

Migrant Children in Detention in Europe: Psychosocial Issues. Problems and Solutions

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Am I a Child?

- A child is ‘every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier’ (CRC art. 1).

But...

- Not everyone has their birth registered or a document to prove it

Invisible Children

- 41 % of all births each year in the developing world (except China) go unregistered, denying the rights of over 50 million children to an official identity, name, and nationality (*UNICEF, Innocenti Research Center*)
- Within the context of the global economic financial crisis, many countries are enforcing migration laws; regular migrant children at risk of becoming irregular and they “disappear” (the administrative detention camps).
- If children are not counted, they are forgotten in the migration’s policy discussion

Age-disputed migrant children...

- Age assessment procedures are not standardized across the European Union. Child may be detained if he claims to be under 18 while the State considers him an adult.
- “In the event of remaining uncertainty, (in the assessment) should accord the individual the benefit of the doubt and she or he should be treated as child”.
- “Authorities should not only take into account the physical appearance of the individual, but also his or her psychological maturity”
- *Committee on the Rights of the Child, General Comment No. 6 (2005), U.N. Doc. CRC/GC/2005/6, para.7; United Nations High Commissioner for Refugees, Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum, February 1997, para. 5.11*

Irregular migrant children

- Problematic definition; a mobile and open category. Multiple pathways into irregularity for adults and children (*PICUM, Undocumented Children in Europe: Invisible Victims of Immigration Restrictions, 2008*)
- Who live without a residence permit;
- Who have overstayed visas or were refused immigration applications as a family;
- Who have entered irregularly either alone or as a family;
- Who have a regular status themselves but live with undocumented parent(s) or caregiver(s). In this case they still live in an irregular migration situation and are still impacted by policies on irregular migration and practical barriers to rights that affect their accompanying parent(s) or caregiver(s).
- (*Children First and Foremost, PICUM, 2013*)

Administrative Detention: an increasing solution

- States worldwide are increasingly using various forms of detention as a one-size-fits-all approach to address irregular migration
- States give little consideration to specific vulnerabilities such as age, gender, medical conditions and protection needs of refugees, asylum seekers and irregular migrants (Crimmigration)
- While European states provide a minimum age at which a child could be detained for a criminal offence such rules do not exist in migration cases. The consequence is that even families with very small children have been placed in detention centers.
- *Juliet Strumpf (2006) *The crimmigration crisis: immigrants, crime, and sovereign power* , www.papers.ssrn.com/sol3/papers.cfm?abstract_id=935547

Administrative detention: the embarrassing silence at international level

- There is no international instrument that specifically covers the use of administrative detention, whether of adults or of children.
- United Nations treaties, standards and norms as well as regional human rights instruments address, in general terms, the issue of deprivation of liberty in all its forms.
- Such instruments place limitations on the use of detention and, in particular, prohibit the use of illegal or arbitrary detention and provide minimum rights to a person when is deprived of his or her liberty
- (Article 3 of the UDHR, Article 9 of the ICCPR, Article 37 of the CRC, Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms)

The EU regulation: Directive 2008/115 (the “Return Directive”)

- Directive 2008/115 establishes common standards and procedures in Member States for returning illegally staying Third-Country nationals (Dir 2005/115 the “Return Directive”)
- Includes a period for voluntary return between 7 and 30 days
- While the return procedure is ongoing, the Third Country national **may also be detained in specialized detention facilities**
- limit of detention : 6 months, exceptionally to be extended to a maximum of 18 months. This period seems to exceed the reasonable amount of time necessary to enforce a removal order

The statement...

The Directive reads that:

- “Third-country nationals in detention should be treated in a humane and dignified manner with respect for their fundamental rights and in compliance with international and national law”
- “Unaccompanied minors and family in detention **only as last resort**” (Article 37 of the CRC limits the use of administrative detention as a measure of last resort and for the shortest appropriate period of time)
- Art. 17(3) of “Return Directive”: provides for recreational activities for minors in detention, but only **conditional access to education**

...and the reality

- 280 detention centers in Europe
- Extremely difficult to obtain data; very few States are willing to publicize and share them; difficult access for NGOs and journalists
- Approximately 600,000 men, women and children are detained in Europe every year for migration control purposes, mostly with no Court decision, although they committed no crime (awaiting removal, overstayers, undocumented, asylum seekers)

Forms of administrative detention

- Detention facilities different from State to State
- Operate like medium- to high-security prisons, detainees are not allowed to leave and are guarded by staff all the time.
- Lost in transit: detention centers also in airport transit zones or other points of entry to the State.

Conditions of detention

- Most are kept in overcrowded, unhygienic conditions, sometimes with convicted criminals. Substandard detention conditions. Risk of retraumatization of migrants. (*Medical Justice (2012) Second Torture: the immigration detention of torture survivors*)
- Legal counsel sporadic or non-existent
- Administrative detainees often do not receive information in a language that they can understand on the reasons for their detention and their rights while detained
- Article 9(3) of the ICCPR provides that anyone arrested or detained on a criminal charge shall be brought promptly before a judge and shall be entitled to trial within a reasonable time or to release. However, this does not apply to those who are held in administrative detention for immigration purposes.

Length of detention

- Migrants often remain in administrative detention for long periods of time, particularly if they are held awaiting deportation or removal
- Time taken to hear asylum claims and appeals against deportation, the need for consulates to process travel documents and for the State to make travel arrangements
- Due to the situation in their countries of origin, they cannot be deported (sometimes known as non-removable)
- The excessive length of detention of migrants is a disproportionate punishment

Conditions of detention in some European Union countries...

- **Italy:** Detention at the CDAs (“*Centri di accoglienza*” “*Welcome Centers*”, pre-admittance detention; substandard conditions in Lampedusa; capacity, 300 people: more than 800 migrants reached the island 30 March 2013
- 16 “Identification and expulsion centers”, not clearly regulated; little information, very poor living conditions, lack of bed sheets, doors in bathrooms, lack of recreational area; inadequate sanitary facilities and health care assistance. (*Global Detention Project*, www.globaldetentionproject)
- **Cyprus:** Systematic detention for irregular migrants and the frequent detention of asylum-seekers in contradiction with EU law. 7 detention facilities in police stations (*Global Detention Project*).
- UNHCR, over 25,500 people had their asylum applications rejected in Cyprus between 2002 and 2012

...

- **Greece:** in most detention facilities the conditions fall far below international human rights standards, including in terms of severe overcrowding. Systematically condemned by the European Court of Human Rights for violating human rights.
- **Romania** (Arad camp): horrible detention conditions (violence, no access to medical care, no heating or access to water on some days (www.migreurop.org)

Children's detention

- Detention of unaccompanied children (separated from parents or relatives and not being cared for by an adult) is prohibited in many European countries (Italy, Belgium, Cyprus, Denmark, France, Hungary, Ireland, Lithuania, Portugal, Romania, Slovakia, Spain, Sweden, UK): they must be accommodated in dedicated facilities for minors.

BUT

- The lack of child-specific facilities or shortcomings in the identification process may result in the accommodation of a child in a centre for adults or even placement in detention
- Children may be detained when there is a dispute over their real age, that is, when the child claims to be under the age of 18, while the State maintains that the individual is an adult

Administrative detention: a partial picture

- Children are classified according to their migration status prior to being seen as children.
- Little information is available on the numbers of children administratively detained for immigration reasons. The lack of information available is due largely to a general failure on the part of States to collect data on the number of children detained, the length of their detention and the reasons for their detention.
- Where official statistics are available, they are often out-of-date, not comprehensive, not disaggregated or may have been collected using different methodologies.
- Restricted NGO access to places of detention

Children in detention

Some data

- **France:** In Overseas Department of France (Reunion, Guyana, Mayotte): negative situation. In Mayotte (Indian Ocean) in 2011 over 4.500 children placed in immigration detention
- **Greece:** 100 unaccompanied minors are detained at any given time; Detention centre for unaccompanied male children (Amygdaleza) has sub-standard conditions (2012). Many refugee children released on the street (2013).
- *End Child Detention Campaign, teamed up with Terres des Hommes and PICUM (Platform for International Cooperation on Undocumented Migrants*
- *(Amnesty international, www.amnesty.org)*

Children in detention

Some data

- **Poland:** six guarded immigration detention centers; a total of 516 minors were reportedly detained in 2012, 10 of whom unaccompanied. No attention to children's nutritional needs, no recreational areas, inadequate medical assistance. The children placed in the guarded centers do not go to school. They attend limited-curriculum courses held on the premises.
- (*Amnesty International Poland et al., 2012*)

Children in detention

Some data

- **Malta** detains an average of 1,500 people per year, including children, who arrive in the country by boat without permission, or “irregularly”. Children live and sleep with adults, without any special accommodation for their young age and without access to education. Children are exposed to periodic violence in detention facilities

(Human Right Watch, 18 July 2012)

- **Italy:** almost 2,600 unaccompanied minors landed in Lampedusa between January and September 2011; lack of bathrooms, women, little children sleep two in a bed or on the floor, newborns on pillows (*Save the Children, 2012, PICUM 2012; European Commission, 2011*).

Children in detention

Some data

- **Greece:** In May 2012, opened its first purpose built detention camp for undocumented migrants outside Athens. Among detainees currently detained a large number are unaccompanied minors and children

(End Child Detention Campaign, teamed up with Terres des Hommes and PICUM (Platform for International Cooperation on Undocumented Migrants))

- The Amygdaleza immigration detention centre for unaccompanied male children: children in sub-standard conditions (2012). Many refugee children released on the street due to lack of space (2013).
(*Amnesty International, European Institutions Office, 15 February 2013*)

Lost in transit

- Detention centers may also be found in airport transit zones or other points of entry to the State.
- **France** has 85 *zones d'attente* in various ports of entry intended for very short-term detention (legal limit 48 hours); this limit may be extended with court orders to a total of 20 days.
- From January 2008 to July 2009 around 1,500 migrant children arrived without a care-giver or parent at Roissy Charles de Gaulle airport in Paris and were denied entry. Degrading treatment, detention with adults, little protection from traffickers, barriers to apply for asylum.
- 2009: French minister of immigration has created a working group to examine the issue of unaccompanied children, including those held at the airport transit zone
- (*Human Watch Rights Report, 2009*)

Lost in transit

- **UK** Heathrow airport. In 2011 up to 3.000 people, including children were held by UK Border Agency (UKBA) for more than 12 hours
- Children in degrading conditions; rooms without natural light, no access to open air, no sleeping arrangements, kept with unrelated adults
- *(Independent Monitoring Board (IMB), 2012)*

Conditions for administratively detained migrant children

- Children are deprived of a range of rights to which they are entitled, including the right to education, physical and mental health, privacy, information, and rest and leisure. They can also find themselves detained with adults and subject to an adult regime and treatment.
- Article 37(d) of the CRC gives children the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.
- Children may not know of their right to challenge, be afraid to challenge authority fearing that it might damage their case, or simply have no access to legal representation or assistance to mount such a challenge

Impact of Detention on Children

- Highly traumatizing for children's particular vulnerabilities; perception that life is unsafe, uncertain, unstable, unpredictable (PTSD)

(Facing Our Future Children in the Aftermath of Immigration Enforcement, The Urban Institute, 2010)

- Detention aggravates previous trauma experienced in their home country or during migration

Impact of Detention on Children

- Children are less able to understand why have been detained , have limited opportunities to play, are denied adequate medical care, why their parents treated without dignity
- Disruption of family unity and parental role have a negative impact in their psychological development
(Dudley M., Steel Z., Mares S. Newman L., *Children and young people in immigration detention, University of New South Wales, Australia, 2012*)
- Oldest children take on the role of parenting: emotional burden disproportionate for their age

Impact of Detention on Children

- Clear link between length of time children detention and psychosocial and developmental issues
- Negative impact of even short-term detention. A person becomes vulnerable from the first day of detention

Detention of children: consequences

- developmental and physical problems (lack of systematic research)
- depression, anxiety, sleep problems (suicidal behavior)
- eating difficulties, persistent crying, aggression and rebellion (they try to escape)
- negative impacts of detention may be lifelong

Migrant children have right to have rights

- Non-discrimination (article 2 (1) CRC)
- Best Interests of the Child (article 3 (1) CRC)
- Right to life, survival and development (article 6 CRC)
- Right to express their views, the right to be heard (article 12 CRC)
- Right to appropriate protection and humanitarian assistance in the migration context (art.22 CRC)
- Right to challenge the legality of deprivation of liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action (art.37 (d) CRC)

- If not explicitly stated otherwise in the Convention, these rights must be available to all children – including asylum-seeking, migrant and refugee children also children left behind – irrespectively of their nationality, immigration status or statelessness

(CRC's General Comment No.6 on the 'Treatment of Unaccompanied and Separated Children Outside their Country of Origin')

ECHR and children in detention

Vox clamantis in deserto?

(the voice of one crying in the wilderness)

- **ECHR** in some law cases found **violation of prohibition of inhuman or degrading treatment and right to liberty and security in detention**
- *Ahmade v. Greece* (case 50520/09, judgment 9/25/2012) unlawfully detention an Afghan asylum seeker in degrading condition
- *Kanagaratnam v. Belgium* (no. 15297/09, 12.13.2011) detention of a mother and her three children – asylum seekers – for almost four months in a closed centre for illegal aliens pending their removal
- *Popov v. France* (nos. 39472/07 and 39474/07, 1.19.2012, ban of detention of migrant children. Administrative detention of a family (with two children aged five months and three years) for two weeks at a holding centre, pending their deportation to Kazakhstan, after their flight was cancelled for reasons beyond their control

ECHR: *vox clamantis in deserto?*

- Mubilanzila Mayeka and Kaniki Mitunga vs. **Belgium** (ECHR no. 13178/03, 12.10.2006). Congolese national, five years old arrived at Brussels airport to join her mother a refugee in Canada. Because without documents, placed in a detention center for adults without proper assistance, for 4 months. Sent back to Democratic Republic of Congo where no member of the family was waiting for her.
- ECHR found a violation of Articles 3 (prohibition of inhuman or degrading treatment) and 8 (right to respect for private life and family)

ECHR: *vox clamantis in deserto?*

- Hirsi Jamaa and others v. **Italy** (27765/09), 23 February 2012. ECHR found **violation of principle of non refoulement**, which prohibits returning migrants to countries where they may face persecution or inhuman or degrading treatment. Somalian and Eritrean migrants travelling from Libya who were intercepted at sea by the Italian authorities and sent back to Libya.
- Italy (2013) is **summarily returning unaccompanied migrant children** and adult asylum seekers to Greece, where they face a dysfunctional asylum system and abusive detention conditions

Human Rights Watch Reports, January 22, 2013

Protect the best interest of the child

Council of Europe:

- *Resolution 1701 (2010)* “vulnerable people should not as a rule be placed in detention and specifically unaccompanied minors should never be detained”;
- *Resolution 1810 (2011)* “unaccompanied children must be treated first as children...the child’s best interest must be a primary consideration...regardless of the child’s migration or residence status”

European Union Commission urged Member States to seek alternatives to detention as a “win-win scenario” for them as well as for migrants.

- **Alternatives cost less than detention** A cost saving of 93% was noted in Canada and 69% in Australia on alternatives to detention
- *Global campaign to end immigration detention of children* endorsed by 80 organizations, www.endchilddetention.org

Alternatives to detention: Belgium

- **Belgium:** after many criticisms, undocumented families, as well as families who submit an asylum application at the border, accommodated in “Family Identification and Return Units” (15 unities in 4 towns)
- 249 families – among them 452 children – have been accommodated in the family units from October 2008 to November 2011. Original aim: to facilitate a family’s return to their country of origin. 60 families returned to their country of origin or to a third country.
- Children of appropriate ages are permitted to attend local schools. Guardianship arrangements: for unaccompanied or separated irregular migrant children
- The most restrictive rule is that units must always be occupied by at least one member of the family, and the entire family has to stay in the unit overnight

Alternatives to detention: Germany

- **Germany:** children above 16 are considered to hold legal capacity to act. This means that some 16 and 17 year old children may be placed in accommodation with adults and do not receive the support of a guardian to help them
- Brandenburg State, Alreju project, provides in-house care to children and young people with a migration background, including unaccompanied migrant minors; nightly curfew, set at 10:00 pm during the week
- Many unaccompanied minors go to school in the local community

Alternative to detention: United Kingdom

- **United Kingdom:** in late 2010, the government announced that it was ending the controversial practice of detaining minors.
- Exploring alternative to detention. Observers have criticized some of these “alternatives” as amounting to detention
- Families with an irregular status have a separate treatment, (*Independent Family Returns Panel* including open accommodation, pre-departure accommodation, several pilot projects)
- The UK has also recently adopted processes to consider the best interests of a child when considering the return of an unaccompanied child.

(*Administrative Detention of Children: A Global Report*, UNICEF, Child Protection Section, New York, 2011)

Alternative to Detention: The Netherlands

- The Dutch Minister for Immigration and Asylum announced on the 10th of March 2011 that unaccompanied migrant children will no longer be placed in immigration detention. The interest of the child will be valued higher than a possible flight risk.
- Unaccompanied minors will instead receive temporary housing through the central asylum authority, Central Organ for the Shelter Reception of Asylum Seekers (COA) under guardianship of the institute called NIDOS

Alternative to detention: Sweden

- **Sweden:** no child under 18 may be held in detention for more than 3 days, in extreme circumstances 6 days.
- After this period child released with family at a refugee center.
- Where a member of the family is believed to pose a potential threat to national security, or where a person 's identity cannot be verified, the family is notified that the father is to be held in detention, while the mother and children are released into group homes and allowed to visit him during the day.
- *(International Detention Coalition, Children in Immigration Detention Position Paper ‘, May 2009)*

Alternatives to detention

- increase independent departure and voluntary return rates for refused cases
- improve integration outcomes and respect human rights obligations
- preserve family unity protecting the best interest of the child
- reduce wrongful, unnecessary and long-term detention

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