

UN Special Rapporteur on the human rights of migrants Call for submission on “Ending immigration detention of children and seeking adequate reception and care for them”

Contribution of the Council of Europe

The protection of refugee and migrant children is among the priorities of the Council of Europe¹ and significant work has been accomplished by the organisation in this regard. This is reflected in the activities undertaken by a number of Council of Europe bodies, which repeatedly work on this issue, and the diversity and multidisciplinary approach of the activities undertaken. This submission highlights the applicable Council of Europe standards and principles and practical initiatives to address the issue of immigration detention of children and ensure that appropriate reception and care are provided to them.

1. [The European Court of Human Rights \(ECtHR\)](#) has repeatedly emphasised the extreme vulnerability of children, which imposes an obligation on States to protect them under Article 3 (prohibition of torture and other forms of ill-treatment) of [the European Convention of Human Rights \(ECHR\)](#). Such obligation takes precedence over any considerations relating to the child’s status as an irregular migrant², the best interest of whom must always be a primary consideration.³ States thus have to provide special protection and care to children, including putting in place reasonable measures to prevent ill-treatment.⁴ This means that reception conditions should be appropriate and adapted to the child’s age. Children should not be held in places that are “ill-adapted to the presence of children”⁵ and conditions should “not create for them a situation of stress and anxiety with particularly traumatic consequences”.⁶

Special safeguards should be in place for unaccompanied and separated children.⁷ National authorities should identify such children as soon as possible and take measures to ensure they

¹ See, for example, Council of Europe Action Plan on Protecting Refugee and Migrant Children in Europe (2017-2019): www.coe.int/action-plan-child-refugee; Council of Europe Strategy for the Rights of the Child (2016-2021): <https://edoc.coe.int/en/children-s-rights/7207-council-of-europe-strategy-for-the-rights-of-the-child-2016-2021.html>; Committee of Ministers Reply to Parliamentary Assembly Recommendation 2056 (2014): The alternatives to immigration detention of children, para. 2, available at: <http://semantic-pace.net/tools/pdf.aspx?doc=aHR0cDovL2Fzc2VtYmx5LmNvZS5pbmQvbnNveG1sL1hSZWYvWDJILURXLWV4dHluYXNwP2ZpbGVpZD0yMTc3NyZsYW5nPUVO&xsl=aHR0cDovL3NiYWVudGljcGFjZS5uZXQvWHNsdC9QZGYvWFJlZi1XRC1BVC1YTUwyUERGLnhzba==&xslparams=ZmlsZWlkPTIxNzc3>; PACE Campaign to end immigration detention of children: <https://pace.coe.int/en/pages/campaign-detention-children>; Joint publication of FRA and CoE on the “Fundamental rights of refugees, asylum applicants and migrants at the European borders”, (2020): https://fra.europa.eu/sites/default/files/fra_uploads/fra-coe-2020-european-law-land-borders_en.pdf.

² ECtHR, *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, No 13178/03, 12 October 2006, para 55, available at: <https://www.refworld.org/cases,ECHR,45d5cef72.html>; *Muskhadzhiveva and Others v. Belgium*, No 41442/07, 19 January 2010, paras 56-58, available at:

<https://www.refworld.org/cases,ECHR,4bd55f202.html>; *Popov v. France*, Nos. 39472/07 and 39474/07, 19 January 2012, para 91, available at: <https://www.refworld.org/cases,ECHR,58a72adf4.html>

³ ECtHR, *Rahimi v. Greece*, No 8687/08, 5 April 2011, para. 108, available at:

<https://www.refworld.org/cases,ECHR,4d9c3e482.html>; *Popov v. France*, para. 140.

⁴ ECtHR, *Rahimi v. Greece*, paras. 60 and 62; *Khan v. France*, No. 12267/16, 28 February 2019, para. 73: <https://www.refworld.org/cases,ECHR,5c78080b4.html>.

⁵ ECtHR, *Popov v. France*.

⁶ ECtHR, *Tarakhel v. Switzerland*, No 29217/12, 4 November 2014 [GC], para. 119, available at: <https://www.refworld.org/cases,ECHR,5458abfd4.html>; *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, No. 13178/03, 12 October 2006, para. 50.

⁷ ECtHR, *Rahimi v. Greece*.

are placed in adequate accommodation. This applies even if the children do not apply for asylum, but intend to do so elsewhere, or to join family members there.⁸ A guardian and/or legal representative should also be appointed. Any failure or inaction to provide assistance and accommodation may amount to a degrading treatment under Article 3 of the ECHR.⁹

The evolving jurisprudence of the ECtHR increasingly restricts the possibility of detaining children in the context of migration. The ECtHR has made clear that the requirement to consider whether detention is necessary to achieve the aim pursued becomes decisive when children are involved¹⁰. Authorities must demonstrate that there are no other less coercive measures which can be applied instead. Any omission to examine whether less restrictive measures would be available and sufficient can constitute in itself a violation of Article 5.1 (f).¹¹ Maintaining family unity does not justify detention: the principle of the best interests of the child requires that alternatives should be considered for the entire family¹².

Overall, the criteria for detaining children in the context of migration are stringent and focus not only on the material conditions that detained children face, which may or may not be inappropriate, but also on the effects that detention *per se* may have on children in any case. This makes the exhaustive, active consideration and implementation of alternatives to detention even more imperative for States.

2. [The European Social Charter \(ESC\)](#) requires States to take necessary and appropriate steps to provide children with the care and assistance they need to protect them from negligence, violence or exploitation.¹³ This obligation extends to children who are in their territory unlawfully.¹⁴ Children must be treated on an individual basis, and the principle of the best interests of the child should apply fully to migrant children.¹⁵ [The European Committee of Social Rights \(ECSR\)](#) has also reaffirmed the obligation of States under Article 31(2) of the ESC to provide adequate shelter to children unlawfully present in their territory for as long as they are in their jurisdiction, whatever their residence status.¹⁶

Violations have also been found of unaccompanied children's rights under the ESC in situations where there were shortcomings in provision for unaccompanied children, delays in

⁸ ECtHR, *Khan v. France; Sh.D. and Others v. Greece, Austria, Croatia, Hungary, North Macedonia, Serbia and Slovenia*, No. 14165/16, 13 June 2019, available at: <https://www.statewatch.org/news/2016/oct/echr-sw-intervention.pdf>.

⁹ ECtHR, *Rahimi v. Greece*, paras. 90-95; *Khan v. France*, paras. 92-95.

¹⁰ ECtHR, *R.M. and Others v. France*, No. 33201/11, 12 July 2016, para. 83, available at: <https://www.refworld.org/cases,ECHR,5784e5cc4.html>.

¹¹ ECtHR, *Rahimi v. Greece*, paras 90-95; *Popov v. France*; See also, *Rahimi v. Greece*, para. 109; *Mohamad v. Greece*, No. 70586/11, 11 December 2014, paras. 84-86, available at:

<https://www.refworld.org/cases,ECHR,548ff3f1a.html>; *A.B. and Others v. France*, No. 11593/12, 12 July 2016, para. 124, available at: <https://www.refworld.org/cases,ECHR,5784e34e4.html>.

¹² ECtHR, *Popov v. France; A.B. and Others v. France; R.K. and Others v. France*, No. 68264/14, 12 July 2016, available at: <https://www.refworld.org/cases,ECHR,5784e8574.html>; *Bistieva and Others v. Poland*, No. 75157/14, 10 April 2018, available at: <https://www.refworld.org/cases,ECHR,5ace0ec24.html>.

¹³ ECSR, *Defence for Children International (DCI) v. Belgium*, Complaint no. 69/2011, decision on the merits of 23 October 2012, para 82, available at: <https://www.refworld.org/cases,COEECSR,514adf402.html>

¹⁴ ECSR, *Defence for Children International (DCI) v. the Netherlands*, Complaint no. 47/2008 decision on the merits of 20 October 2009, available at: <https://www.refworld.org/cases,COEECSR,4b9e37ea2.html>

¹⁵ Parliamentary Assembly, CoE, A Study of immigration detention practices and the use of alternatives to immigration detention of children (2017) at p.13, 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>.

¹⁶ ECSR, *Defence for Children International (DCI) v. the Netherlands*, Complaint no. 47/2008, Decision on the merits, 20 October 2009, paras 44 and 64.

appointing an ad hoc guardian, and the detention of unaccompanied children in waiting areas and hotels.¹⁷ In its recently published Conclusions 2019, the ESC addressed a variety of issues pertaining to migrants' rights in all States Parties. Under Article 17: treatment of children in an irregular migration situation, whether they be accompanied or not, and asylum seeking children, in particular their access to appropriate and safe accommodation. Moreover, the ECSR noted the increasing number of children in Europe registered as stateless, which may have a serious impact on those children's access to basic rights and services such as related to education and healthcare. Therefore, the ECSR asked what measures have been taken by the State to reduce statelessness (such as ensuring that every stateless migrant child is identified, simplifying procedures to ensure the acquisition of nationality, and taking measures to identify those children who were not registered at birth).¹⁸

3. [The Council of Europe Committee of Ministers](#) has held that children should, as a rule, not be detained¹⁹ and has acknowledged that the Council of Europe "has a role to play in bringing to an end the immigration detention of migrant children and in identifying alternatives to that practice."²⁰ Specific protection and assistance should be provided to refugee and migrant children.²¹

In line with the Council of Europe priorities in the field, the Committee of Ministers adopted in 2017 the Council of Europe Action Plan on Protecting Refugee and Migrant Children in Europe (2017-2019)²². The Action Plan, *inter alia*, aimed at addressing some of the most persisting challenges with regard to the protection of refugee and migrant children, including by promoting measures to prevent the detention of children in the context of migration and support member states in providing appropriate reception protection and care to them. A series of activities, coordinated by the Special Representative of the Secretary General on Migration and Refugees, were accomplished in the framework of this Action Plan.²³

¹⁷ *EUROCEF v. France*, Complaint No 114/2015, available at: <https://www.refworld.org/cases,COEECSR,5b2cc7494.html>. See also European Committee of Social Rights, *Conclusions 2019* and *Conclusions XXI-4 (2019)* (Council of Europe, March 2020), available at <https://www.coe.int/en/web/european-social-charter/-/social-rights-of-children-families-and-migrants-in-danger-across-europe-latest-annual-conclusions-from-the-european-committee-of-social-rights>

¹⁸ ESC, Social rights of children, families and migrants in danger across Europe: latest annual conclusions from the European Committee of Social Rights, 24 March 2020, available at: <https://www.coe.int/en/web/european-social-charter/-/social-rights-of-children-families-and-migrants-in-danger-across-europe-latest-annual-conclusions-from-the-european-committee-of-social-rights>

¹⁹ Committee of Ministers, Guidelines on human rights protection in the context of accelerated asylum procedures, para. XI.2, available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805b15d2.

²⁰ Committee of Ministers, reply to Parliamentary Assembly Recommendation 2056 (2014) on the alternatives to immigration detention of children, para. 2, available at: <http://semantic-pace.net/tools/pdf.aspx?doc=aHR0cDovL2Fzc2VtYmx5LmNvZS5pbmQvbnveG1sL1hSZWYvWDJILURXLWV4dHlUeXNwP2ZpbGVpZD0yMTc3NyZsYW5nPUVO&xsl=aHR0cDovL3NlbWFudGljcGFjZS5uZXQvWHNsdC9QZGYvWFJlZi1XRClBVC1YTUwYUERGlnhzbA==&xsltparams=ZmlsZWlkPTIxNzc3>.

²¹ Committee of Ministers, Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, adopted by the Committee of Ministers of the Council of Europe on 17 November 2010 and Explanatory memorandum, October 2011, III. Fundamental Principles, D. Protection from discrimination, § 2, as well as §§ 43 and 78 of the Explanatory memorandum, available at: <https://rm.coe.int/16804b2cf3>.

²² Committee of Ministers, 'Council of Europe Action Plan on Protecting Refugee and Migrant Children in Europe (2017-2019)', 2017, available at: www.coe.int/action-plan-child-refugee.

²³ Council of Europe, "Refugee and migrant children in Europe" – Final report on the implementation of the Action Plan (2017-2019), SG/Inf (2020)4, 14 February 2020, available at: <https://rm.coe.int/-refugee-and-migrant-children-in-europe-final-report-on-the-implem/16809c827d>.

In 2019 the Committee of Ministers adopted a recommendation on effective guardianship for unaccompanied and separated children in the context of migration. The text affirms the need to put in place comprehensive and child friendly measures in open accommodation facilities to ensure the protection and assistance of unaccompanied and separated children in migration. It also calls for the adoption of comprehensive frameworks, whereby guardians are appointed without delay, are adequately screened, qualified and supported, in order to protect and promote the rights of the child and secure their best interests.²⁴

Further efforts on standard-setting are continuing, in particular by following up the work of its predecessor, and based on consultations with unaccompanied minors,²⁵ [the Steering Committee for the Rights of the Child \(CDENF\)](#) is expected to finalise a draft recommendation on age assessment for children in the context of migration at the end of the year, for adoption by the Committee of Ministers.²⁶

4. [The Parliamentary Assembly of the Council of Europe \(PACE\)](#) has adopted a series of recommendations and resolutions consistently emphasising that children should never be detained for immigration related purposes and has encouraged member States to, *inter alia*, develop and implement non-custodial, community based alternatives to detention programmes for children and their families. Resolutions and recommendations on “The alternatives to immigration detention of children (2014)” and “Child-friendly age assessment for unaccompanied migrant children (2017)” are of particular importance in this respect.²⁷

[A Parliamentary Campaign to End Immigration Detention of Children](#) was launched by the Parliamentary Assembly’s Committee on Migration, Refugees and Displaced Persons of the Parliamentary Assembly in April 2015. In 4 years, the Campaign enlisted the support of over 1400 Members of Parliament, high-level officials of member States, NGOs and others who signed a petition to end immigration detention of children. The campaign developed a comprehensive study on legal frameworks and immigration detention practices in Europe, in particular in non-EU member States. The capacities of members of parliaments to monitor facilities where migrant children are placed were reinforced through the dissemination of a

²⁴ Recommendation CM/Rec(2019)11 of the Committee of Ministers to member states on effective guardianship for unaccompanied and separated children in the context of migration, available at: <https://rm.coe.int/cm-rec-2019-11-guardianship-en/16809ccfe2>.

²⁵ Council of Europe, *We are children, hear us out! Report on consultations with unaccompanied children on the topic of age assessment*, available at: <https://rm.coe.int/we-are-children-hear-us-out-children-speak-out-about-age-assessment-re/16809486f3>.

²⁶ See CDENF Terms of Reference (1 January 2020-31 December 2021), available at: <https://rm.coe.int/cdenf-2020-2021-en/1680992cdb>.

²⁷ Parliamentary Assembly, Recommendation 1703 (2005), available at: <https://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-en.asp?FileID=17328&lang=en>; Recommendation 1596 (2003), available at: <https://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-en.asp?FileID=17086&lang=en>; Recommendation 1985 (2011), available at: <http://www.assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=18041&lang=en>; Resolution 1810 (2011), available at: <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17991&lang=en>; Resolution 1707 (2010), available at: <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17813&lang=en>; Resolution 2020 (2014), available at: <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=21295&lang=en>; Recommendation 2056 (2014), available at: <https://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-en.asp?FileID=21296&lang=en>; Resolution 2136 (2016), available at: <https://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-en.asp?FileID=23179&lang=en>; Resolution 2195 (2017), available at: <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?fileid=24273>; Resolution 2295 (2019), available at: <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-en.asp?FileID=28060&lang=en>; Resolution 2324 (2020), available at: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=28595&lang=en>.

Parliamentary guide on “Visiting places where children are deprived of their liberty as a result of migration procedures”²⁸ and through visits organised for parliamentarians, seminars and exchanges of views during meetings of the Committee on Migration. Non-custodial good practices in care and accommodation of unaccompanied minors were identified and promoted as alternatives to detention, in particular in the context of visits to several member States (such as Switzerland, Greece²⁹ and Cyprus). These enabled parliamentarians to gain first-hand experience of child-friendly alternatives to detention and the benefits of open residential centres compared to closed migration structures. Several specific meetings in member States also took place in the framework of the Campaign, including a conference “Towards Alternatives to immigration detention of children in France” in the Strasbourg City Hall on 23 January 2019 and a national parliamentary seminar on age assessment in Iceland on 29 March 2019, where child-friendly procedures for assessing unaccompanied minors’ age were discussed. The Campaign was also instrumental in drawing attention to the issue of age assessment practices and the need for adequate international and European standards. The Campaign’s Final Conference was held in Strasbourg on 26 June 2019 and took stock of the results of the Campaign’s four years of work.

5. [The Special Representative of the Secretary General on Migration and Refugees \(SRSG\)](#) has held that children should never be detained for immigration related purposes.³⁰ The protection of refugee and migrant children has been a cross-cutting theme in the SRSG work reflected not only in his various fact-finding missions but also in specific activities such as the coordination of the implementation of the Action Plan on refugee and migrant children³¹.

In the framework of the Action Plan, the Czech Chairmanship of the Committee of Ministers of the Council of Europe hosted the *Conference “Immigration Detention of Children: Coming to a Close?”* in 2017. This event offered a platform for exchange across diverse sectors and concluded that alternatives to immigration detention are not only necessary where children are concerned but can be an effective and pragmatic policy of migration management while upholding the best interests of the child. The conclusions of the Conference contribute to the ongoing work of the Council of Europe in this field. The Conference on alternatives to immigration detention brought together a variety of international and regional organisations to ensure synergies and complementarity of action in this field. Both the UNHCR and the European Union used the opportunity to inform participants of their activities and programmes, as well as to exchange information on their future priorities and joint ways forward. The event engaged representatives of the Inter-American Court of Human Rights. The conference contributed to the European Commission’s 11th European Forum on the Rights of the Child, on 6-7 November 2017, which addressed children’s deprivation of liberty. In 2018 and 2019, the Human Rights Policy and Co-operation Department organised jointly with the UNHCR a number of events, in Azerbaijan, Bulgaria, Georgia, Portugal and Turkey focused on relevant

²⁸ Council of Europe, ‘Visiting places where children are deprived of their liberty as a result of immigration procedures - Guide for Parliamentarians (2018)’, available at: <https://edoc.coe.int/en/migration/7526-visiting-places-where-children-are-deprived-of-their-liberty-as-a-result-of-immigration-procedures-guide-for-parliamentarians.html>.

²⁹ Parliamentary Assembly, Greece: parliamentary visit to SOS Children’s Villages, available at: <http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=7159>.

³⁰ Special Representative of the Secretary General on migration and refugees, Thematic Report on migrant and refugee children, Information Documents, SG/Inf(2017)13, 10 March 2017, available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016806fdd08.

³¹ Council of Europe, “*Refugee and migrant children in Europe*” – Final report on the implementation of the Action Plan (2017-2019), SG/Inf (2020)4, 14 February 2020, available at: <https://rm.coe.int/-refugee-and-migrant-children-in-europe-final-report-on-the-implem/16809c827d>.

ECHR case law, Council of Europe, European Union and UNHCR action on asylum and migration, and in particular on alternatives to detention of migrants. In addition, the thematic co-operation on the development and implementation of alternatives to immigration detention continued with the organisation by the Council of Europe, the European Commission and the European Network for Migration of the international conference on 4 April 2019 in Strasbourg. Co-operation activities with the IOM and the International Detention Coalition were also pursued, including on pilot projects implementing alternatives to immigration detention in Italy, Greece and Cyprus³².

It is also in the framework of the implementation of the Action Plan that online training courses for authorities and relevant stakeholders were developed within the context of Human Rights Education for Legal Professionals (HELP) Programme, such as a new e-learning course to alternatives to immigration detention in 2019³³. The course covers the applicable human rights standards, with a particular focus on children. It, *inter alia*, explores the various types of alternatives, including through examples of implementation from across the world. Particular attention is also paid on how to make alternatives effective in a particular national context. Another e-learning course has been developed on refugee and migrant children.

6. [The Council of Europe Commissioner for Human Rights](#) has consistently emphasized that children, whether travelling alone, or with parents, should never be detained as detention is never in their best interest³⁴. The Commissioner has also set out a five-step plan to abolish migrant detention, emphasising the need for clear alternatives in law and policy, a deadline for the abolition of child detention, the exchange of good practices and improvements of data gathering.³⁵ However, it has been noted that while many countries legislate for alternatives to detention in migration contexts, implementation remains a challenge.

³² CoE SRSG, “*Refugee and migrant children in Europe – Final report on the implementation of the Action Plan*”, SG/Inf (2020)4, available at: <https://rm.coe.int/-refugee-and-migrant-children-in-europe-final-report-on-the-implemента/16809c827d>

³³ available on the HELP platform in 2020

³⁴ see, for ex. Commissioner for Human Rights, Human Rights Comment, Protecting Children’s Rights: Europe should do more, 18 November 2014, available at: <https://www.coe.int/en/web/commissioner/-/protecting-children-s-rights-europe-should-do-more!>; Document CommDH (2015)12, 22 June 2015, para 141, available at: <https://rm.coe.int/16806db7e2>; Document CommDH (2016)1, 28 January 2016, paras 48-49, available at: <https://rm.coe.int/16806db735>

³⁵ Commissioner for Human Rights, Immigration detention of Children: Coming to a Close?, 25 September 2017, available at: https://www.coe.int/en/web/commissioner/children-rights-speeches/-/asset_publisher/v0lZfS0vWJg9/content/immigration-detention-of-children-coming-to-a-close-?inheritRedirect=false

7. [The European Committee for the Prevention of Torture \(CPT\)](#) has maintained that “detention of children is rarely justified and (...) can certainly not be motivated solely by the absence of residence status.”³⁶ It repeatedly emphasised that “every effort should be made to avoid resorting to the deprivation of liberty of an irregular migrant who is a child, that when, exceptionally children are held in a detention centre, the deprivation of liberty should be for the shortest possible period of time and that unaccompanied and separated children should not, as a general rule, be detained.”³⁷

Moreover, the CPT has stressed that age assessment should be multidisciplinary and involve social work and psychological staff as well as a paediatrician and that the use of X-ray can be possible supplementary tool, but should not replace the multidisciplinary approach.³⁸

8. Similarly, [the Group of Experts on Action against Trafficking in Human Beings \(GRETA\)](#) has stressed that, in line with Article 12.7 of the Council of Europe Convention on Action against Trafficking in Human Beings, the accommodation of presumed child victims of trafficking has to be appropriate in terms of their specific needs. GRETA has noted that the principle of the best interests of the child should be fully respected at all times and any detention of children used only as a measure of last resort and for the shortest appropriate period of time.³⁹

9. [The Lanzarote Committee](#) has also underlined that children face increased vulnerability to sexual exploitation and abuse caused by factors such as deprivation of liberty.⁴⁰

During an urgent monitoring round, the Lanzarote Committee underlined the importance of providing adequate protection of children in reception centres, and that prolonged stays in inappropriate conditions increased their risk of exposure to sexual violence. While Parties had taken steps to improve facilities and lodging solutions for children, there was more work to be done. In particular, unaccompanied children should be separated from adults in reception centres and robust complaint mechanisms to report abuse must be effective.⁴¹

³⁶ CPT, Safeguards for irregular migrants deprived of their liberty, Extract from the 19th General Report of the CPT, published in 2009, para. 97, available at: <https://rm.coe.int/16806cce8e>

³⁷ *Ibid.*

³⁸ European Committee for the Prevention of Torture, “Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)”, (CPT/Inf (2018)42, 18 September 2018, paragraph 61, available at: <https://rm.coe.int/16808d6f12>.

³⁹ Group of Experts on Action Against Trafficking in Human Beings, 6th General Report on GRETA’s Activities (Council of Europe, March 2017), available at: <https://rm.coe.int/1680706a42>; Group of Experts on Action Against Trafficking in Human Beings, Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Norway (Council of Europe, June 2017), available: <https://rm.coe.int/16806321c1>.

⁴⁰ Declaration of the Committee of the Parties to the Council of Europe Convention on the Protection of children against sexual exploitation and sexual abuse (Lanzarote Convention) on protecting migrant and refugee children against sexual exploitation and sexual abuse, 28 June 2018, para. 6(3), available at: <https://rm.coe.int/declaration-on-protecting-migrant-and-refugee-children-against-sexual-/16808b78d9>

⁴¹ Lanzarote Committee, *Special report on protecting children affected by the refugee crisis from sexual exploitation and sexual abuse* (adopted 3 March 2017), available at: <https://rm.coe.int/special-report-protecting-children-affected-by-the-refugee-crisis-from/16807912a5>. See also Lanzarote Committee, *Assessment by the Lanzarote Committee of the follow-up given by the Hungarian authorities to the recommendations addressed to them further to a visit undertaken by a delegation of the Lanzarote Committee to transit zones at the Serbian/Hungarian border (5-7 July 2017)* (adopted 6 June 2019), available at: <https://rm.coe.int/assessment-by-the-lanzarote-committee-of-the-follow-up-given-by-the-hu/168094d2d2>.

10. In recent years [the Council of Europe Steering Committee for Human Rights \(CDDH\)](#) has completed a considerable work on alternatives to immigration detention and care arrangements for migrant and refugee children.

In 2017, the CDDH published a comprehensive [Analysis on the Legal and practical aspects of effective alternatives to detention in the context of migration](#). Particular attention is paid throughout to the issue of immigration detention of children. The CDDH Analysis highlights, *inter alia*, the legal obligation to provide appropriated care and protection to children on the move through a comprehensive overview of Council of Europe, United Nations and European Union standards. Providing explanations of existing non-custodial alternatives – including central features, potential benefits and drawbacks for each type – the work seeks to support member States in providing appropriate reception and care arrangements to migrant and refugee children instead of resorting to detention. Analysing practical experiences from the field, including various global and regional studies, the CDDH Analysis suggests key essential elements needed to render alternatives effective in practice. These elements include: a) screening and assessment, b) ensuring effective access to information, c) providing access to legal assistance, d) supporting individuals through case management services, e) safeguarding dignity and human rights, f) building trust in asylum and migration procedures. The work of the Special Rapporteur on the human rights of migrants and his position on the immigration detention of children is, *inter alia*, explored and referenced throughout the CDDH Analysis.

In October 2019, the CDDH published a user-friendly and visual [Practical Guide](#) for policy makers, legal professionals and other relevant stakeholders on how to effectively implement alternatives to immigration detention. The Guide complements the CDDH Analysis and provides, *inter alia*, an overview of the existing non-custodial alternatives, including family-based care arrangements for children and certain essential elements that render alternatives effective. The Practical Guide highlights the specific steps to be taken in order to make alternatives to immigration detention effective in particular national context, taking into account existing strengths and capacities.

Building on the work already completed and the Council of Europe priorities in the field, the CDDH is currently working on alternative family-based care arrangements for unaccompanied and separated children in close collaboration with Council of Europe member States and other actors in the field. Family based care has been long promoted as the preferred accommodation option for unaccompanied and separated children and has received increasing interest in recent years. However, despite the numerous benefits of family-based forms of care, not only for unaccompanied and separated children but the community at large, underlying challenges limit their use and expansion. CDDH work on [“Family Based Care for Unaccompanied and Separated Children”](#) aims at clarifying key Council of Europe, United Nations and European Union legal standards, practical aspects and examples of family-based care implementation in various countries, thereby supporting Council of Europe Member States in meeting their international commitment *vis-à-vis* unaccompanied and separated children. As such, it aims at promoting effective protection systems for children on the move and ensuring that unaccompanied and separated children have access to quality care and support.

11. Further practical tools have been developed, aimed at addressing challenges linked to care arrangements for migrant and refugee children, and targeted in particular at increasing the capacity of frontline professionals⁴², and awareness of children themselves⁴³.

12. A number of significant challenges remain however for Europe in addressing the situation of children in migration contexts, and the deprivation of liberty of these children. In the first place, it has been noted that, while many countries legislate for alternatives to immigration detention, these are too often not adequately implemented in practice.⁴⁴ Further key issues arise around identification and age assessment of children, registration of children and guardianship, provision of adequate reception conditions, alternatives to detention, prevention of violence, family reunification and access to information and access to justice.⁴⁵ A thematic report on migrant and refugee children was published in March 2017⁴⁶, setting out results from fact-finding missions to a number of Council of Europe member States. They highlighted a number of issues, including the “protracted” nature of emergency responses⁴⁷.

⁴² See e.g. Council of Europe, *How to convey child-friendly information to children in migration: A handbook for frontline professionals* (2018), available in English, French and Spanish, in English at: <https://rm.coe.int/how-to-convey-child-friendly-information-to-children-in-migration-a-ha/1680902f91>; Human Rights Education for Legal Professionals (HELP) online course on refugee and migrant children. Available in 10 languages, .

⁴³ See e.g. Council of Europe, *Your rights in age assessment procedures: Information for children in migration* (2019), available at: <https://rm.coe.int/ageassessmentchildrenmigration/168099529f>