

**OHCHR report to the Human Rights Council: “The rights of the child and family reunification”**

**Written submission by the Special Representative of the Secretary General on Violence against Children**

The SRSG on Violence against Children would like to thank the Office of the High Commissioner for Human Rights for the opportunity of contributing to this valuable report on the “rights of the child and family reunification”.

The Report represents an extraordinary opportunity to enhance awareness and strengthen implementation of human rights standards on the rights of the child, and very specially to safeguard the right of the child to family reunification and freedom from all forms of violence.

The protection of children without parental care from all forms of violence and their right to family[[1]](#footnote-1) and family reunification is at the core of the SRSG mandate on violence against children which also includes the prevention and end of deprivation of liberty of children as a form of violence.

The Special Representative heads the United Nation Task Force on Children Deprived of Liberty[[2]](#footnote-2) that support Member States in collaboration with the NGO Panel and multi stakeholders to accelerate progress on prevention and end to deprivation of liberty of children. This year the UN Task Force has prioritized ending child immigration detention the opportunities created by the 2021 High-level Political Forum (HLPF), which assessed SDG Target 10.7[[3]](#footnote-3) on migration as well as SDG target 16.2; and the ongoing processes of implementation, follow up and review of the Global Compact for Migration (GCM) and the Global Compact on Refugees (GCR). Moreover, this theme also aims at building upon the wealth of child rights-based measures to prevent and provide alternatives to child immigration detention existing in over 60 countries across several regions[[4]](#footnote-4).

In this spirit, we would like to submit to the consideration of the Office of the High Commissioner for Human Rights some suggestions which we hope will be helpful to the process of the finalization of the Report on the rights of the child and family reunification to be presented to the Human Rights Council in 2022.

1. **To consider the right of the child to family reunification in line of international human rights standards and political commitments**

The very solid International Human Rights framework, including the Convention on the Rights of the Child and its Optional Protocols as well as the Committee’s extensive jurisprudence, the United Nations Guidelines for the Alternative Care of Children and the significant research and policy recommendations undertaken within the UN system in this area, including the UN Study on Violence against Children and its process of follow up, provide a sound foundation for this critical initiative.

In a complementary manner, it is also essential to keep into consideration important legally binding obligations of Member States in the framework of regional human rights treaties such the American Convention on Human Rights[[5]](#footnote-5) and the African Charter on the Rights and Welfare of the Child[[6]](#footnote-6) and the extensive jurisprudence developed by regional human rights systems in this area.

In addition to that, it is also important to highlight that the protection of children’s rights to family reunification should also be addressed in line with Member States political commitments enshrined in the 2030 Agenda for Sustainable Development, the Global Compact for Safe, Orderly and Regular Migration and the Global Compact for Refuges.

1. **Some main human rights concerns affecting children separated from their families, and the priorities to strengthen global and national frameworks for the prevention of family separation**

A child should never be separated from his/her family, unless when in accordance with international law, separation is permitted as a measure of last resort, in the best interest of the child and when alternative solutions to ensure the child lives in a family environment are provided.

To address the protection of children separated from their families, it is important to understand the causes that prompt children into situations of separations from their families and the variety of backgrounds of children who are separated from their families.

Children without parental care and separated from their families or at risk of losing their families are among the most vulnerable and easily forgotten groups. These are often children who have really been left behind.

The issues of violence against children and alternative care are inseparable. Violence is a key driver of children’s placement in alternative care. Violence also pervades many children’s experience of alternative care.

Exposure to violence or neglect in the home is often the beginning of a child’s journey through alternative care. But the structural violence to which children and families are exposed – including poverty, stigma, discrimination, and exclusion from essential services – are also among the most significant root causes.

As the Global Study on Children Deprived of Liberty outlined, many States are failing to provide preventive, protective, and supporting mechanisms, and strong gatekeeping. As a result, large numbers of children are separated from their parents unnecessarily. As we all know, a huge number of so-called orphans in institutions have at least one living parent who could provide them with the care they need, given the right support.

While alternative care can involve children of all backgrounds, available data shows that there can be an over-representation of certain groups, such as children with disabilities, children living in poverty, indigenous children, children in street situations, children with mental health difficulties, and children from families that are stigmatized, such as those headed by a single mother. Migrant and asylum-seeking children can also face especially difficult circumstances in the context of migration-related detention.

Children separated from their parents and families in the context of human mobility are exposed to a heightened risk of violence and other adverse childhood experiences that take a heavy toll on their mental wellbeing.

The stressors to which children on the move are exposed arise across all parts of their journey: in their country of origin, while they are in transit and in their country of destination.

The factors that force children to leave their homes can include experiencing or witnessing violence, torture, and losses of close family and friends. Displacement brings further stressors. In addition, children on the move face an uncertain future that could include resettlement in areas where they continue to be exposed to community violence and economic deprivation, deportation, or detention.

Asylum-seeking and refugee children living in the community in countries of destination are also exposed to a range of stressors. Research has pointed to this as a period when children may experience secondary trauma, including in relation to asylum determination procedures that are not child sensitive. More generally, the process of acculturation and integrating into a new society can place stress on the mental health of children

As children’s ability to self- regulate and cope emotionally depends in large part upon the emotional state of their caregivers, children without caregivers may be at even greater risk of developing mental health conditions following traumatic stress. The separation of children from their parents in the context of detention threatens the attachment bond, forming an additional root of fear and lack of safety. Removing children from contact with their wider family can also deprive them of an important source of support and resilience.

For these reasons, supporting family reunification in the best interests of children is a key to supporting the mental wellbeing of children on the move.

**3. a. How can the right to family life be upheld for children in cross-border situations, particularly migrant children who are separated from their families (taking into consideration Article 10 of the Convention on the Rights of the Child)?**

In line with international legally binding obligations under CRC, States have the responsibility to protect all children within their jurisdiction and this implies the obligation of the States to guarantee that every child enjoys his/her right to a family and if separated from one or both parents or legal guardians in different countries to ensure that the child lives with their parents of legal guardians or at least maintain on a regular basis personal relations and direct contact with both parents.

Regarding children separated from their families, article 10 of the CRC enshrines States legal obligation to ensure family reunification “in a positive, humane and expeditious manner” and to allow parents and children to visit each other if they live in different States. Most children in need of family reunification are either so called “economic migrants”, refugees or children of separated parents living in different countries.

In this area is important to consider regional developments such the 2020 Arab Strategy for the protection of children in Asylum context in the Arab region[[7]](#footnote-7) urges Member States to work on sensitizing asylum procedures to be child-friendly, and to give priority to children, conduct best interest determination, family reunification, prevention of detention of children seeking asylum, while ensuring that detention.

**b. How can the best interests of children separated from their families in cross-border situations, in particular migrant children, be more effectively upheld without discrimination?**

First, children’s status should prevail over their migration status. In line with the best interest of the child, States must guarantee that their national laws, policies, and practices on immigration control do not compromise children’s right to family reunification. In this regard, States must ensure positive, human, and expeditious judicial and administrative processes to ensure children’s right to family reunification.

Another important aspect to ensure children are not separated from their families is ending child immigration detention. As highlighted by the Special Representative in her 2021 Annual Report detaining migrant children is never in their best interests; it is a form of violence and a violation of children rights. The detention of children based on their migration status cannot be considered as a measure of last resort because it is prohibited under international law and should, therefore, must be banned in national legal frameworks. Furthermore, there is a wealth of child rights-based measures to prevent and provide solutions to end child immigration detention already existing in over 60 countries across several regions[[8]](#footnote-8).

**4.a. What are the main human rights concerns for children living in conflict, children in detention or whose parents are detained, or children allegedly associated with terrorism or terrorist groups, regarding their right to be reunited with their families?**

The Special Representative stresses that the family dimension of the detainee whether a juvenile who is a parent himself or herself, or of an adult responsible for children, must be given special consideration in trial to ensure that the best interest of the child and the right to family prevails. In this regard, it is important to recall that the Inter-American Human Rights System, the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas[[9]](#footnote-9) recognize that the family dimension of the deprivation of liberty needs to be addressed by States to protect the rights of persons deprived of liberty. Interestingly, principle 2 refers to the registration of persons deprived of liberty and it compels States to register the most complete personal data of those deprived of liberty, including information about family members. This is an important measure to help States to collect data about children deprived of liberty, and who have incarcerated parents and caregivers, so States are well equipped to inform their specific public policies in safeguarding the rights of children in such situations.

The Special Representative would also like to underscore the situation of children of foreign fighters that are separated from their families. As noted in the 2020 SRSG Report “between 2009-2017, an estimated 4,640 foreign children became affiliated with ISIS in Iraq and Syria and at least 730 infants were born to foreign parents in these territories. To date around 1,180 children have been repatriated, leaving more than 4,000 in theatre.1 While many are believed to have died, others are being held in detention or camps. In 2018, a judge from the Baghdad High Court confirmed that his country was holding 900 children in custody, 185 of whom were foreigners and had been convicted under terrorism legislation.2 What should happen with these children, as well as child affiliates who have already returned or who never left, has become the subject of a polarized international debate.”[[10]](#footnote-10)

Here, it is important to highlight that COVID-19 pandemic has magnified the concerns regarding the protection of children separated from their based on the ground of deprivation of liberty. Confinement measures have led to an increased risk of violence against children in all settings, both online and offline. Many children detained have been released except for children detained in migration facilities or for security reasons, who continue to be separated from their parents.

The economic impact of the pandemic has also generated severe economic hardship, placing further pressure on households. The pandemic has simultaneously eroded the capacity of child protection and social care services to respond.

Children in alternative care or in detention centers have in some instances been returned to communities and families, without proper planning and assessment to ensure that it was safe and in their best interests to do so. According to a recent estimate published in the Lancet, by May 2021 over 1 million children experienced the death of primary caregivers, including at least one parent or custodial grandparent, due to the COVID-19 pandemic. As this research highlights, secondary impacts of the pandemic such as children being orphaned or losing their caregivers has adverse consequences, including poverty, abuse, and institutionalization.

States must invest on prevention by strengthening family support programmes, child protection and social protection services, justice with children. Services that assist and support families in the local community can help prevent children needlessly entering institutions and ensure that separating a child from their family is only ever a last resort.

And if placement in care is clearly in the best interests of the child, different options should be available depending on the child’s situation, needs and wishes, and in line with the child’s ability to participate in the decision-making process. Placements must be subject to appropriate care standards, review, inspection, and independent oversight. Child-friendly counselling, complaint and reporting mechanisms must also be made available, as part of a robust child safeguarding framework.

The 2021 Voluntary National Report on SDG implementation show initiatives taken to enhance social protection for all: reducing child poverty and strengthening social inclusion and social coherence; expansion of affordable childcare centers, contributing to gender equality in labor market and poverty reduction; enhancing social welfare services to act as a guardian for children and adolescents with conduct disorders and unaccompanied minors-asylum seekers; provision to persons with disabilities and the elderly of suitable, comfortable, accessible, family-type homes in the community to live with safety, dignity, and quality of life; protection and enhancement of welfare for migrants and asylum seekers through projects; continuation of the Guaranteed Minimum Income (GMI); school breakfast to disadvantaged students in public schools.[[11]](#footnote-11)

1. Preamble and in particular Articles 3(2), 5, 7, 8, 9, 10, 11, 18, 20, 21, and 27 of the Convention on the Rights of the Child [↑](#footnote-ref-1)
2. The UN Task Force members are: SRSG VAC (chair), SRSG CAC, UNICEF, UNHCR, IOM, CRC Committee, WHO, UNODC, OHCHR. [↑](#footnote-ref-2)
3. SDG target 10.7 urges States to facilitate orderly, safe, regular, and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies. [↑](#footnote-ref-3)
4. A/76/224 Annual Report of the Special Representative of the Secretary General on Violence against Children paragraphs 78-84 [A/76/224 - E - A/76/224 -Desktop (undocs.org)](https://undocs.org/A/76/224). International Detention Coalition, There are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention (Revised Edition) (Melbourne, 2015) [There-Are-Alternatives-2015.pdf (idcoalition.org)](https://idcoalition.org/wp-content/uploads/2015/10/There-Are-Alternatives-2015.pdf) [↑](#footnote-ref-4)
5. American Convention on Human Rights article 19 rights of the child [Basic Documents - American Convention (oas.org)](https://cidh.oas.org/basicos/english/basic3.american%20convention.htm) See also IACHR Report on the right of boys and girls to a family [Report-Right-to-family.pdf (oas.org)](http://www.oas.org/en/iachr/children/docs/pdf/Report-Right-to-family.pdf) [↑](#footnote-ref-5)
6. African Charter on the Rights and Welfare of the Children article 19 on parental care and protection and article 23 refugee children [36804-treaty-african\_charter\_on\_rights\_welfare\_of\_the\_child.pdf (au.int)](https://au.int/sites/default/files/treaties/36804-treaty-african_charter_on_rights_welfare_of_the_child.pdf) [↑](#footnote-ref-6)
7. https://www.unhcr.org/eg/wp-content/uploads/sites/36/2020/02/Arab-Strategy-Protection-of-Children-in-Asylum-Context.pdf [↑](#footnote-ref-7)
8. A/76/224 Annual Report of the Special Representative of the Secretary General on Violence against Children paragraphs 78-84 [A/76/224 - E - A/76/224 -Desktop (undocs.org)](https://undocs.org/A/76/224). International Detention Coalition, There are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention (Revised Edition) (Melbourne, 2015) [There-Are-Alternatives-2015.pdf (idcoalition.org)](https://idcoalition.org/wp-content/uploads/2015/10/There-Are-Alternatives-2015.pdf) [↑](#footnote-ref-8)
9. Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas of 2008, <https://www.oas.org/en/iachr/mandate/Basics/principles-best-practices-protection-persons-deprived-liberty-americas.pdf> [↑](#footnote-ref-9)
10. [un\_hq\_osrsg\_solutions\_for\_children\_previously\_affiliated\_with\_extremist\_groups\_20-01153\_lo-res.pdf](https://violenceagainstchildren.un.org/sites/violenceagainstchildren.un.org/files/2020/reports_extremism/un_hq_osrsg_solutions_for_children_previously_affiliated_with_extremist_groups_20-01153_lo-res.pdf) [↑](#footnote-ref-10)
11. [282512021\_VNR\_Report\_Cyprus.pdf (un.org)](https://sustainabledevelopment.un.org/content/documents/282512021_VNR_Report_Cyprus.pdf) [↑](#footnote-ref-11)