



RE: UN Special Rapporteur on the Human Rights of Migrants - Call for Submissions  
Submitting entity: United Nations Major Group for Children and Youth, Migration Working Group

The United Nations Major Group for Children and Youth (UNMGCY) welcomes the opportunity to contribute to the Special Rapporteur's report on Ending immigration detention of children and seeking adequate reception and care for them.

The United Nations Major Group for Children and Youth (UNMGCY) is the UN General Assembly-mandated official, formal and self-organised space for children and youth (aged below 30) to contribute to and engage in certain intergovernmental and allied policy processes at the UN since 1992. Our mission is to bridge children and youth and the UN system in order to ensure that their right to meaningful participation is realised. We do so on a voluntary-basis by engaging children and youth entities in formal and informal forms in the design, implementation, monitoring, follow-up and review of sustainable development policies at all levels in four areas: Policy & Advocacy, Capacity Building, Youth Action and Knowledge. The Migration Working Group is the group within the UNMGCY which focuses on migration issues through a youth-centered lens and experience through Policy & Advocacy, Capacity Building, Youth Action and Knowledge Assessment, Generation and Use. Our latest Impact Report found that youth are concerned with the urgency of addressing the opportunities and challenges created by the large movements of people across the globe, and believe in the power of partnerships to achieve our goals more effectively. In 2020, the UNMGCY will be focusing on bringing even more practical solutions to the table, and want to make it easy for actions to be taken and partnerships to be created, and so it will bring young people to present innovative initiatives based on strong and successful track records. The UNMGCY will present evidence-based recommendations on how to scale them and concrete proposals for partnerships. You can read our latest impact report, here: <https://bit.ly/2VvaLyb>. For any questions please do not hesitate to contact the leadership of our migration team at [migrationgfp@unmgcy.org](mailto:migrationgfp@unmgcy.org)

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**1. Please provide information on any legislation or policy that prohibits or restricts the use of immigration detention of children and their families in your country. Grateful if you could kindly submit the original text of the legislation or policy, accompanied by an English translation if it is in a language other than English, French or Spanish.**

In Europe, the European Court of Human Rights has published two factsheets on unaccompanied and accompanied minors in detention where violations of Article 3 (prohibition of inhuman or degrading treatment), Article 5.1 (right to liberty and security) as well as Article 8 (right to respect for private and family life) of the ECHR are often found<sup>1</sup>. The Court of Justice of the European Union has also frequently found breaches of Articles 1, 7 and 24 of the Charter of Fundamental Rights of the European Union<sup>2</sup>.

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<sup>1</sup> European Court of Human Rights, Factsheet – Unaccompanied migrant minors in detention, January 2018 [https://www.echr.coe.int/Documents/FS\\_Unaccompanied\\_migrant\\_minors\\_detention\\_ENG.pdf](https://www.echr.coe.int/Documents/FS_Unaccompanied_migrant_minors_detention_ENG.pdf); European Court of Human Rights, Factsheet – Accompanied migrant minors in detention, April 2018, [https://www.echr.coe.int/Documents/FS\\_Accompanied\\_migrant\\_minors\\_detention\\_ENG.pdf](https://www.echr.coe.int/Documents/FS_Accompanied_migrant_minors_detention_ENG.pdf)

<sup>2</sup> CJEU – C-233/18 Haqbin, 12 November 2019; CJEU - C-79/13, Federaal agentschap voor de opvang van asielzoekers v Selver Saciri and Others



be detained. Those under the age of 16 are placed in a government-run shelter, while those +16 years old are accommodated in reception and accommodation centres<sup>13</sup>.

In 2015, Taiwan prohibited the detention of children under the age of 12 years old through Presidential Decree hua-zong-yi-yi-zi No. 10400013351, promulgated on February 4, 2015<sup>14</sup>.

In 2015, Mexico prohibited immigration detention of children in the official regulations for the National Child Rights Law<sup>15</sup>.

Similarly, the regulations for the Migration Act of the Dominican Republic state that detention will never be applied to migrant children<sup>16</sup>.

In 2017, Ecuador approved a new Human Mobility Law that expressly prohibits immigration detention of children<sup>17</sup>.

In Costa Rica, Decree No. 36831-G on the Regulation of Refugees prohibits the detention of all children regardless of whether they are accompanied or unaccompanied<sup>18</sup>.

\*These are some examples of laws that restrict immigration detention of children and families. It is important to clarify that these provisions are not always applied in practice.

**2. Please provide information on existing non-custodial alternatives to immigration detention of children in your country (e.g. community-based reception solutions) and elaborate how these alternatives effectively enhance the protection of the rights of migrant children and their families.**

The most common alternatives implemented in Europe are enforcement-based: reporting; sponsorship by a citizen of the country or by a long-term resident; personal financial guarantee; designated residence (which includes designation to reception centres for asylum seekers, centres for unaccompanied minors and private accommodation); and electronic tagging<sup>19</sup>. This is the case in countries like Norway, Croatia or Slovakia<sup>20</sup>.

There is strong evidence that alternatives to detention that use case management to support migrants in migration processes achieve higher rates of compliance and better ensure the rights and wellbeing of migrants. The International Detention Coalition's analysis of alternatives to detention from around the world found that alternatives compliance ranges from 70% and 99%<sup>21</sup>.

<sup>13</sup> Original document: <https://www.mevzuat.gov.tr/MevzuatMetin/1.5.6458.pdf>. Translation: <https://www.refworld.org/docid/5a1d828f4.html>

<sup>14</sup> Original document: <https://law.moj.gov.tw/LawClass/LawAll.aspx?PCode=D0080132>. Translation: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080132>

<sup>15</sup> See article 111 of Reglamento de la Ley General de los Derechos de Niñas, Niños y Adolescentes (2015), available at [http://www.dof.gob.mx/nota\\_detalle.php?codigo=5418303&fecha=02/12/2015](http://www.dof.gob.mx/nota_detalle.php?codigo=5418303&fecha=02/12/2015)

<sup>16</sup> See article 134 of Reglamento de Aplicación de la Ley General de Migración (2011), available at <https://www.acnur.org/fileadmin/Documentos/BDL/2012/8880.pdf>

<sup>17</sup> See article 2 of Ley Orgánica de Movilidad Humana (2017), available at: [www.refworld.org/pdfid/58a41f864.pdf](http://www.refworld.org/pdfid/58a41f864.pdf)

<sup>18</sup> See article 47 of Reglamento de Personas Refugiadas (2011), available at: [www.refworld.org/docid/4ffe64d2.html](http://www.refworld.org/docid/4ffe64d2.html)

<sup>19</sup> Odysseus Network, Alternatives to immigration and asylum detention in the EU (2015)

<sup>20</sup> End Immigration Detention of Children and CoE, A study of immigration detention practices and the use of alternatives to immigration detention of children (2017), p.51, available at <https://edoc.coe.int/en/migration/7533-a-study-of-immigration-detention-practices-and-the-use-of-alternatives-to-immigration-detention-of-children.html>

<sup>21</sup> Sampson, R., Chew, V., Mitchell, G., and Bowring, L., There Are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention (Revised), p. 4. International Detention Coalition (2015). Available at <https://idcoalition.org/wp-content/uploads/2015/10/There-Are-Alternatives-2015.pdf>

In Germany, unaccompanied children are integrated into the mainstream youth care system. They are first accommodated in an emergency reception centre and visited by a social worker. After the first assessment, they are transferred to a second reception centre and are assigned a guardian and a case manager from the youth office. They work together to find a suitable long-term accommodation solution within 2-4 months<sup>22</sup>.

Three engagement-based alternatives to detention are currently operating in Bulgaria, Cyprus and Poland. They are delivered by civil society organisations, with two-year financial support from the European Programme for Integration and Migration<sup>23</sup>. The analysis shows that the positive impact of case management was particularly acknowledged by interviewees in two aspects: ability to participate in informed decision making (94%) and coping and well-being of individuals (93%).

A government-funded project run by a non-governmental organisation arranges housing in the community as well as direct provision of food, clothing and medicine for asylum seekers in Hong Kong. Using a case management approach, professionals assess each case and develop an appropriate program of response in line with the resources available. Vulnerable migrants, such as unaccompanied minors, are given priority and extra support<sup>24</sup>.

From January 2016 through June 2017, the US government implemented a program to respond to families seeking asylum at the US border. Rather than being detained, some families were enrolled into the Family Case Management program (FCMP), a community-based alternative. 99% of participants reported positive relationships with their case managers. Most of the participants indicated that beyond providing information, case managers helped them understand the information and helped them cope with the psychological aspect of navigating immigration proceedings. Furthermore, participants stated that comprehending their legal obligations made it easier for them to comply with immigration proceedings. FCMP was planned as a five-year program in five cities across the United States. Instead, it was terminated by the Trump administration in June 2017, only 1.5 years into its implementation<sup>25</sup>.

**3. Please provide information on any existing good practices or measures taken in your country to protect the human rights of migrant children and their families while their migration status is being resolved, including inter alia their rights to liberty, family life, health and education(e.g. by ensuring effective access to inter alia adequate reception, healthcare, education, legal advice, family reunion).**

The "Family Units" in Belgium are regularly used as a good alternative measure. Children with their family enjoy freedom of movement and are supervised by a designated person from the Immigration Office which works in collaboration with a network of lawyers (for the provision legal aid), local schools (for the education of children), childhood protection organisations and NGOs such as Jesuit Refugee Service Belgium (for monitoring purposes)<sup>26</sup>. In Scotland there is the Scottish Guardianship Services which works to help young

<sup>22</sup> IDC, Keeping Children Safe, p. 6 (2018). Available at <https://idcoalition.org/wp-content/uploads/2018/10/Keeping-Children-Safe-IDC-Briefing-Paper-Oct-2018.pdf>

<sup>23</sup> For further information, see Eiri Ohtani, Alternatives to Detention from theory to practice: Evaluation of three engagement-based alternative to immigration detention pilot projects in Bulgaria, Cyprus and Poland (2018) [https://www.epim.info/wp-content/uploads/2018/10/ATD-Evaluation-Briefing\\_FINAL.pdf](https://www.epim.info/wp-content/uploads/2018/10/ATD-Evaluation-Briefing_FINAL.pdf)

<sup>24</sup> Sampson, R., Chew, V., Mitchell, G., and Bowring, L., There Are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention (Revised), p. 45. International Detention Coalition (2015). Available at <https://idcoalition.org/wp-content/uploads/2015/10/There-Are-Alternatives-2015.pdf>

<sup>25</sup> Women's Refugee Commission, The Family Case Management Program: Why Case Management Can and Must Be Part of the US Approach to Immigration (2019) <https://reliefweb.int/sites/reliefweb.int/files/resources/The-Family-Case-Management-Program.pdf>

<sup>26</sup> Sampson, R., Chew, V., Mitchell, G., and Bowring, L. There Are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention (Revised). International Detention Coalition (2015). Available at <https://idcoalition.org/wp-content/uploads/2015/10/There-Are-Alternatives-2015.pdf>

asylum seekers to feel supported and empowered throughout their journey whilst their claim is assessed, and their status determined. It enables them to make informed decisions about their future and ensure that they are entitled to their rights. The young person is appointed a guardian, who will represent a point of contact and continuity through their progress through the asylum and immigration system<sup>27</sup>.

In the new Tanzanian Constitution, children aged 7 years old or younger will be placed in a foster home this is despite that there is no law differentiating the treatment of children in detention, the UNHCR and partners follow an official policy of placing unaccompanied refugee children into a foster program and given culturally and linguistically appropriate refugee foster families in the refugee camps. Similarly, some children are being accommodated in the homes of local officers rather than staying in prison with parents. However, this practice is inconsistent with the Convention on the Rights of the Child that prefers family unity for children otherwise subject to detention but does provide an alternative to detention.

The fundamental right of all children to education, regardless of their migration status, is recognized in Argentina, Belgium, Chile, Italy, Spain, Thailand, the Netherlands and Uruguay<sup>28</sup>.

In Italy unaccompanied and separated children will not be subjected to “refoulement” or returns that may cause them harm and reduce the time these children spend in first-line reception centres. This is done through using trained volunteers from the regional child and youth agency and promote foster care and host families for children. This allows for harmonisation and improves procedures for age assessment in a sensitive manner. The use of qualified cultural mediators to communicate and needs of vulnerable adolescents. The new law includes additional budgetary provisions on top of €600 million which the Government of Italy had already allocated in 2016 to municipalities, groups and caregivers to help them cope with the large influx of refugees and migrants in reception centres. Moreover, Article 32 of the Italian Constitution guarantees assistance to everyone under the national health-care system, based on the principles of universality and solidarity. This implies the compulsory enrolment in the National Health-Care Service (NHS) to all migrant children, regardless of their status.

The Inter-American Court of Human Rights emphasizes the need to adopt special measures for migrant children, to guarantee conditions of equality, due process, and priority. In 2010, Costa Rica created a commission named PANI-Migration, which is composed of the Patronato Nacional de la Infancia (PANI), and the National Directorate of Immigration and Foreigners (Dirección Nacional de Migración y Extranjería) to provide effective care for minors. This commission has drawn up three protocols for action, including one relating to unaccompanied minors. The established procedure implies that migrant children should not be apprehended and should be immediately transferred to the PANI<sup>29</sup>.

Legal support for access to services while migration status is being resolved is essential. This work must be done in inter-institutional coordination between the State and civil society. In Argentina, the Centre for Popular Communication and Legal Advice (CECOPAL) supports irregular migrant families to access rights such as education (which is recognised by the law regardless of migration status) and health. They provide free legal advice for migrant families and training for public officials on migrants’ rights and intercultural communication (including teachers, pediatrics, psycho-pedagogical services, etc.). At a legal level, this work is supported by the Migrant Commission that operates within the Public Ministry of Defense.

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<sup>27</sup> Government of Scotland, The Human Trafficking and Exploitation Act (2015). Available at <https://www.gov.scot/policies/refugees-and-asylum-seekers/unaccompanied-children/>

<sup>28</sup> Human Rights Council, Report on the compendium of principles, good practices and policies on safe, orderly and regular migration in line with international human rights law (2017) Available at [http://www.ohchr.org/Documents/Issues/Migration/36\\_42/A-HRC-36-42\\_EN.docx](http://www.ohchr.org/Documents/Issues/Migration/36_42/A-HRC-36-42_EN.docx)

<sup>29</sup> IDC, ¿Qué esperamos del futuro? Detención migratoria y alternativas a la detención en las Américas, p. 75 (2017). Available at <https://idcoalition.org/wp-content/uploads/2017/04/INFORME-REGIONAL-AMERICAS-2017-1-1.pdf>



In Ecuador, the Constitution recognises the figure of the Advisory Councils for Children and Adolescents, which operate within the structure of the National Council for Intergenerational Equality (CNI). At a local level, they implement youth-led approaches for the psychosocial care of migrant children in the post-diaspora process, as part of the project on Psychosocial First Aid for Migrant Children. These types of initiatives supported by constitutional structures but based on community work and led by young people are effective and promote the right to participation recognized by Article 12 of the International Convention on the Rights of the Child.

**4. Please indicate any challenges and/or obstacles in the development and/or implementation of non-custodial alternatives to immigration detention of children and their families.**

Alternatives to detention should adapt to the specific national context of the State concerned: good practice cannot simply be copied from one country to another.

It is important to take into account the differences in legislative/policy frameworks: i.e. in some States there are legislative gaps or barriers to the development of alternatives, since they lack legislation banning / limiting immigration detention of children or provide for the automatic detention of migrants, so it is more difficult to develop alternatives to detention or to extend the use of those. In these cases, the biggest challenge has to do with the law, and the efforts should be put in advocating for a legislation that complies with international legal standards. For instance, under Australian migration law, detention of irregular migrants is mandatory. Although section 4AA of the Migration Act explicitly contemplates the principle that ‘a minor shall only be detained as a measure of last resort’, in practice the detention of children is the first action taken by the government. By requiring the mandatory detention of all “unlawful non-citizens” in Australia (section 189 of the Migration Act), the law results in the detention of all migrants not holding a valid visa, often including children<sup>30</sup>.

Some other States, on the contrary, already have legislation restricting detention of children, but little practice regarding alternatives. This is the case of Mexico, where there is legislation prohibiting child detention but in practice, it persists<sup>31</sup>. The main obstacles are often related to existing infrastructure and resources available, both within government and on the part of civil society and other key stakeholders, or lack of training and expertise, i.e.

Another challenge has to do with shifting from traditional - enforcement oriented - alternatives to detention (such as reporting requirements, surrender of documents or designated residence) to more effective engagement-based alternatives, involving case management - which aim at case resolution while respecting the rights of migrants and making them participants of their own migration process<sup>32</sup>.

Also, often alternatives to detention are regulated as general measures that do not address the specific needs of vulnerable populations, such as children. It should be taken into consideration the journey of the child and under what means they arrived. In cases of trafficking, there should be an upscale of protection, as many may still be under threat of their trafficker. Detention is never in the best interests of the child and it is

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<sup>30</sup> Human Rights and Equal Opportunity Commission, A last resort? National Inquiry into Children in Immigration Detention (2004), p 851, available at [https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/last-resort-national-inquiry-children-immigration?\\_ga=2.174693286.561786719.1589105881-183194141.1589105881](https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/last-resort-national-inquiry-children-immigration?_ga=2.174693286.561786719.1589105881-183194141.1589105881)

<sup>31</sup> Animal Político, En 2019, detenciones de menores migrantes y de niños no acompañados batieron todos los récords en México (2020) <https://www.animalpolitico.com/2019/12/2019-detenciones-menores-migrantes-ninos-batieron-records-mexico/>

<sup>32</sup> CoE, Alternatives to Immigration Detention: Fostering Effective Results (2019), p 35, available at <https://rm.coe.int/migration-practical-guide-alternatives-migration/1680990236>

not a protection mechanism, but there should be other measures in place to ensure that they are protected and not lead back into possible danger and harm, thus should be kept in pastoral appropriate settings.

**5. What support could other stakeholders (other than your Government) provide to strengthen the development and/or implementation of non-custodial alternatives to immigration detention of children and their families that enhance the protection of their rights?**

Other actors, such as NGOs, migrant and youth communities, trade unions, faith-based organisations and UN agencies play an essential role in supporting States and local governments in developing alternatives to detention for children and their families and overcoming practical challenges when implementing them.

Civil society should help to identify and address needs on the ground, advocate for the introduction of community-based alternatives to detention and hold governments accountable when they do not comply with the law. For instance, In Lebanon, the Global Campaign to End Child Immigration Detention together with Insan Association launched the Lebanese “Next Gen Index”, an important advocacy tool that ranks States on their progress in ending child immigration detention. Through naming and shaming, civil society can pressure governments to introduce alternatives to detention and to properly implement the legal framework. In Mexico, reports and recommendations from civil society organizations, such as the Mexican Commission for the Defense and Promotion of Human Rights<sup>33</sup> and the Citizens Council of the National Institute of Migration<sup>34</sup> have repeatedly asked for the release of migrant children and adolescents held in immigration detention, as required by the National Child Rights Law.

Once alternatives are in place, CSOs can support the implementation through training and capacity-building and can advise States on how to build trust and ensure compliance with migration processes. Development aid agencies can support States to overcome financial challenges, by funding projects on alternatives to detention for children and families.

This collaboration could be done through multi-stakeholder peer learning platforms on alternatives immigration detention of children<sup>35</sup>, which would bring together all relevant stakeholders to discuss challenges and share progress in developing and putting into practice alternatives to child immigration detention. They should be open and safe spaces where governments and other relevant stakeholders can exchange good practices and difficulties, learn from each other and explore opportunities for international cooperation.

Partnerships toward the realization of rights-based policies between specialized agencies within governments and civil society have proven to be the most effective in pushing for legislation to get passed, as well as in promoting a cause nation-wide (and garnering nation-wide attention). These types of partnerships not only give a worthy cause a very necessary civil society component, but also give it the political (legitimate) backing to push for policy reform beyond just campaigning.

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<sup>33</sup> CMDPDH, Garantizar los derechos humanos de los solicitantes de asilo (2017). Available at <http://cmdpdh.org/wp-content/uploads/2017/05/OficioSolicitantesSEGOB.pdf>

<sup>34</sup> Consejo Ciudadano del Instituto Nacional de Migración, Informe Final. “Personas en detención migratoria en México Misión de Monitoreo de Estaciones Migratorias y Estancias Provisionales del Instituto Nacional de Migración Consejo Ciudadano del Instituto Nacional de Migración” (2017) Available at [http://cdhfraymatias.org/web/wp-content/uploads/2017/08/CCINM-Informe\\_Final-Monitoreo.pdf](http://cdhfraymatias.org/web/wp-content/uploads/2017/08/CCINM-Informe_Final-Monitoreo.pdf)

<sup>35</sup> See IDC, Cross-Regional Peer Learning Platform on Alternatives to Child Immigration Detention Brochure (2020) <https://idcoalition.org/wp-content/uploads/2020/02/Platform-Brochure-2020-FINAL.pdf>

APPENDIX – Mapping of youth-led organisations working on alternatives to detention for migrant children  
(in Spanish)

En el marco de la organización del *Seminario sobre Cuidados Alternativos para la Niñez en Situación de Migración* del Instituto para la Mujer en Migración (IMUMI), en cooperación con la Agencia de las Naciones Unidas para los Refugiados (ACNUR), y el Fondo de las Naciones Unidas para la Infancia (UNICEF); el Punto Focal Regional de América Latina del Grupo Principal de las Naciones Unidas para la Niñez y la Juventud (UNMGCY) ha recopilado iniciativas juveniles sobre cuidados a la niñez migrante en la región latinoamericana. Estas iniciativas son parte de la Red de proyectos en donde participan los miembros del Equipo de Trabajo de Migración de UNMGCY en Latinoamérica.

Organización	Ubicación	Descripción	Tipo
Consejo Consultivo de Niñas, Niños y Adolescentes	La Troncal, Ecuador	Trabajo en grupos de intervención social y psicológica - liderados por jóvenes locales- para la niñez migrante asentada en familias. Buscan la inclusión cultural y el derecho a la salud mental de la niñez migrante en procesos traumáticos pos-díspora.	Segunda Respuesta
Primeros Auxilios Psicosociales para la niñez migrante			
Jóvenes por el Cambio	San Marcos, Guatemala	Trabajo educativo con niñez rural en potencial riesgo de migración irregular no acompañada a Norteamérica. Proyecto es liderado por jóvenes que frecuentan 4 escuelas de la comunidad cada semana para trabajar un “diplomado” sobre derechos y habilidades.	Prevención
Un Round más por el Cambio			
Centro de Comunicación Popular y Asesoramiento Legal	Córdoba, Argentina	Brinda apoyo jurídico a familias en condición migratoria irregular para el acceso a servicios de la niñez que según la legislación nacional tiene el derecho a acceder a educación, salud, etc., independientemente de su estatus migratorio.	Segunda Respuesta
Fundación por los Derechos Humanos y de la Naturaleza	Quito, Ecuador	El proyecto de Apoyo y Custodia Familiar interviene en situaciones de vulnerabilidad de los derechos del menor para reubicarlo con otra persona su familia hasta el 4to grado de consanguinidad para evitar la institucionalización.	Primera Respuesta
Apoyo y Custodia Familiar			