



UNICEF WORKING PAPER

Alternatives to Immigration Detention of Children

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Key Messages

- Immigration detention of children – whether they are travelling alone, or with their families - is never in their best interests, is a violation of their rights, and should be avoided at all costs.
- Immigration detention is expensive, burdensome to administer and rarely fulfils its stated objectives as a migration management tool, and it does not act as a deterrent to would-be migrants.
- The provisions on detention of children (as a ‘measure of last resort’) in the Convention on the Rights of the Child (CRC) may apply to children in conflict with the law, but are not applicable to immigration proceedings and therefore cannot be used to justify immigration detention of children.
- Child immigration detention cannot be justified solely on the basis of a child being unaccompanied or separated. When children are accompanied, the need to keep the family together also is not a valid reason to justify a child’s detention.
- To avoid the risk of detention for unaccompanied or separated children, the key mechanism is swift identification, referral to national child protection authorities and provision of a guardian.
- Alternatives to detention for children and families include a range of options such as supported community placement, including placement with host families, bail schemes to ensure compliance with immigration proceedings or reporting requirements, or schemes whereby guarantors or sponsors agree to support the care and supervision of a migrant family in the community.¹ The most effective alternatives involve case management provided by a range of actors – social workers, civil society or specialised staff from immigration authorities.

1. For examples and best practices of alternatives to detention, see also the International Detention Coalition’s Alternatives to Detention Database available at: <https://database.idcoalition.org/>

- Many states in all regions of the world already implement a mixture of alternative measures for both unaccompanied children and families; states that have invested in alternatives have found them both effective and cost-efficient, with low rates of absconding and high rates of compliance with migration status determination processes, including removal orders.
- The commitment of States to end the practice of immigration detention of children in the New York Declaration on Refugees and Migrants needs to be translated into concrete road maps supported by investment and political change.
- To meet commitments in the Global Refugee Compact (GCR) and Global Compact for Safe, Orderly and Regular Migration (GCM), UNICEF calls upon states to develop national action plans to manage the transition from the use of detention to the use of alternatives and a prohibition of child immigration detention.

is no evidence that the use of detention deters would-be migrants from attempting to enter a country³.

At the same time, the international consensus – reinforced by international jurisprudence – has begun to move from an acceptance of immigration detention of children, even as a ‘measure of last resort’, towards a commitment to complete elimination. Many countries have already successfully either eliminated the practice, or greatly diminished its incidence, using a range of alternative measures for the supervision and support of migrants.

Context And Considerations

Over 100 countries detain children based on their or their families’ immigration status. The forms of detention vary greatly, from being held for a few hours inside a police cell at an airport or for a few days in the last phase of a removals process, to prolonged periods of imprisonment whilst awaiting the outcome of an asylum or migratory status determination process. Places where children are detained are rarely labelled as detention centres, but closed reception centres, ‘hotspots’, semi-closed housing centres and other facilities which regularly deprive children of their liberty, often under the guise of protection measures. This practice of detention continues despite the growing body of evidence that detention – even for a short period and even in well appointed, modern facilities – can have profoundly negative effects on children and their development. The continued use of detention is even more surprising given that the evidence shows that the practice is expensive and difficult for states to maintain and that it is not an effective migration management tool. Detention, particularly of families, can be 80 per cent more expensive than community-based supervision,² and furthermore, there

The Negative Effects of Detention on Children

The detrimental effects of detention upon children are well documented and indisputable. Regardless of the conditions in which children are held, studies show that detention has a profound and negative impact on child health and development, and that this damage can occur even if the detention is of relatively short duration. Children held in detention are at risk of suffering depression and anxiety, and frequently exhibit symptoms consistent with post-traumatic stress disorder (PTSD) such as insomnia and nightmares, and there can even be significant damage to their long-term cognitive and physical development.⁴

These effects can be so severe that the UN Special Rapporteur on Torture has found that the immigration detention of children – even for a short duration – may constitute a particular form of cruel, inhuman or degrading treatment of migrant children.⁵ The UN Special Rapporteur on Torture has further noted that combining detention with long-term offshore-confinement on isolated islands or extra-territorial enclaves constitutes a particularly traumatic form of migration-related detention.⁶

2. Immigration Detention Centre, ‘There are Alternatives - A handbook for preventing unnecessary immigration detention (Revised Addition)’, Immigration Detention Coalition, Melbourne 2015, Page 11.

3. Edwards, Alice, ‘Back to Basics: The Right to Liberty and Security of Person and ‘Alternatives to Detention’ of Asylum-Seekers, Stateless Persons, and Other Migrants’, Legal and Protection Policy Research Series, UNHCR, Geneva, 2011.

4. See Keller, Dr Allan S. et al., ‘Mental health of detained asylum seekers’, *The Lancet*, vol. 362, issue 9397, 22 November 2003, pp.1721-23; International Detention Coalition (IDC), ‘Captured Childhood: Introducing a New Model to Ensure the Rights and Liberty of Refugee, Asylum Seeker and Irregular Migrant Children Affected by Immigration Detention’, IDC, Melbourne, 2012, pp. 48-49.

5. United Nations Special Rapporteur on Torture, Thematic Report on torture and ill-treatment of children deprived of their liberty, UN document A/HRC/28/68, 5 March 2015, paragraph 80.

6. United Nations, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/37/50, 26 February 2018, p. 7, paragraph 21.

Societies also suffer negative consequences from detention. As well as the diversion of resources that could be used for community-based alternatives which benefit host communities, as well as migrants, detention delays possible integration. Furthermore, when children and families are eventually released from detention – either into host communities or to be returned to their country of origin – addressing the symptoms and consequences of detention is an additional financial and social burden for society.

A Developing Consensus And Practice Towards the Elimination of Child Migration Detention

The normative presumption against the immigration detention of children is well established and has been reinforced across a range of legal instruments and political commitments. In 2017, in the Joint General Comment issued by the Committee on the Rights of the Child and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, these treaty bodies stated clearly and unequivocally that

“Child and family immigration detention should be prohibited by law and its abolishment ensured in policy and practice”⁷

The position of the Committee on the Rights of the Child has been echoed by numerous international and regional human rights bodies⁸ and by the Inter-American Court of Human Rights.⁹ The good news is that, when considering the global situation, detention is in fact rarely the first approach adopted by most states towards migrant children. The opportunity that the present international dialogue around migrants and refugees offers is to move to a situation where immigration detention of children is not just rarely the first approach, but rarely an approach that is considered at all.

The Convention on the Rights of the Child and Immigration Detention

Many countries have endorsed the principle that immigration detention of children is neither in line with their commitments under the Convention on the Rights of the Child, nor is it an effective migration management tool. However, they still use immigration detention of children, for example when holding children in the final stages of a removal order, or in detaining families under the guise of preserving family unity. When doing so, States often note that Article 37 (b) of the Convention of the Rights of the Child establishes the general principle that a child may be deprived of liberty as a last resort and for the shortest appropriate period of time. However, the Committee on the Rights of the Child and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families firmly reject this argument in their joint general comment

“The possibility of detaining children as a ‘measure of last resort’, which may apply in other contexts such as juvenile criminal justice, is not applicable in immigration proceedings as it would conflict with the principle of the best interests of the child and the right to development”¹⁰

Even if states choose to continue to argue for justification of the principle of ‘last resort’ for the purposes of immigration detention, despite this clear guidance from the Committees, it is rarely obvious that the principle is in fact being applied. ‘Measure of last resort’ implies that all other means of responding to the situation of the child have been explored and exhausted, with the best interests of the child acting at all stages as the overriding principle through which the State makes decisions about that child. If states do not have large scale, credible alternatives to detention in operation, then they cannot claim that any deprivation of liberty is a ‘measure of last resort’.

7. United Nations Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), 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 State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, 16 November 2017, CMW, <www.refworld.org/docid/5a12942a2b.html>, accessed on 21 April 2018.

8. The Recommended Principles summarize these standards as follows: “The detention of children because of their or their parents’ migration status constitutes a child rights violation and always contravenes the principle of the best interests of the child” and “States should expeditiously and completely cease detention of migration affected children and allow children to remain with family and/or guardians in non-custodial, community-based contexts while their immigration status is being resolved” (Principle No. 4)

9. Inter-American Court on Human Rights, Advisory Opinion OC-21/14 of August 19, 2014, Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection, Inter-American Court on Human Rights, paragraph 157-160, <www.corteidh.or.cr/docs/opiniones/seriea_21_eng.pdf>, accessed on 2 April 2018.

10. United Nations Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), 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 State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, CMW, 16 November 2017, paragraph 10.

Developing a Roadmap Towards Ending Child Immigration Detention

For a migration framework to be truly directed towards preventing immigration detention of children, policies and practices in support of the best interests of the child need to be in place from an early stage. Taking a holistic approach – and one in which all countries are responsible for preventing the detention of children for immigration control – requires a coherent migration governance framework that begins in communities of origin, where vulnerable children and families may be considering migration. If the immigration detention of children is to be ended, it is important to shift focus from solutions solely in so-called ‘countries of destination’ to look at the multiple points of vulnerability where a child may need assistance and support – and may face the risk of detention.

Informed Choices About Migration

In many cases, when making decisions about possible migration, children and families do not have adequate information or access to in-country processes and systems for asylum claim or regular migration planning, and resort to irregular migration – which can place them at risk of detention if they are apprehended at borders or in the country of destination. The greater the number of safe, regular means of migration that are available to individuals, the less likely children are to make unsafe journeys and resort to irregular and/or unsafe migration.

In communities of departure, increased educational access and integrated programming in communities to keep children in school, and support investment in child protection and social services for the identification and assistance of vulnerable children and families can provide children with alternatives to unsafe migration, either temporarily or permanently.

In El Salvador, a pilot programme is underway in five municipalities that have high rates of violence and child migration. The goal of the programme is to replace violence with educational opportunities and a Child Protection Surveillance and Warning System (CPSWS). The warning system involves flexible educational opportunities that include vocational training and second-chance learning for out-of-school children and returning child migrants.

Children are often apprehended in transit to their destination - either alone or with family, and with or without identification papers. Apprehension can occur when they are either entering or attempting to leave a transit country, or in-country as they make their way across the territory. Children and families can be detained by a wide range of actors, including by State officials who have wide-ranging and often ill-defined authority, as well as by increasingly, non-State actors and criminal networks.

The Responsibility to Protect Migrant and Refugee Children

Whether children are identified in transit countries or in their country of destination, the obligation upon authorities to undertake all possible measures to avoid detention is the same. It is essential that border guards/migration officers and refugee authorities, police and security forces are all aware of their responsibility to protect children, especially those who are travelling alone. As has been stated by the CRC Committee and the Migrant Worker Committee, once a migrant child (accompanied or unaccompanied) has been detected, child protection or welfare officials should immediately be informed, and take responsibility for screening the child for protection, shelter and other needs.¹¹

In some cases, the liberty of children may need to be restricted for a short period, whilst authorities take necessary steps to identify the child (where possible), define their status, and make decisions about the best short-and-medium term care solutions for that child. Where this occurs, states must be vigilant to ensure that legal safeguards exist to assure such measures do not last longer than a few hours, and do not become a form of de-facto detention disguised as protection.

¹¹ United Nations, Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), 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 State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, CMW, 16 November 2017, paragraph 13.

Special Measures for Unaccompanied and Separated Children

For unaccompanied and separated children, once identified, the key mechanisms that states can put in place to prevent detention are referral to national child protection authorities, and provision of a guardian. An unaccompanied and separated child should be accorded the same protection, support and care that any national child deprived of parental care would be offered. No State would wish to deprive a child citizen of their liberty simply because they are without parental care. If the obligation of the CRC to treat all children on a territory in a non-discriminatory manner is to be met, then migrant and refugee children must receive the same treatment.

Zambia adopted guidelines to identify, refer and assist vulnerable migrants, with clear protocols and procedures for front line officials. Police and migration authorities have been trained to refer unaccompanied and separated migrant children to appropriate child protection authorities and services.

To avoid the risk of detention for children, states need to address shortages and lack of capacity in child protection and social services and inadequate supplies of qualified guardians and foster care. These are investments which yield benefits to national populations as well as migrant and refugee children: a strong, well-resourced and trained network of guardians can respond to the needs of national and non-national children alike, preventing unnecessary institutional placement for national children, and providing a vital resource to prevent the immigration detention of unaccompanied refugee and migrant children. UNICEF can assist national child protection actors in the development of guardianship schemes, by including the development of care standards, standard referral and assessment tools, training of social workers, border officials and NGO personnel, and technical assistance on establishing mechanisms for judicial oversight etc.¹² If guardianship is not available or requires time to be established, shelters staffed by trained child care professionals can provide non-custodial accommodation and protection for unaccompanied migrant and refugee children without restricting their liberty.

Children Traveling With Family Members

For children that are with family members, a range of options exist that states can – and must – consider instead of detention. The options have been well documented by organizations such as UNHCR, the International Detention Coalition and others, and have been implemented in a range of settings: These include:

- Supported community placement - where individuals are free to live in the community, and, following an assessment of their risk, undertake differing degrees of supervision and reporting to national authorities, which can range from signing an undertaking to refrain from certain activities to a requirement to report in with assigned authorities on a regular basis.
- Bail schemes - whereby the migrant family pays a financial bond which will be forfeited if they do not comply with agreed-upon-requirements such as court appearances, participation in immigration proceedings hearings, or failure to notify the authorities of a change in residential status/address.
- Guarantors and sponsors - individuals or community organizations agree to be responsible for the care and supervision of the migrant family in the community, sometimes including help for housing, clothing and food, as well as social and emotional support. The guarantor also agrees to guarantee that the migrant will attend immigration proceedings hearings as required. In some schemes, these guarantors will pay a form of bail on behalf of the migrant family.
- Placement with host families – these schemes can operate in a similar manner to guarantors or sponsors, but with fewer obligations placed upon both the host family and/or the migrant family. These schemes are particularly suitable for families which authorities have assessed to be of low risk of absconding and who have strong ties to families and individuals in the host community.

Many states choose to implement a mixture of such measures - for example, placement in a host family under the care of a guarantor, with minimal reporting requirements. Regardless of the exact model chosen, what has been shown to be key in the success of these schemes is case management, support and information for families. Case management can be provided by a range

¹² United Nations Children's Fund (UNICEF) UK and the Children's Society has produced a paper providing a cost/benefit analysis of establishing guardianship schemes for unaccompanied minor child migrants, available at https://downloads.unicef.org.uk/wp-content/uploads/2014/07/Guardianship-CBA-CHTB-End- Report_2014_FINAL_FOR-CIRCULATION.pdf?_ga=2.253445068.472730727.1522175788-1131437014.1522175788.

of actors – social workers, NGO staff, and specialized staff from immigration authorities – and ideally provides families with an individual key worker who will build a relationship with them, support them in identifying available means of assistance and services in their community. Case managers also guide families through the bureaucratic process associated with assessment of their asylum claim or attempts to regularize their migratory status, helping them to explore all available means to remain in the country legally, and, if this is not possible, considering all avenues to depart the country. Rates of absconding are consistently low, and compliance with migration status determination processes, including removal orders high, provided children and families are given clear, honest information about their status, and about the possibility of removal and or/return to their country of origin, and are encouraged to be actively involved in planning for a range of eventual outcomes.¹³

Preventing the detention of migrant children is possible – but it requires political will, and it requires states to engage actors beyond migration and border control authorities.

In Sweden, case officers work with asylum applicants to identify suitable accommodation in the community, find educational and other activities, and to prepare those whose applications for asylum are unsuccessful for return – with around 80 per cent of returns being undertaken independently.

Recommendations

1. **Develop National Action Plans to end immigration detention of children and their families:** States should develop national action plans for ending the immigration detention of children and families as part of their broader efforts to ensure safe, orderly and regular migration based on protection, human rights and non-discrimination. These action plans should contain clear milestones regarding the establishment and scale-up of alternatives to detention, drawing on the range of available options from foster care for unaccompanied children to family and community placement schemes, bail or guarantor or case management approaches that support the care and supervision of migrant families while ensuring compliance with immigration proceedings.
2. **Invest in inclusive child protection systems:** States need to invest in national child protection systems and ensure they are inclusive of children affected by migration, so that they are a key resource for caring for, supporting and supervising child migrants and their families.
3. **Invest ODA into building and strengthening alternatives to detention:** Overseas Development Assistance agreements focusing on the development of migration and asylum systems should support developing countries – particularly those identified as ‘transit’ countries – in providing alternatives to immigration detention.
4. **Provide clear information:** Access to clear, objective information – about migration options, migrants’ rights and the forms of assistance and support available to migrants – need to be made available to children and their families at all stages of the migratory cycle.
5. **Ensure host community support:** Host communities need to be informed that the investments in services which support migrant children and families also benefit vulnerable local children and families.
6. **Strengthen referral networks to avoid any referral into detention:** Strong referral networks between law enforcement, border guards and child protection actors ensure that vulnerable children are always directed to a protective, caring environment - and not towards detention need to be strengthened.

13. Immigration Detention Centre, ‘There are Alternatives - A handbook for preventing unnecessary immigration detention (Revised Addition)’, Immigration Detention Coalition, Melbourne 2015, Pages 9-12.



FURTHER READING

There are Alternatives (Revised Edition), Immigration Detention Coalition, [link](#)

Committee on the Protection of the Rights of all Migrant Workers and Members of Their Families and of the Committee on the Rights of the Child, 2017, Joint General Comment on State obligations 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, [link](#)