensure that children are provided with opportunities to have their views and opinions heard

1.5. Prior to any return decision and procedure, voluntary return is explored with families with children, with appropriate consideration of the best interests of the children and appropriate consultation with children

2. ASSISTANCE TO UNACCOMPANIED AND SEPARATED CHILDREN PRIOR TO A RETURN DECISION

2.1. Mechanisms are established to identify children who are separated from their primary caregivers

2.2. Prior to any return decision and procedure, unaccompanied and separated children are provided with special protection and assistance, with a view to ensuring that all decisions have their best interests as a primary consideration

2.3. Processes are in place to restore family links for unaccompanied or separated children where this is requested by the child or their guardian, is in the best interests of the child and where it is safe to do so for family members

2.4. A formal procedure for determining the best interests of an unaccompanied or separated child has been undertaken, with a view to identifying a durable solution for the child
3. DECISION MAKING PROCEDURES

3.1. Decision making procedures regarding return take specific account of the situation of children, including children within families.

3.2. Information has been gathered to indicate that a child will not be at risk of harm, at risk of refoulement, or at risk of (re) trafficking or exploitation following their return.

3.3. Lawyers with special expertise are appointed to families with children and to unaccompanied children to represent the children throughout the decision-making process and all relevant appeals.

3.4. A prompt and effective remedy exists for children to appeal against the decision to return and such appeals have a suspensive effect on any return decision.

6. THE RETURN PROCESS

6.1. If, after appropriate consideration of all durable solutions, the return option is pursued, relevant information regarding the return procedure is given to the child concerned.

6.2. A plan is in place to assist the child with reintegration following their return.

6.3. Practices for the removal of children are appropriate and proportionate.

6.4. Mechanisms allow for unaccompanied and separated children to be escorted on their journey of return.

4. POST DECISION AND PRE RETURN PHASE

4.1. A voluntary departure period is afforded to returns of families with children to ensure minimal disruption to the child’s situation.

4.2. Children have access to education, health and accommodation services pending return.

4.3. Family unity is maintained throughout all stages of the return procedure.

7. ARRIVAL IN COUNTRY OF RETURN AND

7.1. Procedures exist for the formal transfer of care and custodial responsibilities for the child.

7.2. Appropriate reintegration support exists for returning children.

7.3. Formal procedures for monitoring the outcomes of the impact of return for children exist in countries of return.

5. DETENTION

5.1. Alternatives to detention are in place and are fully considered in each case before a decision to detain is taken.

5.2. Detention is used only as a measure of last resort and for the shortest possible period, is regularly reviewed, and children have access to legal advisers and other actors as well as the possibility to challenge the detention decision.

5.3. Detention conditions are suitable for families with children.

5.4. Unaccompanied children are not detained in adult accommodation.

ECRE and Save the Children, Comparative study on best practices in the field of return of minors, December 2011.
CONCLUSION

The 5-step Child-sensitive Assessment and Placement model is designed to prevent refugee, asylum seeker and irregular migrant children from being placed in detention. It takes states’ interests to manage migration seriously, while at the same time recognising that it is never in the best interests of children to be detained.

The CCAP model has a solid evidence base. Research indicates high levels of compliance among refugees, asylum seekers and irregular migrants who are in supported alternative to detention processes. Similarly, more failed asylum seekers and other migrants who are within such processes chose to leave a state voluntarily compared with those who are not involved in alternative to detention schemes. The evidence suggests that detention does not deter potential irregular migration and nor does it guarantee the removal or return of irregular migrants.

CCAP is a comprehensive model that offers ways of avoiding detaining refugee, asylum seeker and irregular migrant children from the moment they come to the attention of the state, throughout the assessment of the status, and through to the resolution of their cases. The examples presented here of policies and practices already used by states across the world to prevent detaining children demonstrates that the model is both realistic and achievable, as well as being humane.

Tools

A number of tools such as the Child-friendly Community Assessment and Placement (CCAP) model are available at www.idcoalition.org/ccap

AUSTRALIA – Community Assistance Scheme

The CAS is a comprehensive early intervention model using different organizations, such as the Australian Red Cross, the Immigration Advice and Application Assistance Scheme (IAAS) and the International Organization for Migration (IOM) to provide welfare and legal advice.

Specific services depend on the identified needs of clients, but may include:

- Community assistance, including assistance with food, clothing, basic living expenses, health care, and accommodation, which is provided by the Australian Red Cross.
- Immigration advice and application assistance to vulnerable people, delivered by providers under the Immigration Advice and Application Assistance Scheme (IAAS).
- Information and counselling services, provided by the International Organization for Migration (IOM). The IOM provides information on immigration processes and assistance to people and prepares them for their immigration outcome.

Case managers are responsible for overseeing the case, meeting regularly with their clients and coordinating case conferences with client and service providers at critical incidents, such as a refusal or change of circumstance.

Of the 918 people initially assisted, 560 (61%) had a final immigration outcome. Of this group 370 people (66%) received a temporary or permanent visa to remain, 114 people (20%) voluntarily departed, 37 people (7%) absconded, 33 people (6%) were removed and 6 people (1%) died. These figures show that 93% of people complied with their reporting and other obligations and that 60% of those not granted a visa to remain in the country voluntarily departed.
RECOMMENDATIONS

Recommendation 6.1:
That States articulate in law and policy a presumption that children will not be detained for immigration purposes.

Recommendation 6.2:
That upon first encountering a refugee, asylum seeker or irregular migrant child, or such a person claiming to be a child, or someone who appears despite their claims to the contrary to be a child, states treat the person as though they are a child.

Recommendation 6.3:
That when in doubt about the age of a refugee, asylum seeker or irregular migrant claiming to be a child, that States undertake a process of age assessment that is comprehensive, multidisciplinary and child- and gender-sensitive and that applies the benefit of the doubt and any margin of error in favour of the individual concerned.

Recommendation 6.4:
That prior to a comprehensive age assessment process being undertaken, unaccompanied persons claiming to be children must be allocated an independent guardian to advocate for their best interests.

Recommendation 6.5:
That a guardian be appointed to an unaccompanied or separated child as soon as a State is aware that the person is or may be a child without an adult guardian.

Recommendation 6.6:
That guardians have specialist knowledge and expertise in dealing with children of refugee or migrant background.

Recommendation 6.7:
That States establish guardians who are independent of state migration authorities, do not have any potential conflict of interest and are mandated to act in the child's best interests. Given the power of guardians over the lives of young people, the institution of guardianship should also be independently monitored.

Recommendation 6.8:
That guardianship arrangements for unaccompanied and separated children are flexible enough to respond to the diverse rights, needs and interests of children and adolescents, mindful that the migration process can have a significant impact on children's lives.

Recommendation 6.9:
That the 'voice of the child' is an important aspect of guardianship arrangements and in the determination of the child's best interests and that opportunities for children to input into decisions affecting them are built into the decision-making process.

Recommendation 6.10:
That consistent with the authoritative guidance of the Committee on the Rights of the Child, refugee, asylum seeker and irregular migrant children be provided with access to safe and secure accommodation appropriate to their age, gender, cultural background, and family situation, pending a resolution of their migration status.
Recommendation 6.11:
That refugee, asylum seeker and irregular migrant children have access to the same level of social resources in the community as native born children in that community.

Recommendation 6.12:
That States provide the highest level of physical and psychological health care to refugee, asylum seeker and irregular migrant children, acknowledging the particular needs of such children arising from their experiences.

Recommendation 6.13:
That States without the capacity to provide adequate physical and mental health care to refugee, asylum seeker and irregular migrant children draw on the international community, including UN agencies and non-governmental organizations, to assist in ensuring that such children have adequate health care.

Recommendation 6.14:
That States provide refugee, asylum seeker and irregular migrant children with resources and support to meet their basic material needs.

Recommendation 6.15:
That States without the capacity to provide for refugee, asylum seeker and irregular migrant children’s basic material needs engage with the international community, including UN agencies and non-governmental organizations, to assist in ensuring that such needs be met.

Recommendation 6.16:
That States provide refugee, asylum seeker and irregular migrant children with educational and training opportunities appropriate to their age and experiences as well as responding to their wishes and capacities.

Recommendation 6.17:
That States without the capacity to provide for refugee, asylum seeker and irregular migrant children’s education and training engage with the international community, including UN agencies and non-governmental organizations, to assist in ensuring that such needs be met.

Recommendation 6.18:
That States provide opportunities for refugee, asylum seeker and irregular migrant children to participate in recreational, cultural and religious opportunities consistent with their cultural and religious identity, and within the host community.

Recommendation 6.19:
That States develop policies and practices for children to live with dignity within the community consistent with their best interests.

Recommendation 6.21:
That the formal Best Interests Determination involve the child’s guardian and other relevant experts and agencies, as well as due consideration of the child’s voice.

Recommendation 6.22:
Refugee, asylum seeker and irregular migrant children with special needs ought never be detained.
Recommendation 6.23:
That States ensure that children who are refugees, asylum seekers or irregular migrants with special needs have access to medical, social and other facilities in order to live in safety and with dignity in the community.

Recommendation 6.24:
That refugee, asylum seeker and irregular migrant children have access to protection determination processes that are child and gender-sensitive, and should they be found to have protection needs, be granted appropriate protection, including the relevant rights attached to such protection.

Recommendation 6.25:
That States provide refugee, asylum seeker and irregular migrant children with free, independent legal assistance and advice, and, where appropriate interpreters who can speak a language they can understand, to enable the children to engage most effectively in protection determination processes.