



CDDH-MIG(2020)01
13/02/2020

STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

**DRAFTING GROUP ON MIGRATION AND HUMAN RIGHTS
(CDDH-MIG)**

Family Based Care for Unaccompanied and Separated Children

1ST DRAFT

A few examples of practices have already been included in *Chapter 3. Practical Principles* based on sources available. These examples are by no means exhaustive or definitive. Member States are invited to provide insights and examples from their own experience and practice in order to further enrich the ongoing work of CDDH-MIG on family-based care.

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1. INTRODUCTION

1.1. Context

1. A large number of unaccompanied and separated children arrive in Europe after undergoing difficult and potentially traumatic journeys. A number of these children may also have experienced trauma prior to leaving their country of origin. Due to their inherent vulnerability – and the particular risks they face before, during and after their arrival (e.g. trafficking, abuse, exploitation etc.) – they are entitled to special protection and care. Despite their unquestionable right to protection, a number of unaccompanied and separated children remain in difficult conditions after arrival to Council of Europe Member States, including the lack of appropriate accommodation and child-friendly services.

2. Against this backdrop and in light of Council of Europe priorities in the field,¹ the Drafting Group on Migration and Human Rights (“the CDDH-MIG”) paid particular attention to the rights of refugee and migrant children during the preparation of a comprehensive [*Analysis of the legal and practical aspects of alternatives to detention in the context of migration*](#). (“the CDDH Analysis”)² and the accompanying Guide on [*“Alternatives to immigration detention: Fostering effective results”*](#) (“the CDDH Guide”).³ Building on the work already completed, the Group was asked to explore issues pertaining to alternative family-based care for unaccompanied and separated children.⁴

3. Long-promoted as the preferred accommodation option for unaccompanied and separated children, alternative care principles promote deinstitutionalisation and family-based care. Notwithstanding the prevalence of Council of Europe, United Nations and European Union standards and guidelines on the use of family-based care for unaccompanied and separated children, its practice has been far from commonplace, with most children living in residential care.⁵ For example, the European Union Agency for Fundamental Rights (“FRA”) has noted that foster care was only available in 12 EU member States and was not available or extremely rare in 16 EU member States.⁶ In 2017, the European Commission noted that “[w]hile the use of family-based care/foster care for unaccompanied children has expanded in recent years and has proven successful and cost effective, it is still under-utilised”.⁷

¹ See, for example, Council of Europe Action Plan on Protecting Refugee and Migrant Children in Europe (2017-2019) adopted by the Committee of Ministers in May 2017 (“the Action Plan”); Council of Europe (2016), Strategy for the Rights of the Child (2016-2021), March 2016.

² Council of Europe, *Legal and practical aspects of effective alternatives to detention in the context of migration*, Analysis of the Steering Committee for Human Rights (CDDH) Adopted on 7 December 2017.

³ Council of Europe, *Alternatives to Immigration Detention: Fostering Effective Results*, Practical Guide Adopted at the 91th CDDH meeting (18–21 June 2019).

⁴ Document CDDH(2019)R91, para. 43.

⁵ European Union Agency for Fundamental Rights (2017), Fundamental Rights Report 2017, Publications Office of the European Union, Luxembourg (“FRA Fundamental Rights Report (2017)”), p.184; De Ruijter de Wildt, L; Melin, E; Ishola, P; Dolby, P, Murk, J; and van de Pol, P (2015), Reception and Living in Families – Overview of family-based reception for unaccompanied minors in the EU Member States, Stichting Nidos, Utrecht, p. 127.

⁶ Ibid.

⁷ Communication from the Commission to the European Parliament and the Council, *The protection of children in migration*, COM(2017)211 final, 12 April 2017, p. 8.

4. This work on “*Family Based Care for Unaccompanied and Separated Children*” aims at clarifying key legal standards and practical aspects in the field, thereby supporting Council of Europe Member States in meeting their international commitment *vis-à-vis* unaccompanied and separated children.

1.2. Scope

5. The scope of this work is to identify key aspects for Council of Europe Member States to consider when developing and implementing *family-based care for unaccompanied and separated children* in the context of migration. As such, it aims at promoting effective protection systems for children on the move. It likewise aims at ensuring that unaccompanied and separated children have access to quality care and support with a particular focus on family-based accommodation as a preferred option.

6. Although the focus of this work is on family-based care other care arrangements such as group care and supervised independent living arrangements may also be further explored to provide a wider spectrum of options.

1.3. Definitions

7. For the purpose of this work:

- (a) A child “means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”.⁸
- (b) An Unaccompanied Child (UAC) is a child who has been separated from both parents and other relatives and is not being cared for by an adult who, by law or custom, is responsible for doing so.⁹
- (c) A Separated Child (SC) is a child separated from both parents, or from his or her previous legal or customary primary caregiver, but not necessarily from other relatives. She or he may, therefore, be a child who is accompanied by other adult family members.¹⁰

8. Alternative Care is the care provided for children by persons who are not their usual primary caregiver and takes the form of:¹¹

- a) Informal care – a private arrangement provided in a family environment, where the child is looked after by relatives, friends or others in their individual capacity, on an ongoing or long-term basis. These arrangements have not been ordered by an administrative or judicial authority or accredited body: or
- b) Formal care – care ordered by a competent administrative or judicial authority. Formal care can either be provided in a family environment, or in a residential one.

⁸ United Nations (1989), Convention on the Rights of the Child, General Assembly Resolution 44/25 (“CRC”), Article 1.

⁹ United Nations General Assembly (2010), *Guidelines for the Alternative Care of Children*, Resolution 64/142, 24 February, (“UNGACC”), para 29(a)(i); United Nations (2014), UNHCR, *Child protection Issue Brief: Alternative Care*, January, (“UNHCR *Child protection Issue Brief*”), p.1.

¹⁰ UNGACC, para 29(a)(ii); UNHCR *Child protection Issue Brief*, p.1; see also Save the Children, UNHCR, UNICEF (4ed) (2009), *Statement of Good Practice, Separated Children in Europe Programme*, Copenhagen, pp. 3-4.

¹¹ UNGACC, para 29(b).

9. Alternative care may be provided to a child in the following contexts:¹²
- (a) Kinship care – family-based care within the child’s extended family or with close friends of the family known to the child. It can be either formal or informal in nature;
 - (b) Foster care – provided by couples or individuals authorised by a competent authority for the purpose of alternative care in their domestic environment. A foster care family is not related to the child but has been selected, qualified, approved and supervised for providing such care;
 - (c) Other family-based or family like care placements are “care settings where an existing family plays a formal care role similar to that of a foster carer – but does not operate within the foster care service”.
 - (d) Residential care – care for the child within a non-family-based group setting, “such as places of safety for emergency care, transit centres in emergency situations, and all other short- and long-term residential care facilities, including group homes”;
 - (e) Supervised independent living arrangements – “a living arrangement where an adolescent child, or group of adolescent children, live independently”.¹³
 - (f) Group Care – “a form of residential care where children are placed in small group home that is run like a family home, whereby groups of, say, six to eight children or young people are cared for by consistent caregivers within the children’s community.”¹⁴
10. Finally, family-based care is a type of care where children live with a family other than their usual primary caregiver. It is a broad term covering kinship care, foster care and other family-like placement and refers to the way in which the care is provided, rather than a pre-existing family-status.

2. LEGAL PRINCIPLES

2.1. Best interests of the child: A primary consideration

11. The principle of the best interests of the child is the cornerstone of child protection and encompasses all decisions and actions involving them. While the United Nations Convention on the Rights of the Child (“CRC”) does not provide a definition, the term is understood to broadly describe the well-being of a child. Such well-being is determined by a variety of individual circumstances, including the age, gender, level of maturity and experiences of the child. Other factors are also relevant, such as the presence or absence of parents, quality of the relationships between the child and family or their primary care giver, the child’s physical and psychosocial situation, and their protection situation. Interpretation and application of this principle must be in line with the CRC and other international legal norms, as well as with the authoritative guidance provided by the Committee on the Rights of the Child (“CRC Committee”).

12. The child’s best interests have three facets: It is a) a substantive right; b) a fundamental, and interpretative legal principle; and c) a rule of procedure. It is aimed at

¹² Ibid., para 29(c).

¹³ UNHCR *Child protection Issue Brief: Alternative Care*, p. 2

¹⁴ Ibid., p.1

making sure that both the full and effective enjoyment by the child of all rights recognised in the CRC, as well as their holistic development, are possible.¹⁵

13. The best interests principle applies to all children, without discrimination, whether considered as a group or as individual children. It holds true for children who are citizens of a State or foreign nationals, including asylum-seekers, refugees, migrants or stateless children. The principle also applies whether children are with family members or are unaccompanied or separated.

14. General Comment No. 14 of the CRC Committee explains in detail what is meant by the notion that “the best interests shall be a primary consideration”. This refers to a legal obligation to assess and ascribe the proper weight to the best interests of the child in any action that may affect them. “Primary consideration” means that it is a consideration greater than all others and cannot be regarded on the same level. This [...] is justified by the special situation of the child: dependency, maturity, legal status, and, often, voicelessness.”¹⁶

15. The implementation of this principle in practice requires the assessment and determination of the child’s best interests. For those children who are with their parents or primary caregivers, these considerations lie primarily with the latter. When children are unaccompanied or separated, e.g. in refugee or migration contexts, a formal procedure of assessment and determination must take place to ensure the safeguarding of the best interests of the child.

16. UNHCR describes the ‘best interests assessment’ as an assessment made by staff taking action with regard to individual children, designed to ensure that such action gives a primary consideration to the child’s best interests. The assessment can be carried out by a multidisciplinary team, with the required expertise, and with the participation of the child.¹⁷ The assessment should be carried out as soon as possible upon arrival, and must be conducted in circumstances occurring from the moment of identification, until the implementation of a durable solution.

17. A ‘best interests determination’ is a formal and more in-depth process with strict procedural safeguards. It is designed to determine the child’s best interests for particularly important decisions affecting the child. It should facilitate adequate child participation without discrimination, involve decision-makers with relevant areas of expertise, and balance all relevant factors in order to assess the best option.

18. Concerning specifically unaccompanied and separated children, “the determination of what is in the best interests of the child requires a clear and comprehensive assessment of the child’s identity, including her or his nationality, upbringing, ethnic, cultural and linguistic background, particular vulnerabilities and protection needs.” It further clarifies that allowing the child access to the territory is a prerequisite for this initial assessment process, which should be carried out in a friendly and safe atmosphere by qualified professionals who are trained in age and gender-sensitive interviewing techniques.

¹⁵ Committee on the Rights of the Child, General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), adopted by the Committee at its sixty-second session (14 January–1 February 2013), CRC/C/GC/14, 29 May 2013 (“CRC Committee, General comment No. 14 (2013)”).

¹⁶ Ibid.

¹⁷ UNHCR (2018), *Guidelines on assessing and determining the best interests of the child*.

19. In the European context, the European Court of Human Rights (“the Court”) has strongly embraced the principle of the best interests of the child requiring that a best interests assessment is conducted prior to any decision or action concerning children is taken.¹⁸ The need to give due consideration to the best interests of the child in any decision that affects them is also recognised by other Council of Europe bodies as well as the European Charter of Fundamental Rights (“EU Charter”), and EU secondary legislation.¹⁹

2.2. Primacy of the status of the child

20. The Court has noted the primacy of the status of the child – that is, that a child’s “extreme vulnerability” not only engages a State’s positive obligations under Article 3 of the European Convention on Human Rights (“the Convention”) but also take precedence over considerations relating to the child’s status as an irregular migrant.²⁰ The Court has also consistently emphasised that unaccompanied children are amongst the most vulnerable members of society²¹ based on their age, lack of independence, status as asylum seekers or migrants and the fact that they are unaccompanied.²² Consequently, care and protection has to be provided to this particularly vulnerable group irrespective of their migration status.²³

21. As noted previously, the primacy of the status of the child, the specific needs and extreme vulnerability of unaccompanied and separated children has been acknowledged at the UN level.²⁴ The CRC applies to every child, everywhere, irrespective of their status,

¹⁸ *Rahimi v Greece*, No. 8687/08, 5 April 2011, para 108.

¹⁹ Charter of Fundamental Rights of the European Union, OJC 326/02, 26 October 2012, (“EU Charter”) Article 24(2); Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast) (“Recast Reception Conditions Directive”), Recital 9 and Article 23(1); Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) (“Recast Qualification Directive”), Recital 18 and Article 20(5); Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, (“Return Directive”), Recital 22, Articles 5(a) and 10(1); Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) (“Recast Procedures Directive”), Recital 33 and Article 25(6); Regulation (EU) No. 604 /2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) (“Recast Dublin Regulation”), Recital 13 and Article 6(1).

²⁰ *Mubilanzila Mayeka and Kaniki Mitunga v Belgium*, No. 13178/03, 12 October 2006, para. 55; *Muskhadzhiyeva and Others v Belgium*, No. 41442/07, 19 January 2010, paras 56-58; *Popov v France*, Nos. 39472/07 and 39474/07, 19 January 2012, para. 91.

²¹ *Rahimi v Greece*, para 87; *Mubilanzila Mayeka and Kaniki Mitunga v Belgium*, para. 55.

²² *Rahimi v Greece*, para 87; *Mubilanzila Mayeka and Kaniki Mitunga v Belgium*, para. 55. See also 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, para 2, as well as paras 43 and 78 of the Explanatory Memorandum; Parliamentary Assembly, *Recommendation 1985 (2011) on Undocumented migrant children in an irregular situation: a real cause for concern*, para 2.

²³ CRC Committee (2005), *General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, CRC/GC/2005/6, 17 May – 3 June (“CRC Committee (2005), *General Comment No. 6*”), paras 12-18; UNGACC, para 141; see also European Parliament (2013), Committee on Civil Liberties, Justice and Home Affairs, *Report on the situation of unaccompanied minors in the EU (2012/2263 (INI))*, Rapporteur: Nathalie Griesbeck, A7-0251/2013, 26 August, para 18; see also United Nations (2016), Committee on the Rights of the Child, *General Comment No. 20 (2016) on the implementation of the rights of the child during adolescence*, CRC/C/GC/20, 6 December, para 77.

²⁴ See, for example, CRC, Articles 2(1), 22(1) and 39; CRC Committee (2005), *General Comment No. 6*, para 4; International Covenant on Civil and Political Rights (“ICCPR”), Article 24; United Nations (2014), Human Rights Committee (HRC), *General Comment No. 35, Article 9 (Liberty and security of person)*, 16 December, CCPR/C/GC/35, para 18; International Covenant on Economic, Social and Cultural Rights (“ICESCR”), Article 10.

including their migration status. The CRC Committee has also reaffirmed this position by highlighting that the enjoyment of all rights foreseen in the CRC should be enjoyed by all children, including those who are seeking asylum, refugee and migrant children, irrespective of nationality, immigration status or statelessness.²⁵

22. Article 20 of the CRC, which explicitly recognises the particular vulnerability of unaccompanied and separated children, clarifies that when a child is temporarily or permanently deprived of her or his family environment, she or he is entitled to special protection and assistance provided by the State. In other words, the State must, *inter alia*, provide alternative care in accordance with national legislation.

23. The fact that children must always, first and foremost, be recognised as children, means that, when children are recognised as being in need of protection, there should not be disparities in the level of support and in the quality of services they receive. The implication is that migrant and refugee children who move across borders and are unaccompanied or separated, and therefore particularly vulnerable, should benefit from special protection, support and services adapted to their specific needs and circumstances.

2.3. Provision of care and protection

24. As noted above, children are entitled to special protection and care. In line with their obligation under articles 1 and 3 of the Convention, States have an obligation to provide special protection and care to children, including putting in place reasonable measures to prevent ill-treatment.²⁶ This means that reception conditions should be appropriate and adapted to the child's age. It needs to be ensured that any conditions "do not create for them a situation of stress and anxiety with particularly traumatic consequences".²⁷ Any failure or inaction to provide appropriate shelter or leave a child on the streets to fend for him/herself may amount to a degrading treatment under Article 3 of the Convention.²⁸ In light of the "extreme vulnerability" of unaccompanied and separated children, the overall approach taken should focus on care and protection and not on immigration control, enforcement or detention.²⁹ In its assessment of special care, the Court has acknowledged that the CRC imposes specific obligations on State parties with regard to children seeking international protection and humanitarian assistance.

25. In cases where children are deprived of their family environment, the special care and protection to be provided by States includes, but is not limited to, placement in alternative care. Placing unaccompanied and separated children in alternative care is a long-standing good practice, recognised not only by the Court but also other bodies of the Council of Europe and international organisations.³⁰ The Court has emphasised that placing unaccompanied and

²⁵ CRC Committee (2005), *General Comment No. 6*, para 5.

²⁶ *Rahimi v Greece*, paras 60 and 62; *Khan v France*, No. 12267/16, 28 February 2019, para 73.

²⁷ *Tarakhel v Switzerland* [CG], No. 29217/12, 4 November 2014, para 119; *Mubilanzila Mayeka and Kaniki Mitunga v Belgium*, para 50.

²⁸ *Rahimi v Greece*, paras 90-95; *Khan v France*, paras 92-95.

²⁹ *Mubilanzila Mayeka and Kaniki Mitunga v Belgium*, para 55; *Muskhadzhiyeva and Others v Belgium*, No. 41442/07, 19 January 2010, paras 56-58; *Popov v France*, para 91.

³⁰ *Mubilanzila Mayeka and Kaniki Mitunga v Belgium*, para 83; Council of Europe, Committee of Ministers, *Recommendation Rec(2003)5 of the Committee of Ministers to Member States on Measures of Detention of Asylum Seekers*, 16 April 2003 ("Recommendation Rec(2003)5"), para 23; Council of Europe, Committee of Ministers, *Recommendation No. R (87)6 of the Committee of Ministers on Foster Families*, 20 March 1987 ("Recommendation No. R (87)6"); Council of Europe, Parliamentary Assembly, Resolution 1810, *Unaccompanied children in Europe: issues of arrival, stay and return* ("Resolution 1810"), para 5.9; Council of Europe, Parliamentary

separated children with foster parents or in a specialised centre is “more conducive to the higher interest of the child guaranteed by Article 3 of the Convention on the Rights of the Child”.³¹ The revised European Social Charter (“ESC”) requires States to “take all appropriate and necessary measures designed to provide protection and special aid from the state for children and young persons temporarily or definitively deprived of their family’s support”.³² 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.³³ Both the Council of Europe Parliamentary Assembly and the Council of Europe Committee of Ministers have recommended the use of non-custodial, community-based care, such as foster care, for unaccompanied and separated children.³⁴

26. Article 3 of the CRC states that children must be ensured “such protection and care as is necessary for his or her well-being”, while article 20 explains that a child deprived of the care of its parents is entitled to special protection and assistance by the State. According to article 22, mechanisms established under national law to ensure alternative care for such children also apply to unaccompanied and separated children. Alternative care arrangements must be provided in line with the UN Guidelines for the Alternative Care of Children.

27. These principles and their application to unaccompanied and separated children have been tackled by the CRC Committee through its General Comment No. 6 (2005), as well as in the 2017 Joint General Comment No. 4 issued with the Committee on the Rights of All Migrant Workers and Members of their Families. This authoritative guidance highlights that the measures to be offered to the child and her or his family should be based on an “ethic of care and protection”, and “provide all the material, social and emotional conditions necessary to ensure the comprehensive protection of the rights of the child, allowing for children’s holistic development.”³⁵

28. The CRC and the UN Guidelines for the Alternative Care of Children provide extensive guidance on the care and protection that should be afforded to children who are not in the care of their parents or primary caregivers. The CRC, in its preamble, states that the family is the “the natural environment for the growth, well-being and protection of children”. It further states that “the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding”. It then notes that parents or guardians have the primary responsibility for the upbringing of their children, and that they should receive appropriate support in their performance of these responsibilities. As noted, the CRC also foresees a responsibility for the State to provide alternative care for a child temporarily or permanently deprived of its family environment.

Assembly, Resolution 2020, *The alternatives to the detention of children*, 3 October 2014 (“Resolution 2020”), para 9.7.

³¹ *Mubilanzila mayeka and Kaniki Mitunga v Belgium*, para 83.

³² Council of Europe, European Social Charter (revised), CETS No.163,1996, Article 17 (1).

³³ ECSR, *Defence for Children International v. the Netherlands*, Complaint No. 47/2008, Decision on the merits, 20 October 2009, paras 44 and 64.

³⁴ Council of Europe, Committee of Ministers, *Recommendation Rec(2003)5*, para 23; Council of Europe, Committee of Ministers, *Recommendation No. R (87)6*; Council of Europe, Parliamentary Assembly, Resolution 1810, para 5.9; Council of Europe, Parliamentary Assembly, Resolution 2020, para 9.7.

³⁵ *Joint General Comment No.4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No.23 (2017) of the Committee on the Rights of the Child on the General Principles regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return*, CMW/C/GC/4-CRC/C/GC/23, 16 November 2017, (“Joint General Comment No. 4”), para 12.

29. The UN Guidelines for the Alternative Care of Children, welcomed by the General Assembly in 2009, were developed to enhance the implementation of the CRC for children without, or at risk of losing, parental care. They were deemed necessary because of concerns about, *inter alia*, the conditions under which alternative care can be provided, and the low priority that may be afforded to responding appropriately to the needs of children who are particularly vulnerable as they lack the protection of their primary caregivers.³⁶

30. The Guidelines provide extensive information on how to prevent unnecessary family separation, and on how to ensure that any alternative care is both necessary and suitable for the needs, circumstances, and wishes of every individual child. These principles – necessity and suitability – are at the core of the Guidelines.

31. In order to ensure that the “specific psycho-emotional, social and other needs of each child without parental care can be met”, a range of alternative care options should be made available, consistent with the general principles of the Guidelines, “with priority to family- and community-based solutions”. Foster care should be considered before looking at other formal alternative care responses since it offers children the opportunity to live in a family environment. When considering an alternative care arrangement for a child, it is also essential to ensure that it can provide them with a sense of security, stability and belonging.

32. The Guidelines also carefully consider the place of residential care within the child protection and alternative care system. Given that a range of high quality alternative care options is required to ensure that the needs of each child without parental care can be met, the Guidelines recognise that residential care can complement family-based care. Its use, however, “should be limited to cases where such a setting is specifically appropriate, necessary and constructive for the individual child concerned and in his/her best interests”.³⁷ On the contrary, institutional care settings – such as large residential facilities – are not an appropriate option. The Guidelines call for the development of other options in the context of an overall, clear and well-planned deinstitutionalisation strategy.

33. These principles have been reiterated in other international legal and policy texts including, most recently, the UN General Assembly Resolution on the Rights of the Child adopted in December 2019, which also provides additional information for policy and practice.³⁸

34. Within the UN, the detention of refugee and migrant children in the context of migration has been recognised to never be in the best interests of the child. The UNHCR, for example, in its position regarding the detention of refugee and migrant children issued in 2017, explicitly calls for appropriate care arrangements and community-based programmes to be put in place to ensure adequate reception of children and their families. Similarly, the UNHCR Guidelines on the Care and Protection of Children calls for national or local child welfare services to supervise the care and placement of unaccompanied children, who should receive care “that meets at least the minimum standards provided for national children”. The UNHCR’s Framework for the Protection of Children adopts a family and community-based approach as one of its principles.³⁹ The UNHCR’s Beyond Detention strategy also contemplates alternative

³⁶ Cantwell N., Davidson J., Elsley S., Milligan I., Quinn N. (2012) Moving Forward: Implementing the ‘Guidelines for the Alternative Care of Children’. UK: Centre for Excellence for Looked After Children in Scotland, p. 3

³⁷ UNGACC, paras 21-23.

³⁸ UN General Assembly, Draft Resolution I, Rights of the Child, A/74/395.

³⁹ United Nations (2012), UNHCR, *A Framework for the Protection of Children*, (“UNHCR Framework for the Protection of Children”), p.15.

reception/care arrangements, citing foster care as an example.⁴⁰ Reception in foster care, supervised independent living, or other family- or community-based living arrangements is also put forward by UNICEF when discussing the protection of unaccompanied and separated children in the context of migration.⁴¹

35. In the European Union, the rights of the child are expressly referred to in the Treaty on the European Union.⁴² A child's right to protection and care is guaranteed under the EU Charter⁴³ when, *inter alia*, member States are implementing EU Law.⁴⁴ EU secondary legislation on asylum also provides for the placement of unaccompanied children in non-custodial settings, including with adult relatives, a foster family, or in accommodation centres with special provisions for children.⁴⁵ Unaccompanied and separated children are to be placed in such settings as soon as they are admitted to the territory and until the moment they are obliged to leave and/or when international protection is granted.⁴⁶

2.4. Child's right to respect for family life

36. In the context of the best interests of the child, the right to respect for family life as enshrined in the Convention, EU and international law, is of fundamental importance.⁴⁷ The right to respect for family life applies to unaccompanied and separated migrant children even though they may be separated from their family of origin. The right to respect for family life further entails that unaccompanied and separated children have to be allowed and enabled to maintain their contact and relationship with their family of origin.⁴⁸ Siblings travelling together should remain together, unless it is verifiably not in their best interests.⁴⁹ The UN Committee on the Rights of the Child instructs that the term "family" should be interpreted broadly to include foster families.⁵⁰ According to the CRC Committee, the right to protection of family life and unity also means that children should be provided with a continuity of care, indicating that changes to residence and accommodation should be kept to a minimum.⁵¹

⁴⁰ United Nations (2014), UNHCR, *Beyond Detention: A Global Strategy to support governments to end the detention of asylum-seekers and refugees – 2014-2019*, p.17.

⁴¹ United Nations (2017), UNICEF, *A child is a child – Protecting children on the move from violence, abuse and exploitation*, pp. 48 & 50. See further, Save the Children, UNHCR & UNICEF (2009), *Statement of Good Practice – 4th Revised Edition: Separated Children in Europe Programme*, pp.28-29;

⁴² Treaty on the European Union ("TEU"), OJ C 326/13, 26 October 2012, Article 3(3).

⁴³ EU Charter, Article 24

⁴⁴ EU Charter, Article 51(1).

⁴⁵ Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, OJ L 031/18 ("Reception Conditions Directive"), Article 19(2); Recast Reception Conditions Directive, Article 24(2).

⁴⁶ *Ibid.*; Council Directive 2004/83/EC of 29 April 2003 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, OJ L 304/12 ("Qualification Directive"), Article 30(3); and Recast Qualification Directive, Article 31(3). Recently the European Commission encouraged EU member States to "ensure that a range of alternative care options for unaccompanied children, including foster/family-based care are provided." European Commission, Communication from the Commission to the European Parliament and the Council, The protection of children in migration, COM(2017) 211 final, 12 April 2017, p. 9.

⁴⁷ ECHR, Article 8; Recast Reception Conditions Directive, Article 11 (3). CRC, Article 16(1); ICCPR, Articles 17(1) and 23(1).

⁴⁸ CRC Committee (2013), *General Comment No. 14*, op. cit., paras 60 and 65.

⁴⁹ United Nations (1994), UNHCR, *Refugee Children – Guidelines on Protection and Care* (2001 reprint), p.126; UNHCR Guidelines on Best Interests of the Child Determinations, op. cit., pp. 72-73; CRC Committee (2005), *General Comment No. 6*, para 40.

⁵⁰ CRC Committee (2013), *General Comment No. 14*, op. cit., para 59.

⁵¹ CRC Committee (2005), *General Comment No. 6*, op. cit., para 40.

37. The CRC expressly provides that the primary responsibility for the upbringing and development of a child rests with the parents or legal guardians. It further states that States are to render appropriate assistance to parents and legal guardians “in the performance of their child rearing responsibilities”.⁵² This includes ensuring the developing of institutions, facilities and services for the care of children.⁵³ The primacy of the family “as the natural and fundamental group unit of society” which “is entitled to protection by society and the States” is also reflected in the International Covenant on Civil and Political Rights (“ICCPR”)⁵⁴ and the International Covenant on Economic, Social and Cultural Rights (“ICESCR”)⁵⁵

2.5. Child’s right to participation

38. The right of child to express his or her views and be heard, usually called participation, constitutes one of the fundamental values of the UN CRC and is key to realising children’s rights. As one of the four general principles of the UN CRC it is “not only a right in itself but should also be considered in the interpretation and implementation of all other rights.” This right imposes on obligation on States to listen to the views of the child and give them due weight in accordance with the age and maturity of the child. In order to effectively realise this right, States have a strict obligation to undertake appropriate measures to ensure its implementation for all children regardless of, *inter alia*, nationality, status, etc.⁵⁶

39. At the Council of Europe level, the Council of Europe Committee of Ministers has, among other, emphasised the right of children to be informed about their rights in a manner they understand.⁵⁷ The information shared with the child concerned should be provided in a manner that is appropriate to the age and maturity of the child.⁵⁸ Children must be allowed and enabled to freely express their views. Where necessary interpreters should be made available at all stages of the procedure.⁵⁹ The overall approach adopted should be child sensitive and take due account of the specific circumstances of the child’s situation.⁶⁰

2.6. Guardianship

40. Guardian “refers to a person who is appointed or designated to support, assist and, where provided by law, represent unaccompanied or separated children in processes concerning them.”⁶¹ As such guardians are one of the most important safeguards for unaccompanied or separated children because they play a key role in the safeguarding of

⁵² CRC, Article 18(1).

⁵³ Ibid., Article 18(2).

⁵⁴ ICCPR, Article 23(1).

⁵⁵ ICESCR, Article 10(1).

⁵⁶ CRC Committee, General Comment No. 12 (2009): the right of the child to be heard, 20 July 2009, CRC/C/GC/12, (“General Comment No. 12 (2009)”).

⁵⁷ Council of Europe (2010), Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, 17 November, pp. 17, 20 and 21; See, for example, United Nations (2014), UNHCR & UNICEF, *Safe & Sound – What States can do to ensure respect for the best interests of unaccompanied and separated children in Europe*, p.21. Council of Europe (2018), *How to convey child-friendly information to children in migration – A handbook for frontline professionals*, December 2018, Strasbourg.

⁵⁸ See, for example, UNHCR and UNICEF (2014), *Safe & Sound*, op. cit., p.21.

⁵⁹ CRC, Article 12; CRC Committee (2013), *General Comment No. 14*, op. cit., paras 53 and 54; UNGACC, para 7.

⁶⁰ United Nations (2017), *Global Compact for Safe Orderly and Regular Migration*, 13 July (“Global Compact for Migration”), para 15.

⁶¹ Council of Europe, Committee of Ministers, 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, 11 December 2019, (“Recommendation CM/Rec(2019)11”).

children's best interests and the exercise by these children of their rights. They also act as a link between the child and all other stakeholders (authorities, agencies, individuals, etc.) and can help build trust with the children and ensure their well-being in cooperation with other actors. The prompt appointment of guardians is thus essential for every unaccompanied and separated child.

41. This has been recognised in a number of international and European legal and policy documents, including the Council of Europe Committee of Ministers Recommendation on Guardianship.⁶² Member States are encouraged to put in place an effective guardianship system which takes into account the specific needs, circumstances and vulnerabilities of unaccompanied and separated children. Guardians should be independent and impartial, have a clear function and role, and have no conflict of interests. This role includes the Guardian having the authority to be present in all planning and decision-making processes, including immigration and appeal hearings, care arrangements and through all efforts undertaken to search for a durable solution for the child.⁶³

42. A set of standards for guardians of separated children has also been proposed at European level.⁶⁴ These include guardians (a) advocating for the rights of the child, and for all decisions to be taken in their best interests, aimed at their protection and development; (b) ensuring the participation of the child in every decision that affects them; (c) acting as a bridge and focal point for the child and all other actors involved; (d) assisting children in navigating complex asylum, social work and child protection systems.

43. A well-developed guardianship service that meets the needs of unaccompanied and separated children will also need to look into issues of social isolation and loneliness. This can be achieved by ensuring that guardians can only take responsibility for a limited number of children to allow for the development of a personal connection. Ideally, guardians should live in the same community or area as the children so as to be able to meet on a regular basis and be available when the children need them.

44. Guardians should be adequately screened, reliable, qualified and supported throughout their mandate, but they could be also supported by volunteer guardians to extend the quality and support received by children. In specific circumstances, volunteer guardians may assist children by using their personal and professional networks. Any guardianship system should be properly monitored at regular intervals, including through consultation with children.⁶⁵

3. PRACTICAL PRINCIPLES

45. Member States are diverse and face vast differences in the field of migration, including the reception of unaccompanied and separated minors. Among others, they face enormous disparities in (a) the scale of migration movements and (b) infrastructure and resources available. Acknowledging that each State has different capacities and faces different challenges, the following section attempts to outline certain practical principles aiming to inspire and support member States when seeking to develop family-based care for unaccompanied and separated children.

⁶² Ibid.

⁶³ Idem.

⁶⁴ See, Closing a protection gap 2.0: Implementing the Core Standards for guardians of separated children in Europe in practice, policy and legislation. Project Reference Number: JUST/2012/DAP/AG/2995.

⁶⁵ Council of Europe, Committee of Ministers, Recommendation CM/Rec(2019)1, op. cit.

3.1. Integration with child-care and protection systems

46. An integrated national child protection system can be defined as “the way in which all duty bearers (e.g. state authorities represented by law enforcement, judicial authorities, immigration authorities, social services, child protection agencies, etc.) and all system components (e.g. laws, policies, resources, procedures, etc.) work together across sectors and agencies sharing responsibility to form a protective and empowering environment for all children.”⁶⁶

47. An integrated child protection system places children at its centre while all relevant actors – spanning health, education, welfare, civil society, family, community, etc. – work together in a coherent and comprehensive manner. Linking the migration or asylum reception system to the national child protection system and its standards is a recommended way of ensuring that there is equity of protection and family-based care for all children, regardless of, *inter alia*, immigration status. This can help guarantee that unaccompanied and separated children have access, in practice, to the same level of protection and care as national children in line with the standards set out in the UN Guidelines for the Alternative Care of Children.⁶⁷

48. Integration with child-care and protection systems can be promoted by examining the current situation in a member State in terms of (a) migration/asylum reception systems, (b) child protection systems, and (c) the characteristics and numbers of unaccompanied and separated children in need of care and protection. This will help to better understand the specific national strengths, challenges and needs enabling the development of systems adapted to the particular national context.⁶⁸

49. A supportive legal framework plays a key role in the effective integration with child protection systems and helps ensure equality of treatment for all children. Any such legislative framework should ideally allow for the development of proactive, targeted measures that address the specific needs and circumstances of each individual child.⁶⁹

⁶⁶ European Commission, 9th European Forum on the Rights of the Child, Coordination and cooperation in integrated child protection systems, 30 April 2015, pp. 3-4. At the European Union level, following the 2013 Commission Recommendation on Investing in Children, the 10 Principles on Integrated Child Protection Systems (2015) attempted to bridge migration and non-migration contexts to take a child-rights approach. As one of the central principles, it is noted that “families should be supported in the role as primary caregiver”. It also noted as one of the principles, and that they families must be supported through “universal and targeted services, through every stage of intervention, particularly through prevention”. The fact that child protection systems must have transnational and cross-border mechanisms in place is another principle noted. European Commission (2015), Ten Principles for Integrated Child Protection Systems (presented at the 2015 European Forum on the Rights of the Child), Principle 4.

⁶⁷ UNGACC, para 141.

⁶⁸ De Ruijter de Wildt L., Melin E., Ishola P. and Dolby P. (2015), p. 9.

⁶⁹ D’Addato A., Giraldi M., Van De Hoeven C., Fontal A. (2017), Let Children be Children: Lessons from the Field on the Protection and Integration of Refugee and Migrant Children in Europe, Eurochild and SOS Children’s Villages, Brussels, p. 146-147.

Example of practice

Legislative framework in Italy⁷⁰

In Italy, Law 47/2017—also known as the “Zampa Law”—introduced an integrated and holistic approach regarding the care and protection for all unaccompanied and separated children. It specifically notes that family-based care is the most appropriate and preferred option and provides for the creation of a list of volunteer guardians at the Juvenile Court.

Law 47/2017 promotes a greater equality between Italian children and unaccompanied and separated foreign children. Moreover, it guarantees that all unaccompanied and separated children have a right to access education, health and social services in addition to care and protection services. The law regulates all aspects related to the protection of unaccompanied and separated children and aims, *inter alia*, at:

- ensuring that there is a consistent and standardised approach in the whole country;
- reducing the time children spend in first-line reception centres;
- harmonising and improving age-assessment procedures, based on a child-sensitive approach;
- establishing a structured and streamlined national reception system, with minimum standards in all reception facilities involving an extensive roll-out of qualified cultural mediators to communicate and interpret the needs of vulnerable adolescents.

50. Although essential, having good legislation in place is not sufficient for effective protection. It is also crucial to ensure implementation in practice. This is, *inter alia*, done by removing barriers to the provision of family-based care. In all circumstances, discrimination must be avoided, such as differentiation based on the origin of children, their legal status, or a lack of resources.⁷¹

51. Successful integration with the national child protection systems also implies ensuring sufficient financial resources so that services can support children and families effectively. Creating a budget for a national approach may facilitate pooling or better use of resources, and guarantee equity of access to services.

52. The ability of relevant actors to work in partnership is another condition for the good functioning of an integrated, national child protection system. Overall responsibility for coordinating service provision and delivery (including needs assessment and case management) should rest with governmental authorities or a duly mandated agency. NGOs and civil society organisations can, obviously, develop and deliver programmes and services that support and complement those provided by the authorities. Such services, however, should not duplicate or replace those provided by the State.

⁷⁰ Valentina Tenedini, ALFACA II, *Country Report Italy*, State of the art on family based care for unaccompanied children, May 2019; See also, Diritto e Giustizia, Legge 7 aprile 2017, n. 47; pubblicata in G.U. del 21 aprile 2017, n. 93, Disposizioni in materia di misure di protezione dei minori stranieri non accompagnati, and Camera dei Deputati, Servizio Studi, XVIII Legislatura, Minori stranieri non accompagnati, 4 novembre 2019, as well as UNICEF News note, UNICEF hails new Italian law to protect unaccompanied refugee and migrant children as model for Europe, Rome, Geneva, 29 march 2017.

⁷¹ D’Addato A., Giraldi M., Van De Hoeven C., Fontal A. (2017), op. cit., p. 140.

Examples of practice

Irish model of care and protection for unaccompanied and separated children seeking asylum⁷²

Since 2010, when the “equity of care” principle was implemented in Ireland, it was decided that unaccompanied and separated children should receive the same level of care as Irish children.

Every child arriving in Ireland is immediately assigned a qualified social worker. Upon arrival children under 12 years old or with extraordinary vulnerabilities are placed in foster care. Those over 12 years or older are generally placed in one of the four short-medium term residential facilities that are registered children’s homes with no more than six children in any home setting. Children are accommodated in these facilities on average for three to six months while their allocated social worker conducts a multidisciplinary assessment of risks, needs or family reunification options, develops a care plan, and if appropriate, makes an application for asylum on behalf of the child. After the initial assessment period, children are placed in the most appropriate placement option depending on their assessed needs – usually either foster care or supported lodgings for older and more independent children.

The system in Ireland centres around building a trusted relationship with the child as well as across diverse sectors such as child protection, immigration and police.

National system to ensure reception in families for unaccompanied and separated children in the Netherlands⁷³

Nidos, the National guardianship institution in the Netherlands, is mandated by law to provide family supervision and guardianship. Nidos delivers reception in families to unaccompanied and separated children, and it does so through the recruitment and training of ethnic foster families, independently of the Dutch foster care system.

3.2. The specific needs of the child

53. When considering family-based placements, it is important to recognise that unaccompanied and separated children have particular needs and circumstances. While the need to live in a stable and caring environment is the same for all children, the particular background and experiences of unaccompanied and separated children call for a specific approach. Unaccompanied and separated children have, inevitably, gone through very difficult times. They may likely have been exposed to risks such as abuse, violence and exploitation,

⁷² Council of Europe, *Promoting child-friendly approaches in the area of migration, Standards, guidance and current practices*, December 2019; “Effective Alternatives to the Detention of Migrants”, International Conference organised jointly by the Council of Europe, the European Commission and the European Migration Network, 4 April 2019; Dr Muireann Ní Raghallaigh (2013), *Foster Care and Supported Lodgings for Separated Asylum Seeking Young People in Ireland: The views of young people, carers and stakeholders*.

⁷³ For a succinct description of Nidos and its programme on reception and living in families, see Stichting Nidos, *Reception Families for unaccompanied children seeking asylum, Nidos OWG Reception and Living in Families*, Utrecht.

physical and psychological hardships; lack of money and resources; hostility, stigma and discrimination; and/or inappropriate treatment (e.g. by smugglers, fellow travellers or even officials, etc.). Even if children have not been severely traumatised, they will have had to cope with drastic changes while still in their fragile, developmental years.⁷⁴ In a number of cases, they might also have had stable home and family environments at some points before their journeys.⁷⁵ These moments and periods past of belonging inevitably also make up a fundamental core of their being. In a number of cases, they may not have been able to make any real decisions of their own, including on whether to migrate away from their families or not.

54. This specific context requires a particular type of support that can enable children to deal with feelings of despair, loneliness, powerlessness and missing their families, friends and home countries. Managing the difficult experiences they have gone through while on the move adds yet another layer of concern. Such support also entails helping them cope with their individual hopes and dreams, tapping into their resilience and resourcefulness to confront their present and future.⁷⁶

55. Navigating uncertainty in their present and future, including complex procedures such as asylum applications, and adapting to a new country with a different culture, language and possibly religion and ethnicity, are other conditions necessitating specific support. This may only be offered through professional planning and implementing a variety of measures.⁷⁷ These measures include making sure that the support and protection provided to each child reflects the diversity of their situations, aspirations, strengths and needs. According to their age and maturity, provision of tailored support should ideally include participation of the child during assessment, planning, implementation and monitoring.⁷⁸

56. The provision of psycho-social support, to strengthen resilience and avoid the aggravation of mental health problems, is essential. Emotional suffering is commonly related to the stresses that children are exposed to upon arrival. The ability to help children recognise their skills and build their confidence is equally important, as is supporting them to regain a sense of normality, for example through participation in educational, recreational and leisure activities.⁷⁹

⁷⁴ CELCIS/ University of Strathclyde, *Caring for Children Moving Alone: Protecting Unaccompanied and Separated Children*, Course Step 1.13, *Risks to unaccompanied and separated children on the Move*, a Massive Open Online Course, available on Futurelearn.com; Dr Connolly H. (2019), *Without my family: The impact of family separation on child refugees in the UK*, Amnesty International UK, The Refugee Council and Save the Children, London p. 9-12; Sayers A., Lowe K. and Megna F. (2019), *Caring for Unaccompanied Migrant Children, Fostering Across Borders (FAB) Project. A foster carer training manual*, International Organization for Migration (IOM), London, p. 39-43.

⁷⁵ Stichting Nidos, *Reception Families for unaccompanied children seeking asylum*, op. cit., p. 4.

⁷⁶ Sayers A., Lowe K. and Megna F., op. cit., p. 87-101; Sirriyeh, A. and Ní Raghallaigh, M. (2018) "Foster care, recognition and transitions to adulthood for unaccompanied asylum seeking young people in England and Ireland" *Children and Youth Services Review*, 92, pp. 89-97.

⁷⁷ Wade J., (2019), *Supporting unaccompanied asylum-seeking young people: The experience of foster care*, *Child & Family Social Work*, 24(3), pp. 383-390; see also Kohli R. K. S. (2007), *Social work with unaccompanied asylum seeking children*. Basingstoke: Palgrave Macmillan, cited in Wade J., (2019).

⁷⁸ Sayers A., Lowe K. and Megna F., op. cit., pp. 87-101; See also CELCIS/ University of Strathclyde, *Caring for Children Moving Alone: Protecting Unaccompanied and Separated Children*, Course Step 2.12 and Course Steps 2.17, 2.18 and 2.19 specifically on child participation and Avramović M. (2014), *When we are asked, not questioned – Consultations with children on the move*, Save the Children International, Sarajevo, esp. pp. 22-30.

⁷⁹ Ventevogel P., Schinina G., Strang A., Gagliato M., Juul Hansen L. (2015), *Mental Health and Psychosocial Support for Refugees, Asylum Seekers and Migrants on the Move in Europe. A Multi-Agency Guidance Note*, UNHCR, IOM and MHPSS.net. See also Sirriyeh, A. and Ní Raghallaigh, M., op.cit., pp. 89-97.

57. Diversity can be recognised as an important resource for individual children in the provision of family- and community-based care. This may be achieved by recruiting foster parents with the same or a similar cultural and linguistic background. Adjustment to family life in foster care may not always be easy for unaccompanied and separated children. This may be easier if there is a close cultural or ethnic match which can help children to feel more at home. A shared experience of migration and of the challenges related to settling in a new country may help with bonding and a sense of inclusion. These are important considerations when matching children with foster parents. Crucially, this also requires the availability of a sufficient number of foster families, from a variety of backgrounds.⁸⁰

3.3. Sufficient and suitable places and services

58. Family based care can take place within 'local' families, or with families that share the same or a similar ethnic and cultural background. Placement with an 'ethnic' family may help the child preserve their cultural identity and potentially their native language; this can be a protective factor for the child's mental health. The shared experience of migration can also make the placement easier, as an ethnic family may be better able to offer comfort and guidance to the child. Shared experiences of migration, integration and/or background may help working through stress buffers needed when fleeing, processing trauma and mourning. To ensure social inclusion of the child in question, it may be important that foster families are well integrated in the community in the host country. It is also worth noting that these placements may sometimes be considered more difficult to monitor, and that cultural matching, while it can be a protective factor for the child's mental health, may at times be considered discriminating.

59. Placements within 'indigenous families' may make integration in the new community easier, and may also make learning the local language, dominant culture, and values easier. This may in turn help with education and potentially fulfilling children's aspirations. National families may, however, feel less competent in offering support and cultural guidance. It has been noted that these placements can work well especially when families have intercultural experience and knowledge. Intercultural awareness for the foster family can be supported through attending workshops, and working with interpreters for both language and culture (cultural mediators), who help the reception families to better understand the child's background.

60. The recruitment of suitable and willing foster families – and effective ways by which to enhance such measures – is a necessary requisite for ensuring sufficient places for unaccompanied and separated children within families. Certain structural efforts may be needed to enhance this. If, for example, the alternative care system is not organised and managed at the national level by a central authority or mandated agency, there may be good practices that remain limited to the local level. Efforts could be made to share these and replicate elsewhere. Financial and organisational structures may also need to be strengthened to support the development of a sufficient and well-trained pool of foster carers.

61. Coordinated, state-led efforts may be needed to enhance effective change. Alignment of child protection and migration legislation to ensure an equity of care may also facilitate putting in place a structured system. This could, in turn, allow the mandated body to coordinate

⁸⁰ De Ruijter de Wildt L., Melin E., Ishola P., Dolby P., Murk J., van de Pol P. (2015), op. cit.. Nidos, SALAR, CHTB. P. 6-7, 70-71 and 126-129, and Wade J., op. cit. p. 385. See also To become a foster family, on <https://www.nidos.nl/en/voor-opvangouders/opvangouder-worden/> as well as D'Addato A., Giraldi M., Van De Hoeven C., Fontal A. (2017), op. cit., p. 141.

placement of children in family-based care. Having a State-wide system in place may also make it possible for promising practices to be shared and replicated, thus ensuring their long-term sustainability.⁸¹

62. Although family-based care is the preferred option for any children in need of alternative care, member States rely on a range of options, which also includes residential care settings such as family-like care or small group homes. Semi-independent living arrangements are often available for older children in preparation for transitioning to independent living. All of these alternative care options should in any case be made available to those unaccompanied and separated children who may not be suitable to, or not want to, live with a family – due to their age and maturity, and/or because they are now used to being independent. Clearly, their particular needs and circumstances must be properly assessed.⁸²

Example of practice

Independent living arrangements for unaccompanied children in Germany⁸³

SOS Children's Village Düsseldorf in partnership with the local youth welfare office, education authorities, health officers, youth migration services and healthcare services have developed a comprehensive care network for unaccompanied children over the age of 16 who have been granted residence or a tolerated stay permit. Unaccompanied children live together in two – or three-bedroom apartments. Socio-pedagogical experts are on-call duty 24/7 and meet with the children regularly to provide support.

An individual care plan is developed in consultation with each child, his or her legal guardian and his or her case manager and is regularly reviewed and adapted to address the evolving needs of the child. Children receive educational support and individual guidance including, legal counselling regarding their asylum and migration procedures.

The project aims at supporting unaccompanied children to achieve independence and successfully integrate into the German society through self-empowerment and helping them to live independently in the community.

3.4. Recruitment of foster families

63. Recruiting and maintaining a good pool of foster carers has been described as a question of “constant effort, patience and perseverance”.⁸⁴

⁸¹ De Ruijter de Wildt L., Melin E., Ishola P., Dolby P., Murk J., van de Pol P. (2015), op. cit.

⁸² UNGACC, paras 53-54. See also Cantwell, N.; Davidson, J.; Elsley, S.; Milligan, I.; Quinn, N. (2012). *Moving Forward: Implementing the 'Guidelines for the Alternative Care of Children'*. UK: Centre for Excellence for Looked After Children in Scotland, p. 71-73, where the application of the 'suitability principle' is described. For an account of a care experienced young person, see Rezaie H. (2019), *Commentary on "Supporting unaccompanied asylum-seeking young people: The experience of foster care"*, *Child & Family Social Work*, 24, pp. 391-392.

⁸³ D'Addato A., Giraldi M., Van De Hoeven C., Fontal A. (2017), op. cit., pp. 38-45.

⁸⁴ Schippers M., van de Pol P., and de Ruijter de Wildt L. (Nidos), Thys K. (Minor-Ndako), Krogshøj Larsen M. (Danish Red Cross), Massoumi Z. (Jugendhilfe Süd-Niedersachsen) and Rozumek M. (Organization for Aid to Refugees) (2016), *ALFACA Alternative Family Care. Manual for staff working with reception families and unaccompanied children living in reception families*. Nidos, Utrecht, The Netherlands, p. 64.

64. Recruitment could start with the development of a plan, outlining specific needs, as well as characteristics of foster families, which can be particularly important when placing siblings or children with specific needs. Developing a plan will help to formulate targets, strategies and concrete activities to pursue.⁸⁵

65. When considering what families to recruit as foster carers, the key question to reflect upon is whether or not they will be able to meet the needs of the child. Some of the aspects to consider are their intercultural awareness, whether or not they have a sincere interest in the well-being of the child and, perhaps most importantly, their pedagogical and nurturing skills – their ability to support the child. Foster families should be able to take into consideration the particular experiences the child has gone through, to allow contact with the biological family of the child if possible, and to create a space for them even if they are absent.⁸⁶

66. There are various ways in which recruitment can be organised: Through advertisements and/or the organisation of campaigns; by distributing flyers in carefully-chosen distribution areas; and, potentially, through social media. The approach must, of course, be carefully crafted and shared. Direct communication and a personal approach may be ideal. For example, informational meetings can be organised with a variety of groups, e.g. at religious gatherings, with NGOs, migrant associations, schools, community centers, etc. Foster families can be invited to share information about their experiences, and they can also be supported to identify and recruit other foster families.⁸⁷

67. At a professional level, being proactive and reliable in making contact with potential foster families can prove essential. Working with ‘leaders’ in the ‘target’ community can also yield good results, as particular contacts and individuals may have a special influence within their communities. The support and engagement of cultural mediators or advisors can prove invaluable. Former unaccompanied and separated children can likewise be good contacts to build a stronger network of foster families.⁸⁸

⁸⁵ Schippers M. et al., op. cit., p. 64-68; Stichting Nidos, Reception Families for unaccompanied children seeking asylum, op. cit., p. 6.

⁸⁶ Stichting Nidos, Reception Families for unaccompanied children seeking asylum, op. cit., p. 6. See also PiB – Pflegekinder in Bremen gemeinnützige GmbH, Kinder im Exil. Ein Angebot im Rahmen der Vollzeitpflege für unbegleitete minderjährige Ausländer gem. §§ 33 und 42 SGB VIII, available at <https://www.pib-bremen.de/kinder-im-exil>.

⁸⁷ Schippers M. et al., op. cit., p. 64-68 ; Stichting Nidos, Reception Families for unaccompanied children seeking asylum, op. cit., p. 6. For examples from different countries, see De Ruijter de Wildt L., Melin E., Ishola P., Dolby P., Murk J., van de Pol P. (2015), op. cit. p. 56 (Ireland), p. 64-65 (Italy), p. 71 (The Netherlands); see also Grinvald M., Ristić T., Vukašin G. (2017), Specialised foster care for unaccompanied children in Serbia. Case Study, Save the Children International, Belgrade, Serbia. Another example is provided in D’Addato A., Giraldi M., Van Der Hoeven C. and Fontal A. (2017), p. 72-80.

⁸⁸ Schippers M. et al., op. cit., p. 64-68

Example of practice

Netherlands – Recruitment of families with an ethnic background⁸⁹

Nidos recruits reception families with an ethnic background through an approach that aims at identifying communities that may be interested in providing family-based care to unaccompanied and separated children, and then building a relationship based on trust and confidence. Their approach is a combination of:

- getting people engaged with the interests and needs of the unaccompanied children;
- appealing to their concern and sense of responsibility with regard to the children;
- giving correct and detailed information on taking care of unaccompanied children;
- stimulating people to spread the message;
- organising meetings where interested people can hear the experiences of others.
- setting up media campaigns.

3.5. Training of, and support to, foster families

68. The availability of a well-trained workforce is at the heart of delivering quality family-based care. Such a workforce can meet the specific needs of unaccompanied and separated children, provide them with a sense of stability and security, and give them the opportunity to rebuild their lives regardless of the final outcome of their migration case.⁹⁰

69. Foster carers, whether ‘nationals’ or with an ethnic background, should be selected through a rigorous process. They should receive specific training to support migrant children and thereby be better prepared to cater for their specific needs. These can include helping to teach the language and customs of the new country in which the children now live and supporting their cultural needs – such as maintaining their sense of identity. It may also include psychosocial support to help them deal with any trauma or specific vulnerabilities they may have. Another aspect may be the ability to understand and support children in their asylum-seeking application, or other legal processes they may be involved in, such as age assessments. These processes are complex, especially when a child is already adapting to a new context.

70. In a nutshell, relevant topics to include in specific trainings for foster carers/ reception families may be:

- The specific experiences of unaccompanied and separated children, including why they leave home, the particular risks they face, and how they become unaccompanied or separated;

⁸⁹ ALFACA, Alternative Family Care Manual, p. 65.

⁹⁰ On the need to train professionals working with unaccompanied children, see Communication from the Commission to the European Parliament and the Council, The protection of children in migration, Brussels, COM (2017)211 final; and European Migration Network (May 2015), Synthesis report for the EMN Focussed Study 2014. Policies, practices and data on unaccompanied minors in the EU Member States and Norway, DG Migration and Home Affairs, European Commission, available at: <https://emn.ie/publications/policies-practices-and-data-on-unaccompanied-minors-in-the-eu-member-states-and-norway-emn-synthesis-report/> and Dr. Shalev Greene K. and Toscano F. (2016), Summit Report SUMMIT: Safeguarding Unaccompanied Migrant Minors from going Missing by Identifying Best Practices and Training Actors on Interagency Cooperation. Missing Children Europe, available at www.missingchildreneurope.eu.

- Their specific rights and obligations, the processes they may undergo and how these can impact the children. This can, *inter alia*, include the children's prospect to leave or stay in the country, the support they are entitled to, as well as their psychological well-being, which requires managing the impact of the uncertainty they live with;
- Their specific needs, such as integration, identity, and expectations about their life - whether their own or those of their families, and how these may impact the choices they face.

71. If the foster family is a local family (if the placement is transcultural), training and preparation for placement should also include areas such as cultural awareness and sensitivity, immigration procedures and how they can affect children. Training can also cover aspects such as how to make children welcome so that they can begin to develop a sense of belonging. Information about the child's country of origin, their customs and/or religion, as well as tools and strategies to find out more, are other topics to be covered. Culture and background can influence matters of everyday importance such as what food children can eat and/or are able to digest. Language and communication skills also play a pivotal role in inclusion. Supporting children to learn the local language and attend school are equally important aspects.⁹¹

72. In addition to formal training, foster parents can benefit from sharing experiences and learning from each other. This can be achieved by promoting opportunities for peer learning, support and exchange, and through activities such as meetings or information sessions with experienced foster carers. Another consideration is to invite experienced foster families to contribute to formal training courses that are organised by the relevant, mandated authority.⁹²

73. Other areas to cover through training are the importance for children of keeping in touch with the family of origin so that they can be informed about the life and development of their children in the new country and culture. This will allow them to be involved in important decisions for their children, which also helps avoid "conflicts of loyalty" that they may develop towards their families and communities.⁹³

74. Finally, capacity building should ideally provide for how to care for the carers. This means informing reception parents on how they can support their own well-being, recognise signs of stress and burn out, and make use of available help. Such help could, for example, be found through social workers, other foster carers, or through discussions during supervisory meetings. While it is paramount to provide a solid initial training to foster carers, some topics are complex and may still require them to undergo additional capacity-building, or to seek the support of social workers, specialised professionals and/or experienced colleagues.⁹⁴

⁹¹ For training of, and support to, foster families, see: Wade J. op. cit.; Sayers A., Lowe K, op. cit.; CRC Committee, General Comment No. 6 (2005), paras 95-97; European Expert Group on the Transition from Institutional to Community-based care (2012), Common European Guidelines on the Transition from Institutional to Community-based care, Brussels, Belgium, pp. 151-152.

⁹² De Ruijter de Wildt L., Melin E., Ishola P., Dolby P., Murk J., van de Pol P. (2015), op. cit., p. 64-66.

⁹³ De Ruijter de Wildt L., Melin E., Ishola P., Dolby P., Murk J., van de Pol P. (2015), op. cit., p. 64-66.

⁹⁴ Sayers A., Lowe K, op. cit., pp. 128-136.

Examples of practice

In Sicily (Italy), local third sector associations such as MetaCometa recruit and train local families to provide foster care to unaccompanied and separated children in need of care and protection arriving on the island.⁹⁵

The Fostering Across Borders is a project funded by the Rights, Equality and Citizenship Programme of the EU, led by IOM, which developed a set of documents, materials and a training package to improve the quality and increase availability of family-based care for unaccompanied migrant children in 6 countries in Europe.

3.6. Monitoring

75. Monitoring is an integral component of providing childcare and protection. Providers of alternative care should be duly authorised by a competent authority responsible for regular monitoring and review. This should be according to criteria on treatment, protection, contact with family and staff qualifications, in addition to aspects that relate to more basic needs such as quality of accommodation. In other words, the emotional and cultural development of the child should be part of the plan so that its safety and well-being can be ensured. The UN Guidelines for the Alternative Care of Children also stipulate that monitoring and inspection should happen both through scheduled and unannounced visits, and, importantly, that interviews with children must happen under conditions of privacy. Capacity building and training of staff and relevant stakeholders – including foster carers – are also highlighted as key aspects of monitoring. Monitoring should lead to identifying and then delivering any support that may have to be provided to the foster family or the child, whether through training, coaching or other means.⁹⁶

76. The most common form of family-based care for unaccompanied and separated children is a kinship or network family placement. These may not be kin but known to the child before they arrived in the country. Often, this type of placement is informal: it happens outside of the scope of the formal child protection system and is consequently not monitored. This situation can pose unnecessary risks to children as they may be subjected to neglect or abuse. All placements should ideally be arranged by the relevant authority, including kinship placements. This ensures that the family receives adequate support, including training and compensation, and allows for the placement to be monitored and strengthen their accountability and responsibility towards the child. Regional and project-based approaches should also be integrated with child protection systems to ensure appropriate oversight and safeguards for children.⁹⁷

⁹⁵ This example of good practice is presented in CELCIS/ University of Strathclyde, *Caring for Children Moving Alone: Protecting Unaccompanied and Separated Children*, Course Step 4.16; see also <http://www.metacometa.it/>

⁹⁶ Cantwell, N.; Davidson, J.; Elsley, S.; Milligan, I.; Quinn, N. (2012), pp. 108-110.

⁹⁷ FRA Fundamental Rights Report (2017), Luxembourg: Publications Office of the European Union, 2017, p.185, and De Ruijter de Wildt L., Melin E., Ishola P., Dolby P., Murk J., van de Pol P. (2015), op. cit., p.7.

3.7. Transitions

77. The transition to adulthood is a delicate and complicated period for any child. It is particularly difficult for children who have grown up in care and even more so for unaccompanied and separated children, considering that turning 18 may entail a significant loss of rights, protection and entitlements. In some cases, they may lose their permit to stay in the country, be detained or forced to leave.⁹⁸

78. It is recommended to support unaccompanied and separated children in preparing and planning for radically different scenarios. Firstly, drawing up a transitional plan to support the child in a period of uncertainty while they await the outcome of their asylum application or claim decision. Secondly, developing a longer-term plan to support them if they are granted refugee status, including access to supported or independent accommodation, to higher education and/or more. Thirdly, preparing the young person to return to their country of origin if their application is unsuccessful or if they wish to do so. Starting a conversation with the child or young person on the possible outcome of their asylum application can be very difficult, emotional, and challenging. However, it is important to discuss this topic so that the proper planning can be put into place.⁹⁹

79. If the young person is allowed to stay in the country, she or he will need help with integration and securing continued support. Similarly, the young person will need to be provided with realistic, age and gender appropriate information, which includes details of any other decisions that may affect them. They will need information about what 'ageing out of care' entails, and how to ensure a successful transition to independent living and/or departure from the host country. Planning for leaving their foster care placement and transitions through the provision of other arrangements should also be discussed. This may include ongoing support they may be entitled to once they have left care, such as continued contact with the foster family.

80. This process should ideally be managed through the development and implementation of a 'leaving care plan', including information about all the topics to consider regardless of whether the young person is staying or leaving the country (e.g. health and well-being, personal development, positive relationships, learning and work, accommodation, practical skills, finances, rights and legal matters). These young people may benefit from schemes such as scholarships and mentorships, facilitated access to continued education and/or training opportunities; or by participating in quality internships and similar measures.¹⁰⁰

81. Coaching in self-reliance can be particularly beneficial for unaccompanied and separated children and young people. This will preferably start before they reach the age of 18. It is important to help them build a support network, both formally through organisations and informally, through friendships, their schools, religious communities, or clubs; and through meeting compatriots who have integrated in the host country. Ideally, the foster family will also remain within the support network of the child when they turn 18.¹⁰¹

⁹⁸ D'Addato A., Giraldi M., Van Der Hoeven C. and Fontal A. (2017), op. cit. p. 149.

⁹⁹ Sayers A., Lowe K, op. cit., 71-74.

¹⁰⁰ CELCIS/ University of Strathclyde, *Caring for Children Moving Alone: Protecting Unaccompanied and Separated Children*, Course Steps 6.8, 6.9, 6.11, 6.12. See also Cantwell N., Gale C., McGhee K., Skinner K. (2017), *Prepare for Leaving Care. Practice Guidance*, SOS Children's Villages International and CELCIS, University of Strathclyde.

¹⁰¹ Sirriyeh, A. and Ní Raghallaigh, M., op. cit.

3.8. Challenges

82. Some of the greatest challenges to offering family-based care to unaccompanied and migrant children are due to a ‘disconnect’ between the asylum and migration system on the one hand, and the child protection and youth care systems of the other. Embedding a holistic approach to care that recognises all children as right holders is the first essential step that needs to be taken to ensure a boost in support for unaccompanied and separated migrant children arriving in Europe. This can be most effectively achieved through a legislative framework that supports protection in practice. Such a system also foresees necessary safeguards – such as guardians - for all children to be able to understand their rights, access relevant services, and benefit from holistic support.

83. Practical know-how and concrete examples on how to increase the quality and availability of family-based care placements are further needed to support wider dissemination.

84. Strategies aimed at identifying, analysing and replicating good practices can benefit from specific initiatives that aim at sharing knowledge, data and evidence. Success and long-term sustainability for any such effort can only be ensured if sufficient resources are made available: consistent and transparent funding, which is predictable and accessible must be made available.

85. Some of the challenges that need addressing are more subtle and are connected to issues such as stigma, perceptions, and how migrant and refugee children are viewed and addressed. Referring to and speaking about children as children – even when close to age 18 – rather than as ‘migrants’, or ‘asylum seekers’, for example, may make it easier to ensure that their rights are not downgraded.

86. Finally, the increase in numbers of asylum seekers, refugees and migrants arriving to Europe – many of them children – since 2015, has at times created strains on the ability to provide care and protection for children. Insufficient capacity and varied challenges – including disproportionate burden sharing – can also hinder progress. Practical know-how and concrete examples on how to address persisting challenges and increase the quality and availability of family-based care placements are further needed. A concerted approach, based on solidarity, rooted in human rights, and delivered in a coordinated and integrated manner, can help ensure that the current situation does not become a long-term structural problem whereby individual States are unable to cope with the pressures of arrival.

4. ADVANTAGES

87. Integrated child protection systems are best placed to respond to the specific needs and circumstances of unaccompanied and separated children. Developing responses that are rooted in a rights framework, which recognise children as children first – rather than as refugees, migrants or asylum seekers – will make it possible for unaccompanied and separated children to access the support they need on an equal basis with others.

88. Family-based care can provide children with the opportunity to create relationships that have a significant impact on their well-being, as well as their present and future circumstances. It can provide them with support and connections that strengthen their emotional, legal and social recognition, and help them navigate the difficult and complex legal procedures

necessary to achieve case resolution , as well as forge their path towards independence in a new country if status is granted.¹⁰² Inclusion and integration in the broader community can be facilitated through opportunities for local populations and newcomers to meet and establish relationships.

89. The previous chapters have presented some of the strategies that can be followed by authorities to strengthen child protection and alternative care systems, in view of making the provision of quality family- and community-based care to unaccompanied and separated children possible. These strategies can also help determine investment priorities and understand the long-term benefits of realising the rights of every child, for the benefit of society as a whole. A good model of reception in families can be based on good practices that are developed locally, then scaled-up, once they have been properly analysed and evaluated. Policies can then be developed based on these experiences, and chances of success can be enhanced through proper follow through within the system, collaboration, and through guidance and support to those working at the grassroots level.

90. A European approach can be particularly helpful, as there is an added value in sharing knowledge, expertise, and innovation across countries as authorities at all levels grapple with similar questions and issues. Providing a framework or forum at the European level on the cooperation and exchange of good practices and challenges can lead to mutual learning and to appreciate issues from a different point of view.

91. Any of the strategies described will have greater chances of success if there is increased awareness of public responsibilities for protecting all children – no matter where they come from. This can lead to positive changes both in social attitudes towards unaccompanied and separated children, as well as in public discourse. This is crucial in combating stigma and making true inclusion possible.

92. Other important considerations when designing policies and services to respond to the rights and needs of children arriving in Europe include considering and addressing the needs of the local communities, by ensuring that they can also benefit from initiatives aimed at supporting unaccompanied and separated children – as well as migrants and refugees more generally. This is particularly important especially if we want to avoid conflicts or grievances caused by the perception that refugees and migrants are treated better than locals are, or that the responding to their needs prevents authorities and services from addressing appropriately the needs of other marginalised groups. Policies and strategies that are based on this understanding will approach this as an opportunity to increase equity and inclusion.

5. CONCLUSION

93. 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 good-quality family-based forms of care, not only for unaccompanied and separated children but the community at large, underlying challenges limit their use and expansion.

¹⁰² Ala Sirriyeh, Muirrean Ní Raghallaigh (2018), Foster Care, recognition and transitions to adulthood for unaccompanied asylum seeking young people in England and Ireland, Children and Youth Services Review 92 (2018) 87-97.

94. There is a clear need firstly, for legal and policy coherence between child protection and migration policy spheres; and secondly, for the exchange of knowledge, practical know-how and promising practices beyond the local and regional levels and beyond EU member States to and between all Council of Europe member States.

95. There is no “one-fits-all” care placement that will meet the needs, vulnerabilities, risks and circumstances of each unaccompanied and separated child. Additionally, every national context will have specific challenges which may put enormous strains on the ability to provide care and protection to children in the context of migration.

96. The development and implementation of effective care systems needs to carefully examine the specific national context and develop placement options that take into account the best interests of the child and at the same time meet a minimum level of quality standards. A range of options should be available and developed in cooperation with local authorities, relevant stakeholders, community and the affected population to promote a sense of shared ownership. Regardless of the particular form of care, the quality of family alternative care is central to the well-being of unaccompanied and separated children.

97. Having regard to the international and European human rights standards and the underlying challenges hindering the use and expansion of alternative family-based care, the Council of Europe could be well-placed to make a strategic contribution in the field by supporting its member States in their endeavors, thereby helping to create lasting positive changes in the way unaccompanied and separated children are cared for and protected in Europe.