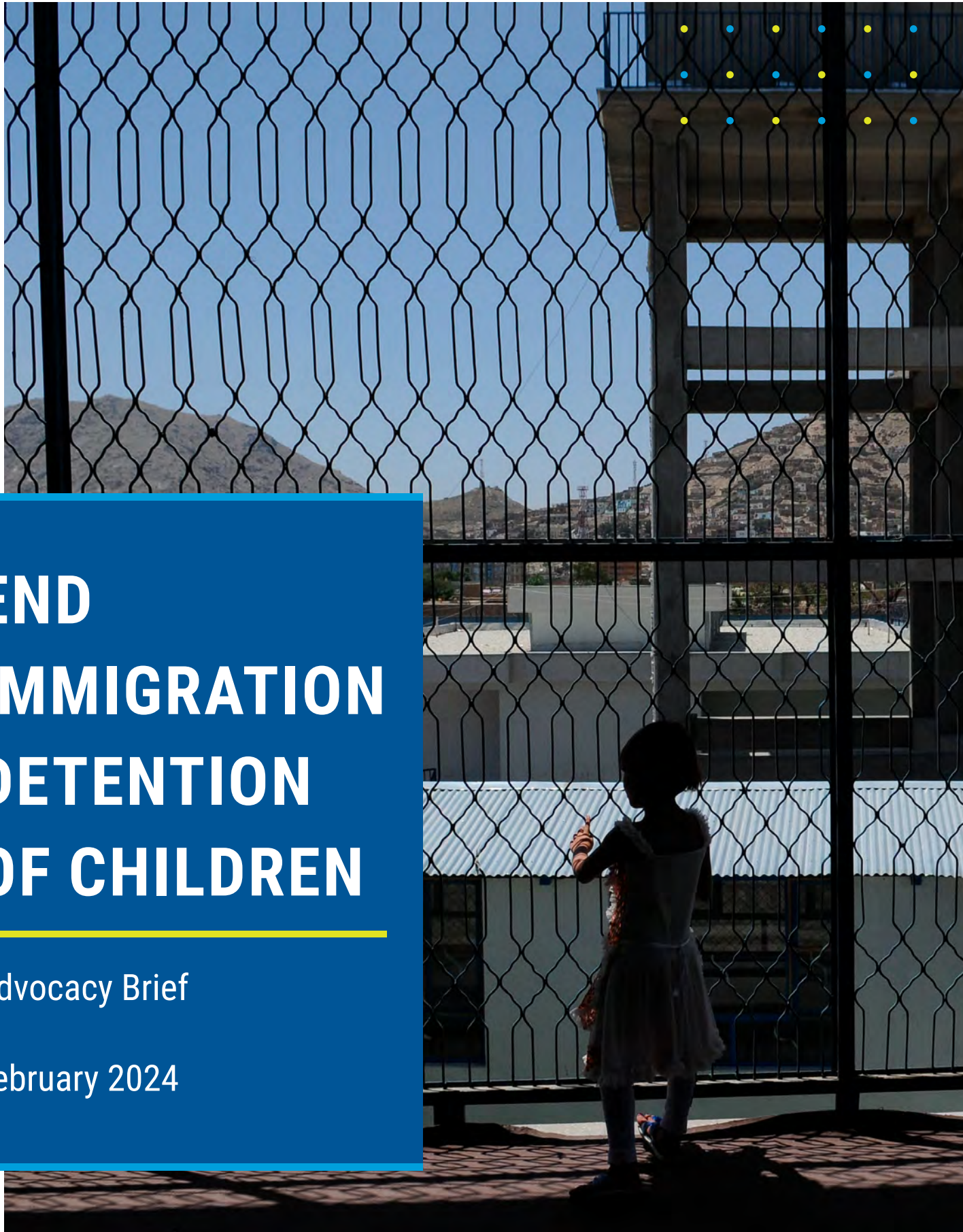
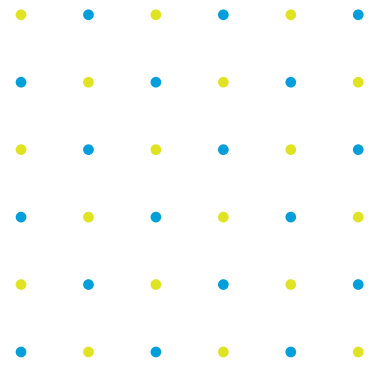


United Nations Task Force on Children Deprived of Liberty

Advocacy Series



END IMMIGRATION DETENTION OF CHILDREN

Advocacy Brief

February 2024

UNITED NATIONS TASK FORCE ON CHILDREN DEPRIVED OF LIBERTY

The UN Task Force comprises all UN agencies, mandates and special mechanisms, under the coordination of the Special Representative of the Secretary General on Violence against Children, playing an active role in the implementation of the recommendations of the UN Global Study on Children Deprived of Liberty based on GA Resolutions A/Res/74/133 and A/Res/75/185.

The United Nations Task Force on Children Deprived of Liberty is integrated by the Special Representative of the Secretary General on Violence against Children (chair), the Special Representative of the Secretary General on Children and Armed Conflict, the United Nations Children's Fund (UNICEF), the International Organization for Migration (IOM), the Office of the United Nations High Commissioner for Refugees (UNHCR), the Office of the United Nations High Commissioner for Human Rights (OHCHR), the Committee on the Rights of the Child (CRC), the United Nations Office on Drugs and Crime (UNODC) and the World Health Organization (WHO).



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**GLOBALLY, EVERY YEAR
330,000 CHILDREN ARE
DEPRIVED OF THEIR
LIBERTY**

INTRODUCTION

IMMIGRATION DETENTION^{1,2} IS NEVER IN THE BEST INTERESTS OF THE CHILD AND CONSTITUTES A CHILD RIGHTS VIOLATION.³

It is a form of violence that impacts a country's capacity to achieve the 2030 Agenda for Sustainable Development, especially targets 10.7 and 16.2.^{4,5} All children, regardless of their legal or migratory status or that of their families, have the right to be cared for and protected from violence, abuse and exploitation. **At least 77 countries have laws and policies that allow children to be detained based on their legal or migratory status, and at least 330,000 children globally per year are deprived of their liberty based on their (or their parents') legal or migratory status.**⁶ Lack of accurate data means this is likely to be a significant under-estimate. While many countries have committed to end child immigration detention, the reality is that even in some countries where legislation does not support immigration detention, it continues to remain in use.⁷

In 2022, the United Nations Task Force on Children Deprived of Liberty^{8,9} under the leadership of the UN Special Representative of the Secretary-General on Violence Against Children, made a joint pledge¹⁰ at the International Migration Review Forum (IMRF):

1. To conduct evidence-based advocacy and to mobilize all key stakeholders at all levels to scale up child rights-based protective solutions to end the detention of children in the context of migration.
2. To support Member States to harmonize their national legal frameworks with international human rights standards to explicitly prohibit detention of children based on their migration status or that of their families.
3. To involve and amplify the voices of migrant children in determining their best interests in all issues concerning children in legislation, policies, practices, including those related to integration, return and family reunification; as well as access to services, to justice and to remedies for violations of their rights.
4. To support data collection and the dissemination of promising practices on child rights-based protective solutions as alternative measures to end the detention of children in the context of migration.

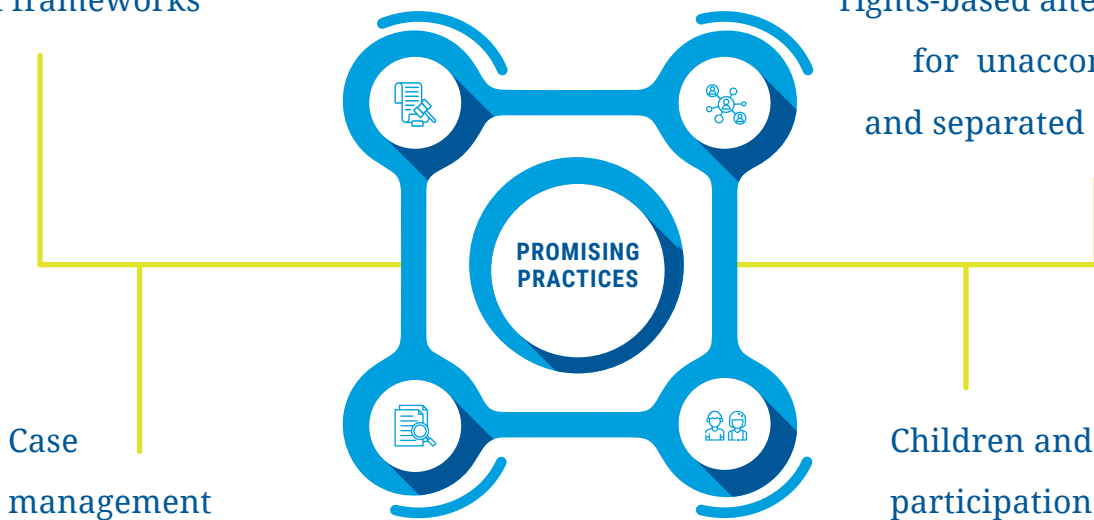
This advocacy brief provides an overview of promising practices and lessons learned to end child immigration detention and sets out a range of policy actions needed to scale up efforts to end this form of violence.

PROMISING PRACTICES

Countries are taking various actions to end child immigration detention. These include, among others, adopting a whole-of-government and a whole-of-society approach, regional and national policies and legal frameworks prohibiting immigration detention of children, creating temporary regularisation programs that result in temporary permits, investing in inclusive child protection systems,¹¹ scaling up family based alternative care and rolling out comprehensive case management systems that ensure children’s meaningful participation in the processes leading to the resolution of their cases.¹²

Strengthening policies and legal frameworks

Community and family child rights-based alternatives for unaccompanied and separated children



Case management

Children and youth participation

As part of this process, in 2023, the UN Task Force collaborated closely with the UN Network on Migration in the context of **the global online peer learning exchange on alternatives to detention¹³ that brought together Governments and other key stakeholders from all regions** to ensure a continuous process of mutual learning and supporting communities of practice to end immigration detention of children.¹⁴ Also, in September 2023, the UN Task

Force made a submission to the UN Network on Migration work stream on GCM indicators to advocate for **the inclusion of a core indicator to end the immigration detention of children in the set of indicators requested by the 2022 IMRF Declaration** paragraph 70 to monitor progress of the Global Compact on Safe, Orderly and Regular Migration (GCM).¹⁵

Promising practices on ending child immigration detention have shown concrete results in:

1. **Cost-effectiveness of alternatives to detention and keeping children with their families in the community.**^{16,17}
2. **Higher rates of case resolution** with up to 95 per cent compliance rates.¹⁸
3. **Ensuring children’s wellbeing** because keeping children in communities increases the health and wellbeing of children and their families.¹⁹

i. STRENGTHENING POLICIES AND LEGAL FRAMEWORKS:

At regional level:

Some examples of regional policies moving towards ending child immigration detention include:

1. the **2014 Brazil Declaration**;
2. the **2019 ASEAN Declaration** on the Rights of the Child in the Context of Migration²⁰ and its Regional Plan of Action;
3. the **Southern African States’** commitment to “develop and implement alternative options to detention,” as well as implement Migration Dialogue for Southern Africa **MIDSA Regional and National Action Plans** to oversee progress;
4. the EU invoking the **Temporary Protection Directive for Ukrainians** provided recognition of international protection needs and guaranteed swift access to safety, documentation and rights for refugees.²¹

At national level:

Canada adopted a Ministerial Directive to “keep children, both unaccompanied and accompanied by their families, out of detention to the greatest extent possible and to maintain family unity”. **Colombia**²² established a temporary protection program to apply for regular status, work permits, and access to basic services including health and education within a period of ten years. **Ireland** adopted the International Protection Act 2015 that prohibits the detention of any applicant for international protection under the age of

18.²³ The **Republic of Korea** issued a ministerial policy of the Ministry of Justice that provides protection against detention and deportation for undocumented children who are residing in South Korea and attending school.²⁴ **Mexico** approved a legislative reform to comprehensively prohibit the detention of children – accompanied or unaccompanied – as a result of their legal or migratory status and transferred responsibility for these children to the National System for the Protection of Children.²⁵ Mexico has also adopted a Comprehensive Protection Protocol for Migrant Children that is being rolled out to key migrant-receiving states (within Mexico) at state and local level, with technical support from civil society organizations and UN agencies.²⁶ At the 2022 IMRF Mexico pledged to establish a national strategy on alternative care for children in situations of mobility. **Türkiye** adopted the Regulation on the Alternative Obligations to Administrative Detention (RAOAD).²⁷ Domestic law prohibits the immigration detention of unaccompanied children seeking asylum under 16 years of age.²⁸ Instead, they are placed in suitable accommodation facilities by the Ministry for Family and Social Policies, either in the care of their adult relatives or a foster family.²⁹ **Thailand** has made significant progress to end child immigration detention and developed community-based alternatives to detention (ATD).³⁰ In 2019 the government signed the ‘Memorandum of Understanding on the Determination of Measures and Approaches, Alternative to Detention of Children in Immigration Detention Centers’ (ATD-MOU). In 2022, the Department of Children and Youth, International Detention Coalition, Terre des Hommes Germany and UNICEF Thailand (with support from the European Union) co-organized an advocacy workshop and consultations on the National Plan of Action on the Rights of Children in the Context of Migration. The government is currently implementing a monitoring, learning and evaluation framework to assess progress and areas for development under the ATD-MOU. At the 2022 IMRF, **Germany** pledged it will not take children and young people into deportation detention.³¹ **Zambia**³² has developed a national migration policy which addresses migrant children’s rights and established a National Referral Mechanism that trains frontline officials to screen migrants and identify vulnerable groups, to divert them from the detention system to appropriate alternative arrangements.



ii. COMMUNITY AND FAMILY CHILD RIGHTS-BASED ALTERNATIVES FOR UNACCOMPANIED AND SEPARATED CHILDREN:

In **Colombia** and the **Philippines**, unaccompanied and separated children should, upon entering the country, be referred to child protection services to guarantee their rights.³³ **Indonesia**, with the support of the UN, has established an informal guardianship/kinship mechanism through which adult refugees from the same community provide protection until other legal guardianship processes are determined. In **Jordan**, there are standard operating procedures (SOPs) for Emergency Response to Unaccompanied and Separated Children and Guidelines that establish that family care and “community-based care” (i.e., Hosting of refugee children in refugee communities) are to be prioritized.³⁴

Community placement for refugee and migrant children is in place in countries such **Botswana, Kenya, Malawi, Morocco, Mozambique, South Africa, Uganda, Tunisia, Zambia, Zimbabwe**, among others. Foster care or guardianship arrangements for non-national children are codified in law in **Zambia, Uganda, Kenya, Tanzania, Zimbabwe, South Africa, Libya**; as well as, in domestic law in Egypt and Morocco through the Kafala system.^{35,36}

iii. CASE MANAGEMENT:

Belgium's Aliens Office established an Alternatives to Detention (ATD) Department to scale up ATD to roll out a comprehensive policy of individual case management (ICAM) based on correct information sharing (administrative and legal procedures), intensive close-to-the-client and tailor-made guidance (coaching).³⁷ **Canada**'s ATD program includes a national community case management and supervision program that is connected with community support services to respond to individuals' needs. In **Egypt**, the National Council for Childhood and Motherhood (NCCM) adopted SOPs to protect and assist refugee and asylum-seeking children to support case management. The SOPs refer these children into protection systems as an alternative to detention. The SOPs include procedures for identification and referral, according to which law enforcement officers immediately refer children to child protection authorities.³⁸ **Iceland**'s Barnahus model accommodates unaccompanied children and provides them with a child-friendly and multidisciplinary

approach and access to a range of services.

There are child-specific screening systems and accompanying training for government officials in place in **Algeria, Ethiopia, Djibouti, Kenya, Malawi and Zimbabwe**. There are bilateral and multilateral attempts to harmonize case management systems for children across borders. For example, the “**West Africa Network**” (WAN) is based on a standardized procedure for government authorities and NGOs across 16 countries to undertake the identification, protection and reintegration of children (in their countries of nationality or in “third” countries).

iv. CHILDREN AND YOUTH PARTICIPATION:

One way to ensure children’s voices are heard is through case management systems that ensure children’s meaningful participation in the processes leading to the resolution of their cases. Another way is through securing support to children and youth advocacy and mobilization to end immigration detention of children.

On 8th May 2023, the Migration Youth and Children’s Platform (MYCP) organized the first global youth consultation on ending child immigration detention. The outcome report of this consultation recommended to:

1. include children and youth, especially those with lived experiences, in policy formulation and decision-making processes;
2. stop the politicization of the issue of children and youth on the move;
3. replace child immigration detention with community-based support including access to services;
4. create economic, education and social opportunities for children and youth who were formerly detained;
5. educate others on the issue of child immigration detention, highlighting the stories of children and youth with lived experience;
6. support and directly engage with children in, and those who have previously been in immigration detention.³⁹

Youth-led non-governmental organizations have advocated for the rights of children in immigration detention in many countries, such as **Egypt** and **Italy**.⁴⁰

KEY POLICY ACTIONS

Despite the progress achieved, much needs to be done for and with children to ensure that all children in the context of asylum and migration are always treated first and foremost as children. They retain the same rights as any child, wherever they are.

The UN Task Force on Children Deprived of Liberty calls on States to take action to:

1. **Adopt explicit legal prohibition of detention of children based on their legal or migratory status or that of their families and provide a legal framework for a wide range of alternatives for unaccompanied and accompanied children and their families.** Alternatives to detention (ATD) in the context of child immigration detention is not the same as ATD for children in conflict with the law. In line with Objective 13 paragraph 29 h⁴¹ of the Global Compact on Safe, Orderly and Regular Migration, alternatives to detention (ATD) in the context of child immigration detention requires child protection and welfare actors to take the primary responsibility for children in the context of migration. The Global Compact for Refugees also supports the development of non-custodial and community-based alternatives to detention, particularly for children (paragraph 60).⁴²
2. **Invest in child rights-based community and family-based alternative care arrangements.** Divert resources dedicated to detention into child rights-based non-custodial solutions supported by competent child protection actors.
3. Establish **asylum and migration management systems** that are based on child rights.
4. Prevent detention of children and their families by setting up **effective screening systems that refer children and their families for protection and assistance**, with child-friendly reception mechanisms.
5. **Ensure that national child protection systems are fully inclusive** of refugee and asylum-seeking children, as well as, migrant children.
6. Establish children and their families' access to **effective and comprehensive case**

management to assist with case resolution and with their access to services.

7. Establish timely appointment of **qualified guardians** for unaccompanied and separated children.
8. Ensure **children's access to justice**, with free and timely legal aid and representation to claim for their rights and seek remedies for violation of their rights.⁴³
9. Ensure all **children's access to multisectoral services**, regardless of their or their parents' status, including education, healthcare, and social protection.
10. Establish **regularization programs for undocumented children and their families**.
11. Establish **sound asylum and migration management systems**, that encompass child rights-based policy and legislation, screening, protection and assistance, case management, child-friendly reporting systems, as well as, infrastructure and varied options for accommodation and community based non-custodial arrangements and that is effectively coordinated with social and child protection systems.
12. **Collect disaggregated and harmonized data on immigration detention of children and child rights-based alternative solutions**. This data should be publicly available and disaggregated by age, sex, country of origin, citizenship, disability status, and whether the child is accompanied or unaccompanied.
13. **Engage children and youth**, especially those who experienced deprivation of liberty, safely and ethically, as key actors and partners in policy formulation and decision-making processes and provide financial support to enable refugee and migrant youth organizations advocacy work.
14. **Enhance international cooperation** to end immigration detention of children.

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2. [CMW/C/GC/3-CRC/C/GC/22 "9](#). The present joint general comment addresses the human rights of all children in the context of international migration, whether they have migrated with their parents or primary caregivers, are unaccompanied or separated, have returned to their country of origin, were born to migrant parents in countries of transit or destination, or remained in their country of origin while one or both parents migrated to another country, and regardless of their or their parents' migration or residence status (migration status). The non-discrimination principle of the Convention on the Rights of the Child obliges States parties to respect and ensure the rights set forth in the Convention to all children, whether they are considered, inter alia, migrants in regular or irregular situations, asylum seekers, refugees, stateless and/or victims of trafficking, including in situations of return or deportation to the country of origin, irrespective of the child's or the parents' or legal guardians' nationality, migration status or statelessness." See also UNHCR, [UNHCR's position regarding the detention of refugee and migrant children in the migration context](#), January 2017.
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9. The United Nations Task Force on Children Deprived of Liberty is integrated by the Special Representative of the Secretary General on Violence against Children, the Special Representative of the Secretary General on Children and Armed Conflict, the United Nations Children's Fund (UNICEF), the International Organization for Migration (IOM), the Office of the United Nations High Commissioner for Refugees (UNHCR), the Office of the United Nations High Commissioner for Human Rights (OHCHR), the Committee on the Rights of the Child (CRC), UNODC and the World Health Organization (WHO).
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11. See UNICEF's [Child Protection Systems Strengthening \(CPSS\) Approach, 2021](#) and IOM, UNICEF Technical Note: Inclusion of Children Affected by Migration in National Child Protection Systems, forthcoming 2024.
12. The inclusion of an example does not signify that all elements of the practices of the country are considered positive and that its practical implementation is flawless.
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CHILDREN IN THE CONTEXT OF ASYLUM AND MIGRATION SHOULD ALWAYS BE TREATED FIRST AND FOREMOST AS CHILDREN

End Immigration Detention of Children

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