



IAWG to End Child  
Immigration Detention



# Ending Child Immigration Detention

## About the Inter-Agency Working Group

The Inter-Agency Working Group (IAWG) to End Child Immigration Detention is an international alliance to support States to end child immigration detention consistent with existing international human rights obligations to protect the best interests of the child. Together, they have committed to engaging and supporting States to “completely and expeditiously” end the practice of child immigration detention, consistent with the UN Convention on the Rights of the Child.

### History

In September 2012, at the annual Day of General Discussion of the UN Committee on the Rights of the Child, UN, intergovernmental and civil society experts discussed growing concerns around the detention of migrant children and their families on the basis of irregular immigration status.

In March 2014, at the UN Human Rights Council, a broad stakeholder group of child rights organizations, migrant groups and long-time supporters of the Global Campaign to End the Immigration Detention of Children hosted a side-event where they explored “A Global Strategy to End Child Immigration Detention.” Immediately following this side-event, groups met and agreed to form an Inter-Agency Working Group to End Child Immigration Detention (IAWG). Terms of reference were developed in the following months and the first official meeting of the IAWG was held in June 2014 on the margins of the UN Human Rights Council.

### Members

The IAWG is comprised of twenty-one prominent UN groups, intergovernmental organizations, and civil society representatives who collectively represent stakeholders in every country of the world.

### Institutional Partners

- United Nations and Intergovernmental Bodies
- UN Committee on Migrant Workers
- UN High Commissioner for Human Rights (OHCHR)
- UN High Commissioner for Refugees (UNHCR)
- United Nations Children’s Fund (UNICEF)
- International Organization for Migration (IOM)
- UN Special Rapporteur on the Human Rights of Migrants
- UN Special Rapporteur on Trafficking
- UN SRSG on Violence Against Children
- UN Working Group on Arbitrary Detention (WGAD)
- Regional Human Rights Bodies
- Inter-American Commission on Human Rights (IAHCR), Rapporteurship on the Rights of Migrants
- Council of Europe, Commissioner on Human Rights
- Council of Europe, General Rapporteur on Ending Immigration Detention of Children

### Civil Society Partners

- Caritas Internationalis
- Child Rights International Network (CRIN)
- Defence for Children International (DCI)
- Global Campaign to End Child Immigration Detention
- Human Rights Watch (HRW)
- International Detention Coalition (IDC)
- Platform for International Cooperation on Undocumented Migrants (PICUM)
- Save the Children
- Terre des Hommes International Federation (TDH)

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The inter-agency group is comprised of over 20 prominent UN, regional, intergovernmental, and civil society organisations who collectively represent stakeholders in every country of the world.

## Introduction

Every day, all around the world, millions of children are affected by immigration detention. Whether detained themselves or impacted by the detention of their parents or guardians, children are particularly vulnerable to abuse and neglect when subject to detention on the basis of their or their parents' migration status.

In practice, States often detain child refugees, asylum seekers, and migrants for a number of reasons which are completely avoidable, such as to conduct routine health and identity screening; to maintain family unity; or to facilitate engagement with on-going asylum or migration procedures. Sometimes, children are detained without the knowledge of State authorities, for example because there is a failure to properly conduct age assessments, or due to a lack of appropriate child screening and identification. At other times children are knowingly detained, for example when they are detained together with their parents or guardians on the basis of maintaining family unity.

Regardless of the reasons for immigration detention, a number of studies have shown that detaining children has a profound and negative impact on child health and well-being. Migrant children deprived of liberty are exposed to increased risks of physical and sexual abuse, acts of violence, social discrimination and denial of access to education, health

care, and family life. Even very limited periods of detention in so-called "child friendly" environments can have severe and lifelong impacts on child psychological and physical well-being and compromise their cognitive development.

For these reasons, the immigration detention of children represents a serious threat to children, and a growing body of UN, regional, and domestic human rights experts have called upon States to "expeditiously and completely" end the practice. As a result, over the past five years the issue of child immigration detention has risen in importance on the global human rights agenda. United Nations, intergovernmental and civil society actors have undertaken significant research and reporting which finds that immigration detention is never be in the best interests of a child, and have lobbied State policy makers to end the immigration detention of children as a matter of priority.

However, despite this growing attention and international consensus, significant gaps remain. Migrant children continue to be detained on the basis of their or their parents' migration status every day, in nearly every country in the world. There remains a virtual lack of effective prevention, monitoring, and reporting on the issue by States, and there are no validated statistics on the number of migrant children in immigration detention at any one time.

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UN, intergovernmental and civil society partners alike have undertaken significant research which demonstrates that immigration detention can never be in the best interests of a child...

## Why are children on the move?

Children migrate for a number of reasons. They may be seeking international protection, fleeing violence or poverty, pursuing better economic or educational opportunities, or seeking family reunification.<sup>1</sup> Migrant children may be accompanied by their parents or guardians; traveling as “separated children” accompanied by an adult who is not their parent or guardian; or as “unaccompanied” children traveling alone.<sup>2</sup> Globally, the numbers of accompanied, separated and unaccompanied child migrants are on the rise.<sup>3</sup>

According to the United Nations Department of Economic and Social Affairs (DESA), the number of international migrants rose to 232 million in 2013, an all-time high.<sup>4</sup> Nearly 35 million (15 percent) of all international migrants are under the age of 20, including over 23 million children under the age of 15. In 2015, children also comprised more than half of the world’s 65.3 million refugees, representing the highest percentage of children of concern to UNHCR since they began tracking the issue.<sup>5</sup>

The proportion of child migrants varies widely by region: from 27 percent in Africa, to 20 percent in Asia, to 9 percent in North America.<sup>6</sup> Adolescent children aged 15 to 19 are the largest group of child migrants in all regions of the world other than Latin America and the Caribbean, where 5 to 9 year-olds are the largest age group.<sup>7</sup> In certain sub-regions, the proportion of child migrants can be even higher. For example, in 2008, an ILO study found that 42 percent of migrants across the Cambodian-Thai border were children, and an estimated 20 percent of irregular Burmese migrants in Thailand are children.<sup>8</sup> A 2009 census-based study of child migration in Argentina, Chile, and South Africa found that approximately 25 percent of all international and internal migrants in those three countries were children.<sup>9</sup> The detention of children in times of crisis or conflict is even more concerning, as the proportion of children is higher in forced migration situations than in migration flows that are driven by economic reasons.<sup>10</sup>

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There are over 23 million child migrants under the age of 15, and more than half of the world’s 65.3 million refugees are children.



A child keeps warm after crossing the Mediterranean by boat, landing on Lesbos Island Greece. This photo was taken before the reception centres were transformed into closed detention for migrants.

## Why are States detaining migrant children?

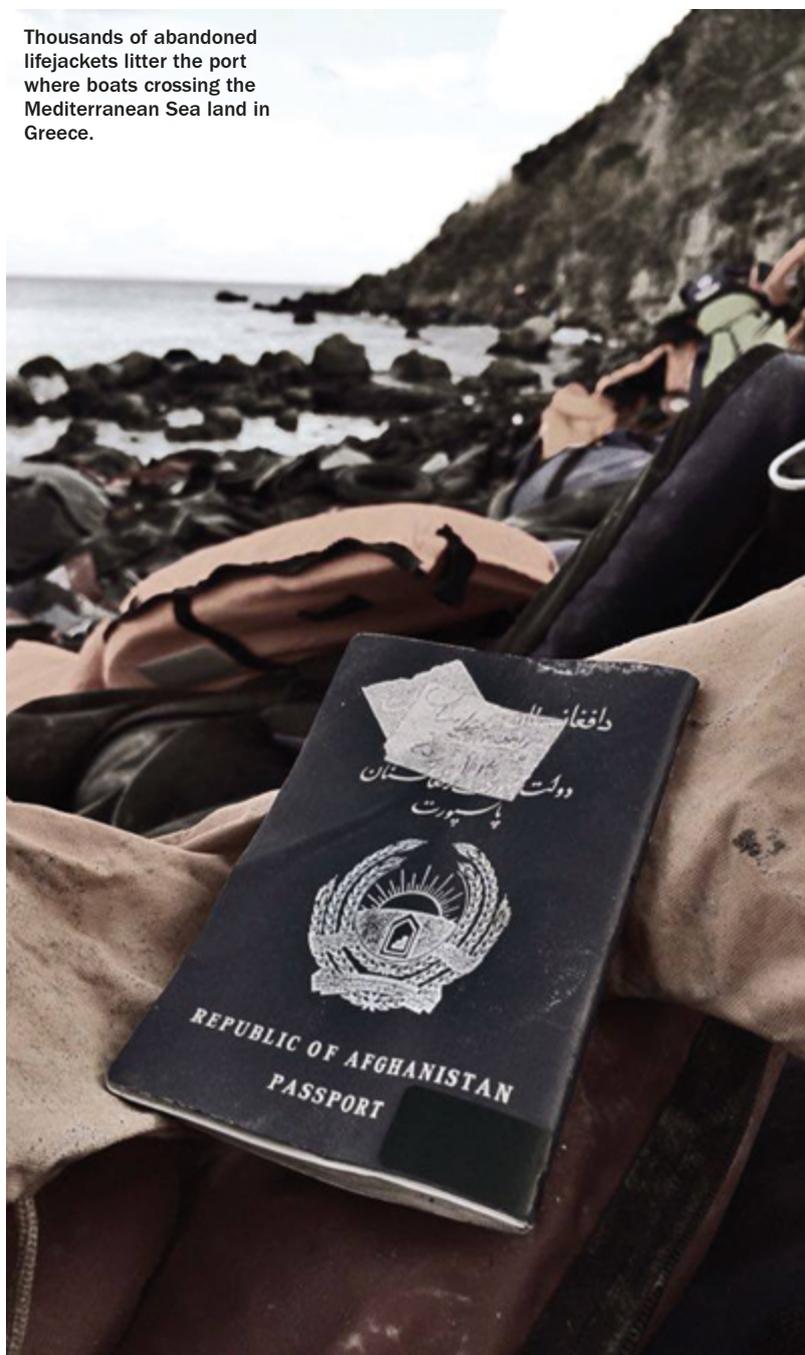
### Immigration detention is on the rise

The practice of using immigration detention as a strategy for combatting irregular migration has been in use at least since the 1980s, but the practice has become increasingly widespread and institutionalized since 2001.<sup>11</sup> The International Detention Coalition (IDC) has found that States worldwide have increasingly used immigration detention as a first resort over the past fifteen years, as a result of heightened concerns over combatting irregular migration and false narratives that have often linked international migration with crime, instability, or national security.<sup>12</sup> As a result, immigration detention has become a key part of many States' migration management strategies, and is now commonly used in multiple stages of the migration process, including when migrants attempt to leave their own country; when migrants are in transit or at sea; when migrants arrive at international borders; during processing of asylum and other immigration claims; and in preparation for voluntary return, deportation or removal.<sup>13</sup>

### A failure to protect child migrants

Child migrants are often treated discriminatorily within these processes based upon their or their parents' migration status, rather than being seen as children first and foremost. Under international law, States are obligated to protect the rights of all children, regardless of their or their parents' migration status, and State policies aimed at protecting children must include irregular migrant children and make them a specific target group for social protection. However in practice there is frequently a tension between national legal frameworks governing immigration control, and those governing child protection. As a result, children in an irregular migration situation are adversely affected by restrictive migration control law and policies, and are not sufficiently considered and protected as children, first and foremost, under national systems for child protection.

Thousands of abandoned lifejackets litter the port where boats crossing the Mediterranean Sea land in Greece.



## How many migrant children are being deprived of liberty?

### Lack of data

Despite the increase in child migration globally and the parallel rise in the use of immigration detention as a strategy for combatting irregular migration, limited data is available regarding the number of children detained each year on the basis of their or their parents' migration status.

Most States either do not collect or do not publicly share data on the numbers of immigration detainees in general, including the length of detention or the justification for the use of detention in each case. Even those States that do collect this information may not disaggregate the data by age, making it impossible to know how many child migrants are impacted by detention policies each year. When States do provide statistical data on the number of child migrants in detention, the usefulness of this data is further limited and comparison across States is difficult due to differing methods of data collection.

As UNICEF noted in a 2011 report on the administrative detention of children, the failure to collect this data systematically at the national level “may mean that the extent of administrative detention of children at a global level is impossible to measure quantitatively. It also means that it is unlikely that the number of children placed in administrative detention is being monitored nationally by many States, and possibly, that the length of time that children spend in administrative detention and the conditions of that detention are also not regularly monitored.”<sup>14</sup> Similarly, according to UNHCR “immigration detention has historically been one of the most opaque areas of public administration.”<sup>15</sup>

Nongovernmental reports often provide snapshots of available child detention information, however such reports are not frequently comprehensive due to a lack of access to government data or to immigration detention facilities themselves. For example, in 2007, the IDC found that only Australia, Canada, and the United Kingdom provided comprehensive data on the number of children in immigration detention despite the fact that they were able to identify at least twenty industrialized countries that detained migrant children.<sup>16</sup>

### Current estimates

While lack of data makes it difficult to determine how many children are detained due to their immigration status around the world each year, estimates range from the hundreds of thousands<sup>17</sup> up to one million.<sup>18</sup> The Global Campaign to End Child Immigration Detention (‘Global Campaign’) estimates that thousands of children are detained each day<sup>19</sup> in over one hundred countries around the world, including both developed and developing countries.<sup>20</sup>

The UN Committee on the Rights of the Child (‘CRC Committee’) cited concerns about immigration detention of children in their concluding observations for the periodic reports of thirty-one countries across five continents between October 2008 and June 2014. However, not all countries underwent periodic review during this period, and the United States, which has the world’s largest immigration detention capacity, is not a State party to the Convention. Furthermore, UNICEF has found that at least 2 million children are living in refugee camps and may find their freedom of movement so restricted that they are effectively subject to de facto administrative detention.<sup>21</sup>

### UN Global Study on Children Deprived of Liberty

To address the data gap regarding the number of children detained each year, in December 2014, the United Nations General Assembly (UNGA) requested the office of the UN Secretary General to undertake a Global Study on Children Deprived of Liberty. The mandate of the Global Study is to look broadly at the deprivation of liberty of children: involved in criminal justice systems, children in need of protection, children with physical or mental disabilities, children exposed to drug abuse, children detained with parents, children in immigration detention, and children suspected of threats to national security.<sup>22</sup> As a result, there is hope that the Global Study will collect much needed data on children in immigration detention as well as identify and inform good practices for ending the immigration detention of children.

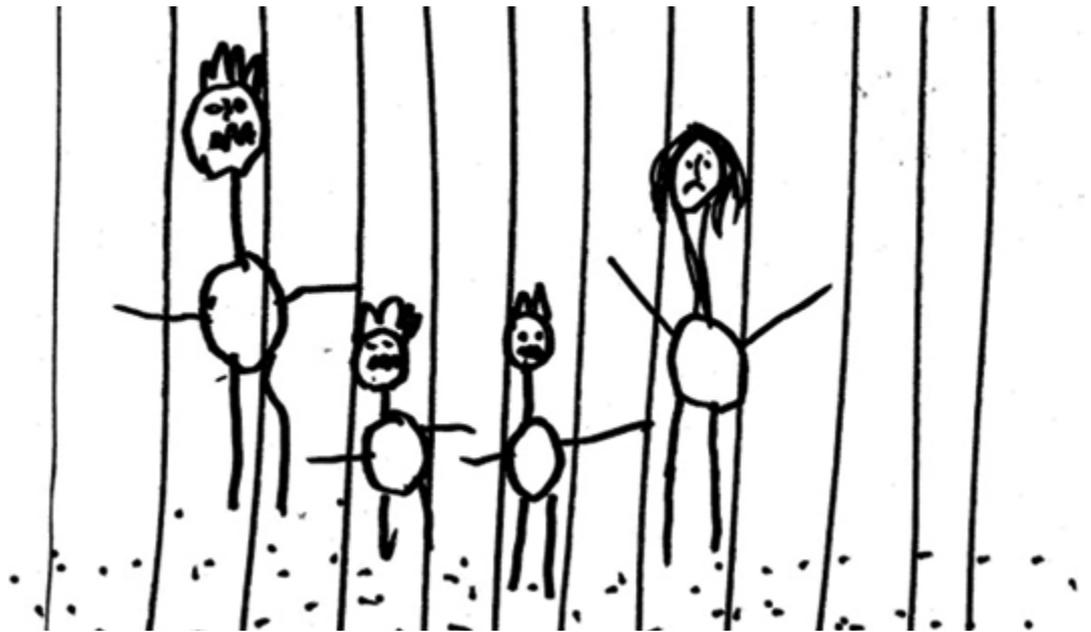




Migrants in Budapest railway station, September 2015  
Photo: Elekes Andor

## The impacts of immigration detention on children

A drawing from a child inside an immigration detention centre run by the Australian Government.



A number of studies have shown that detention has a profound and negative impact on child health and well-being.<sup>23</sup> Even very short periods of detention can undermine child psychological and physical well-being and compromise their cognitive development.<sup>24</sup> Children held in immigration detention are at risk of suffering depression and anxiety, and frequently exhibit symptoms consistent with post-traumatic stress disorder such as insomnia, nightmares and bed-wetting.

Reports on the effects of immigration detention on children have found excess rates of suicide, suicide attempts, self-harm, mental disorder and developmental problems, including severe attachment disorder.<sup>25</sup> According to the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mr. Juan E. Méndez, children in immigration detention have been tied up, gagged, beaten with sticks, burned with cigarettes, given electric shocks, and placed in solitary confinement, causing severe anxiety and mental harm.<sup>26</sup> In addition, the Special Rapporteur has noted that many child migrants suffer appalling and inhuman conditions while detained, including: overcrowding, inappropriate food, insufficient access to drinking water, unsanitary conditions, lack of adequate medical attention, irregular access to washing and sanitary facilities and to hygiene products, lack of appropriate accommodation and other basic necessities.<sup>27</sup>

But immigration detention has been found to harm children even in relatively humane or “child friendly” detention environments.<sup>28</sup>

This is because immigration detention can contribute to or exacerbate a number of pre-existing psychosocial and developmental vulnerabilities frequently experienced by children in the context of migration. These vulnerabilities may include previous violence or trauma experienced in their home country or during migration; disruption of the family unit and parental roles; and a lack of basic needs being met. For these reasons, according to the European Court of Human Rights (ECtHR), even short-term immigration detention of children is a violation of the prohibition on torture and other ill-treatment, because a child’s vulnerability and best interests outweigh the Government’s interest in attempting to control or stop irregular migration.<sup>29</sup>

Immigration detention also has profound and negative implications for migrant families. The longer a family spends in detention the more likely the family is to break down, as detention undermines the ability of adults to parent adequately, creates or exacerbates parental mental health problems, and damages parents’ ability to provide the emotional and physical support children need for healthy development.<sup>30</sup> The institutional effects of detention also disempower parents from their role as carers, providers and protectors, causing children to take on roles, responsibilities, and emotional burdens disproportionate to their age, such as dealing with authorities (e.g. immigration officials or detention guards) or providing support and comfort to their parents.<sup>31</sup>

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## Immigration detention: a clear child rights violation

In their Report of the 2012 Day of General Discussion on The Rights of all Children in the Context of International Migration, the UN Committee on the Rights of the Child (CRC Committee) devoted significant attention to the issue of child immigration detention and found that the detention of children based on their or their parents' migration status is never in the best interests of the child, and therefore constitutes a clear child rights violation.<sup>32</sup>

This CRC Committee recommendation recognizes that immigration detention—even for relatively limited duration or in contexts that are relatively “child friendly”—is never an appropriate place for children. The CRC Committee therefore called upon States to “expeditiously and completely cease” the immigration detention of children, and to adopt alternatives to detention (ATD) that fulfill the best interests of the child and allow children to remain with their family members and/or guardians in non-custodial, community-based contexts while their immigration status is being resolved.<sup>33</sup>

Since 2012, a growing number of UN and regional human rights experts have joined the CRC Committee in finding that immigration detention is never in the best interests of the child, and therefore a clear violation of child rights. What has emerged is a growing clarity and international consensus around the non-detention of refugee, asylum seeker and migrant children when the justification for the use of detention is based on the migration or residency status of the child or of their parents or guardians.

### Children are children first and foremost

The starting point of the international child protection framework is that all children, without distinction, discrimination or exception, are entitled to child rights. The principle of non-discrimination ensures that all the rights protected in the Convention on the Rights of the Child apply to “each child within their (States Parties) jurisdiction, without discrimination of any kind irrespective of the child’s or his or her parents’ or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or status.”<sup>34</sup> The CRC Committee has explicitly stated that the principle of non-discrimination applies regardless of a child’s nationality or immigration status:

“The enjoyment of rights stipulated in the Convention is not limited to children who are nationals of a State Party and must therefore, if not explicitly stated otherwise in the Convention, also be available to all children – including asylum-seeking, refugee and migrant children – irrespective of their nationality, immigration status or statelessness.”<sup>35</sup>

### The best interests of the child must be a primary consideration

In addition to non-discrimination, one of the central protections of the Convention on the Rights of the Child is the principle of the best interests of the child. This principle recognizes that in “all actions concerning children, whether undertaken by public or private social welfare institutions, courts of

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Adolescents being held in US Detention

law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”<sup>36</sup> The CRC Committee has stated that:

“a determination of what is in the best interests of the child requires a clear and comprehensive assessment of the child’s identity, including her or his nationality, upbringing, ethnic, cultural and linguistic background, particular vulnerabilities and protection needs. Consequently, allowing the child access to the territory is a prerequisite to this initial assessment process. The assessment process should be carried out in a friendly and safe atmosphere by qualified professionals who are trained in age- and gender-sensitive interviewing techniques.”<sup>37</sup>

States are obligated to consider the child’s best interests as a primary consideration in any immigration decision, including the decision of whether to detain a child or her parents or guardians on the basis of their migratory or residence status or lack thereof.

#### **Immigration detention is never in a child’s best interests**

Given the detrimental effects that detention and family separation have been shown to have on migrant children, the CRC Committee has stated clearly that “the detention of a child 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.”<sup>38</sup> This finding has now been supported by an overwhelming number of UN and regional human rights experts.<sup>39</sup> This finding was recently well-articulated by the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, in his thematic report on “Children deprived of liberty”:

“Within the context of administrative immigration enforcement, it is now clear that the deprivation of liberty of children based on their or their parents’ migration status is never in the best interests of the child, exceeds the requirement of necessity, becomes grossly disproportionate and may constitute cruel, inhuman or degrading treatment of migrant children... The Special Rapporteur therefore concludes that the principle of *ultima ratio* that applies to juvenile criminal justice is not applicable to immigration proceedings. The deprivation of liberty of children based exclusively on immigration-related reasons exceeds the requirement of necessity because the mea-

sure is not absolutely essential to ensure the appearance of children at immigration proceedings or to implement a deportation order. Deprivation of liberty in this context can never be construed as a measure that complies with the child’s best interests.”<sup>40</sup>

This is consistent with the finding of the Inter-American Court of Human Rights (IACtHR), who in 2014 issued an advisory opinion on the Rights and Guarantees of Children in the Context of Migration and/or in *Need of International Protection*<sup>41</sup> in response to a request made in 2011 by the four MERCOSUR States at that time: Argentina, Brazil, Paraguay and Uruguay. The Advisory Opinion is a key declaration that establishes minimum obligations for origin, transit and destination States to guarantee the protection of migrant children’s rights. Among other things, the advisory opinion notes:

“(...) the Court finds that the deprivation of liberty of children based exclusively on migratory reasons exceeds the requirement of necessity because this measure is not absolutely essential in order to ensure their appearance at the immigration proceedings or to guarantee the implementation of a deportation order. Adding to this, the Court finds that the deprivation of liberty of a child in this context can never be understood as a measure that responds to the child’s best interest. Thus, the Court considers that measures exist that are less severe and that could be appropriate to achieve such objective and, at the same time, satisfy the child’s best interest. In sum, the Court finds that the deprivation of liberty of a child migrant in an irregular situation, ordered on this basis alone, is arbitrary and, consequently, contrary to both the Convention and the American Declaration.”<sup>42</sup>

#### **The child’s best interests take precedence over administrative considerations**

It is also important to note that the best interests of the child take precedence over the administrative considerations of the State. As articulated in the case of *Popov v. France* by the European Court of Human Rights:

“The child’s extreme vulnerability is the decisive factor and [the child’s best interest] takes precedence over considerations relating to [migration] status.”<sup>43</sup>

For this reason, States have been urged to “make clear in their legislation, policies and practices that the principle of the best interests of the child takes priority over migration policy

and other administrative considerations.” For example, OHCHR’s Recommended Principles and Guidelines on Human Rights at International Borders, calls upon States to “ensure that children in the context of migration are treated first and foremost as children and ensure that the principle of the child’s best interest takes precedence over migration management objectives or other administrative considerations.”<sup>44</sup>

### **The child’s best interests not to be detained extend to the entire family**

Furthermore, the CRC protects the child’s right to family and makes clear that children should never be separated from their parents or guardians unless it is considered in the child’s best interests to do so.<sup>45</sup> Specifically, the CRC Committee has found that children must remain with their family unless there are decisive reasons, based on the child’s best interest, for legal separation. Article 9 of the Convention on the Rights of the Child provides:

“States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child’s place of residence.”<sup>46</sup>

It should also be recalled that the child’s right to family extends beyond the mere biological family or any single or traditional model for a family. In this regard, the CRC Committee has stated that “[t]he term ‘family’ must be interpreted in a broad sense to include biological, adoptive or foster parents or, where applicable, the members of the extended family or community as provided for by local custom.”<sup>47</sup> The provisions of Article 9 concerning the separation of children from their parents also extends “to any person holding custody rights, legal or customary primary caregivers, foster parents and persons with whom the child has a strong personal relationship.”<sup>48</sup>

For this reason, when a child’s parent or guardian is at risk of immigration detention, the child’s right to liberty and family life extend to the entire family. As both the Inter-American Court of Human Rights and the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment have asserted:

“when the child’s best interests require keeping the family together, the imperative requirement not to deprive the child of liberty extends to the child’s parents, and requires the authorities to choose alternative measures to detention for the entire family.”

### **States must prioritize rights-based, child-friendly alternatives**

Taken together, the above principles have led the CRC Committee and a number of other relevant UN and regional human rights experts to call for States to “expeditiously and completely” cease the immigration detention of children and, by extension, the family unit. Instead, States must prioritize alternatives to detention that promote the care and well-being of the child. As articulated by the CRC Committee:

“To the greatest extent possible, and always using the least restrictive means necessary, States should adopt alternatives to detention that fulfil the best interests of the child, along with their rights to liberty and family life through legislation, policy and practices that allow children to remain with family members and/or guardians... and be accommodated as a family in non-custodial, community-based contexts while their immigration status is being resolved.”<sup>49</sup>

This need to prioritize the implementation of alternatives was also explored in-depth by the IACtHR in their Advisory Opinion 21 of 2014 on the *Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection*.<sup>50</sup>

The International Detention Coalition (IDC), a leading global expert on immigration detention and alternatives to detention, has also undertaken a global program of research to identify and describe various rights-based ATD around the world. This program of research is—to date—the most in-depth study on alternatives that exists, and is described in detail in the report, *There Are Alternatives*.<sup>51</sup> The report also outlines a model framework for governments to explore, develop and implement community-based alternatives in line with their existing human rights obligations. This model framework, the Community Assessment and Placement (CAP) model represents a global best practice for States seeking to “expeditiously and completely” cease the immigration detention of children.<sup>52</sup>

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States should adopt alternatives to detention (ATD) that fulfill the best interests of the child and allow children to remain with their family members and/or guardians in non-custodial, community-based contexts while their immigration status is being resolved.

## Finding solutions: implementing alternatives and seeking an end to child immigration detention

The good news is that there are alternatives. More affordable, effective and humane approaches to migration governance exist that allow States to achieve policy goals without harming the health and well-being of children or violating child rights. The phrase ‘alternatives to immigration detention’ is not an established legal term nor a prescriptive concept, but a fundamentally different way of approaching the governance of migration which focuses on community engagement and support from a human rights-based perspective.<sup>53</sup> Building trust, respecting and valuing the dignity of the child, and providing a fair, transparent process are fundamental to prevent unnecessary immigration detention, particularly when dealing with children and families.

### Positive State practices

A number of States have already begun implementing effective alternatives for children and families, proving that alternatives can help States to provide appropriate accommodation and care to child migrants without resorting to unnecessary immigration detention. There has been a clear shift toward detention reform and decreasing the use of immigration detention in several States over the past five years including several States that have established legislation prohibiting the immigration detention of children or have pledged to end child immigration detention as a matter of priority, including: Argentina,<sup>54</sup> Austria,<sup>55</sup> Costa Rica,<sup>56</sup> Hungary,<sup>57</sup> Italy,<sup>58</sup> Ireland,<sup>59</sup> Japan,<sup>60</sup> Latvia,<sup>61</sup> Mexico,<sup>62</sup> Portugal,<sup>63</sup> Panama,<sup>64</sup> Spain,<sup>65</sup> Taiwan,<sup>66</sup> Venezuela, the United Kingdom, Finland, Poland, France<sup>67</sup> and Malta.<sup>68</sup> Additionally, every EU member State except Malta had passed national legislation promoting alternatives to detention prior to the end of 2011, and countries such as Tanzania were exploring alternatives as well.<sup>69</sup>

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More humane and effective approaches to migration governance exist that allow States to achieve their policy goals without harming the health and well-being of children or violating child rights.



Syrian children at a shelter in Northern Jordan. Photo: DFID – UK Department for International Development



Photo: © Tdh/Ollivier Girard

### Adoption of the UN Guidelines for the Alternative Care of Children

The UN Guidelines for the Alternative Care of Children were formally endorsed by consensus by the United Nations General Assembly in 2009, signaling that no country in the world had objections to their content. The UN Guidelines help to embed the UN Convention of the Rights of the Child in alternative care provision for children, such as fostering, residential child care and kinship care.<sup>70</sup> Articles 9 and 10 of the Alternative Care Guidelines specifically stipulate that appropriate care and protection must be sought for vulnerable children including unaccompanied and separated children, internally displaced and refugee children, children of migrant workers and children of asylum-seekers. These widely adopted guidelines provide a framework for child-sensitive care in the community. A wealth of informed recommendations regarding guardianship and criteria for decisions of alternative care placements is available in the “Moving forward” tool which compliments the Guidelines.

### Global Campaign to End Child Immigration Detention

The Global Campaign to End Immigration Detention of Children was launched during the 19<sup>th</sup> Session of the UN Human Rights Council in 2012, to draw attention to the many detrimental effects that immigration detention has on children, and to encourage states to cease the immigration detention of children consistent with their CRC obligations.<sup>71</sup>

The Global Campaign urges states to adopt alternatives to detention that fulfill the best interests of the child and allow children to remain with their family members and/or guardians in non-custodial, community-based contexts while their immigration status is being resolved.

The Campaign coordinates international, regional and national activities with the goal of raising awareness of the issue of child immigration detention and encouraging states to “expeditiously and completely cease the immigration detention of children” consistent with the CRC Committee’s guidance.



## Endnotes

- 1 David Corlett with Grant Mitchell, Jeroen Van Hove, Lucy Bowring, and Katherine Wright, *Captured Childhood*, International Detention Coalition, 2012.
- 2 UN Committee on the Rights of the Child, General Comment No. 6: Treatment of Unaccompanied and Separated Children Outside Their Country of Origin, CRC/GC/2005/6, 1 September 2005.
- 3 UNICEF, *Administrative detention of children: a global report*, February 2011.
- 4 UNDESA, *The number of international migrants worldwide reaches 232 million*, September 2013, available at: <http://esa.un.org/unmigration/wallchart2013.htm>.
- 5 UNHCR, *Global Trends Report 2015*, available at: <http://www.unhcr.org/news/latest/2016/6/5763b65a4/global-forced-displacement-hits-record-high.htm>
- 6 United Nations Department of Economic and Social Affairs, *International migrant stock by age and sex, Trends in International Migrant Stock: The 2013 Revision*, 2013.
- 7 Ibid.
- 8 Daniela Reale, *Away From Home: Protecting and Supporting Children on the Move*, Save the Children UK, 2008.
- 9 Shahin Yaqub, *Child migrants with and without parents: Census-based estimates of scale and characteristics in Argentina, Chile and South Africa*, Discussion Paper No. 2009-02, UNICEF Innocenti Research Centre, 2009.
- 10 Alice Farmer, conversation, June 23, 2014.
- 11 Michael Flynn, *How and Why Immigration Detention Crossed the Globe*, Global Detention Project Working Paper No. 8, Global Detention Project, April 2014.
- 12 International Detention Coalition (2009), *Position Paper: Children in Immigration Detention*.
- 13 Sampson, R., Chew, V., Mitchell, G., and Bowring, L. *There Are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention (Revised)*, (Melbourne: International Detention Coal
- 14 UNICEF, *Administrative detention of children: a global report*, 20, February 2011.
- 15 UN High Commissioner for Refugees (UNHCR), *Association for the Prevention of Torture (APT) and the International Detention Coalition (IDC), Monitoring Immigration Detention: Practical Manual*, 2014, p. 21.
- 16 Children Not Counted Just Don't Count, Refugee Council USA press release, available at: <http://www.rcusa.org/children-not-counted-just-don-t-count>.
- 17 "Learn More," Global Campaign to End Child Immigration Detention, available at: <http://endchilddetention.org/learn-more>.
- 18 UNICEF, *Administrative detention of children: a global report*, February 2011.
- 19 "Learn More," Global Campaign to End Child Immigration Detention, available at: <http://endchilddetention.org/learn-more>.
- 20 "By Country," Global Campaign to End Child Immigration Detention, available at: <http://endchilddetention.org/by-country/>.
- 21 UNICEF, *Administrative detention of children: a global report*, February 2011.
- 22 See, <http://www.childrendeprivedofliberty.info>.
- 23 David Corlett with Grant Mitchell, Jeroen Van Hove, Lucy Bowring, and Katherine Wright, *Captured Childhood*, International Detention Coalition, 2012, p. 48.
- 24 No Child in Detention Coalition, "Dad, have we done something wrong?", 2014, p. 5.
- 25 M Dudley and B Blick, Appendix E to *The heart of the nation's existence - a review of reports on the treatment of children in Australian detention centres*, *ChildOut* (2002); S Mares and J Jreidini, *Psychiatric assessment of children and families in immigration detention - clinical, administrative and ethical issues*, *Australian and New Zealand Journal of Public Health* 520 (2004); Human Rights and Equal Opportunity Commission, *A Last Resort? National Enquiry into Children in Detention* HREOC, (April 2004); Z Steel, S Momartin, C Bateman, A Hafshejani, D M Silove, N Everson, K Roy, M Dudley, L Newman, B Blick, S; Z Steel, *The politics of exclusion and denial: the mental health costs of Australia's refugee policy*, p.10 (May 2003).
- 26 UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, Report on Children Deprived of Liberty, 1 February 2013, A/HRC/22/53, para. 60.
- 27 UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, Report on Children Deprived of Liberty, 1 February 2013, A/HRC/22/53, para. 61; see also Alice Farmer, *The impact of immigration detention on children*, *Forced Migration Review*, September 2013.
- 28 See JRS Europe, *Becoming Vulnerable in Detention*: Civil Society Report on the Detention of Vulnerable Asylum Seekers and Irregular Migrants in the European Union (The DEVAS Project), June 2010; see also No Child in Detention Coalition, "Dad, have we done something wrong?", 2014.
- 29 UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, Report on Children Deprived of Liberty, 1 February 2013, A/HRC/22/53, para 62 citing *Popov v. France*, judgement of 19 January 2012; *Rahimi v. Greece*, judgement of 5 April 2011; *Mubilanzila Mayeka and Kaniki Mitunga v Belgium*, judgement of 12 October 2006.
- 30 David Corlett with Grant Mitchell, Jeroen Van Hove, Lucy Bowring, and Katherine Wright, *Captured Childhood*, International Detention Coalition, 2012.
- 31 Ibid.
- 32 UN Committee on the Rights of the Child (CRC), Report of the 2012 Day of General Discussion: The Rights of All Children in the Context of International Migration, 78, November 2012.
- 33 UN Committee on the Rights of the Child (CRC), Report of the 2012 Day of General Discussion: The Rights of All Children in the Context of International Migration, 79, November 2012.
- 34 CRC, article 2.
- 35 UN Committee on the Rights of the Child, CRC General Comment No. 6: Treatment of Unaccompanied and Separated Children Outside Their Country of Origin, CRC/GC/2005/6, 1 September 2005.
- 36 CRC, article 3 (1).
- 37 UN Committee on the Rights of the Child, CRC General Comment No. 6: Treatment of Unaccompanied and Separated Children Outside Their Country of Origin, CRC/GC/2005/6, 1 September 2005, para. 20.
- 38 UN Committee on the Rights of the Child, Report of the 2012 Day of General Discussion: The Rights of All Children in the Context of International Migration, 78-79, November 2012.
- 39 See, Inter-Agency Working Group (IAWG) to End Child Immigration Detention, *Summary of standards relating to child immigration detention*, June 2016.
- 40 UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, Report on Children Deprived of Liberty, 1 February 2013, A/HRC/22/53, para. 80.
- 41 Inter-American Court of 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'.
- 42 Inter-American Court of 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', para. 154.
- 43 *Popov c. France*, Requêtes nos 39472/07 et 39474/07, Council of Europe: European Court of Human Rights, 19 January 2012, para. 91.
- 44 OHCHR, *Recommended Principles and Practical Guidelines on Human Rights at International Borders*, 2014, Principle A6.
- 45 CRC, article 3(1).
- 46 CRC, article 9(1).
- 47 UN Committee on the Rights of the Child, General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (Article 3, paragraph 1), para. 59.
- 48 UN Committee on the Rights of the Child, General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (Article 3, paragraph 1), para. 60.
- 49 UN Committee on the Rights of the Child, *Report of the 2012 Day of General Discussion: The Rights of All Children in the Context of International Migration*, 79.
- 50 Inter-American Court of 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'.
- 51 Sampson, R., Chew, V., Mitchell, G., and Bowring, L. *There Are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention (Revised)*, (Melbourne: International Detention Coalition, 2015).
- 52 See, <http://idcoalition.org/CAP/>.
- 53 Alternatives to detention may be defined as: *Any law, policy or practice by which persons are not detained for reasons relating to their migration status*. Sampson, R., Chew, V., Mitchell, G., and Bowring, L. *There Are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention (Revised)*, (Melbourne: International Detention Coalition, 2015).
- 54 UN Committee on the Rights of the Child, 2012 Day of General Discussion Background Paper, Annex II: Examples of positive developments for the rights of children in the context of international migration, [http://www.ohchr.org/Documents/HR\\_Bodies/CRC/Discussions/2012/2012DGDBackgroundPaperAnnexII.pdf](http://www.ohchr.org/Documents/HR_Bodies/CRC/Discussions/2012/2012DGDBackgroundPaperAnnexII.pdf).
- 55 International Detention Coalition (Forthcoming), *Briefing Paper: At no time: protecting children from immigration detention*.
- 56 Ibid.
- 57 Hungary: Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals, Section 56, July 1, 2007, accessed June 10, 2014, <http://www.refworld.org/docid/4979cae12.html>.
- 58 International Detention Coalition (Forthcoming), *Briefing Paper: At no time: protecting children from immigration detention*.
- 59 European Commission Directorate-General Home, *Comparative Study on Practices in the Field of Return of Minors*.
- 60 Robyn Sampson and Grant Mitchell, *Global Trends in Immigration Detention and Alternatives to Detention: Practical, Political and Symbolic Rationales*, *Journal on Migration and Human Security* 1.3 (2013): 97-121.
- 61 International Detention Coalition (Forthcoming), *Briefing Paper: At no time: protecting children from immigration detention*.
- 62 Ibid.
- 63 UN Committee on the Rights of the Child, Concluding observations on the third and fourth periodic reports of Portugal, CRC/C/PRT/CO/3-4, January 31, 2014.
- 64 UNICEF, *Examples of Good Practices in the Implementation of the International Framework for the Protection of the Rights of the Child in the Context of Migration*, May 26, 2010.
- 65 UN Committee on the Rights of the Child, 2012 Day of General Discussion Background Paper, Annex II: Examples of positive developments for the rights of children in the context of international migration, August 2012.
- 66 International Detention Coalition (Forthcoming), *Briefing Paper: At no time: protecting children from immigration detention*.
- 67 Robyn Sampson and Grant Mitchell, *Global Trends in Immigration Detention and Alternatives to Detention: Practical, Political and Symbolic Rationales*, *Journal on Migration and Human Security* 1.3 (2013): 97-121.
- 68 Human Rights Watch, *Dispatches: Malta Commits to Ending Detention of Migrant Children*, April 1, 2014, available at: <http://reliefweb.int/report/malta/dispatches-malta-commits-ending-detention-migrant-children>.
- 69 Robyn Sampson and Grant Mitchell, *Global Trends in Immigration Detention and Alternatives to Detention: Practical, Political and Symbolic Rationales*, *Journal on Migration and Human Security* 1.3 (2013): 97-121.
- 70 UN General Assembly, *Guidelines for the Alternative Care of Children: resolution / adopted by the General Assembly*, 24 February 2010, A/RES/64/142, articles 9 & 10.
- 71 See, [www.endchilddetention.org](http://www.endchilddetention.org).



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