



**ENSURING UNACCOMPANIED CHILDREN
AVOID THE HARMS OF IMMIGRATION DETENTION**

Keeping Children Safe

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KEY POINTS

- Child-sensitive migration systems can protect unaccompanied children and meet government expectations
- The responsibility of states to protect and seek alternative care for children is outlined in Article 20 of the CRC
- Several principles underpin child-sensitive migration systems, including that the best interest of the child comes first
- Existing child protection systems can be used as a foundation to build upon and, where possible, integrate alternative care systems
- Immigration detention is not a mechanism for providing child protection
- Placement and care options include foster care, kinship care, child-headed households and institutional care

EXECUTIVE SUMMARY

This briefing paper explores alternative care for unaccompanied children in the context of international migration. Children who travel across borders without a parent, guardian or adult carer are particularly vulnerable to exploitation and harm. This risk is heightened for children held in immigration detention. Despite clarification that immigration detention is a child rights violation, many unaccompanied children are held in immigration detention facilities alongside unrelated adults.

Child-sensitive options, rather than immigration detention, can be utilised by states when responding to a child in the context of migration. This paper outlines the principles and foundations that underpin child-sensitive migration systems. It describes the elements needed at different stages of the migration process, including upon first contact with the child, during placement in care, and when approaching a resolution of their migration situation. The paper demonstrates that alternative care systems for unaccompanied children can provide appropriate protection and care for children while also ensuring their migration situation is resolved.

I. BACKGROUND

Children¹ are on the move in greater numbers than ever before. In 2016, there were an estimated 31 million children living outside their country of birth, including 11 million refugee or asylum seeker children.²

Among this number are hundreds of thousands of unaccompanied children,³ or children who are separated from both parents and who are not being cared for by an adult who, by law or custom, is responsible for doing so.⁴ There are many reasons children find themselves travelling without a parent or guardian. Some children set out on their own, having been sent by their family to escape persecution and violence (such as forced conscription or prostitution by local militia). They may set out seeking to join parents, siblings or other family members who are living in another country. Some become separated from their parents or family group while on the journey; this is particularly common in a chaotic context of fleeing war or generalised violence. Children may also become separated if kidnapped or otherwise fall victim to human trafficking. Some set out alone to find work to support their family, especially if their parents have died.

Unaccompanied children are particularly vulnerable to mistreatment and abuse without the protection of a parent or other adult. Trafficking and exploitation, including forced prostitution and labour bondage, are very real dangers for unaccompanied children.⁵

IMMIGRATION DETENTION OF CHILDREN

Hundreds of thousands of children – including unaccompanied children – are held in immigration detention each year because they lack the right migration status.⁶ Additionally, millions of children are impacted by the detention of a parent or family member. This can cause family separation and cause the child to become unaccompanied children who is deprived of parental care.

Incarceration in detention is an incredibly distressing experience, dominated by feelings of sadness, fear and loneliness.⁷ Detained children are vulnerable to abuse and neglect at the hands of other detainees and guards, particularly if alone and unprotected by a parent. Children can find themselves detained in inadequate conditions, deprived of education, health care and social supports. Detained children are less able to advocate for their rights.⁸ Some child detainees are vulnerable to smugglers and traffickers who recruit victims from within detention.⁹

Immigration detention has immediate and long-term impacts on children's health and wellbeing.¹⁰ No matter their age, children in detention have worse social-emotional wellbeing than children who are living amongst the wider society.¹¹ Children display a range of symptoms as a result of being detained including suicide, attempted suicide, self-harm, mental disorders relating to anxiety and despair, and developmental issues.¹²

¹ As defined in Article 1 of the Convention of the Rights of the Child, a child is “a human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier”.

² UNICEF. 2016. *Uprooted: The Growing Crisis for Refugee and Migrant Children*, p. 6-7.

³ UNICEF. 2017. *A child is a child: Protecting children on the move from violence, abuse and exploitation*. New York: UNICEF. p. 6.

⁴ We have chosen to use the term unaccompanied children in this briefing paper. Other commonly used terms include unaccompanied and separated children (UASC) and unaccompanied minors (UAMs).

⁵ UNICEF. 2017. *A child is a child*

⁶ IAWG, 2016, *Ending Child Immigration Detention*, p 6 http://www.iawgendchilddetention.org/wp-content/uploads/2016/11/IAWG_Advocacy-Brochure_Aug-2016_FINAL-web.pdf

⁷ Mares, Sarah, and Karen J Zwi. 2014. “Sadness and fear: What the drawings by children in detention showed us.” *The Guardian* online. Accessed 20.05.2014. <http://www.theguardian.com/commentisfree/2014/may/12/sadness-and-fear-what-the-drawings-by-children-in-detention-showed-us?INTCMP=ILCNETTXT3487>

⁸ Corlett, D., et al. 2012. *Captured childhood: Introducing a new model to ensure the rights and liberty of refugee, asylum seeker and irregular migrant children affected by immigration detention*. Melbourne, International Detention Coalition. Available at: www.idcoalition.org/publication/captured-childhood/

⁹ This can include situations where corrupt officials collude with traffickers and extort money from detained migrants in order to secure release. See e.g. Regional Mixed Migration Secretariat. 2015. *Behind bars: The detention of migrants in and from the East & Horn of Africa*. Nairobi: RMMS. http://www.regionalmms.org/fileadmin/content/rmms_publications/Detention_Study_February_2015.pdf

¹⁰ Lorek, Ann, Kimberly Ehntholt, Anne Nesbitt, et al. 2009. “The mental and physical health difficulties of children held within a British immigration detention center: A pilot study.” *Child Abuse & Neglect* 33 (9):573-585

¹¹ Zwi, Karen, Sarah Mares, Dania Nathanson, Alvin Kuowei Tay, and Derrick Silove. 2017. “The impact of detention on the social-emotional wellbeing of children seeking asylum: a comparison with community-based children.” *European Child & Adolescent Psychiatry*. doi: 10.1007/s00787-017-1082-z

¹² Dudley, M., et al. 2012 “Children and young people in immigration detention.” *Current Opinion in Psychiatry*, 25(4): 285-292.

NEVER IN A CHILD’S BEST INTERESTS

In recognition of these significant and avoidable harms, immigration detention has been deemed to be a child rights violation.¹³ Specifically, the Committee on the Rights of the Child and the Committee on Migrant Workers has clarified this interpretation, stating:

*Any kind of child immigration detention should be forbidden by law and such prohibition should be fully implemented in practice.*¹⁴

As outlined in Article 20 of the Convention of the Rights of the Child, states have a responsibility to protect children and seek alternative care for those children who are deprived of parental care.¹⁵

Proper safeguards, through the use of alternative care systems, are needed to ensure unaccompanied children avoid the harms of immigration detention in the future. Child-sensitive migration systems can effectively protect children while also meeting government expectations on the management of international migration. As demonstrated elsewhere, governments can achieve acceptable compliance outcomes through mechanisms that promote engagement with migration authorities.¹⁶

II. PRINCIPLES / FOUNDATIONS

The following foundational principles together ensure migration systems adequately protect unaccompanied children.¹⁷

BEST INTERESTS OF THE CHILD COME FIRST

All children are deserving of protection, dignity and liberty, and should be treated – first and foremost – as children. As the United Nations Convention on the Rights of the Child (CRC) states:

*In all actions concerning children... the best interests of the child shall be a primary consideration.*¹⁸

This principle should inform all parts of an alternative care system, as well as all actions relating to individual children. In individual cases, in practice this principle is implemented through the use of Best Interests Assessments (BIA) and Best Interests Determinations (BID). These are described in greater detail below.

Best interests in the United Kingdom

Immigration officials in the United Kingdom have a statutory duty to consider the best interests of any child who will be affected by a decision to be taken. As stated in Section 55(1)a of the *Borders, Citizenship and Immigration Act 2009*, the functions in relation to immigration (and other duties) are to be “discharged having regard to the need to safeguard and promote the welfare of [all] children who are in the United Kingdom.”¹⁹

¹³ Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, and Committee on the Rights of the Child. 2017. *Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return*. Available online at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=7&DocTypeID=1

¹⁴ Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, and Committee on the Rights of the Child. 2017. *Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return*. Available online at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=7&DocTypeID=1 paragraph 5.

¹⁵ “1. A child temporarily or permanently deprived of his or her family environment... shall be entitled to special protection and assistance provided by the State. 2. States Parties shall in accordance with their national laws ensure alternative care for such a child.” UN General Assembly, *Convention on the Rights of the Child*, Art. 20.1 and 20.2

¹⁶ Sampson, Robyn, Vivienne Chew, Grant Mitchell, and Lucy Bowring. 2015. *There are alternatives: A handbook for preventing unnecessary immigration detention (Revised)*. Melbourne: International Detention Coalition. <https://idcoalition.org/publication/there-are-alternatives-revised-edition/>

¹⁷ See also: Office of the United Nations High Commissioner for Human Rights, and Global Migration Group. 2018. *Principles and guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations*. Geneva: OHCHR. <http://www.refworld.org/docid/5a2f9d2d4.html>

¹⁸ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, Art. 3.1, available at: <http://www.refworld.org/docid/3ae6b38f0.html>

¹⁹ *Borders, Citizenship and Immigration Act 2009* Section 55(1) a, accessed at <http://www.legislation.gov.uk/ukpga/2009/11/section/55>

ACCESS TO TERRITORY

While governments are responsible for regulating the entry and exit of non-citizens on their territory, they are also responsible for protecting the best interests of all children without discrimination. Whenever authorities come into contact with a child, they must work to protect that child's best interests while resolving any migration matters.

At the border, authorities must permit all children – especially unaccompanied children – to enter the territory in order to determine the child's best interests. As noted, unaccompanied children are at much greater risk of trafficking and other abuse when on the move. Entry to the territory ensures that authorities have the opportunity to review the child's situation and ensure their protection.

Access to territory in Ireland

Ireland is one country that ensures all children are permitted to enter the territory. The *Immigration Act* of 2003 establishes that children without 'leave to land' are exempt from arrest and detention. Further, the *Refugee Act* of 1996 requires immigration officers to refer unaccompanied or separated children to the care of the Child and Family Agency. Children presenting at the border are to be given the benefit of the doubt, to ensure all children can enter the country in order for authorities to assess their needs.

MAINSTREAMING

Mainstreaming refers to whether or not the care of asylum seeker, refugee and irregular migrant children is governed by the same rules, laws and practices that apply to children who are citizens of a particular country and who also do not have a parent or other adult family member who is responsible for them (including orphans).

Mainstreaming asylum seeker, refugee and migrant child care into regular youth care systems ensures that services and areas of care for unaccompanied children are not overlooked. It further ensures there is not a two-tiered system, and that all children are treated with equal regard for their wellbeing and their best interests. Integrated child protection systems can facilitate cooperation and coordination between relevant agencies (including both child protection and immigration) to ensure protection of all children needing care.²⁰

²⁰ European Commission. 2015. Coordination and cooperation in integrated child protection systems: Reflection paper. Brussels: European Commission. https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/rights_of_the_child_2015_-_reflection_paper.pdf

PROTECTION FROM TRAFFICKING

Children who migrate without a parent or guardian are often at heightened risk of exploitation, abuse and neglect. They require additional support and care to ensure their safety and to support their physical, psychological and cognitive development. However, it is important to recognize that **detention is not a mechanism for providing child protection.**²¹ Despite this, some authorities attempt to use detention or severe restrictions on freedom of movement as a strategy to protect children from trafficking or other risks associated with the irregular migration context.

While authorities must protect children from these risks, confinement is not an appropriate protection measure and does not resolve the risks that they are facing.

Guidelines that outline measures to protect children from trafficking are available.²² The guidelines show that effective protection from trafficking requires a multi-disciplinary and interagency approach. Further, the most efficient measure to prevent disappearance is by creating a relationship of trust between the professional and the child. Some of the activities that assist in achieving this protection include:

- informing the child about their rights, regulations and practices
- appointing a guardian
- placement in family-based care
- training all those involved in the child's care in identifying and addressing risks of the child going missing
- using standardized list of indicators to assess the likelihood of the child going missing
- creating individual safety/care plans²³

Age-appropriate rules for children that reflect social and cultural expectations of care can be necessary for children's protection. For example, it is common for parents to expect children to be home by a certain time at the end of the day and this may be appropriate in alternative care placements.

²¹ As already shown, it is well established that immigration detention does not protect children, but rather causes them harm. Zwi et al. 2017. "The impact of detention on the social-emotional wellbeing of children seeking asylum" op cit.

²² Missing Children Europe. 2016. *Summit handbook: Practical guidance on preventing and responding to unaccompanied children going missing*. Missing Children Europe, available at: http://missingchildreneurope.eu/Portals/0/Docs/report_SUMMIT%20-%20Safeguarding%20Unaccompanied%20Migrant%20Minors_1mrt.pdf

²³ Ibid

Protection from trafficking in the United Kingdom

The UK's *Modern Slavery Act* 2015 aims at countering human trafficking.²⁴ The law establishes the role of *Independent Child Trafficking Advocates* (Advocates) to provide specialist, independent support for trafficked children.²⁵ The main aim is to advocate on behalf of the child to protect their best interests. Their advocacy and involvement is intended to ensure the child is protected from further harm, prevent possible repeat victimisation, re-trafficking or going missing, and to promote recovery. This includes providing independent, balanced advice to the child, and accompanying children to meetings with services including immigration and police. This role was trialled in 2014, and has been operating in three sites since January 2017.²⁶

NON-DETENTION OF CHILDREN

In light of the blanket prohibition on the immigration detention of children established by the CRC, several States have proscribed the detention of children in law. Some States have limited this prohibition to unaccompanied and separated children. A full review of child rights relating to detention and of laws that prohibit child detention is available in a separate briefing paper.²⁷

Prohibiting child detention: Ecuador and Israel

Article 2 of Ecuador's *Human Mobility Law* states that "At no time may children be detained for immigration infractions ... [and] the obligation to protect personal freedom should be extended to the child's parents or caregivers."²⁸

Israel's *Prevention of Infiltration Law* outlines a number of reasons to release a person from immigration detention. These grounds for release ensure unaccompanied and separated children are not detained.²⁹

CHILD-FRIENDLY INFORMATION

Children should be kept informed about the processing they are going through, the options available to them and their obligations in the proceedings. The child's voice and opinion should be heard and information made available "in such a manner and under such circumstances that the child is able to have full appreciation of the situation, in accordance with her/his age and maturity level."³⁰

Keeping children informed: Germany

It is important for minors to be kept well informed about the asylum and youth care process to aid their navigation and trust in these systems. The NGO 'Federal Association for Unaccompanied Minor Refugees' or Bundesfachverband unbegleitete minderjährige Flüchtlinge (BumF), have published a brochure *Welcome to Germany: a guide for unaccompanied minors*.³¹ This brochure is available in German, French and English for free online and printed versions are available for purchase by service providers and institutions to put on display. It is written in a way that is understandable to children, coherently explaining the asylum process for unaccompanied minors, outlining their rights and providing advice for successful integration into German society.

²⁴ Modern Slavery Act, 2015 Available at: <https://www.gov.uk/government/collections/modern-slavery-bill>

²⁵ Home Office. 2017. Interim Guidance for the three *Independent Child Trafficking Advocates* Early Adopter Sites. London: Home Office. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/586796/trafficking_interim_guidance.pdf

²⁶ Home Office. 2018. Assessment of *Independent Child Trafficking Advocates*: Interim findings. London: Home Office. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/730098/assessment-of-independent-child-trafficking-advocates-horr101.pdf

²⁷ International Detention Coalition. 2017. *Never in a child's best interests: A review of laws that prohibit child immigration detention*. Briefing Paper No. 2. Melbourne: International Detention Coalition. Available at: http://idcoalition.org/wp-content/uploads/2017/06/Briefing-Paper_Never-in-a-childs-best-interests_June-2017.pdf

²⁸ Ley Orgánica de Movilidad Humana Ecuador, Suplemento - Registro Oficial N° 938. Accessed at: <http://www.refworld.org/pdfid/58a41f864.pdf>

²⁹ International Detention Coalition. 2017. *Never in a child's best interests* op cit. p. 9.

³⁰ UNHCR & UNICEF. 2014. *Safe & Sound: What States can do to ensure respect for the Best Interests of Unaccompanied and Separated Children in Europe*. <http://www.refworld.org/docid/5423da264.html>, p. 21

³¹ Bundesfachverband unbegleitete minderjährige Flüchtlinge e.V. (BumF). 2016. *Welcome to Germany: A guide for unaccompanied minors*. Available at: http://www.b-umf.de/images/willkommen/wkb%20englisch%20schwarzwei%20fr%20hp_final.pdf

III. FIRST INSTANCE RESPONSE

The following section outlines the elements to consider when authorities first come into contact with an unaccompanied child.

SCREENING AND IDENTIFICATION

Screening and identification is a process in which children are screened for vulnerability factors. This helps to determine if a child has been separated from their parents or legal guardians (the process for establishing the age a child or suspected child is under Age Assessments). In addition, this process is used to obtain basic information about a child, such as their name or identity, nationality, health and legal status.

The screening and identification process will help frontline workers to identify the specific needs and situations that may make an individual vulnerable. This will inform decision-making on the procedures to follow, including the type of alternative accommodation and services required.

Vulnerability Screening Tool

UNHCR and IDC have published a *Vulnerability Screening Tool* to identify and address vulnerability. It is designed to be adapted national asylum and migration systems. Section B. 4 of the tool is about children. It notes that:

“children face greater risks of neglect, abuse and exploitation, and might have witnessed or experienced violent acts. Children who are unaccompanied or separated from their families face very serious risk of harm.”³²

The tool provides a comprehensive set of prompts and questions aimed at identifying the risks of harm to the child. These include ascertaining whether a child is unaccompanied or separated, or is being cared for by their parents or family members, as well as evaluating the health and safety needs of the child, their schooling needs, and the adequacy and appropriateness of the parenting or care they are receiving.

EMERGENCY PLACEMENT / RECEPTION

In emergencies, interim care must be provided for children separated from their families until they are reunited, placed with foster parents or other long-term arrangements for care are made. This may include fostering, other forms of community-based care, or institutional care.³³

Emergency reception in Germany

For the most part, unaccompanied children in Germany are integrated into mainstream youth care systems.³⁴ In the first instance, children are placed in an emergency reception centre, where they are visited by a social worker. After this first assessment is complete, they are transferred to a ‘Clearingstelle’, or initial reception centre, and assigned a guardian and a case manager.

The case manager (from the youth office) and the guardian, with input from the child, then work to find suitable long-term accommodation within two to four months. This can include supervised accommodation centres with other children, independent accommodation with other children (depending on age, preferences, maturity and level of independence) or foster care with relatives or unrelated families (though this is not common).

Some of the good practices of the different federated states are as follows:

AGE ASSESSMENT

Age assessments should only be undertaken when absolutely necessary, and in compliance with the guidance provided by the CRC Committee. This guidance stipulates that assessments must be undertaken by a trained professional using holistic and non-intrusive methods. Authorities should treat the person as a child while an age assessment is conducted, including by avoiding detention until such an assessment is concluded.

There is no single method to precisely determine a person’s age. However, authorities can employ a holistic method that is both reliable and sensitive to the child’s situation. A holistic evaluation incorporates personal narratives with physical, cognitive and behavioural assessments.

³² UNHCR and IDC 2016 *Vulnerability Screening Tool* op cit. p. 8

³³ Inter-Agency 2004 *Inter-Agency Guiding Principles on Unaccompanied and Separated Children*, op cit. p. 42

³⁴ The process differs depending on the federated state, as state authorities manage youth care through the youth office. Whereas migration and asylum applications are a centralised system run through the Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge, ‘BAMF’).

It is important to note that bone x-rays and dental checks are intrusive, unethical, and inaccurate methods for age assessment, and should be abandoned.³⁵

Several guides are available for social workers and other professionals engaged in undertaking age assessments.³⁶

Age assessment in Italy

Italian Presidential Decree 234/2016 came into force on January 6 2017. This decree clarified the procedure for determining the age of a person who claims to be a child but whom authorities believe is an adult. The Decree stipulates that the police can only order an age assessment if there are serious doubts about the age of a potential minor. Age assessments are to be “conducted by a multidisciplinary team at a public health facility” and include “social interaction, a paediatric evaluation and a psychological or neuropsychiatric evaluation, in the presence of a cultural mediator, in accordance with the best interests of the child principle.”³⁷ The findings of an age assessment must include specific reference to the method’s margin of error. This information must be shared with the individual and their guardian, and they must be provided with an avenue to contest the findings if the outcome remains in dispute.

However, many unaccompanied children are unable or unwilling to register themselves with local authorities.³⁸ This can be a result of negative experiences with authorities in their country of origin, due to advice from trusted informants such as family members or other asylum seekers, fear of detention, or they may be under pressure from traffickers, smugglers or others looking to exploit them. Authorities must work to build trust in order to overcome these barriers to engagement and provide protection.

REGISTRATION AND DOCUMENTATION

It is important that unaccompanied children are registered with authorities and provided with documentation demonstrating that registration. Such documentation demonstrates that they are participating in a process to resolve their migration situation. In some countries, this registration information is used to access some services, such as health care.

³⁵ Royal College of Paediatrics and Child Health 2007 *X-Rays and Asylum Seeking Children: Policy statement*. RCPCH. Accessed 4 September 2017 at http://www.rcpch.ac.uk/sites/default/files/asset_library/Policy%20and%20Standards/X%20rays%20and%20asylum%20seeking%20children%20policy%20statement.pdf

³⁶ ACDS 2015 Age assessment guidance: Guidance to assist social workers and their managers undertaking age assessments in England. ACDS. Available at http://adcs.org.uk/assets/documentation/Age_Assessment_Guidance_2015_Final.pdf; Dybell, Karen, Graham McPhie, and Clare Tudor. 2012. Age assessment practice guidance: An age assessment pathway for social workers in Scotland. Glasgow: Scottish Refugee Council and Glasgow City Council. Available at http://www.scottishrefugeecouncil.org.uk/assets/0000/4415/Age_Assessment_Practice_Guidance_GCC-SRC_June_2012_FIRST_EDITION.pdf

³⁷ Asylum Information Database (AIDA). 2017. “Italy: Age assessment procedure for unaccompanied children victims of trafficking.” 16 January 2017, accessed 15 November 2017: <http://www.asylumineurope.org/news/28-02-2017/italy-age-assessment-procedure-unaccompanied-children-victims-trafficking>

³⁸ UNHCR & UNICEF 2014 *Safe & Sound* op cit.

GUARDIANSHIP

A guardian – or legal custodian appointed for a child deprived of parental care – has the responsibility and obligation to promote the best interests of a child.³⁹ Guardians are not necessarily the adults who supervise a child’s day-to-day living (such as foster family parents). Rather, a guardian is an independent advocate who is tasked with the overall legal responsibility for the child, including the authority to make decisions on behalf of a child in order to protect their best interests. The exact nature of guardianship can differ by country context. However, key responsibilities are to protect the best interests of the child, and to ensure the child’s views and opinions are taken into consideration in decisions that will affect them.

In some countries, procedures such as family tracing and reunification cannot be started if a guardian has not been appointed. In these situations, delays in the appointment of a guardian can have a significant impact on the child’s protection and case resolution.

Guardianship in the Netherlands

The Dutch Civil Code stipulates that all children residing in the Netherlands, whether of Dutch nationality or foreign, must have a parent or legal guardian. The Nidos Foundation has been given the exclusive responsibility under law to arrange guardianship for all unaccompanied asylum seeker, refugee and irregular migrant children. In the absence of a parent, the court assigns the Nidos Foundation as the guardian for all unaccompanied children in the Netherlands. The organisation employs professional youth workers to carry out the responsibilities of guardianship.

In this context, guardians are responsible for representing the child in legal proceedings, exercising authority and supervision over the child, promoting their best interests, and supporting their wellbeing and development.⁴⁰ Guardians are further tasked with securing and monitoring the child’s long-term care and accommodation. As a result, day-to-day care lies with youth care facilities or foster families, with guardians acting as supervisors.

There were over 2000 new guardianships granted in 2016, bringing the total number to 5678 as of the December 31st 2016.⁴¹ Of these, 33% (over 1800 minors) are accommodated with foster families, 28% are in small-scale residential facilities, 18% in central reception centres (initial reception), and the remainder are in other forms of accommodation and care.⁴²

39 European Union Agency for Fundamental Rights. 2015. *Guardianship systems for children deprived of parental care in the European Union: With a particular on their role in responding to child trafficking*. Vienna: EU FRA.

40 Wildt, et al. 2015, *Reception and Living in Families* op cit.

41 Nidos annual report, p. 6 <https://www.nidos.nl/wp-content/uploads/2017/08/Nidos-Annual-Report-2016.pdf>

42 Nidos Annual Report, op cit. p. 12

CASE MANAGEMENT

Case management is a process developed by social services to engage and support a person with complex needs. Unlike a guardian, a case manager does not have any legal authorities over a child. Instead, they are responsible for assessing the child’s situation, identifying solutions to problems, and providing advice and support.

Case managers are often social workers or welfare professionals, but may also include people who are experienced in the migration or child protection sector.⁴³ In the context of care for unaccompanied children, case management is sometimes provided by the child’s guardian, but can also be provided by another person.

Case management in Kenya

In Kenya, a number of interventions aim at improving protection of unaccompanied children, particularly among those living in the Dadaab refugee camp complex.⁴⁴

First, the Kenyan government established a police force for each camp within Dadaab and provided a monthly mobile court with an attached social worker for children.

Second, UN agencies and NGOs provided case management for unaccompanied children, alongside psychosocial support for all children, and awareness campaigns on the issues facing children in the camps.

Third, the community provided foster care for several hundred unaccompanied children, and assisted with family tracing and reunification.⁴⁵ The community used a traditional clan-based tracing mechanism, in which a child’s family name would be used to connect them with their clan. Children who were traced back to a particular clan would receive care from family or clan members. Save the Children oversaw the placements by assessing the suitability of living situations for children.⁴⁶

43 Corlett, D., with Mitchell, G., Van Hove, J., Bowring, L., Wright, K. 2012. *Captured Childhood*. Melbourne: International Detention Coalition.

44 Dadaab houses around 238,617 people (as of 31 October 2017), the majority of whom are from Somalia. UNHCR. *Dadaab Refugee Complex*. Viewed 14 November 2017. <http://www.unhcr.org/ke/dadaab-refugee-%20complex>

45 Jones, Camilla, Trish Hiddleston, and Christine McCormick. 2014. “Lessons from Introducing a Livelihood Project for Unaccompanied Children into an Existing Child Protection Programme in the Dadaab Refugee Camps in Kenya.” *Children and Youth Services Review* 47 (P3). Elsevier Ltd: 239–45. doi:10.1016/j.childyouth.2014.09.010.

46 Jones, et al. 2014 “Lessons from Introducing a Livelihood Project.” op cit.

IV. PLACEMENT AND SUPPORT

It is of vital importance that unaccompanied children are protected through appropriate housing and care arrangements. This section reviews medium-term placement and care arrangements for unaccompanied children. Accommodation options include family-like foster care, kinship care, child-headed households, and reception / institutional care. Care mechanisms reviewed in this section include Best Interests Determination, and access to services / basic needs.

FOSTER CARE

Foster care: situations where children are placed by a competent authority for the purpose of alternative care in the domestic environment of a family other than the children's own family that has been selected, qualified, approved and supervised for providing such care.⁴⁷

Kafala and foster care in Tunisia

In some contexts, such as Tunisia, two cultural and legal child protection systems operate alongside one another. *Kafala* is a form of child protection that is based on Islamic law and is specific to some Muslim majority countries. *Kafala* is considered to be a voluntary commitment by a person (*kafil*) to take responsibility for the care, needs, education and protection of a child who is deprived of their family (*makful*). Unlike legal adoption, the person (*kafil*) undertaking this responsibility does not legally replace the biological parents of the child. Indeed, legal adoption is prohibited under law in many Muslim majority countries.

In the case of Tunisia, *kafala*, adoption and foster care coexist under one legal system. Law No. 58-27 of March 4 1958⁴⁸ on public guardianship, unofficial guardianship (*kafala*) and adoption, operate alongside Law No. 67-47 of 1967⁴⁹ on foster care. The result of this was that in 2015 out 496 children under care (guardianship) by the National Institute for the Protection of Children, 88 were adopted, 21 were in *kafala* and 84 were in temporary foster care.⁵⁰

It is unclear whether this system is being used to provide care for children who are not citizens. Even so, it provides important insights into the types of care that might be suitable for unaccompanied children in Muslim-majority contexts.

⁴⁷ Wildt, et al. 2015, *reception and living in families* op cit. p. 18

⁴⁸ International Social Services (ISS). 2017. *Monthly review No. 213 July 2017*. International Reference Centre (IRC). Switzerland.

⁴⁹ ISS 2017 *Monthly review No. 213 July 2017* op cit.

⁵⁰ ISS 2017 *Monthly review No. 213 July 2017* op cit. p. 8

KINSHIP AND NETWORK CARE

Kinship care describes family-based care with a member of the child's extended family (kinship care). Network care is family-based care with close friends of the family known to the child (network). Both of these arrangements can be formal or informal in nature.⁵¹

Kinship and network care in Sweden

Studies undertaken in Sweden⁵² and internationally⁵³ have found that kinship care provides a more stable living situation for children than placement in recruited foster families or residential facilities. In 2014, approximately 40% of foster care placements in Sweden were with kinship or network families.⁵⁴ Despite the strengths of this option, it is worth acknowledging that kinship or network families often experience challenges that impact on their care for an additional child. These challenges can include lack of economic resources, unemployment, overcrowding (especially for families with several of their own children), and uncertainty due to their own asylum process. The Municipalities of Malmö and Rinkeby-Kista city council in Stockholm have provided financial support and training for kinship and network families to help alleviate these issues.

The Municipality of Malmö has established a unit that deals with unaccompanied children, that has worked to recruit families of non-Swedish cultural backgrounds to act as foster carers for children in their cultural network. These families are usually well integrated into Swedish society, but have also had similar experiences of forced migration that can help their understanding and support for the child in starting a new life in Sweden. According to the Municipality of Malmö's unaccompanied minors unit, the most important factor is to assess the child's needs to find the best matching foster family, as some children fit best in native Swedish families.

⁵¹ Wildt, et al. 2015, *reception and living in families* op cit. p. 18

⁵² Settling into a new home as a teenager: About establishing social bonds in different types of foster families in Sweden; Lena Hedin (School of Law, Psychology, and Social Work, Örebro University), Ingrid Höjer (Dept. of Social Work, University of Gothenburg) and Elinor Brunnberg (School of Health, Care and Social Welfare, Mälardalen University, Eskilstuna), July 2011

⁵³ Igelhart 1994; Scannapieco 1997; Holtan 2005; Chamberlaine 2006; Testa 2002 and Farmer 2009 – from Wildt, et al. 2015, *reception and living in families* op cit. p. 91 (same below)

⁵⁴ Wildt, et al. 2015, *reception and living in families* op cit. p. 89

CHILD-HEADED HOUSEHOLDS

Child-headed households are a form of semi-independent living, whereby unaccompanied children live in a child- or peer-headed household. In this arrangement, children are cared for by an older sibling or by unrelated older children.⁵⁵

Child-headed households in Ethiopia

In January 2014, the town of Shire in Ethiopia was receiving an average of 100 unaccompanied children each month. This put significant pressure on services to provide family-based care or to facilitate family reunification. The Mai Aini refugee camp, the main refugee camp in the region, was unable to provide adequate child protection and care for unaccompanied children. In response, a new camp was set up which integrated family and shelters for children side by side. The layout of the shelters was designed to facilitate social interaction by placing eight shelters facing into one communal area (rather than in rows). The shelters alternated between four family shelters and four shelters for the children around the common area. The families placed in these shelters agreed to care for and support the unaccompanied children in their small community.⁵⁶

RECEPTION / INSTITUTIONAL PLACEMENT

While family-based care and independent living are the most favourable care options for unaccompanied children, in some contexts they may be placed in institutional care. These can include reception centres, large group homes and shelters. Supervision is usually provided 24 hours per day by a team of carers.

Shelter for unaccompanied boys in Cyprus

An NGO operates a shelter for unaccompanied boys seeking asylum in Cyprus.⁵⁷ Making use of a former boarding school, the shelter caters for about 40 children. In addition to housing and food, the NGO provides a range of support services including case management, legal advice, psychological support (if needed), locating family, support to access education and other services.

BEST INTEREST DETERMINATION (BID)

A Best Interest Determination (BID) is a formal procedure for considering a child's best interests when making a significant decision that will have a fundamental impact on the child's future. A BID

involves interviews and consultations with the child by qualified professionals, and draws on in-depth information about the child accumulated in the course of the process. BIDs require a high degree of scrutiny and independence.⁵⁸

In contrast, a Best Interests Assessment (BIA) is a simple, ongoing procedure for considering whether immediate actions are in a child's best interests. BIAs can take place whenever an action is planned or taken that may affect the child to an extent.⁵⁹

A non-exhaustive list of elements that can be used to assess the best interests of the child include identity; family environment; care, protection and safety; vulnerability; health; and education. Several guidelines are available to assist in undertaking best interests determinations.⁶⁰

Screening and BID in Zambia

The government of Zambia, in conjunction with IOM, UNICEF and UNHCR, developed a set of tools to guide the protection of vulnerable migrants in the country. These tools include guidance on the initial reception, screening and interviews of unaccompanied children.⁶¹

The guidelines direct border officials to immediately refer unaccompanied children to the Department of Social Welfare. It further notes that children seeking protection should never be refused entry or subjected to detailed interviews on arrival.⁶²

Children are provided with case management, during which a Best Interest Determination (BID) must be undertaken. As the guidelines state:

*"The BID for child asylum seekers and refugees is a means to ensure that specific protection and assistance is provided to children who are or may become deprived of the protection of their family. It ensures that such decisions take due account of the fundamental right to life, survival and development of the child to the maximum extent possible. The BID also provides the means for the child's participation in the process of the BID according to his or her maturity and capacity."*⁶³

⁵⁸ UNHCR & UNICEF 2014 *Safe & Sound* op cit. p. 19

⁵⁹ UNHCR & UNICEF 2014 *Safe & Sound* op cit. p. 19

⁶⁰ UNHCR. 2008. UNHCR Guidelines on Determining the Best Interests of the Child. Geneva: UNHCR. <http://www.unhcr.org/4566b16b2.pdf>; UNHCR & UNICEF 2014 *Safe & Sound* op cit.

⁶¹ Available here - <http://weblog.iom.int:8080/iom-rolls-out-tools-protection-vulnerable-migrants-zambia>

⁶² IOM. 2015. *Training manual (Facilitators guide): Protection assistance for vulnerable migrants in Zambia*. IOM. p. 44.

⁶³ IOM. 2015. *Guidelines: Protection Assistance for Vulnerable Migrants in Zambia* IOM. p. 18.

⁵⁵ UNHCR. 2014. *Child Protection Issue Brief Alternative Care*. January 2014. Geneva: UNHCR. p. 2

⁵⁶ UNHCR 2014 *Child Protection Issue Brief Alternative Care* January op cit. p. 4

⁵⁷ Homes for Hope <http://uncrcpc.org.cy/home-for-hope.html>

ACCESS TO SERVICES / BASIC NEEDS

The ability to meet basic needs is fundamental to human life and is protected and reinforced in various human rights instruments. Ensuring minimum standards for children will facilitate their development and enable them to reach their fullest potential. In addition, there is evidence that asylum seekers, refugees and irregular migrants are better able to comply with requirements if they are able to meet their basic needs while in the community.⁶⁴ This includes adequate accommodation, healthcare, education, legal advice, legal status and documentation, access to employment (depending on age), and an allowance or access to food, clothing, hygiene and other basic needs.⁶⁵

Access to education in Spain

In Spain, education is compulsory and free to all children, including migrant, refugee and asylum seeker children. Article 27 of the Spanish Constitution enshrines the right to education for every child between the ages of 6 and 16, regardless of nationality or legal and/or immigration status.⁶⁶ The rights of migrant children are further established in Article 42 of the *Organic Law on the Quality of Education (LOCE)* of 2002, which determines that migrants and nationals have the same rights and responsibilities in the education system.

Article 71 of the *LOCE* outlines the rights of students with ‘specific educational support needs’, instructing the Education Administration to “provide the necessary means in order for every student to develop him/herself fully on a personal, social and emotional level”.⁶⁷

While not specified in law, refugee and asylum seeker children are regularly considered to be students with ‘specific educational support needs’. Unaccompanied children often enter the Spanish education system with little schooling, poor language proficiency and other significant education needs.⁶⁸

⁶⁴ Sampson, Robyn, Vivienne Chew, Grant Mitchell, and Lucy Bowring. 2015. *There are alternatives: A handbook for preventing unnecessary immigration detention (Revised)*. Melbourne: International Detention Coalition. p. 28 idcoalition.org/publication/there-are-alternatives-revised-edition/

⁶⁵ For more information on this see Sampson, et al. 2015 *There are Alternatives* op cit. Section 5, pp. 27-34

⁶⁶ Bourgonje, Paloma. 2010. “Education for refugee and asylum seeking children in OECD countries Case studies from Australia, Spain, Sweden and the United Kingdom.” *Education International*. Belgium

⁶⁷ Bourgonje, P 2010, “Education for refugee and asylum seeking children in OECD countries, op cit. p. 57

⁶⁸ Bourgonje, P 2010, “Education for refugee and asylum seeking children in OECD countries, op cit. p. 58

V. CASE RESOLUTION

Unaccompanied children are subject to the above care arrangements as a result of having an unresolved migration situation. This section outlines some common forms of case resolution for unaccompanied children.

FAMILY TRACING AND REUNIFICATION

Unaccompanied children are bereft of the care and protections provided by family or customary caregivers. For this reason, it is crucial that governments facilitate access to family tracing and reunification services. Family tracing services are responsible for searching for a child’s family members or primary caregivers (whether legal or customary), and to connect children and parents who are looking for each other.⁶⁹

Family reunification is the process of bringing together a child and their family (or previous care provider) with the aim of establishing long-term care.⁷⁰ This process includes determining whether reunification is in the best interests of the child; assessing the situation of their family (also known as ‘home studies’); developing a return and reintegration plan; and monitoring the child upon reunification. Issues to consider include the willingness of both parties to reunite, the adequacy of housing, the financial situation of the family, and the family’s ability to take care of the child. Family reunification may or may not take place in the country of origin, as family members may no longer be located in the child’s country of citizenship.

Family reunification in Italy

The Italian Ministry of Labour and Social Policies has an agreement with IOM to conduct family tracing and assessment in different countries in preparation for family reunification for unaccompanied children. For return to be considered, it must be voluntary, with the informed consent of both the child and the family. Before return, a structured reintegration plan is developed for each child with close cooperation from the child, their family, IOM, and social service providers. This plan must be approved by the Ministry of Labour. To further support the stability of the reintegration plan and reunification process, a minimum six-month monitoring period is mandated.⁷¹

⁶⁹ UNHCR 2014 *Child Protection Issue Brief: Alternative Care* op cit. p. 2

⁷⁰ UNHCR 2014 *Child Protection Issue Brief: Alternative Care* op cit. p. 2

⁷¹ UNHCR & UNICEF 2014 *Safe & Sound* op cit. p. 48

AGING OUT

Many countries have different asylum and migration procedures for children and adults, as well as different levels of care, rights to remain in country and access to basic services. As 18 is the age of adulthood in most countries, children can sometimes find themselves ineligible for basic services, including accommodation, welfare, health and education rights upon reaching majority. Appropriate transition planning that prepares young people for these changes and provides strategies for tackling new challenges that arise from reaching majority is vital.⁷² The specific situation of each child should be taken into account when preparing for this change, and transition care arrangement put in place as required.

LEAVING CARE IN THE UNITED KINGDOM

In the United Kingdom, unaccompanied children are no longer legally under the care of the state once they reach the age of 18. However, under the *Leaving Care Act*, local authorities can initiate 'Staying Put' arrangements. These arrangements provide that children who have had a positive immigration determination to remain in the UK can also remain in foster care up to the age of 21 or 24 if certain criteria are met (as outlined in the 'Staying Put' Guidance⁷³). Those with a negative immigration determination are instead transferred to independent accommodation upon turning 18. This accommodation option offers little support to deal with the challenges of facing departure from the country, with negative impacts on their continued development.

Permanent local integration

In some cases, an unaccompanied or separated minor may not be granted international protection or refugee status, but may not have adequate care arrangements to return to in their country of origin. It is important that children are not returned to situations that may be dangerous or detrimental to their ongoing development and well-being. In cases such as these, alternative arrangements (including alternative visa categories) can provide a long-term solution for children.

PERMANENT LOCAL INTEGRATION IN FINLAND

Finland has developed the option to issue continuous residence permits on compassionate grounds to individuals who have not been granted international protection. These permits are approved in circumstances where return would be "clearly unreasonable considering the applicant's health, established ties to Finland or other individual, humanitarian reasons."⁷⁴ Unaccompanied or separated children are specifically considered for this status. It is recommended that factors such as family unity and continuity of care – which are important to the ongoing well-being and development of children – should be reflected in the decision-making process.

PERMANENT RESETTLEMENT

UNHCR operates a resettlement program by which recognised refugees and other persons of concern permanently relocate to a country that has agreed to admit them with a view to providing permanent residency.⁷⁵ There are a number of submission categories that may enable an unaccompanied child to be resettled through this program, including Children and Adolescents at Risk. However, only a small number of countries take part in the resettlement program. The United States operated the largest resettlement program for unaccompanied children for many years; however, this program has slowed significantly under the current administration. However, Finland has increased resettlement of unaccompanied children in recent years.

⁷² UNHCR. 2014. Unaccompanied and separated asylum-seeking and refugee children turning eighteen: What to celebrate? Strasbourg, France: UNHCR and Council of Europe. <http://www.refworld.org/docid/53281a864.html>

⁷³ The Children's Partnership. 2014. *Staying Put: Good Practice Guide*. The United Kingdom: The Children's Partnership. http://www.ncb.org.uk/media/1154341/staying_put.pdf

⁷⁴ UNHCR & UNICEF 2014 *Safe & Sound* op cit. p. 44

⁷⁵ <http://www.unhcr.org/en-au/resettlement.html>

SUPPORTED VOLUNTARY RETURN

There are situations in which it is in a child's best interests to be returned to their country of origin. As stated in the Inter-Agency Guiding Principles, authorities can consider returning a child to their country of origin if family reunification can be arranged, or when an adult care-giver or appropriate organization is able to provide protection and care upon return.⁷⁶

Supported return: The Netherlands

In the Netherlands, an NGO has established practices for the safe, sustainable and supported voluntary return of unaccompanied children to their families. Before return can be considered, the child requires:

- A safe living situation
- Family-based care provided willingly
- View to an independent life through education or work
- Development opportunities
- Support of the return plan by local organisations⁷⁷

Monitoring of the returned child's living situation includes:

- Monitoring by local and international organisations
- The NGO supervises and provides case management of the return plan during the initial period after return
- The plan is adjusted with the help of local organisations and/or the family, as necessary⁷⁸

An evaluation of 149 children aged 12-18 who had been returned to their families in Kosovo and Albania was undertaken in 2012.⁷⁹ It found that children who were voluntarily returned were in better living situations and were in good mental health condition compared with those who were forcibly deported.⁸⁰

TRANSNATIONAL COORDINATION

The protection and care of unaccompanied children often requires the interaction of government agencies, services and social networks across national boundaries. Establishing transnational care

networks that facilitate coordination across borders ensures greater protection for unaccompanied children. This is particularly the case for unaccompanied children who are preparing to return to their home country.

The West Africa Network for the Protection of Children

Thousands of children migrate every year in West Africa seeking opportunities for work and a safer life. These children have various destinations in mind, including within their home country, another country in the region, or a country in Europe. They are vulnerable to multiple dangers including exploitation, smuggling and trafficking.

The West African Network for the Protection of Children (the Network) has worked to protect and reintegrate children migrating within and outside the region since 2002. It integrates authorities and NGOs in 17 countries, in partnership with the International Social Service. As of 2018, it cares for approximately 1000 children per year.⁸¹

The Network uses a coordinated and standardised process to each child's case, valuing the child in all decision-making. It integrates responses to children in each of the following 8 steps:

1. Arrival, detention and identification
2. Immediate support and care
3. Assessment of the situation of the child
4. Temporary integration and quality care arrangements in the host country
5. Evaluation of the situation in the country of origin
6. Determination of a sustainable solution in the best interests of the child
7. Implementation of the solution
8. Monitoring and follow-up⁸²

The Network forms a needs-based program for each child's reintegration, including schooling, vocational training or income-generating activities. It can also support the socio-economic status of the child's family or destination community, in order to promote sustainable returns and uphold the best interest of the child.

⁷⁶ Inter-Agency 2004 *Inter-Agency Guiding Principles on Unaccompanied and Separated Children*, op cit. p. 61

⁷⁷ Wildt, L. Nidos.. 2014. *Working with the unaccompanied child*. op cit. p. 41 <http://www.connectproject.eu/nld.html>

⁷⁸ Wildt, L. Nidos.. 2014. *Working with the unaccompanied child*. op cit. p. 42 <http://www.connectproject.eu/nld.html>

⁷⁹ Wildt, L. Nidos.. 2014. *Working with the unaccompanied child*. op cit. p. 42

⁸⁰ Wildt, 2014. *Working with the unaccompanied child*. op cit. p. 42

⁸¹ West Africa Network. 2016. *ECOWAS Support Procedures and Standards for the Protection and Reintegration of Vulnerable Children on the Move and Young Migrants*. http://www.resao.org/sites/default/files/pao/u697/ecowas_standards_children_on_the_move_pdf_15903.pdf

⁸² International Social Services (ISS). 2017. *Children on the move: From protection towards a quality sustainable solution. A practical guide*. International Social Service. http://www.iss-ssi.org/images/Childrenonthemove_Guide.pdf

VI. CONCLUSION

Unaccompanied children need protection and care. This briefing paper has shown governments can introduce appropriate care arrangements that can protect the best interests of the child while their migration situation is being resolved.

Child-sensitive migration systems include several elements. Establishing a set of principles, including that the best interests of the child come first, creates a strong foundation for ensuring the protection of children. Identification of children during screening, and prompt appointment of a guardian, are some of the measures to consider with first instance responses. Placement and care options can range from foster care, kinship care, child-headed households and institutional care arrangements. Finally, the resolution of the child's migration matter will depend on several factors including an assessment of the family situation if parents are successfully located.

This paper has drawn together evidence that detention can be completely avoided when developing child-sensitive migration systems. Immigration detention is not a mechanism for providing child protection. Incarceration in detention is not only a child rights violation, it is an incredibly distressing experience which can be averted by States that are willing to ensure that children remain safe and healthy while awaiting case resolution.

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The International Detention Coalition (IDC) is a unique global network of over 400 non-governmental organisations, faith-based groups, academics and practitioners in almost 90 countries that advocate for and provide direct services to refugees, asylum-seekers and migrants in immigration detention. We are the only international organisation focused explicitly on immigration detention and alternatives to detention. With an international Secretariat based in Melbourne, Australia, the IDC works globally through Regional Coordinators in Africa, the Americas, Asia-Pacific, Europe, and the Middle East & North Africa (MENA). To learn more about the IDC, including our mission, key areas of work, and strategic priorities, please visit www.idcoalition.org.

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The International Detention Coalition (IDC) works closely with state policymakers, multilateral agencies, and civil society to seek practical, rights-based migration management solutions. This Briefing Paper series seeks to challenge common misconceptions about the use and effectiveness of immigration detention in migration management; to highlight global positive alternatives to immigration detention; and to provide pragmatic guidance to state policymakers on how to effectively govern migration while upholding human rights.

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