



Quaker
Council for
European
Affairs



Child Immigration Detention in Europe

**HUMAN RIGHTS
PROGRAMME REPORT**

The Religious Society of Friends (Quakers) has worked on the impact of detention of both children and adults for more than 200 years.

A well known example is Elizabeth Fry, who led campaigns for improved detention conditions in Britain in the 19th century. She later also advised on prison regimes in France, Germany, Italy and Russia. In recognition of the impact of her work, her image could be found on British £5 notes for many years.

Today, Quakers are active as prison chaplains, prison visitors and campaigners for reform of immigration detention.

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Glossary

Immigration detention

Deprivation of liberty or confinement in a closed place which a migrant or refugee is not permitted to leave at will, including, though not limited to, prisons or purpose-built detention, closed reception or holding centres or facilities.¹² Immigration detention is usually of an administrative character due to an alleged breach of the conditions of entry, stay or residence in the receiving country.

Child

Every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier.¹³

Alternatives to detention

Measures that allow refugee and migrant children to reside in the community with freedom of movement while their migration status is being resolved or while awaiting deportation or removal from the country.

Migrants and refugees

We use both these terms so as to encompass the two groups of people who have come to Europe: "refugees," that is, those fleeing armed conflicts or persecution and "migrants" for people who choose to move not because of a direct threat of persecution or death, but mainly to improve their lives by finding work, or in some cases for education, family reunion, or other reasons.

Best interests of the child¹⁴

The term "best interests" broadly describes the well-being of a child. Such well-being is determined by a variety of individual circumstances, such as age, level of maturity of the child, presence or absence of parents, or the child's environment and experiences. The Committee on the Rights of the Child neither offers a precise definition, nor explicitly describes how the best interests of the child is achieved, but stipulates that:

- the best interests must be the determining factor for specific actions, notably adoption (Article 21) and separation of a child from parents against their will (Article 9), and
- the best interests must be a primary (but not the sole) consideration for all other actions affecting children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies (Article 3).

Executive Summary

This report explores aspects of child immigration detention in Europe. After briefly describing the legal framework and standards at international and European levels, the report gives an overview of the situation in Europe by addressing three main questions: How many children are detained in the context of migration? Which laws and policies regulate the practice, and what are the existing alternatives to child immigration detention? The report also discusses the impacts of detention, giving special attention to the different impacts on girls and boys in detention.

The report concludes by reasserting that detention is never in the best interests of a child, having detrimental impact on health and well-being. While there is an international growing consensus on the need for alternatives to detaining children, European countries are continuing to do so.

As some alternatives to child detention already exist, and others are being developed, our report insists on the need to implement measures that would ensure that children are protected from a seemingly costly, ineffective and harmful approach.

The Quaker Council for European Affairs (QCEA) is grateful to the many governments and civil society organisations that responded to our requests for information.

Sylvain Mossou
QCEA Human Rights Programme
July 2017

Introduction

European countries have reacted to the challenges of migration by combining internal and external policies and by working with non-EU countries (that migrants have travelled from or through), under what is called the European Union level, “the European Agenda on Migration”.¹

This approach aims to substantially reduce the number of migrants entering Europe and substantially increase the number of people returned. However, there is widespread concern that human rights and refugee protection standards are being undermined.² One of those concerns is the use of detention, including child detention.³

While current European and national laws allow governments to detain non-citizens for migration-related reasons, detention needs to comply with international refugee protection and human rights standards. Unfortunately, in the context of the so-called migration/refugee “crisis”, many European governments have come to understand detention as a method of managing migration.

Such a trend has increased the risk of having refugees and migrants subjected to arbitrary or unlawful detention in overcrowded and unhygienic conditions falling below international standards, some of which amount to human rights violations. The ongoing risk of erosion of human rights in the European response to migration is a clear challenge to the idea that all human beings are born free and equal in dignity and rights. Of particular concern is the exposure of children, as an extremely vulnerable group, to detention and its harmful consequences.

In this context, this report examines child immigration detention in Europe. The first two sections describe the legal framework and standards at international and European level. The third section will discuss the situation in Europe by underlining the major challenges and highlighting the positive measures that should be used as an alternative.

THE CONTEXT

Over recent years, fleeing poverty, violence, persecution and war, the number of refugees and migrants trying to reach European shores has increased substantially.⁴ This is due in large part to the war in Syria and Iraq, as well as to other violent conflict, oppression and poverty in countries such as Afghanistan, Eritrea and elsewhere.⁵

Against the backdrop of a slow economic recovery, increasing nationalism and fear of violent extremism, the European response to migration has been one that has portrayed migration as a security issue (securitisation of migration). Migration is thus framed as a threat that needs to be dealt with urgently. Such an approach helps justify the use of exceptional measures, beyond those that might ordinarily be politically acceptable.

Recent developments – such as the new EU recommendation on return procedures,⁶ Hungary’s bill authorising automatic detention for asylum-seekers⁷ and the Belgian government’s intention to build a detention centre for families⁸ – indicate that European governments may be preparing for an expansion of immigration detention, including for children.

All of this is taking place in the context of an increase in the number of children seeking asylum in Europe in the last two years.⁹ In 2016, children made up 32 percent of the total number of first time asylum applicants in European Union countries.¹⁰ On the dangerous Central Mediterranean Sea passage from North Africa to Europe, in Italy, 92 percent of children who arrived in 2016 and the first two months of 2017 were unaccompanied, up from 75 percent in 2015.¹¹

International human rights framework and standards

While Governments do have a legal right to detain non-citizens for migration related reasons in certain limited circumstances (for initial identification and for legitimate removal purposes), the detention must comply with refugee protection and human rights norms, principles and standards otherwise it becomes unlawful and arbitrary. International human rights law is clear:¹⁵

- It should have a clear legal basis in national law.
- It should only be used as last resort measure, for the shortest possible period of time and can only be justified where it is necessary, reasonable, and proportionate to the legitimate purposes to be achieved.¹⁶
- It is only possible after less coercive alternatives have been found not to be suitable in each individual case. This will require an individual assessment in each situation.

In the case of children, the United Nations Convention on the Rights of the Child (CRC), the most widely adopted and ratified international human rights instrument on the protection of children, prescribed in its Article 37 that “no child should be deprived of his or her liberty unlawfully and arbitrarily”. Article 3 further states that “in all actions concerning children ... the best interests of the child shall be taken into consideration.”¹⁷

While these legal requirements do not prohibit child immigration detention, over the years, various UN human rights bodies¹⁸ have further clarified the standards that should be applied and have come to the following conclusions:

Children should not be detained for migration-related purposes

Article 37 (b) of the Convention states that children can be detained as a last resort and for the shortest possible period of time. However, the CRC committee specified in 2012 that the detention of a child on the basis 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.¹⁹

In situations where the detention of children occurs in spite of the legal obligations under the Convention, to ensure the best interests of children concerned the CRC Committee urged the use of, *inter alia*:

- case-by-case assessments
- the provision of child-friendly environment
- appropriate treatment and conditions of detention
- child protection safeguards, and
- independent monitoring institutions.²⁰

Alternatives to detention need to be found for them and their families

The CRC Committee called on states to “adopt alternatives to detention that allow children to remain with family members and/or guardians in non-custodial, community-based contexts while their immigration status is being resolved, consistent with their best interests, and with children’s rights to liberty and family life.”²¹

The right to family life must be respected

States should ensure that their migration policies, legislation and measures respect the right of the child to family life and that no child is separated from their parents by state action or inaction unless in accordance with their best interests.²² The CRC Committee also added that “family unity was not a justification for detaining children and alternative measures should be found for the whole family.”²³

In conclusion, there seems to be a growing consensus, at international level, that children should not be detained, whether they are unaccompanied or with their families and regardless of their or their parent’s migration status. Therefore, states need to ensure that non-custodial, community-based alternatives are found. These observations were echoed in 2016 by UN Member States in the New York Declaration for Refugees and Migrants in which they have committed themselves to ending this practice.²⁴

European legal framework and standards

The Council of Europe

European Convention on Human Rights

The European Convention on Human Rights (ECHR) does not contain specific provisions regarding the detention of children. However, on many occasions, the European Court of Human Rights, through its case law, recalled that the extreme vulnerability of a child was a paramount consideration and takes precedence over their immigration status. States have an obligation to give primary consideration to the best interests of the child and provide appropriate care for their specific needs, including alternatives to detention, so as to not create a situation which would cause stress and anxiety, with particularly traumatic consequences.^{25 26}

The Committee of Ministers

The Committee of Ministers,²⁷ the Council of Europe's statutory decision-making body made up of Ministers for Foreign Affairs of the 47 Member States, has emphasised that the detention of asylum seekers should be the exception. It considers that "children, including unaccompanied minors, should, as a rule, not be placed in detention. In those exceptional cases where children are detained, they should be provided with special supervision and assistance".^{28 29}

The Parliamentary Assembly (PACE)

The Parliamentary Assembly,³⁰ made up of representatives from the 47 Member States, adopted a resolution in 2014 on the alternatives to immigration detention of children,³¹ which echoed the Committee of Ministers' observations. It however appears to have taken a step further by encouraging Member States to prohibit by law the detention of children for migration purposes and ensure that this prohibition is fully implemented in practice, adding that "alternatives to detention that meet the best interests of the child and allow children to remain with their family members or guardians in non-custodial community-based contexts should be adopted." The Parliamentary Assembly launched a campaign to ending child immigration detention in March 2015.³²

The Commissioner for Human Rights

The Commissioner for Human Rights, Nils Muižnieks, recently spoke out against what he called "the pan-European trend of criminalisation of asylum seekers and migrants, of which detention is a key part [...] a far-reaching interference with migrants' right to liberty" which have "very harmful effects on the mental health of migrants, especially children, who often experience detention as shocking, and even traumatising." He underlined that "there are no circumstances in which the detention of a child for immigration purposes, whether unaccompanied or with family, could be in the child's best interest." For this reason, he called on states to work towards the complete abolition of the detention of migrant children which should be a priority for all states. Alternative measures are essential and that setting up more 'child-friendly' detention facilities "cannot be seen as a substitute for categorically prohibiting the detention of children".³³



↑ *The European Court of Human Rights in Strasbourg.*
PHOTO: CHAIM WAIBEL (CC)

Special Representative of the Council of Europe's Secretary General on Migration and Refugees

The Commissioner's observations and recommendations appear to be largely shared by Tomáš Bocek, the Special Representative of the Secretary General on Migration and Refugees, who published a report³⁴ on 22 March 2017 on the main challenges for migrant and refugee children in Europe. In his report, based on his on-the-ground experience gathered during the fact-finding missions in 2016, he calls for urgent measures to find alternatives to detention of children and guarantee minimum living conditions in camps, such as gender-separate sanitary facilities, better lighting and child-friendly spaces in order to eliminate risks of sexual abuse.

During the 127th Session of the Committee of Ministers in May 2017, the 47 European Member States adopted an Action Plan on protecting refugee and migrant children (2017-2019).³⁵ The Action Plan proposes concrete support to Member States at all stages of the migration process, with a special focus on unaccompanied children, and has three main pillars:

- ensuring access to rights and child-friendly procedures;
- providing effective protection;
- enhancing the integration of children who would remain in Europe.

The measures to be taken in protecting the refugee and migrant children include: new guidelines regarding age assessment and guardianship, alternatives to detention and a handbook on promoting child-friendly information and training on child-friendly procedures.

European Union law

At European Union level, there is the broad framework of the Charter of Fundamental Rights which prescribes in its Article 24 that:³⁶

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.

2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.

3. Every child shall have the right to maintain, on a regular basis, a personal relationship and direct contact with both parents, unless that is contrary to the child's interests.

More specifically, in the context of migration, there are two directives, namely, the Reception Conditions Directive³⁷ and the Return Directive,³⁸ which include specific provisions for Member States to follow in their treatment of migrant children. Both underline the need for the children's best interests to be a primary consideration. The directives allow for children to be detained only as a measure of last resort and after it having been established that other less coercive alternative measures cannot be applied effectively. Such detention shall be for the shortest period of time and all efforts shall be made to release the detained children and place them in accommodation suitable for minors.³⁹

In conclusion, when comparing the international and European legal framework, one can make the following observations:

1. At international level, there seems to be a growing consensus that children, whether they are unaccompanied or with their families, should not be detained. The objective is not only to find alternatives but to ban the practice altogether.

2. At the Council of Europe level, there seem to be a similar push towards ending detention and focusing on alternatives.

3. There is an emerging gap between EU law on the one hand, and international human rights standards and the Council of Europe's position on the other. While EU law puts limitations on the detention of children in the context of migration, it does not prohibit it. International human rights law and standards as well as Council of Europe institutions encourage the use of alternatives and the complete prohibition of child detention.

The situation in Europe

Since the 1990s, it appears that detention has become a method regularly used to in the context of migration in Europe and beyond.⁴⁰ There is a visible increase in the detention infrastructure across Europe, with notable examples of rising detention capacity in the Mediterranean region.⁴¹ To justify its use, States have used a wide range of arguments, sometimes in combination:⁴²

- Practical considerations such as having the migrant at the disposal of the authorities for identity checks or public health screenings at arrival
- Enforcement-related motivations such as securing public order or forced return of irregular migrants
- Political arguments such as to deter any further arrivals or to protect host societies

These arguments are often found in different political discourses around Europe. However, over the past few years, a number of studies on detention and the alternatives to it have reached the following conclusions:

- In many countries, including across Europe, it is difficult to get an accurate picture of the number of migrants and refugees being held in detention.⁴³
- Detention is costly, ineffective and, more often than not, the practice infringes on human rights standards and refugee protection.⁴⁴
- Alternatives to detention in Europe are rare and underused, and only a small number of individuals are submitted to these schemes.⁴⁵

In the context of these findings, and the fact that a significant number of asylum-applicants coming to Europe in 2015-2016 were children, the following section examines: the number of children detained in Europe, the laws and policies on this issue, the impact of detention, the gendered impacts of detention, and the alternatives measures used in different countries.

How many children are detained in Europe?

As noted above, getting data regarding immigration detention is challenging. We contacted all European governments to request their most recent national statistics on child immigration detention. After having combined the data we received and the data contained in the latest report from the European Union Agency for Fundamental Rights (FRA), "European legal and policy framework on immigration detention of children"⁴⁶ (see table opposite), we make the following observations:

1. Data collection is well below adequate

It is indeed difficult to obtain an accurate picture of the number of children held in immigration detention in Europe. There is no comprehensive, comparable and reliable source of data. In the table overleaf, for roughly half of the EU countries, there is no data. And, when there is data, it appears as not being collected regularly. The issue of collecting data is further complicated by different definitions, types and classifications of words such as "detention." For an affluent continent like Europe, with good data collection for other forms of detention, the failure to know how many children we have detained on our continent is unacceptable.

continued →

"The detention of children, even for short periods, can have severe psychological consequences. It has been made clear by the Committee on the Rights of the Child and reinforced by other human rights mechanisms that immigration detention can never, ever, be in the best interests of the child."

BAN KI-MOON
FORMER UN SECRETARY-GENERAL
AUGUST 2016

Data on child immigration detention in Europe, as held by the EU Fundamental Rights Agency (FRA) and QCEA

	FRA REPORT DATA												QCEA DATA					
	31 Dec 2015		31 Mar 2016		1 Sep 2016		15 Nov 2016		1 Dec 2016		May 2017		2016*		2015*			
	UA	AC	UA	AC	UA	AC	UA	AC	UA	AC	UA	AC	UA	AC	UA	AC		
Austria																		
Belgium	7	120	0	2	1	0	0	0	0	0	0	0						
Bulgaria	0	175	0	37	1	458												
Croatia	0	2	0	1	0	0	0	0	0	0								
Cyprus	0	0	0	0	0	0												
Czech Republic	0	0	0	7	0	19	0	0	0	0	0	0						
Denmark	0	0	0	0	0	0	0	0										
Estonia	0	0	0	0	0	0	0	0	0	0	0	0						
Finland	0	3	0	0	0	0	0	0	0	0	0	18	1	24				
France	0	120																
Germany	0	0	0	0	0	0	0	0	0	0	0	0						
Greece			7	248														
Hungary	0	199			0	0	0	38	0	19	0	0						
Iceland											0	0						
Ireland	0	0	0	0	0	0	0	0	0	0	0**	0**						
Italy	0	0	0	0	0	0												
Latvia	6	1	2	0	6	4	10	1			6	2						
Lithuania	0	0	0	0	0	2												
Luxembourg	0	44	0	0	0	0	0	0	0	0								
Malta	0	0	0	0	0	0					0	0						
Moldova											0	2						
Netherlands	0	0	0	9	4	1	1	2	1	1	0	0	26	147				
Norway													12	143		89		
Poland	5	16	0	51	1	46	10	99	3	94								
Portugal																		
Romania	17	0	5	0							0	0						
Slovakia	0	4	0	9	0	24	0	17	0	17	0	0						
Slovenia	0	0	0	0	0	0	0	1	13	0	0	0						
Spain	0	0	0	0														
Sweden	0	0	0	0	0	0	0	1	0	0			99	9				
Switzerland											3	5			4			
United Kingdom	0	0	0	0							0	0	71					

* additional data provided by countries

** data from June 2017

Blank fields indicate that no data was provided

UA = unaccompanied children

AC = accompanied children

■ = no replies to our requests

continued →

2. A misrepresentation of the extent of this phenomenon

Where data is available, in the table, half of the EU countries have reported that no or very few children were detained. Others seem to have reduced the number of children detained (Belgium). While this may appear as positive, it is important to note:

- Some of these countries do not collect data regularly.
- In countries with a federal state like Germany and Switzerland, the situation often differs from one region to another as they have different practices and policies regarding detention.
- Most of the data only reflects the number of children in detention at a specific point in time and not the number of children detained over the course of a certain period.

3. Information is frequently unavailable

Getting information is indeed challenging as data is frequently not provided and/or does not exist. For example, Austria has failed to provide data in response to either FRA or QCEA.

As a consequence, the data gives a misrepresentation of the extent of child immigration detention in a given country. For instance, while in 31 March 2016, the number of children detained in the Netherlands was reported as 9, the overall number for 2016 was reported as 173. The same can be observed with Sweden (No children detained on 1 September 2016, 15 November 2016 or 1 December 2016, but for 108 reported for 2016 as a whole).

Poor data collection has been recognised at international level by the UN General Assembly⁴⁷ which emphasised the need for better data on children and commissioned a Global Study on Children Deprived of Liberty which might offer better data regarding this issue. The key output of the study should be an in-depth, comprehensive global report which is initially scheduled to be presented to the United Nations General Assembly (UNGA) at its 73rd regular session (2018).⁴⁸ However, due to constraints – reportedly of a financial nature – the report is likely to be delayed.

What are the laws regarding child immigration detention?

In our research, we received information on laws and policies regarding child immigration detention in some European countries. After having analysed the responses, and having combined them with findings from other studies and reports, we make the following observations.

Accompanied vs. unaccompanied

Policies on the detention of unaccompanied children in many countries generally follow two trends: it is either completely prohibited or applied in certain situations (in exceptional cases, as a measure of last resort, under certain conditions, in return procedures).

The information that we obtained indicates that accompanied children are more likely than unaccompanied children to be detained. This appears to be confirmed by analysis of different laws and policies in most European countries.

	<i>Detention of unaccompanied children</i>	<i>Detention of accompanied children</i>
Prohibited	Ireland, Belgium, Hungary, Slovakia, Spain, Italy, Germany*, Portugal, Bulgaria	Ireland
Permitted in some cases	France, Netherlands, United Kingdom, Lithuania, Romania, Germany*, Sweden, Norway, Estonia, Latvia, Finland, Denmark, Switzerland*, Serbia, Croatia, Iceland, Cyprus	Sweden, France, Norway, Finland, Netherlands, Slovakia, Spain, United Kingdom, Germany*, Italy, Portugal, Belgium, Switzerland*, Serbia, Croatia, Cyprus

* varies according to region

Banning detention below a certain age

A certain number of countries deal with detention by setting a minimum age under which a child would not be detained. In Austria and Latvia, unaccompanied children cannot be detained below the age of 14 years while in Finland, Switzerland and the Czech Republic, Iceland and Poland, the limit is set at 15.

Gaps between laws, policies and practice

In light of the above observations, the detention of unaccompanied children is either prohibited or applied in exceptional circumstances. Similarly, the detention of accompanied children, albeit more frequent, appears also to remain limited as the practice is mostly used in specific situations. Similar observations were made in the FRA report which also suggests that in some countries when the practice is not prohibited, it is used rarely.

While this suggests that in many countries laws and policies are drafted in order to ensure that detention remains an exceptional measure for children, the following remarks call for a more nuanced assessment of the situation.

Firstly, the majority of countries, if not all of them, have not prohibited child immigration detention altogether. Ireland⁴⁹ appears as the exception among the members of the European Union, if not Europe. Indeed, the country prohibits the detention of children for immigration purposes (asylum or return procedures), whether they are accompanied or not. Most European countries' policies therefore leave the possibility for detention, which goes counter to emerging international human rights standards increasingly supporting a no-detention policy for children as it appears to be detrimental to their best interests.

Secondly, there are reports from civil society organisations which suggest that in some countries there is a gap between law and policy on the one hand and what happens in practice on the other. Here a few examples:

- In **Hungary**, it is reported that when unaccompanied children apply for asylum and are aged over 14, they are transferred to the closed transit facilities at the border with Serbia where they are deprived of liberty.⁵⁰
- In **Slovenia**, while unaccompanied children are generally not detained when they apply for asylum, when they do not, some of them are detained especially when they are accompanied.⁵¹
- In **Belgium**, while the country has seemingly been able to limit the detention of accompanied children, there have been concerns from civil society organisations which have led to the creation of a campaign “We do not detain a child. Full stop”⁵² bringing together 50 organisations against the government's late 2016 announcement to build a closed centre especially for families with children.⁵³
- In **France**, the annual report⁵⁴ on administrative detention in France, published by six civil society organisations present in detention centres, details the systematic use of deprivation of liberty as a primary instrument of migration control. The report underlines that 2016 reached a record in terms of the number of children detained in spite of condemnations by the ECHR. 182 children were detained in mainland France and in one of the country's overseas territories, Mayotte, the number goes up to a dramatic 4285 children detained.
- In **Bulgaria**, the detention of unaccompanied children is prohibited. However, according to a 2016 report⁵⁵ by the NGO “The Bulgarian Helsinki Committee,” a regular practice is to include unaccompanied minors in the detention orders of adults who are not related to them in order to circumvent the prohibition to detain them. The main reason is the failure of the social services for child protection to assist in providing accommodation for these children in other appropriate facilities.
- In **Malta**, in 2015, the government amended legislation which, along with the new policy, prohibits the detention of any vulnerable applicant including minors and alleged unaccompanied minors. While this resulted in having no children detained, in practice, any migrant, including children, arriving in Malta irregularly are first taken to a closed centre, the Initial Reception Facility (IRC), for health checks and initial identification for a maximum of 7 days. Children staying in this centre, even for a short period of time, are therefore detained.⁵⁶

Age assessment procedures

Many countries use age assessment procedures as an exception to detain. Age assessment is a procedure by which the authorities determine the chronological age of an individual lacking legal documents. The issue is that there seems to be no conclusive medical methods to establish the exact age of a child – the margin of error is 1-2 years.⁵⁷ Using such procedures without sufficient safeguards puts unaccompanied children at risk of being wrongfully detained. For instance, the Hungarian Helsinki Committee found in 2014 that 30 individuals in detention whose age had been assessed turned out to be children. In the United Kingdom, reports from Her Majesty's Inspectorate of Prisons (HMIP)⁵⁸ and from the Refugee Council⁵⁹ indicated that immigration officers take swift decisions regarding the age of applicants without having been properly trained.

The impact of detention

Immigration detention harms people mentally and physically. The risks for children can be particularly acute.⁶¹ Research has found depression and post-traumatic stress amongst children to be direct consequences of their detention.⁶² For many children their experience in immigration detention takes place in the context of previous trauma experienced in their home country or during their journey to and within Europe. Some accompanied children experience the added pressure of poor mental health of a parent or other factors which prevent their guardian from adequately caring for them.⁶³

Negative experiences of child immigration detainees⁶⁴

- Poor and unsafe conditions for living, including poor sanitation
- Insufficient provision for basic needs, including poor quality food and nutrition
- Poor health care, including specialist medical care and immunisations
- Prison-style environment, with excessive supervision leading to psychological stress
- Forced separation from community, culture, religion and the outside world
- Isolation, leading to loss of confidence
- Insufficient education provision
- Failure to separate children awaiting an age check from unknown adult men

POSITIVE DEVELOPMENTS IN ITALY REGARDING AGE ASSESSMENT

In Italy, a Presidential Decree entered into force around mid January. The decree clarifies the procedure for determining a child's age and sets out a number of important guarantees.⁶⁰

Firstly, only where there are serious doubts can the police order a multidisciplinary age assessment. The assessment must be conducted by a multidisciplinary team at a public health facility and include social interaction, a paediatric evaluation and a psychological or neuropsychiatric evaluation, in the presence of a cultural mediator, in accordance with the best interests of the child principle.

Secondly, the report of the age assessment procedure must specify the margin of error of the methods used and be shared with the individual and their guardian. A possibility to contest the age assessment is also foreseen in the decree.

Consequences of detention for children

- Increased risk of abuse
- Disruption of the family unit / parent roles
- Loss of interest in play⁶⁵
- Disruption to natural child development (for example, the absence of educational and play facilities can reverse cognitive development)
- Depression
- Anxiety, including separation anxiety
- Eating disorders
- Sleeping disorders, insomnia and bedwetting⁶⁶
- Mutism

The situation for immigration detainees is compounded by poor mental health provision in Europe in general, and especially for people in all forms of detention. Research on criminal and youth justice systems in Europe consistently identify support for trauma and other mental health needs as key failing, with little progress being made.⁶⁷

Younger children will be less able to understand the reasons for their detention, or that it is temporary. Witnessing abusive or violent relationships between detainees or involving staff is also likely to have an impact on their development. The next section considers this impact through a gender lens.⁶⁸

Gender and child immigration detention

In recent years, gender has become nominally recognised as an integral concept to assess lived realities of children in immigration detention.⁶⁹ However, gender continues to be ignored or sidelined in most policy discussions.

Similarly, gender permeates detention policies and practices to inform how asylum seeking and migrant children enter detention systems. Detention is generally considered to impair children's physical, emotional and cognitive development, but the impacts are only partly understood when a gender analysis is ignored.

Institutional control in detention generates gender-specific impacts on psychological and physical well-being of boys and girls. To identify implications of detention it is critical to apply an inclusive gender analysis that is also responsive to disparate social, behavioural and psychosocial circumstances for boys and girls.

GENDER: DEFINING THE ISSUE

Gender is defined as “socially constructed characteristics of women and men,” including masculine and feminine identities and behavioural norms.⁷⁰ As a system, gender interacts with other social categories such as ethnicity, race, sexual orientation and class to assign values to men and women, and allocate power positions and resources to groups in public and private spheres.

Girls

Girls, unaccompanied girls in particular, are typically classified as the most vulnerable groups in contexts of detention. Concerns include both mental and physical wellbeing, particularly protecting girls from physical and sexual violence.⁷¹

Heightened exposure to risks to sexual violence, ranging from verbal sexual harassment, rape or longer term psychological abuse or control.⁷² Inadequate security and surveillance can thus severely compromise safety and privacy and make even the most routine activities such as shower and (nightly) toilet visits extremely dangerous. A standard procedure in Swedish detention centres is to place girls in gender-segregated sections to ensure safety from fellow male detainees.⁷³

Girls are also more susceptible to pathogenic diseases caused by squalid and unsanitary conditions and require female healthcare specialists such as gynaecologists. For instance about 70 percent of women that come from countries where female genital mutilation is a dominant cultural practice, such as Nigeria, Eritrea and Somalia, are estimated by UNHCR to be FGM survivors.⁷⁴ A lack of qualified culturally trained humanitarian and government staff could aggravate the ill-effects of circumcisions and the perpetuation of these practices, as forced migrants tend to bring their customs and practices after they flee their countries.⁷⁵

The vulnerabilities of girls often set terms in gender mainstreaming, but it is important to consider the gender dimension for boys.⁷⁶ The number of males in detention is much higher than females. For example in the UK 90 percent of immigration detainees are male.⁷⁷ Gender-disaggregated data for child immigration detainees in Europe is not published.

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Boys

Institutional control of boys is often shaped in response to fear of male sexuality and/or physical strength. As a consequence, boys often encounter disciplining approaches and practices that are harmful during their development. Many boys (between 14-17 years) originate from conflict affected countries e.g. Eritrea, Syria and Afghanistan where they witnessed extreme levels of violence.⁷⁸ The effects of pre-existing physical injuries and trauma are often only fully apparent when they enter places of detention. The settings of detention buildings surrounded by barbed wire, uniformed staff, restricted freedom of movement and locations in secluded areas intimidate young detainees and exacerbate traumas, distress and behavioural difficulties.

Recreational activities, formal education and training are critical to reintegrate boys into socially constructive structures and desensitize boys for violence and other criminality.⁷⁹ Research found that detainees in Greece were locked in detention sometimes for 100 days (exceeding the legal maximum of 25 days).⁸⁰ In Amygdaleza detention centre in Greece the conditions of confinement of male detainees and the lack of basic care services, led to increased depression, violence, self-harm and suicide attempts.⁸¹

Gender-segregated policies, which are created to safeguard females, can lead to male dominated spaces where hyper-masculine norms are reproduced and male violence increases, especially when boys are detained with adult men.⁸²

These male dominated spaces leave marginalised boys, (who for instance do not fit in with dominant forms of masculinity) subject to intimidation or physical assaults by fellow male detainees.

Boys are also prone to sexual violence. In Italy, reports revealed that some boys have been sexually abused prior to arrival in Europe.⁸³ In one reported incident, a three year old boy was raped in an asylum centre.⁸⁴ Cultural stigma of male rape and the absence of trusted relationships with detention staff are barriers to the reporting of sexual violence.

Finally, despite hostile anti-migrant climates, there is a hierarchy of sympathy whereby particularly female refugees are considered as victims, while asylum seeking and migrant boys are framed as potentially dangerous, or criminalised.⁸⁵ These imageries lead to heightened scrutiny, physical coercion, excessive force brutal treatments from (prison)/guards, police or other authorities, such as is the case in Macedonia where police brutality against refugees has taken place.⁸⁶

Considering the gender dimension reminds us not only how migration policies affect women, men, girls and boys differently, but also the particular life-time consequences of detaining children, due to the impact on their development.



ILLUSTRATION: ERIK DRIES (QUAKERS IN THE NETHERLANDS)

What are the alternatives?

As underlined by international human rights instruments, states need to adopt alternatives to detention that allow children to remain with family members and/or guardians in non-custodial, community-based contexts while their immigration status is being resolved. Alternatives need to be consistent with their best interests, and with children's rights to liberty and family life. The requirement to provide for alternatives could similarly be found in the Council of Europe standards, EU law and the European Court of Human Rights case law.

Moreover, beyond the fact that they are more humane, alternatives are said to be more affordable than detention (up to 80% cheaper than detention) and can achieve high compliance rates (up to 95% appearance rates and up to 69% independent departure rates for refused cases).⁸⁷ These arguments are shared by UNHCR in its Global strategy paper: Beyond Detention 2014-2019.⁸⁸

Bearing this in mind, in our research we received information on the different alternative measures European countries have regarding child immigration detention. After having analysed them and combined them with additional research and findings from other studies, we have identified the following measures that countries usually use, often in combination:

1. Imposing residence restrictions at a particular place (centre, institution) or within a specific geographical area
2. Releasing on bail with restrictions
3. Regular reporting to the authorities (police or immigration staff) at regular intervals
4. Seizure of travel documents or passports

The table opposite (which refers, in turn, to the policies listed above) gives us an overview of the set of alternative measures to detention used in European countries. And many of these measures appear to not entail detention. While this is welcome, it is nevertheless crucial to keep the following elements in mind:

continued →

	ALTERNATIVE POLICIES IN USE			
	1	2	3	4
<i>Austria</i>	●	●	●	
<i>Belgium</i>	●			
<i>Bulgaria</i>			●	
<i>Croatia</i>	●		●	●
<i>Cyprus</i>	●	●	●	
<i>Czech Rep</i>	●	●	●	
<i>Denmark</i>	●	●	●	●
<i>Estonia</i>	●	●	●	●
<i>Finland</i>	●	●	●	●
<i>France</i>	●			
<i>Germany</i>	●	●		●
<i>Greece</i>	●	●	●	
<i>Hungary</i>	●	●	●	
<i>Iceland</i>	●		●	
<i>Ireland</i>	●		●	
<i>Italy</i>	●		●	●
<i>Latvia</i>			●	●
<i>Lithuania</i>	●		●	
<i>Luxembourg</i>	●			
<i>Malta</i>	●	●	●	●
<i>Netherlands</i>	●			
<i>Norway</i>	●			
<i>Poland</i>	●	●	●	
<i>Romania</i>	●			
<i>Slovakia</i>	●	●		
<i>Slovenia</i>	●			
<i>Spain</i>	●		●	●
<i>Sweden</i>			●	
<i>Switzerland</i>	●	●	●	●
<i>United Kingdom</i>	●	●	●	

● = measure in use

continued →

1. There are different interpretations of the concept of “alternatives to detention”

In the term "alternatives to immigration detention," *alternatives* does not have an established legal definition. It is therefore not necessarily understood in the same way by the different stakeholders.

For many civil society and international organisations, alternatives would be defined as "any law, policy or practice by which a children are allowed to reside in community with freedom of movement while their migration status is being resolved or while awaiting deportation or removal from the country." Ideally, the children will have access to education, healthcare and will be able to remain with their family (in the case of accompanied children).

Some argue that lighter forms of detention should be considered as alternatives. However, these consist of forms of detention that have potentially harmful impacts upon children. For example, in Slovenia, the measure of mandatory stay in the area of an asylum centre for children is considered as an alternative to detention, whereas it still remains a deprivation of liberty. In some Landers in Germany, one alternative to avoid detaining accompanied minors is to detain only one of the parents, with a significant impact on family life.

2. The alternatives exist but are underused

A past study made an analysis of existing alternatives to detention practises in a selected number of EU countries (Austria, Belgium, Lithuania, Slovenia, Sweden and the United Kingdom).⁸⁹ The research revealed that alternatives to detention are underused and only a small number of individuals are submitted to these schemes. It however pointed out that there are some good practices which show that it is possible to develop solutions outside detention which are functional, less costly and compliant with human rights.

POSITIVE PRACTICE: FAMILY UNITS IN BELGIUM

The "Family Units" (or return houses) in Belgium are regularly used as a good alternative measure. Children with their family enjoy freedom of movement and are supervised by a coach designated by the Immigration Office which works in collaboration with a network of lawyers (for the provision legal aid), local schools (for the education of children), childhood protection organisations and NGOs such as Jesuit Refugee Service Belgium (for monitoring purposes).



↑ An example of "family units" in Belgium.
PHOTO: MICHEL TONNEAU / BELGA ©

A model to prevent child detention: the Child-Sensitive Community and Assessment Placement Model (CCAP)⁹⁰

The International Detention Coalition has proposed a model for managing children and families in the community and thereby preventing the detention of children for immigration purposes. The model is not prescriptive. Rather, it presents a way in which states might design responses that ensure migrant children are not detained. It follows a five-steps process:

1. Prevention

Establishing in law or policy that children should not be detained.

2. Screening, assessment and referral

Within hours of coming into contact with a child, authorities must undertake a best interests assessment and place them in an appropriate community setting that takes into account age, gender and cultural background. This implies:

- Screening individuals to assess their age. Making sure that age assessment procedures are only used when there are serious doubts.
- Assigning a guardian to unaccompanied or separated children. FRA developed a handbook⁹¹ which could be of use for EU Member States.
- Appointing a case manager in order to assess, oversee, advise, support and manage the case throughout the process of awaiting a final migration outcome.
- Undertaking an 'intake assessment' by the case-manager where the immediate needs and risks associated with the child are assessed. This assessment will inform a decision on the most appropriate accommodation and support required to meet basic needs and protect the child.

3. Case management and Processing

Includes exploration of the migration options available to children and families, a best interests determination, and an assessment of the protection needs of children and/or their families.

4. 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.

5. Implementing official decisions

The realisation of the decision of the state either to allow the migrant children to remain, or to expect that they will leave the state. If the child is allowed to remain then the state should ensure the child's welfare, including accommodation, health, education etc. and facilitating family reunification if appropriate. If the child is not allowed to remain, the state should facilitate a voluntary departure to the child's country of origin or to a third country while making sure that the best interests of the child remain paramount.

Recommendations

Data collection

- Having comprehensive and comparable data is an important element on which stakeholders, especially decision makers, need to rely on in order to design and implement adequate policies and measures. It is also vital to improve accountability, transparency and ensuring that children are protected, notably from arbitrary detention. European countries should therefore systematically collect disaggregated data on children in immigration detention.
- At the level of European Union, the comparability of such data through Eurostat should be encouraged by the EU Commission. Equivalent mechanisms of comparability should also be found across the wider European area.
- European countries need to provide as much detailed and accurate data as possible to the Global Study on Children Deprived of Liberty commissioned by the UN so as to get the best results for this study at international level.

Polycymaking

- Policymakers should prioritise children's inherent dignity and fundamental rights above immigration enforcement. This requires support for multiculturally trained staff and guardians and adequately equipped security, healthcare, psychological and educational services that are calibrated by gender-sensitive approaches so that ineffective detention policies which increases human and financial costs are mitigated. The Child Sensitive Community and Assessment Placement Model developed by the International Detention Coalition could served as a useful guide.
- States need to improve the implementation of the best interests of the child principle. This could be done for examples through Best interests assessment (BIA) and best interests determination (BID), which are key child protection tools providing procedural safeguards and protection measures for children, in accordance with the Convention on the Rights of the Child (CRC).⁹³
- A human rights-based approach to age assessment is needed. It means that such procedure would take child's rights into account, would be gender-appropriate, undertaken by independent child's welfare

experts and used only when there are serious doubts. One of the tools which should provide further advice to EU Member States on how to apply these considerations in practice is the forthcoming European Asylum Support Office (EASO) guidance on age assessment in practice or the module on gender.

Gender sensitivity

- Policymakers should make sure that a gender approach is adopted and mainstreamed through policies and measures concerning children. This requires support for (multi) cultural trained staff that are calibrated by gender-sensitive approaches.
- Discrepancies in documented gender differentiated data of child detention populations across Europe obscures patterns of gendered effects and complicates comparative research. Support should be extended for systematic research to tackle these gaps and create networks to exchange information.
- Regular review mechanisms of detention practices should be established to developed concerted strategies between practitioners, policy makers and researchers to act in the best interests of both boys and girls.

Alternatives to detention

- European countries need to take adequate legislative and policy measures to ensure that the alternatives to detention are available both in laws and in practice.
- Starting with making a better use of some of the different alternatives measures that already exist, European countries should adapt them so as to respect child's rights. This would entail allowing the child to live in the community, enjoy the right to family life if they are accompanied, and the access to education, health, legal aid and the provision of effective oversight mechanisms. Such steps will gradually allow states to manage their asylum and migration policies without resorting to detention.
- European states should make sure to fully engage with the Council of Europe's action plan on protecting refugee and migrant children (2017-2019).

Conclusion

There is a growing international consensus that children should not be detained, whether they are unaccompanied or with their families and regardless of their or their parent's migration status. In Europe, There is a visible increase in the use of detention as a migration management tool. Combined with the political context on the continent, there are concerns that the human rights standards and refugee protection are being lowered. That will in turn make detention a practice which will remain usual and might even be more widely used, including for children.

The report has underlined and confirmed the fact that overall, we do not know how many children are detained. Data is not easily available to the public, let alone disaggregated, and do not sufficiently take into account the gender dimension. There are alternatives, but they are not sufficiently used. Some alternatives to detention do not correspond to the level of protection and care a child should and has the right to receive.

Without denying the lack of solidarity on the continent and the fact that some countries face difficult situations (Greece and Italy as first countries of reception; Germany, Italy, France, Hungary, Austria and Sweden as the ones with the most asylum applications)⁹² we nevertheless urge countries to work towards solutions and cooperate with one another because detention appears to be ineffective, costly and detrimental to a child's rights and well-being. Some alternatives exist and could be improved. A child is a child and should be treated as such whenever he or she comes from.

*“That which is morally wrong
cannot be politically right.”*

FROM AN ADDRESS TO THE INHABITANTS OF EUROPE
MADE AT THE ANNUAL QUAKER GATHERING IN BRITAIN IN 1822
(BRITAIN YEARLY MEETING, QUAKER FAITH AND PRACTICE 23.26)

Annex

Legal sources

AT	Aliens Police Act <i>Article 71 para 1</i> <i>Article 79 para 1, 3</i> <i>Article 80 para 2</i> <i>Article 77 para 3</i> <i>Article 76 para 1, 2</i>	HU	Act No.80 of 2007 on Asylum, as amended on 28 March 2017, <i>Article 31/B (but Article 80/J(6) allows their detention in the transit zones if aged above 14 years in case of mass migration state of emergency)</i> Admission and Right of Residence of Third-Country Nationals 2007, <i>Act II, Article 56 (2)</i>
BE	Immigration Act, <i>Article 74/19 §1 and §2</i>	IS	Art 114 law on foreigners Art 115, paragraph 5 law on foreigners nr. 80/2016 Art 115 paragraph 6 law on foreigners in combination with Art 95 of the law on criminal procedure (nr. 88/2008)
BG	Asylum and Refugees Act, <i>Article 45e (1)</i>	IT	Article 19(4) LD 142/2015 Article 7(5) LD 142/2015
CZ	Act on the Residence of Foreign Nationals, <i>Section 124 (6)</i> Asylum Act, <i>Section 46a (3) in combination with Section 2(1)(i)</i>	LV	Immigration Law <i>Article 50.8, paragraph 1</i> <i>Article 53</i> <i>Article 54, part 6</i> <i>Article 51</i> Immigration Act <i>Section 51 Part 2</i>
DE	Residence Act <i>Section 62, para. 1 sentence 3</i> <i>Section 21, para 1</i> Directive 2008/115/EC, <i>Article 17</i>	MT	Reception of Asylum-Seekers Regulations, <i>Article 14 (1)</i> Common Standards and Procedures for returning illegally staying third-country nationals regulations
DK	Danish Aliens Act, <i>Sections 35 and 37</i> Aliens Act, <i>Sections 36–37</i>	MD	Law No. 200, <i>Para 64 (1), 85, 86</i> RM Government Directive No. 492, <i>Chapter II (1)</i>
EE	Obligation to Leave and Prohibition on Entry Act (OLPEA), <i>Subsection 32 (1) of the Act on Granting International Protection to Aliens, §6</i> Family Law Act, <i>§176</i>	NL	Geneva Convention, <i>Article 1F</i> Dutch Alien Act <i>Articles: 6, 59, 59a and 59b</i> Alien Decree <i>A5/2.4</i> <i>A7/7.3</i>
EI	Immigration Act, <i>Article 74/19</i>	NO	Norwegian Constitution, <i>Article 94</i> Human Rights Act of 1999, <i>Section 2</i> Immigration Act 2008 <i>Section 106 Paragraph 1, 2, 3</i> <i>Section 99 Paragraph 1</i> 1981 Criminal Procedural Act <i>Section 184 second paragraph</i>
ES	Royal Decree 162/2014 Aliens Law, <i>Article 61, 62.4</i>		
FI	Aliens Act <i>Section 122</i> <i>Sections 118-120</i>		
GR	Law 4375/ 2015, <i>Article 45</i> Law 4907/2011, <i>Article 25, 32</i> Presidential Decree 220/2007, <i>Article 19</i> Law 3907/2011, <i>Article 11 (5)</i>		

PL	Act on granting protection to foreigners within the territory of the Republic of Poland, <i>Articles 62 and 67 in combination with provisions of Chapter 6</i> Act on Foreigners, <i>Article 397</i>
PT	Law 27/2008 (Lei No.27/2008), as amended in 2014, <i>Article 35B (6)</i>
RO	Government Ordinance 194/2002 Law 122/2006 Law 272/2004
SK	Residence of Aliens and Amendment and Supplementation of Certain Acts: <i>Article 88 paragraph 1 and 8;</i> <i>Article 88a paragraph 3 of Act No. 404/2011 Coll.;</i> <i>Article 89 of Act No. 404/2011 Coll.</i>
SV	Slovenian International Protection Act, <i>Article 84</i> Aliens Act, <i>Article 76</i>
SE	Swedish Aliens Act, <i>Chapter 10, Section 1, 3rd paragraph</i>
SZ	La loi fédérale sur l'étrangers (LEtr; RS142.20), <i>Article 79, 81</i>
UK	Immigration Act 1971 Immigration Act 2016

AT	Austria
BE	Belgium
BG	Bulgaria
CZ	Czech Republic
DE	Germany
DK	Denmark
EE	Estonia
EI	Ireland
ES	Spain
FI	Finland
GR	Greece
HU	Hungary
IS	Iceland
IT	Italy
LV	Latvia
MT	Malta
MD	Moldova
NL	Netherlands
NO	Norway
PL	Poland
PT	Portugal
RO	Romania
SK	Slovakia
SV	Slovenia
SE	Sweden
SZ	Switzerland
UK	United Kingdom

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