

# Ensuring the right to liberty for child migrants

Refugee, asylum seeking and irregular migrant children are, first and foremost, children. States are required to consider their best interests as the primary consideration in all decisions impacting upon them and to uphold their rights without discrimination. Indeed, the UN Committee on the Rights of the Child ('CRC Committee') has concluded:

**The detention of a child because of their or their parent's migration status constitutes a child rights violation and always contravenes the principle of the best interests of the child. In this light, States should expeditiously and completely cease the detention of children on the basis of their immigration status.<sup>122</sup>**

Further, the detention of a migrant child to maintain family unity may violate the principle of the best interests of the child, the child's right to be detained only as a measure of last resort, and the right to not be punished for the acts of his or her parents. Alternatives should be applied to the whole family, with detention only in very exceptional circumstances.<sup>124</sup>

Evidence shows that detention can have a profound and negative impact on the health and development of young people. Children in detention are at risk of depression and anxiety and frequently exhibit symptoms of Post-Traumatic Stress Disorder.<sup>1</sup> Detained children have higher rates of suicide, suicide attempts and self-harm, mental disorder and developmental problems. Even very short periods of detention can undermine a child's psychological and physical wellbeing and compromise their cognitive development. A recent study has reinforced these concerns, concluding: "Detention is highly distressing and often traumatic [for children]. On the basis of our findings, children, regardless of immigration status, should be protected from detention and should also be spared forced separation from their parents."<sup>128</sup>

The IDC supports the Global Campaign to End Immigration Detention of Children. More details can be found at <http://endchilddetention.org>

## BOX 4

### AGE ASSESSMENTS

Where the age of an individual is in dispute, an age assessment may be required. The UN Committee on the Rights of the Child has recommended that age assessments should have regard for the psychological maturity of the individual, as well as their physical appearance. Assessments should be conducted in an objective, safe, child- and gender-sensitive manner. Age assessment can inte-

grate documentary evidence, interviews and professional observation with medical assessments.<sup>130</sup> In Sweden and Belgium, these three methods are combined. Age assessment procedures can be contentious, with interviews and observational technique - visual, cognitive, behavioural and psychological - often being subjective and dependent upon the expertise of the assessor, particularly on culturally-ap-

### **The Child Sensitive Community and Assessment Placement Model (CCAP)**

The IDC's program of research has identified several mechanisms that States can use to ensure that the rights of irregular migrant children are protected while awaiting case resolution. These are laid out in the IDC's Child-Sensitive Community Assessment and Placement Model (CCAP).<sup>1</sup> CCAP provides governments and other stakeholders with further details on how to actualise CAP specifically in the context of children. The core components of CCAP are as follows:

#### **Prevention**

This systemic aspect protects children from detention by establishing in law or policy that children should not be detained.

#### **Screening, Assessment and Referral**

Within hours of coming into contact with a child, authorities must undertake a best interest assessment and place them in an appropriate community setting that takes into account age, gender and cultural background. This component includes screening the individual to determine their age (with a full age determination only when there are serious doubts as per Box 4), assigning a guardian to unaccompanied or separated children (see Box 6), allocating a caseworker to children who are travelling with their families, undertaking an intake assessment and placing the child and their family into a community setting.

#### **Placement and Case Management**

Involves an exploration of the migration options available to the child and their family, a full best interest determination, and an assessment of the protection needs of the child and/or their family.

#### **Reviewing and Safeguarding**

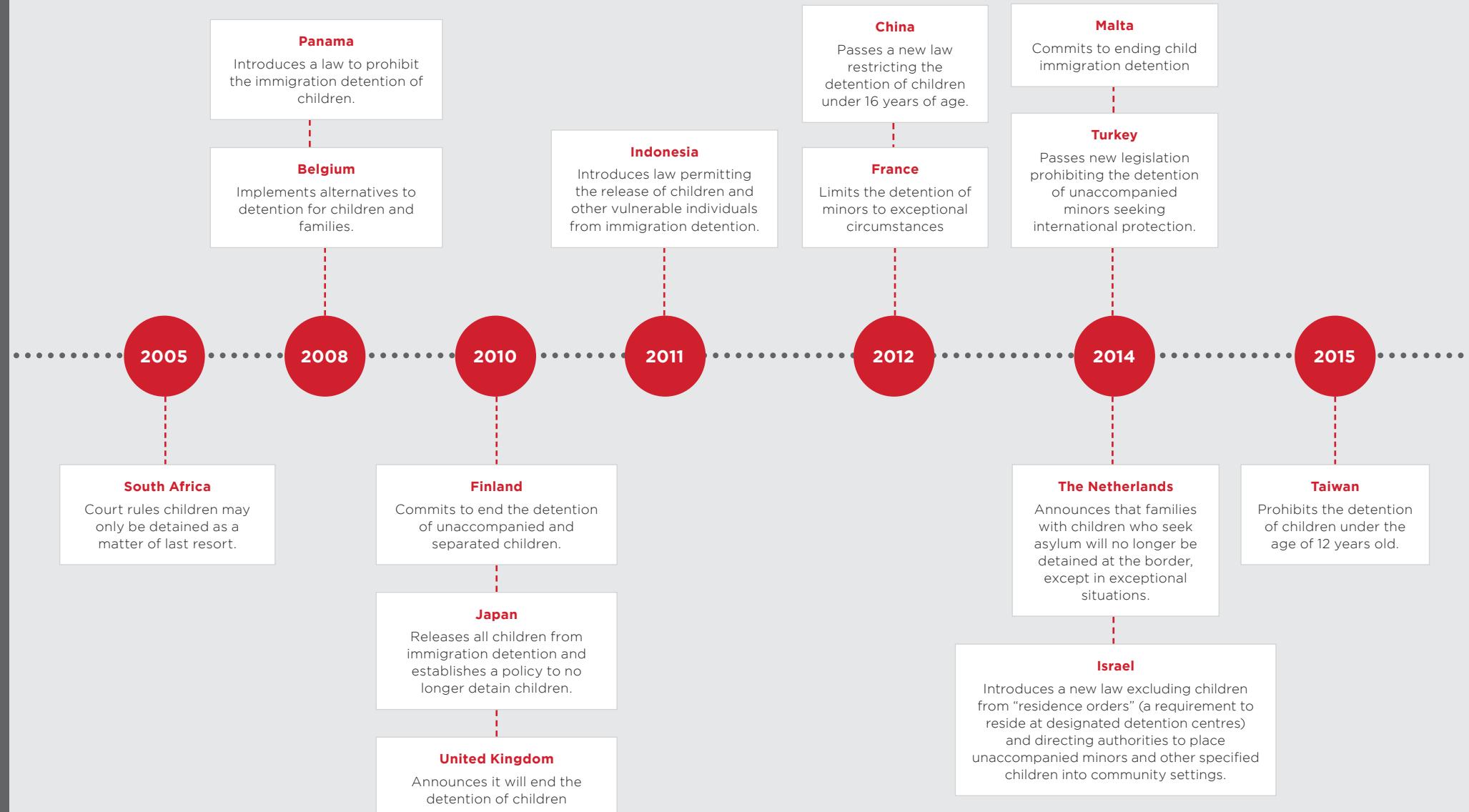
This step ensures that the rights of children and their best interests are safeguarded through regular independent review of any decisions taken including placement, conditions applied and legal status.

#### **Case Resolution**

The realisation of a sustainable migration solution for the child and their family.

More details on CCAP can be found in the IDC Publication *Captured Childhood*. <http://idcoalition.org/ccap>

ropriate markers of age.<sup>131</sup> Medical tests including Magnetic Resonance Tomography, bone and dental radiology and examinations of sexual maturity have also been criticised for their inaccuracy.<sup>132</sup> If age determination assessments do not remove doubts as to the age of the person, then they should be given the benefit of the doubt and considered a minor.<sup>133</sup>



**BOX 6****APPOINTMENT OF A GUARDIAN**

Unaccompanied children, and those separated from their primary caregiver, are particularly vulnerable to abuse and exploitation and are entitled to special protection.<sup>134</sup> A crucial protection measure is the appointment of an independent, legal guardian. The guardian's key role is to help ensure the child is not at any legal disadvantage in the immigration process, and that their support and care needs are being met. In Comment No. 6, the CRC Committee reinforced the need for States to appoint a guardian or adviser as soon

as an unaccompanied or separated child is identified, and to maintain such guardianship arrangements until the child has either reached the age of majority or has permanently left the territory. The guardian should be consulted and informed regarding all actions concerning the child, and should have authority to be present in all planning and decision-making processes involving the child.<sup>135</sup>

There are different types of guardianship models.<sup>136</sup> Good practice examples maintain a clear distinction between the role

of the guardian and that of the immigration authorities. In Belgium, guardians are professional non-government individuals and volunteers, while in Sweden these are citizens of good standing. In both countries, guardianship is appointed by an independent body, this being the Guardianship Service and Chief Guardian respectively. In the Philippines, the Department of Social Welfare and Development are delegated as the responsible guardians to provide shelter, social work and health care services.

**BOX 7****UNACCOMPANIED CHILDREN ARE NOT TO BE DETAINED****HUNGARY**

Section 56 of Hungary's Act II of 2007 on the Admission and Rights of Residence of Third-Country Nationals establishes that unaccompanied children cannot be detained for migration reasons.<sup>137</sup> Unaccompanied children who come into contact with authorities, however, must provide evidence of their identity (with personal identification or valid travel document) and demonstrate a legal ground for stay in Hungary. Those who cannot provide this may be held for a maximum period of 24 hours while the authorities conduct identification and age assessment verification. Those found to be children are appointed a guardian employed by the Department

of Child Protection Services, who is legally responsible for the overall care, management and legal representation of the child.

Since May 2011, unaccompanied children seeking asylum or international protection fall under the scope of the country's general child protection regime and thus enjoy the same rights as Hungarian children. They are regarded primarily as children, and only secondarily as migrants.<sup>138</sup> They are placed in a specific child protection facility in Fót supervised by Hungarian authorities, with services provided by a variety of national and international organisations.<sup>139</sup> Section 45(1) of the Hungarian

Child Protection Act requires that children in care facilities must be provided with food, clothing, health care, education and housing suitable for the development of their physical, mental and emotional needs.

Non-asylum seeking children are accommodated in a child protection facility in Hódmezővásárhely run by the Catholic Church under a contract with the Social and Child Protection Directorate. The capacity at this facility is, however, limited and some non-asylum seeking children are placed at other child protection facilities when required.<sup>140</sup>