



SECOND SUBMISSION TO THE JOINT GENERAL COMMENT (Draft of June, 7th 2017)

International Social Service
June, 28th 2017

This second¹ submission² seeks to add value to the Joint General Comment in its impact and effectiveness through: providing a brief overview of relevant legal and political instruments (see Part I); giving insight on how these frameworks could be implemented through practical tools (see Part II) and pinpointing several key messages, with suggested amendments (see Part III).

Throughout this contribution the terminology “Children on the move” and “Children affected by migration” is used. This is based on the [FXB Principles](#) which refers to “*children moving for a variety of reasons, voluntarily or involuntarily, within or between countries, with or without their parents or other primary caregivers and children remaining in the country of origin after their parents have migrated, and to children living with their parents in the destination country.*”

I) Legal and political frameworks

ISS would like to emphasise that in addition to relevant provisions of the Convention on the Rights of the Child (‘UNCRC’) and the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (‘CMW’), there a number of international instruments and standards that must be considered when addressing the needs of Children on the move, which go beyond urgent protection needs: immediate, middle-term and sustainable quality solutions.

1) In accordance with its article 6³, [the 1996 Hague Convention](#) (‘1996 HC’) directly applies to Children on the move, and foresees a framework for child protection measures decided in one State to be recognized, respected and implemented in another State through cooperation and communication mechanisms (arts. 29 and ff.).

2) ISS highlights the importance of meeting the standards set by [the UN Guidelines for the Alternative Care of children \(2009\)](#) (‘UN Alternative Care Guidelines’) when considering alternative care settings for Children on the move. The UN Alternative Care Guidelines explicitly apply as a whole to Children on the move, with or without parental care. Specifically, Sections VIII and IX address standards for the provision of care to children outside of their place of habitual residence and in emergency situations. Each national/local alternative care system should provide a variety of care options, such as kinship care, foster care and small group homes and with each child’s placement individually determined by child protection experts based on the most suitable care setting (“suitability principle”⁴). Priority should always be given to family-based care arrangements (see i.e. §§ 154(b) & (c) of the UN Alternative Care Guidelines). Each placement must always been duly assessed, prepared and monitored (see i.e. §§ 118-122 & 128-136 of the UN Alternative Care Guidelines). Given the particular context of Children on the move, these options should also be evaluated across borders.

3) Finally, in order to influence political discourse, [the Initiative for Child Rights in the Global Compacts](#) - of which ISS is a steering group member - was created to ensure that children’s rights are addressed during the Global Compacts’ negotiations in 2018, following the [2016 New York Declaration for Refugees and Migrants](#). In this framework, Jacqueline Bhabha and Mike Dottridge

International Social Service (ISS) is an international NGO founded in 1924.

Today a network of national entities and a General Secretariat assist children and families confronted with complex socio-legal problems as a result of migration and other factors. Thanks to its presence in more than 120 countries, ISS is a global actor promoting child protection and welfare.

By establishing a link between child protection services and other relevant agencies and authorities in different countries through a multidisciplinary approach, ISS is able to find concrete solutions that ensures the best interests of each child are respected. ISS supports and helps approximately 75,000 families in the world each year.

ISS casework practice places the individual child and his needs at the heart of its concerns, independently of his status. This credo can only be fulfilled based on a case-by-case management, taking into consideration the diversity and disparity of unaccompanied and separated children. <http://www.iss.ssi.org>

¹ See first ISS Submission at the following link : <http://www.ohchr.org/EN/HRBodies/CMW/Pages/JointGeneralCommentonChildren.aspx>

² Prepared by Juliette Duchesne and Jeannette Wöllenstein; edited by Lisa Robinson.

³ Article 6: (1) For refugee children and children who, due to disturbances occurring in their country, are internationally displaced, the authorities of the Contracting State on the territory of which these children are present as a result of their displacement have the jurisdiction provided for in paragraph 1 of Article 5. (2) The provisions of the preceding paragraph also apply to children whose habitual residence cannot be established. See also [Practical Handbook on the Operation on the 1996 Hague Child Protection Convention](#) ; See Special Commission 2017, <https://www.hcch.net/en/publications-and-studies/details4/?pid=6545&dtid=57> .

⁴ See <http://www.alternativecareguidelines.org/Portals/46/Moving-forward/Moving-Forward-implementing-the-guidelines-for-web1.pdf>.

authored a Working Document which details protection and inclusion measures with respect to six priority issues for refugee and migrant children.⁵ The following propositions are based in part on this advocacy document, which has been debated and agreed on by numerous international bodies.

II) Practical framework

In practice, the legal provisions mentioned above should translate into **effective cross-border cooperation mechanisms**, which allow stakeholders to adopt individualised responses to a Child on the move. Given the increased and often rapid movements of children transnationally, ISS advocates for the establishment of operational cross-border case management systems with harmonised standards among the different countries. ISS has launched a practical guide⁸ proposing 8 steps to find sustainable quality solutions for every Child on the move. Additionally, ISS underlines the need for capacity building of professionals within child protection authorities, who should, as highlighted by the Joint General Comment, play a leading role in any decision-making process related to a Child on the move. This training imperative should also be applied to other involved authorities, such as immigration staff. In this regard, ISS is co-leading, together with the IFRC, a multi-agency initiative⁹ to develop a **Massive Open Online Course (MOOC)** to disseminate knowledge on alternative care standards applicable to Children on the move. This initiative joins efforts between the humanitarian sector and alternative care professionals.

Since 2005, the **ISS West African Network ('WAN')**⁶ has established well-functioning intersectional cooperation in 15 ECOWAS countries and Mauritania. The main activity of the network is the identification, protection and reintegration of vulnerable children and young migrants in the host country, the country of origin or a third country following a common procedure based on harmonised standards. Since its inception, this initiative has supported and integrated over 6'500 children, essentially thanks to the involvement of different child protection stakeholders. In each country, a NGO partner is responsible for fostering cooperation with the authorities, civil society and international partners. In addition, each year the 15 Ministries in charge of child protection meet as a steering committee to discuss the results, challenges and provide direction to the Network.⁷

III) Proposed amendments

ISS proposes that specific paragraphs be amended through modification or the addition of key elements. For each paragraph where an amendment is being proposed, a justification or illustration is provided.

As a general note, and consistent with the terminology and position of the Working Document of the Child Rights Initiative (see above), ISS proposes that the term “sustainable quality solutions” instead of “durable solutions” or “long-term solutions” be used throughout the Joint General Comment. Through the addition of the adjective “quality” the child’s best interests, as well as the child’s opinion and views, are to be taken into account. Further, when it comes to the protection and care of a Child on the move, ISS encourages the Committees to explicitly reference the UN Alternative Care Guidelines, as the internationally agreed standards.

Point III.A.2. Best Interest of the child (art. 3 CRC)

Paragraph 29:

- ❖ *“Conduct BIA in a **case-by-case basis** in order to decide, if needed, the type of protection-nature accommodation (**alternatives to detention**) that could be applied to an unaccompanied or separated child, or children with families.”*

⁵ Non-discrimination; best interests of the child; child protection; child immigration detention; access to services for refugee and migrant children; sustainable solutions in children’s best interests.

⁶ For further details, see: http://www.resao.org/en/the_West_Africa_Network.

⁷ See ISS Submission and Working Document

⁸ *ISS, Children on the move: From protection towards a quality sustainable solution*, accessible at http://www.iss-ssi.org/images/Childrenonthemove_Guide.pdf.

⁹ To date the following agencies have in principle indicated an interest in collaborating on a MOOC including CELCIS, FICE, FXB Harvard, Global Alliance to End Violence Against Children, Graduate Institute (Global Migration Centre), Hope and Homes for Children, ICRC, IDC, IFRC, IOM, ISS, RELAF, SC, SOS CVI, TdH, UNHCR and UNICEF.

ISS encourages explicitly referring to the UN Alternative Care Guideline, which provides that Children on the move shall, as a priority, benefit from **family-based care**. Residential care should only be considered as a temporary measure. The development of **adequately trained foster carers**¹⁰ for unaccompanied and separated children should be promoted, as well as the establishment of **small group homes** for older children. Throughout this decision-making process, specific attention should be given to the **ethnic, migratory, cultural and religious background** of the child and his or her family.

An **individualised assessment of the child's best interests** will result in the solution that fits as best as possible to the particular child's needs.

Proposed amendments: *“Conduct BIA in a case-by-case basis in order to decide, if needed, the type of protection-nature accommodation (alternatives to detention **in accordance with the UN Guidelines for the Alternative Care of Children**) that could be applied to an unaccompanied or separated child, or children with families, **taking into account the diversity of Children on the move. In this process, family-based care solutions should be prioritised.**”*

Sources: §§118-122, 142, 153- 154 UN Alternative Care Guidelines ; ISS Manual Children on the move p.33 ; ISS Submission Joint General Comment pp.2 and following ; Working document pp. 8 and following ; Moving Forward pp. 81, 84, 90, 166-74 & 113-119.

- ❖ *“Promote **quality comprehensive solutions**, facilitating regular contact/communication between the child and his/her family when in the child's best interests (whether in the country of origin or in the country of destination or third country) and ensuring that the child's views and opinions have been gathered and taken account of in a child-friendly and sensitive manner.”*

In order for the child to feel confident and be able to express him or herself in his or her native language, the recourse to an intercultural mediator or a translator is recommended (see §§ 62 & 75 of the UN Alternative Care Guidelines). This also enables the child to better understand **his or her rights and responsibilities** and to participate actively in the decision-making process, therefore enhancing the child's resilience.

Proposed amendments: *“Promote **sustainable quality solutions**, facilitating regular contact/communication between the child and his/her family¹¹ when in the child's best interests (whether in the country of origin or in the country of destination or third country) and ensuring that the child's views and opinions have been gathered and taken account of in a child-friendly and sensitive manner **and, if needed, with the support of an intercultural mediator or a translator.**”*

Sources: §§5 & 154 UN Alternative Care Guidelines ; ISS Manual Children on the move p.33 ; ISS Submission Joint General Comment pp.2 and following; Working document pp. 22 and following.

When a long-term decision is taken for the child, his or her **preparation and effective involvement are vital** for his or her future. A **holistic approach** should be taken which addresses among others, the child's fears, expectations, resources, opportunities and skills. These elements are part of an individualised assessment and will shape the **child's resilience**. A decision in accordance with his or her personal capacities is a decision more likely to be accepted by the child.

Proposed addition to the paragraph: *“**Prepare the child for his or her long-term care plan by taking into consideration his or her fears, expectations, resources, opportunities, skills etc.**”*

Sources: §142 Alternative Care Guidelines ; ISS Manual Children on the move p.33 ; ISS Submission Joint General Comment pp. 6 and following ; Working document pp. 6 and following.

¹⁰ ISS Austria's staff has acquired experience in caring for traumatised unaccompanied and separated children aged between 13 and 18 (sole specialised care facility in Austria) and is currently developing compulsory trainings and preparation courses for prospective foster carers.

¹¹ The **Spanish Red Cross** has merged its activities as ISS correspondent with ICRC's *Restoring Family Links* programme. This programme provides individualised services to families dispersed in different countries, as result of migration, war or natural disaster. It includes a wide range of activities such as the exchange of family messages to assure communication with prisoners of war and detained civilians, searching for missing family members, family reunification and assisted resettlement.

After locating a child's family, **ISS-Australia** has been involved in coordinating the initial contact between the child, child protection authorities in Australia as well as ISS's contact and the family in the country of origin. This involves ISS' contact travelling to the family and has even entailed, in some cases, providing their mobile phone so that the authorities in Australia have a reliable contact number.

Point III.A.3. Life, survival and development

Paragraph 35:

*"The Committees stress that in countries of origin should develop comprehensive policies and **inter-institutional coordination mechanisms** in order to ensure, in cases of children that return to their countries, the effective reintegration through a rights-based approach, including immediate protection measures and long-term solutions, in particular effective access to education, health, family life, justice and protection against all forms of violence."*

A pre-condition for the successful implementation of a sustainable solution for the Child on the move is **collaboration between all relevant actors** in the country or countries concerned. If the sustainable solution for the child occurs in the country of origin or a third country, it is essential to ensure **continuity of care** and a transnational case handover, which covers, among other issues, the exchange of essential information on the child (see §§108 & 109 of the Joint General Comment).

ISS encourages the addition of an element that highlights the **"cross-border" nature of such coordination**, to ensure that these comprehensive policies and coordination mechanisms do not apply only to return or reintegration situations in the country of origin, but that they are in place generally. Such obligations should not only apply to countries of origins, but should be part of a **shared responsibility** among countries of origin, transit and destination countries. Host countries should foresee specific funds to facilitate **assisted voluntary return**.¹²

As highlighted in the Working Document of the Child Rights Initiative, "[r]eintegration needs to be child-focused and take special account of child-specific needs (schooling, access to psychosocial support, social inclusion etc.)." ISS advocates for explicitly including **"access to psycho-social support and social inclusion"** in the non-exhaustive list.

ISS is alarmed by the **lack of comprehensive assessments** being undertaken to adequately evaluate the situation of children in their country of origin.¹³ Indeed, *"ISS takes the position that a child cannot be returned to a child institution in the country of origin when the parents or family members have not first been identified and worked with. For the purpose of the family re-integration process, a temporary stay in a child institution might be a suitable option to assure a proper re-integration within the family. Furthermore, ISS promotes the development of family- and community-based alternatives (such as foster care, placement in small groups, etc.) when an immediate re-placement with the family is not possible for various reasons."* (ISS Manual, p. 89).

Proposed amendments: *"The Committees stress that [...] countries of origin, **transit and destination** should develop comprehensive policies and inter-institutional coordination mechanisms in order to ensure, in cases of children that return to their countries, the effective reintegration through a rights-based approach, including immediate protection measures and **sustainable** solutions, in particular effective access to accommodation, education, health, **psycho-social support**, family life, justice, **social inclusion**, and protection against all forms of violence. **In all these situations, a quality follow-up by all involved authorities should be ensured.**"*

Sources: §154 UN Alternative Care Guidelines; ISS Manual Children on the move p.84
ISS Submission Joint General Comment pp.6 and following, Working document pp. 22 and following.

¹² **Children and Families Across Borders** (ISS Branch in the UK) has developed an assisted voluntary return scheme which provides advice, support and financial assistance for reintegration based on a unique risk and best interest assessment process, home study which serves to evaluate the child's wishes and aspirations for the future, such as available support in the country of origin. It has supported approximately 20 children every year, who are seeking to return home, essentially to Albania, Bangladesh, Vietnam, Nigeria and India.

¹³ **ISS USA**, as part of its *Kids in Between* programme, is likewise working to ensure the safe return and reintegration of children being repatriated to their country of origin. Therefore, ISS USA is trying to change attitudes and raise the awareness of US authorities to consider placing a child with his community or family in the Northern Triangle region if such placement has been considered in the child's best interests after an extensive assessment with local partners gathering valuable information in the country of origin. It is also working with other organizations to develop a unified strategy for the safe return/reintegration of children being repatriated to their country of origin, and advocating for the use of information from home country to be used in *all* decision-making about the children's status, when returning children, or in any decisions that could affect the well-being of a child, who is not in the care of his family.

Point III.A.4. Right to be heard, express his or her view and participation (art. 12 CRC)

Paragraph 37:

"(...) A legal representative for all children (including families), and trained guardian for unaccompanied and separated children, should be appointed as soon as possible on arrival, free of charge."

A translator or cultural mediator ensures the Child on the move **understands his or her rights and responsibilities** and that the child is heard and can **participate actively**¹⁴ in any assessments related to his or her protection needs and provisions. Early decisions (for example, at the border) can have important consequences on a child's life - therefore, all risks of misunderstanding should be avoided.

Appointment of an independent legal guardian is one of the most important first steps when dealing with Children on the move, as the responsibility for the child's wellbeing and safety is entrusted to one professional. In countries where there are no provisions for such a guardianship, there should be the possibility to designate **a person of confidence or a person of reference**. The guardian or the person of confidence should have knowledge and understanding of the specific needs of Children on the move enabling him or her to take informed decisions.¹⁵

The **role and tasks incumbent to the guardian** should be further highlighted. He or she is the key coordinating person in contact with all the actors involved in the protection, care, judicial proceedings, etc. of the child. He or she must ensure the sharing of relevant information as well as the participation of the child in the decision-making process (see § 37 of the Joint General Comment).

Proposed amendment: *"(...) A legal representative for all children (including families), and trained guardian for unaccompanied and separated children, should be appointed as soon as possible on arrival, free of charge. **In case of the absence of a guardianship system, the possibility to name a 'person of confidence' should be available.**"*

Proposed addition to the paragraph: *"**Throughout the process, the child should be offered the possibility to be provided with a cultural mediator or a translator in order for him/her to fully express him/herself in her/his native language. These professionals should be trained to the specificities of Children on the move, including gender, cultural and religious aspects.**"*

Sources: §§5, 19, 101-104 & 145 UN Alternative Care Guidelines; ISS Manual Children on the move pp. 33 & 43. ISS Submission Joint General Comment, p. 5. ; Moving Forward pp. 26-28, 86 & 116.

¹⁴ Through a consultation process with children on the move and professionals working with them in various European Union countries, **Defense for Children Italy** (ISS correspondent in Italy) requested and collected children's voices on safety and protection in order to inform policy and practice stakeholders. This initiative served as a basis to elaborate a series of key guidelines for professionals working at different levels with children on the move as well as a practical guide for children to enhance and value their resilience and resources

¹⁵ In the context of the refugee crisis in Germany and the related restructuring reform, **ISS Germany** has been actively involved in raising awareness and lending technical and legal advice to competent authorities, such as child and youth welfare authorities (*Jugendämter*) and tribunals. In particular, ISS Germany advocates for each unaccompanied or separated child to be ensured professional support and legal representation by a guardian throughout all administrative and legal proceedings, regardless in which administrative area he is being taken care of. Together with professionals working with and for unaccompanied and separated children, **ISS Switzerland** has developed a professional handbook¹⁵ that aims to harmonise the reception, care and protection for unaccompanied and separated children as their treatment varies greatly between the different cantons of Switzerland. This tool offers guidelines and covers issues such as the responsibilities of the receiving State within this complex assessment procedure in the country of origin and reception in view of being able to determine a durable solution implying transnational aspects; the possibilities and role of legal guardians, social workers or other professionals accompanying these children in the process; and the aging out process of young children on the move. Likewise, ISS Switzerland has shared its know-how and actively contributed to a practical guide for case workers and officers on how to deal with transnational child protection cases with regards to children on the move, which has been published by the Council of Baltic Sea States Secretariat (see above).

Point III.A.5. Protection against expulsion: Non-refoulement, prohibition of collective expulsion

Paragraph 42:

- ❖ *“(…)repatriation of any child can only be decided when it is evidenced in a case-by-case basis that this is in their best interests, and after ensuring - within a **procedure with proper safeguards** - that the child, **upon return, will be safe and provided with proper care and custody.***

As soon as the child’s immediate needs have been identified, a potential **return procedure** should be canvassed, imperatively including **family tracing efforts**, followed by a **thorough social assessment** of the risks involved, **and family and social conditions** in the country of origin.

Aside from safety and security elements, **the proper care and custody arrangement** should include the suitability of the arrangement, meaning that the **carer’s capacity and willingness** to care for the concerned child is assessed through a **transnational social evaluation report** (e.g. professional, socio-economic situation, health condition). A child needs to be adequately prepared for the return, and a **follow-up plan** should be determined, which includes a support network (eventual financial assistance, access to education, health care, etc.) as well as transnational monitoring.

See specific details pp. 86 and ff. of the ISS Manual Children on the move.

Case example

In 2015, CFAB received a call from a UK local authority about an 11-year-old Syrian girl called Rana. Her family had fled the civil war to Turkey, from where Rana had travelled unaccompanied to the UK to stay with her extended family. However, UK authorities grew concerned that Rana was not happy in her new surroundings. Although she had been in the UK for eight months, she was not attending school and had started saying that she wanted to return to Turkey to be with her immediate family. There were even fears that she was being exploited as a domestic slave. The local authority suspected that it may be in Rana’s best interests for her to return to Turkey. However, this required making sure her family were able to provide a safe living environment – something the local authority lacked the overseas contacts, expertise and capacity to find out. It was for this reason they contacted CFAB, who were able to contact partners in Turkey and arrange for them to locate and visit the family to conduct a comprehensive assessment. They discovered that Rana’s father had found regular work and had moved his family into safe housing. As a result of the assessment, the local authority concluded that there were no grounds for overriding Rana’s clear wish to return home. Rana was soon returned to her family, where her welfare continues to be regularly monitored by Turkish local authorities. Thanks to CFAB’s work with its International Social Service (ISS) network, Rana is now attending school once more.

Source: CFAB (ISS UK), ISS Turkey; ISS Manual pp. 91 and following.

Proposed amendment: *“(…) repatriation of any child can only be decided (...) - within a procedure with proper safeguards - that the child, upon return, will be safe and provided with proper care and custody. **Such arrangements must be adequately assessed, including the person’s capacity and willingness to care for the child, prepared, monitored and followed-up.**”*

Source: §§147-148 of the UN Alternative Care Guidelines; ISS Manual Children on the move, pp. 67 and following; ISS Submission Joint General Comment, pp. 6-8 with case examples on p. 7.

- ❖ *“(…) repatriation is one of possible **durable solutions** for the unaccompanied children and children with their families, as well as integration in countries of residence - either temporarily or permanently, according to each case circumstances -, resettlement in a third country - e.g., based on family reunification grounds -, or **other solutions that could be identified [on] a case-by-case basis.**”*

ISS suggests adding example for “other solutions” and referencing to transnational solutions, such as **international kinship care**.¹⁶ The advantages of such a placement can be numerous, especially where a relationship is already in existence. For instance, the child could be able to maintain his or her family, community ties as well as cultural, spiritual and linguistic heritage (“**continuity of care**”).

ISS believes that such sustainable quality solutions entail strengthened cross-border cooperation and should be **identified and assessed jointly among the different stakeholders of the involved States**. In this regard the cooperation and communication mechanisms of the 1996 HC could be beneficial (see Part I). Therefore, ISS advocates for **wider ratification/accession to the 1996 HC**, which could prove valuable in finding appropriate care arrangements, nationally and internationally.

*Proposed amendments :“(…) repatriation is one of possible **sustainable quality solutions** for the unaccompanied children and children (...) or other solutions, such as **international kinship care**, that could be identified [on] a case-by-case basis, **by referring to existing cooperation mechanisms, such as the 1996 Hague Convention.**”*

Sources: Articles 33, 23 I of the 1996 HC; §158 UN Alternative Care Guidelines; ISS Manual Children on the Move, The 8 Steps; ISS Contribution Joint General Comment, pp. 3-4.

Point III.B.1. Age

Paragraph 46:

*“(…) States should provide **adequate follow-up, support and transition measures for children when they reach 18 years of age, particularly those leaving a care context**, including by ensuring access to long-term regular migration status and reasonable opportunities for completing education and integration into the labour market”.*

ISS encourages the addition of an explicit **reference to the UN Alternative Care Guidelines** and its provisions on “**leaving care**”, which provide important guidance on how to **prepare** for this transition period and provide **aftercare services (e.g. access to vocational training or work project)**. During such transition, ISS stresses the **importance of a guardian or a person of reference/trust** as well as **peer support** (see §37 of the Joint General Comment).

Given that the period from 10 to 25 years is critical to the development of children and young people, especially where there is deficiency or trauma during childhood (see [WHO](#)), ISS strongly recommends that there should be **flexibility regarding the treatment of aged-out minors** because in some contexts it is not clear who is a child and who is an adult (for example, in Africa there is an issue of birth registration). The quality of care in favour of this group until the possible return and reintegration, or until the young adult concerned becomes (socially and financially) independent, should always be assured.

*Proposed amendments : “(…) **In accordance with the UN Guidelines for the Alternative Care of Children**, States should provide adequate follow-up, support, **especially through the appointment of a guardian/person of reference**, and transition measures for children when they reach 18 years of age, particularly those leaving a care context, including by ensuring access to long-term regular migration status and reasonable opportunities for completing education and integration into the labour market”. **The child and young person should be adequately prepared during this transition period, and competent authorities shall ensure adequate follow-up of the individual situation. The Committees encourage States to take protective and support measures beyond the age of majority.**”*

Sources: §§131-136 of the UN Alternative Care Guidelines; ISS Children on the Move Manual, pp. 67 and following.

¹⁶ **Children and Families Across Borders** (ISS Branch in the UK), for instance, has assisted around 100 cases working closely with local professionals from the ISS network in order to determine the suitability of the concerned family to care for the child. Therefore, CFAB has focused its efforts on raising awareness among local British authorities, consular services and the Judiciary about working in collaboration with overseas authorities, in compliance with international standards such as the Guidelines and the HC-1996. Challenges include the follow-up of kinship placements, especially due to the costs and for a lacking legal authority/responsibility as the legal custody is often transmitted to the kinship carer.

Point III.B.2. Right to liberty and non-detention (arts. 16, 17 CMW; art. 37 CRC)

Paragraph 53:

*“Unaccompanied children should be placed in the national/local **alternative care system**, preferably in community and/or **family-type care** - when such arrangements exist - rather than in institutional care”.*

A specific **reference to § 154 (b) and (c) of the UN Alternative Care Guidelines** should be added. Institutional care should only be considered as **temporary measure**, independently of the country (destination, host country or country of origin).

As highlighted above (see Part I), and based on the UN Alternative Care Guidelines, the national/local alternative care system should provide a **variety of care options, such as kinship care, foster care and small group homes** and individually determined by child protection experts based on the most suitable care setting (“suitability principle”). Given the particular context of Children on the move, these options should also be evaluated across borders. Further, they must **always been duly assessed, prepared and monitored**.

ISS is concerned about existing practices where children are returned to their country of origin and placed in institutional care. This makes the need for an effective transnational case management even more apparent (see Part I and §35 of the Joint General Comment).

With regard to specific settings such as foster care, States should foresee **specialized trainings/preparation for carers**. In addition, their **access to support services** needs to be assured. ISS emphasises that such specialisation does not mean creating parallel systems for migrant children in need of alternative care. Appropriately responding to Children on the move should be an integrated part of a national child protection system.

When pertinent and after a thorough assessment, the recourse to permanent family-type solutions, such as *kafalah* and adoption (in accordance with the 1993 HC)¹⁷, should be considered.

Proposed amendments: *“Unaccompanied children should be placed in the national/local **child protection** system, preferably in community and/or family-type care, **such as kinship care, foster care or kafalah**, - when such arrangements exist - rather than in institutional care”. **When pertinent and after a thorough assessment, the recourse to permanent family-type solutions, such as adoption (in accordance with the 1993 HC), should be considered. Care settings shall always be duly assessed, prepared and monitored, in conformity with the child’s individual needs. In addition, the Committees urge the States to assure proper training and access to support services.”***

Sources: §152 UN Alternative Care Guidelines; Moving Forward Handbook; ISS Children on the Move Manual, pp. 89 and ff. ; ISS/IRC Monthly review March 2017, n°210.

Paragraph 57:

*“Access to quality free legal assistance and **case management** (...). Child protection authorities and children’s rights experts should play a guiding role in these cases.”*

Such case referral systems should exist at the **national but also international level** (see Part I). States should strengthen cooperation between authorities (child protection authorities, judicial, immigration, etc.), both at the international and national level. ISS highlights the need for all authorities – not only child protection authorities - involved in responding to a Child on the move to benefit from **adequate training**.

Proposed amendments: *“Access to quality free legal assistance and case management, **both nationally and transnationally** (...). Child protection authorities and children’s rights experts should play a guiding role in these cases. **Therefore, States***

¹⁷ See <https://www.hcch.net/en/instruments/conventions/specialised-sections/intercountry-adoption>.

should ensure continued capacity building of the latter as well as of other involved stakeholders, e.g. immigration staff, judicial professionals.”

Sources: ISS Children on the Move Manual; ISS Submission Joint General Comment.

Point III.B.5.a Right to family life (arts. 14, 17, 44 CMW; arts. 9, 10, 11, 20, 21, 22 CRC)

Paragraph 69:

*“The Committees underline that member states must comply with their **international legal obligations** in terms of **maintaining family unity** and **preventing separation** which should be a primary focus.”*

ISS suggests specifically referring to **the UN Alternative Care Guidelines**. Indeed, these Guidelines emphasise that all efforts should be made to maintain family unity, including in emergency situations.

There should be specific focus on **sibling groups**. Brothers and sisters should be kept together even when it is decided to resort to alternative care measures, when it is in their best interests. In cases where separation is necessary, States should make efforts towards maintaining communication among the siblings (see §73 of the Joint General Comment).

Proposed amendments: *“The Committees underline that member states must comply with their international legal obligations in terms of maintaining family unity, **including siblings**, and preventing separation which should be a primary focus, **in accordance with the UN Alternative Care Guidelines**.”*

Sources: §§3, 15, 17, 651 & 155-156 UN Alternative Care Guidelines; Moving Forward Handbook ‘The necessity principle’ p. 49 and following & 117; ISS Children on the Move Manual ; ISS Submission Joint General Comment p. 4

Paragraph 73:

*“The Committees are concerned by cases where children are separated from parents and placed in alternative care by child protection systems when there are no concerns related to abuse and neglect. Challenges related to poverty alone cannot justify separation of children from their parents - **necessary basic social assistance** should be provided to parents to care for their children when in their best interests. Children and families in an irregular migration must be ensured due process in custody and other family law matters, when the best interests of the child shall be paramount consideration.”*

Poverty should not be a valid ground to separate a child from his or her family (“necessity principle”). With this in mind, States should focus on the provision of **assistance to family, including wider kinship care** and not only to the individual child. Maintaining family links should be the primary aim of States when it is in the best interests of the child, and whenever possible, the child should remain in his or her family or extended family.

When separation cannot be avoided, recourse to **kinship care** could be considered for unaccompanied and separated children. This family-based care solution is beneficial for many reasons, notably in the maintenance of family links and the continuity of the child’s cultural, linguistic and religious aspects (see §§42 & 53 of the Joint General Comment).

Proposed amendments: *“The Committees are concerned by cases where children are separated from parents and placed in alternative care by child protection systems when there are no concerns related to abuse and neglect. (...) **In cases where the separation cannot be avoided, kinship care could be considered as a potential solution**. Children and families in an irregular migration must be ensured due process in custody and other family law matters, when the best interests of the child shall be paramount consideration.”*

Sources: §§ 3, 15 & 153-167 UN Alternative Care Guidelines; Moving Forward Handbook pp. 49 and following, 117; ISS Submission Joint General Comment p. 3.

Paragraph 76:

*"In the case of unaccompanied or separated children, efforts to find durable solutions for them should be initiated and implemented without delay and analyzing the possibility of **family reunification**. If the child has family in the country, the country of origin or a third country, child protection and welfare authorities in countries of transit or destination should commence tracing family members as soon as possible. The decision of whether a child should be reunified with their family in their country of origin and/or destination should be made while based on a **robust assessment** of upholding the child's best interests as a primary consideration, considering family reunification as one aspect (not the sole aspect) and with a sustainable reintegration plan after guaranteeing the child to participate in the process (see paragraphs XX). A firewall must be ensured so that if family tracing finds parents are residing irregularly in the country or a third country this shall not be communicated to immigration authorities. Unaccompanied and separated children should not be returned without ensuring that proper care and custodial arrangements are in place and that family members have been informed, contacted in the country of return."*

Cross-border solutions such as **international family kinship** care should be investigated. This consists of evaluating the possibility for the child to be cared by an extended family member or other person(s) with a kinship bond, living in a third country (see §§42 & 53 of the Joint General Comment).

The reintegration of the child in his or her country of origin can be considered as a **durable quality solution** for the child. As previously stated, any evaluation of the proper care and custodial arrangements should include an assessment of the parents/carer's capacities and willingness to care for the child (see §42 of the Joint General Comment).

Proposed amendment : *"(...) The decision of whether a child should be reunified with their family in their country of origin, or extended family (international kinship care) in a third country and/or destination should be made while based on a robust assessment of upholding the child's best interests as a primary consideration, (...). Unaccompanied and separated children should not be returned without ensuring that proper care and custodial arrangements are in place and that family members have been informed, contacted in the country of return, **and are capable and willing to care for the child.**"*

Sources: UN Alternative Care Guidelines; Moving Forward Handbook; ISS Children on the Move Manual.

Paragraph 78

*"(...) States should develop effective and accessible family reunification procedures that would allow **children to migrate in a regular manner** and policies that enable regular migrants to be accompanied with their families to avoid separation".*

In order to prevent **"left-behind" children from migrating**, policies and practices should facilitate the establishment of ongoing contact and regular communication between the child and his/her family across border.¹⁸ This is not only important for the child's sense of identity and right to dignity, but may help the child to better settle and cope with their situation.

In addition, **the 1996 HC** provides a framework for child protection measures decided in one Contracting State to be recognised, respected and implemented by the authorities of another Contracting State (see Part I).

States should ensure that effective policies are in place to prevent and respond to the phenomena of **"missing children"**, who are no longer on the radar of child protection services. These groups are particularly vulnerable to exploitation and other illicit practices.¹⁹

¹⁸ In Moldova, at least one in five children has a parent abroad. The **Association for Child and Family Empowerment "AVE Copiii"** (ISS Correspondent in Moldova) works to facilitate contacts/relations between parents/enlarged families and children. // **ISS Hong Kong**, as part of their international child protection programme in Mainland China, regularly undertakes tracing and locating efforts for Chinese children, whose parents are living and working overseas (so-called international family investigation reports) in order to facilitate the child's welfare report for decisions made in the best interests of the concerned child, including considering the placement of the child with his kin abroad.

¹⁹ See <http://missingchildreneurope.eu/>

See in more details: ISS Submission Joint General Comment pp. 8 and 9.

Proposed amendments: “(...) States should develop effective and accessible family reunification procedures that would allow children to migrate in a regular manner and policies that enable regular migrants to be accompanied with their families to avoid separation”. **In addition, States should ensure the regular contact and communication between the child and his or her family members across-borders. Existing cooperation mechanisms, such as the 1996 HC, should be utilised in implementing the child’s contact rights.**

Sources: UN Alternative Care Guidelines; ISS Manual Children on the move; ISS Submission Joint General Comment pp. 2 and following; Working document Child Rights Initiative; Safe and Sound Document; ISS/IRC Monthly review n° 201 and n° 202.

Point III.B.8 Right to an adequate standard of living (art. 45 CMW, art. 27 CRC)

Paragraph 94:

“States shall take measures to ensure an **adequate standard of living** in temporary locations, such as reception facilities, and formal and informal camps, and ensuring that these are accessible to children and their parents or legal guardians, including (...)”

ISS suggests the inclusion of **family-based care options**, which should be prioritised over reception facilities and camps, given that the latter could fall within the definition of residential care provided by the UN Alternative Care Guidelines (see Part I & §§29 & 53 of the Joint General Comment).

Proposed amendment: “States shall take measures to ensure an adequate standard of living in temporary locations, **such as family-based care options**, reception facilities, and formal and informal camps, and ensuring that these are accessible to children and their parents or legal guardians, including (...)”.

Point IV. International cooperation

Paragraphs 108 and 109

- ❖ “ (...) importance of **coordinating efforts** among countries of origin, transit and destination, (...)”
- ❖ “(...), the Committees reaffirms the need to address international migration **through international, regional or bilateral cooperation and dialogue and through a comprehensive and balanced approach**, recognizing the roles and responsibilities of countries of origin, transit and destination in promoting and protecting the human rights of migrant children (...)”

In practice, such cooperation should be translated into **cross-border case management mechanisms** with clear roles and responsibilities for all involved stakeholders.

ISS is alarmed by the fact that child protection in the context of migration often stops at borders. **To ensure the continuity of quality care, and as a pre-condition for the successful implementation of a sustainable solution for the Child on the move, collaboration is needed** between all relevant actors involved in the country or countries concerned (e.g. immigration and border control, social workers and legal professionals). If the sustainable solution for the child occurs in the country of origin or a third country, it is essential **to ensure a transnational case handover**. In this way, professionals can provide continuity of guardianship, care and exchange of essential information related to the child’s situation. Although many efforts are made to establish a re-integration project plan, many aspects are difficult to plan or foresee before return and may require modification. For this reason, it is important to identify **a responsible case-worker** or person from the civil society who is accessible to the concerned child during the re-integration period. The ISS network is well-placed to facilitate transnational case management that safeguards the best interests of the child while a **long-term life project** involving two or more countries is being implemented.

Proposed amendment: “(...), the Committees reaffirms the need to address international migration through international, regional or bilateral cooperation and dialogue and through a comprehensive and balanced approach, recognizing the roles and responsibilities of countries of origin, transit and destination in promoting and protecting the human rights of migrant children (...). **In particular, cross-border case management procedures should be established in an expeditious manner in conformity with the 1996 HC.**”

Source: ISS Children on the Move Manual, the 8 steps.

References

- [Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children](#)
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