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The alternatives to immigration detention of children

Report¹

Committee on Migration, Refugees and Displaced Persons

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Summary

The present report is based on the principle that children are first and foremost children and should never be detained for immigration purposes. The immigration detention of children has a detrimental impact on their mental and physical health. The detention of children violates their rights and deprives them of access to general education and proper health care.

In addition to arguing against children's detention from a human rights perspective, this report offers an insight into the cost benefits of alternatives to detention and outlines some of these alternative models.

The Council of Europe member States who have not yet responded to this issue are called upon to put an end to the detention of migrant children and to promote and facilitate the application of alternatives to detention.

1. Reference to committee: [Doc. 13050](#), Reference 3923 of 21 January 2013.

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A. Draft resolution²

1. The Parliamentary Assembly is very concerned that the immigration detention of children is a growing phenomenon in the Council of Europe member States. Despite improvements in legislation and practice in some European countries, tens of thousands of migrant children still end up in detention every year. The practice is contrary to the best interests of the child and a clear and unequivocal child rights violation.
2. Migrant children are frequently detained in member States simply because they do not have the right immigration documents. They have committed no crime. Yet they may be subjected to criminal penalties, prison-like conditions, be separated from the support and protection of their families, and be denied a number of fundamental rights, such as access to health care, education and play.
3. The Assembly recalls its position expressed in [Resolution 1810 \(2011\)](#) “Unaccompanied children in Europe: issues of arrival, stay and return”, stating that unaccompanied children should never be detained. The detention of children on the basis of their or their parent’s immigration status is contrary to the best interests of the child and constitutes a child rights violation as defined in the United Nations Convention on the Rights of the Child.
4. The Assembly is particularly concerned that detention, even for very short periods of time and in relatively humane conditions, has severe negative short- and long-term effects on children’s physical and mental health. Children in immigration detention are particularly vulnerable to the negative effects of detention and can be severely traumatised. Also, there is a high risk of detained children being subjected to different forms of violence.
5. In addition to deprivation of liberty, children in immigration detention are frequently deprived of other fundamental rights, such as the right to family unity, the right of access to education and the right to adequate health care.
6. The Assembly welcomes the promotion by some European countries of alternative solutions to the detention of migrant children. Such alternatives to detention, when implemented properly, are more effective, cheaper, better protect the rights and dignity of children, and promote better health and well-being outcomes for migrant children.
7. The Assembly notes with satisfaction that a number of member States, including Belgium, Denmark, France, Hungary, Ireland, Italy, the Netherlands and the United Kingdom, have taken steps towards ending the immigration detention of children. In these States, migrant children are either not detained or there is a provision for the release of migrant children from detention in law, policy or practice.
8. However, although the legislation of most member States provides for the introduction of alternatives to detention, the majority of these countries are not applying them in practice.
9. The Assembly considers that it is urgent to put an end to the detention of migrant children and that this requires concerted efforts from the relevant State authorities. The Assembly therefore calls on the member States to:
 - 9.1. acknowledge that it is never in the best interests of a child to be detained on the basis of their or their parent’s immigration status;
 - 9.2. introduce the prohibition of the detention of children for immigration reasons into this legislation, if it has not yet been done, and ensure its full implementation in practice;
 - 9.3. refrain from placing unaccompanied or separated children in administrative detention;
 - 9.4. ensure that children are treated as children first and foremost, and that persons who claim to be children are treated as such until proven otherwise;
 - 9.5. develop child-friendly age-assessment procedures for migrant children;
 - 9.6. continue their efforts to bring their aliens legislation into conformity with the best international standards, while taking into account the best interests of a child as enshrined in Article 3 of the United Nations Convention on the Rights of the Child and promoting various forms of internationally recognised alternatives to detention;

2. Draft resolution adopted unanimously by the committee on 9 September 2014.

- 9.7. adopt alternatives to detention that fulfil 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;
- 9.8. provide necessary resources in order to develop alternatives to the detention of migrant children;
- 9.9. seek to develop and implement non-custodial, community-based alternatives to detention programmes for children and their families, using the “Child-sensitive Community Assessment and Placement (CCAP) Model”;
- 9.10. raise the awareness of all public officials, including the police and migration prosecutors and judges, on international human rights standards, with a certain focus on the rights of children and alternatives to detention;
- 9.11. share best practices on alternatives to the detention of migrant children across the member States;
- 9.12. encourage collaboration between governments of the member States, the Council of Europe, United Nations organisations, intergovernmental organisations and civil society organisations to end child immigration detention and implement non-custodial, community-based alternatives to detention for children and their families.

B. Draft recommendation³

1. The Parliamentary Assembly refers to its Resolution... (2014) on the alternatives to the immigration detention of children.
2. The Assembly stresses that States which engage in the immigration detention of children contravene the principle of the best interests of the child and commit a child rights violation. They deprive children of their fundamental right to liberty and put them at risk of severe and lifelong physical, mental and developmental harm. They may also violate other fundamental child rights, such as the rights to family, health, play and education. The Assembly considers that in order to stop this inhuman practice, the Council of Europe has an important role to play in promoting alternatives to the immigration detention of children.
3. The Assembly therefore calls on the Committee of Ministers to:
 - 3.1. launch a study to collect qualitative and quantitative data on child immigration detention and the use of non-custodial, community-based alternatives to detention for children and families, and promote the sharing of these practices across Europe;
 - 3.2. set up guidelines for conducting child-friendly age-assessment procedures for migrant children.

3. Draft recommendation adopted unanimously by the committee on 9 September 2014.

C. Explanatory memorandum by Ms Bokuchava, rapporteur

1. Introduction

1. Every day, all around the world, millions of children are detained simply because they do not have the right immigration documents. Immigration detention of children is also a growing phenomenon in Council of Europe member States. The use of immigration detention has been growing over the past twenty years as governments strive to control migrant entry and settlement.

2. Children leave their homeland due to a variety of reasons. Some children leave with their families, but some also flee alone, due to armed conflict in their home country, because their human rights are being violated or simply in search of a better life. Accompanied or unaccompanied, all children travelling without official documents, whether seeking asylum or as refugees or irregular migrants, are at risk of being detained.

3. Despite some improvements in legislation and practice in a number of European countries, hundreds of immigrant children still end up in detention. Accurate detention statistics are difficult to obtain, particularly relating to the detention of children; however, the rising trend is confirmed by United Nations bodies, as well as non-governmental organisations (NGOs), such as the International Detention Coalition (IDC), one of the leading organisations in the field.⁴

4. The United Nations Committee on the Rights of the Child has called on States to “expeditiously and completely cease the detention of children on the basis of their immigration status”⁵ as detention constitutes a violation of the rights of a child. The Committee has also urged States to “adopt alternatives to detention that fulfil the best interests of the child”.⁶ Despite these unequivocal calls, the immigration detention of children continues to be a real and serious concern among Council of Europe member States.

5. In the present report, I argue that children are first and foremost children and should never be detained for immigration purposes. The detention of children is a denial of their fundamental right to liberty. In addition to arguing against children’s detention from a human rights perspective, I offer an insight into the cost benefits of alternatives to detention and outline some of these alternative models to promote and facilitate their use throughout the Council of Europe member States.

1.1. Available statistics

6. As indicated in the submission of PICUM (Platform for International Cooperation on Undocumented Migrants) to the United Nations Committee on the Protection of the Rights of all Migrant Workers and Members of their Families, the data on undocumented migrant children remains particularly limited. For dependent migrant children, this is partly due to the fact that children’s movements are often not recorded separately from those of their parents.⁷ The Population Division of the United Nations Department of Economic and Social Affairs reports that globally, 16% of migrants are under the age of 20.⁸ In Europe, Eurostat figures show that 41 455 of migrants apprehended in Europe in 2011 were children. This figure included 16 250 children below the age of 14 and 25 205 between the ages of 14 and 17.⁹

7. The Parliamentary Assembly has also highlighted the difficulty of obtaining child detention statistics. In 2011, Mr Pedro Agramunt, the rapporteur of the Committee on Migration, Refugees and Population, stated in his report that he was “at a loss to estimate the number of undocumented migrant children in Europe”.¹⁰ However, some national estimates on undocumented children in Europe do exist, showing the large magnitude

4. The IDC is a global network of over 300 civil society organisations and individuals in more than 70 countries that advocate for research and provide direct services to refugees, asylum-seekers and migrants affected by immigration detention to limit unnecessary immigration detention. The IDC also runs a campaign to end children’s detention worldwide, joined by the Office of the United Nations High Commissioner for Refugees (UNHCR), UNICEF and others: <http://endchilddetention.org/>.

5. The Committee on the Rights of the Child, Report of the 2012 day of the general discussion on the rights of all children in the context of international migration, paragraph 78.

6. *Ibid.*, paragraph 79.

7. 22 April 2013.

8. United Nations Department of Economic and Social Affairs, Population Division, International Migration 2009: www.un.org/esa/population/publications/2009Migration_Chart/ittmig_wallchart09.pdf.

9. Eurostat (2011), Enforcement of Immigration Legislation Statistics.

10. “Undocumented migrant children in an irregular situation: a real cause for concern”, Doc. 12718, paragraph 9.

of the phenomenon. The Clandestino project estimated that there were between 44 000 and 144 000 undocumented children born in the United Kingdom out of a total of 417 000-863 000 undocumented migrants. Following the data collated by Clandestino, the COMPAS research project at the University of Oxford put forth an estimate of 120 000 undocumented children in the United Kingdom in 2011, of which over 85 000 were thought to be born there.¹¹ According to a study conducted by the Swiss Monitoring Office for Asylum and Foreigners' Law, children make up at least 10% of undocumented migrants in Switzerland.¹²

1.2. Negative impact of detention on children

8. Detention has severe negative short- and long-term effects on children's physical and mental health and is always contrary to the best interests of the child, as defined in the United Nations Convention on the Rights of the Child. While detention is a traumatic experience in general, children are particularly vulnerable to the negative effects of detention and can be severely traumatised. Research indicates that even short periods of detention negatively impact children's cognitive and emotional development; at times such dire consequences can cause lifelong trauma and developmental challenges for children. Also, there is a high risk of detained children being subjected to different forms of violence and/or being deprived of the right of access to education and health care.

1.3. International and European legal protection of migrants against detention

9. In its Resolution 63/184, the United Nations General Assembly called on States "to respect the human rights and the inherent dignity of migrants and to put an end to arbitrary arrest and detention". It called for alternatives to detention to be implemented and for periods of detention to be reviewed. It also welcomed practices among States aimed at reducing the detention of irregular migrants. In 2010, the General Assembly adopted a Resolution on the protection of migrants in which it repeated its calls to reduce the detention of unauthorised migrants. In October 2013, it held the second High-Level Dialogue on International Migration and Development, where the Secretary General stated: "We need to create more channels for safe and orderly migration and to seek alternatives to the administrative detention of migrants."¹³

10. In 2009, the United Nations Human Rights Council held a special panel discussion devoted to the human rights of migrants in detention due to "human rights concerns related to the recourse to detention of migrants and the duration and conditions of their detention". The Council further recognised the problem of immigration detention in the resolution on the human rights of migrants. This resolution calls on States to "put an end to arbitrary arrest and detention and ... to adopt, where applicable, alternative measures to detention".¹⁴

11. In September 2009, the United Nations High Commissioner for Human Rights remarked that the plight of "migrants, and particularly migrants in an irregular situation, is one of today's most critical human rights challenges". More recently, the High Commissioner called on States to "explore effective alternatives to immigration detention, particularly for children and other vulnerable groups of migrants".

12. The Parliamentary Assembly has condemned the detention of child migrants, in particular unaccompanied minors. [Resolution 1707 \(2010\)](#) on detention of asylum seekers and irregular migrants in Europe unequivocally states that "unaccompanied minors should never be detained". The European Court of Human Rights has also delivered judgments on the inadmissibility of the detention of children in a number of cases¹⁵ and has argued for alternative care arrangements respecting the best interest of the child. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) considers that every effort should be made to avoid resorting to the deprivation of liberty of an irregular migrant who is a child.¹⁶

11. N. Sigona and V. Hughes, "No way out, no way in. Irregular migrant children and families in the UK", University of Oxford, COMPAS, May 2012, pp. 6-8.

12. PICUM submission to the United Nations Committee, 22 April 2013 (paragraph 6 above).

13. www.un.org/News/Press/docs/2013/sgsm15367.doc.htm.

14. Human Rights Council 2010, A/HRC/RES/15/16, paragraph 8.

15. *Houssein v. Greece* (2013), *Rahimi v. Greece* (2013), *Popov v. France* (2012), *Kanagaratnam v. Belgium* (2011), *Mushadzhijeva and others v. Belgium* (2010), *Mubilanzila and Kanigi Mitunga v. Belgium* (2006).

16. 19th General Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), paragraph 97.

1.4. Reasons why children are falling through the gaps

13. Even though in most member States alternative care arrangements do exist, particularly for unaccompanied migrant children, member States still resort to detention in too many instances. Children are detained for health and security screening, and for identification and status determination purposes. Some children are incarcerated in facilities exclusively for minors, but others are detained with unrelated adults. In some member States, children end up in detention facilities which are totally unsuitable for catering to their needs.

14. At times, States detain children inadvertently, due to difficulties associated with age determination. All too often, however, age-assessment procedures are used for the benefit of the State seeking to justify detention. Despite the existing standard that persons who claim to be juveniles should be treated as such until proven otherwise, unless the claim is manifestly unfounded, a number of States still detain such persons in institutions for adults. Age-determination procedures, which should be applied as a measure of last resort, are often delayed for undue reasons.

15. There is also a big risk that the age-assessment procedure might negatively affect the dignity of a person subjected to it, unless the assessment procedure is conducted by interdisciplinary (namely not solely medical) methods with respect for the individual's dignity, and based on the informed consent of said individual. The methods and the persons conducting the assessment must be adapted to the person's age, gender and culture.

2. Alternatives to detention: policy, legislation and practice

16. States use a wide range of reasons to justify the detention of irregular migrants. At the same time, they have an obligation to establish presumption in favour of liberty and develop alternatives to detention, while applying non-custodial and less restrictive measures.

2.1. Policy

17. Despite the growth in policies of containment and control, government interests in alternatives to detention have recently increased as well. Alternatives to detention are seen as a way to achieve effective migration management, while protecting the rights and dignity of migrants. More governments are taking steps to explore and implement alternatives ranging from scoping studies and small-scale pilot projects to systemic policy developments and systemic change.¹⁷

2.2. Legislation

18. Efforts to reduce child detention in Europe have been reflected in the introduction of the alternatives to detention in the legislation of the Council of Europe member States and the adoption of new policies.

19. A number of member States made changes to their legislation in 2012. More specifically, Croatia introduced several alternatives to detention in its national legislation, namely the duty to surrender documents, to deposit sureties, to have a fixed address and to report to the authorities regularly.¹⁸ At the end of 2011, Cyprus amended its legislation as well and created the possibility to apply alternatives, without however defining the type of alternatives available.¹⁹ Slovakia's new Law on Residence of Foreigners which came into force in January 2012 also introduced alternative measures; under the new law, detention with designated residence and the possibility of financial guarantees can be applied.²⁰

17. Global Trends in Immigration Detention and Alternatives to Detention: Practical, Political and Symbolic Rationales, *Journal on Migration and Human Security*, Volume 1, Number 3(2013), Robin Sampson and Grant Mitchell.

18. Croatia, Aliens Act, 1 January 2012, Article 136.3.

19. Cyprus, Aliens and Migration Law, 2011, Article 18.1.

20. Slovakia Law No. 404/2011 on Residence of Foreigners.

2.3. Practice

20. Malta is the only remaining European Union member State allowing the application of alternatives only when release is foreseen.²¹ Non-application of the alternatives in practice remains a serious matter of concern as many States resort more often to detention rather than to the different alternatives available.

21. European and non-European countries have developed different practices that allow irregular migrant children to remain in the community with a certain freedom of movement. This period lasts until their migration status is resolved or their removal takes place. Alternatives to detention, which reduce the application of custodial measures, include a wide set of alternatives such as the duty to report regularly to the police, residence restrictions and counselling, the duty to surrender documents, sureties/bail, and electronic monitoring.

22. Some States have opted for different models developed by leading organisations in the field such as the IDC, more specifically the Community Assessment and Placement Model (CAP). This model is built on a few principles, which have to be followed by the implementing authorities:

- the presumption that detention is not necessary;
- screening and assessing the individual case;
- assessing the community setting;
- applying conditions in the community if necessary;
- detention only as a last resort in exceptional cases.

23. A few States like Australia, Argentina, Canada, Hungary, Hong Kong, New Zealand, the Philippines, Spain, Sweden the United Kingdom, the United States and Venezuela have started to apply some of these principles in practice and are consequently bringing down the rates of migration detention.

24. Despite significant changes in legislation and attempts to change practice, the detention of migrant children still remains a matter of serious concern in the majority of member States. While a few States approach detention as a measure of last resort and in most cases opt for alternatives, others still resort to detention as a routine practice. As a result, children end up behind bars in various institutions including police facilities and special holding centres, which do not cater at all to their needs and violate their fundamental rights.

3. Why alternatives?

25. The research commissioned by the International Detention Coalition (IDC) identified a number of benefits that governments receive when resorting to alternatives and avoiding detention:

- they maintain high rates of compliance;
- they cost less than detention;
- they reduce wrongful detention and litigation;
- they reduce overcrowding in detention centres;
- they protect and fulfil human rights;
- they improve client health and welfare;
- they increase voluntary returns and departures.

3.1. Detention is not an effective deterrent

26. There is no doubt that dealing with irregular migration is an everyday issue of governance. The evidence available and statements made by governments once again prove that a policy of detention is not effective in deterring asylum seekers, refugees and irregular migrants. Despite increasingly tough detention policies being introduced over the past twenty years, the number of irregular arrivals has not decreased.²²

21. Fundamental Rights Agency (FRA) annual report 2012, paragraph 1.3.3.

27. Several studies have been undertaken to establish which factors most impact the choice of the destination of asylum seekers and irregular migrants. According to numerous research done in this field, the principal aim of asylum seekers and refugees is to reach a place of safety.²³ Asylum seekers have a very limited understanding of the migration policies of destination countries before arrival and are often reliant on people smugglers to choose their destination. Rather than being influenced primarily by immigration policies such as detention, most refugees choose destinations where they will be reunited with family or friends, or where they believe they will be in a safe, tolerant and democratic society.

3.2. Cost reduction

28. It is incontestable that with effective laws and policies, clear systems and good implementation, managing asylum seekers, refugees and irregular migrants can be achieved in the community in most instances. By learning to screen and assess the case of each person subject to or at risk of detention and introducing appropriate support and conditions into the community as needed, authorities can learn to manage people in the community in the majority of cases without the financial and human cost that detention incurs.

29. The costs of detention and the number of migrants who might be eligible to be detained are just too great. Research commissioned by the IDC shows that cost-effective and reliable alternatives to detention are currently used in a variety of settings and have been found to benefit a range of stakeholders affected by this area of policy.²⁴

30. A few countries have managed to significantly cut their migrant-related costs through changes in their policy and practice. Significantly reducing the number of detentions and the introduction of individual case management tools and community placement enabled the United States, Canada and Australia to reduce their expenditures by 60%-90%, compared to their spending on detained migrants.

3.3. High rates of compliance

31. It is evident that the benefits gained through the application of alternatives to detention are not only limited to cost savings. According to available data, the compliance rates are high as well and only a very small percentage of migrants and asylum seekers violate the conditions. A recent study collating evidence from 13 programmes found compliance rates ranged between 80% and 99.9%. For instance, Hong Kong achieves a 97% compliance rate with asylum seekers or torture claimants in the community, and in Belgium, a pilot programme working with families facing removal had an 82% compliance rate. IDC research found asylum seekers and irregular migrants rarely abscond while awaiting the outcome of a status determination or other lawful process. They are better able to comply with liberty or release conditions, or a negative final decision if they can meet their basic needs in the community, if they have been through a fair and efficient determination process, if they have been kept informed throughout the process, including receiving legal advice, and have also been advised on all options to remain in the country legally and, if need be, supported to consider sustainable avenues of departure.²⁵

3.4. Better health and welfare conditions

32. The third benefit is the promotion of health and well-being of migrants, both children and adults. There are several reasons to believe that alternatives to detention promote better health and well-being outcomes when compared with immigration detention. It is obvious that all people awaiting an immigration outcome can experience stress and anxiety associated with uncertainty about their future,²⁶ but the state of the health, both mental and physical of people who are detained is much poorer than that of people who have never been in detention.²⁷

22. Edwards, A. (forthcoming 2011). *Back to basics: The right to liberty and security of person and 'alternatives to detention' of asylum-seekers, stateless persons, and other migrants*. UNHCR Legal and Protection Policy Research Series. Geneva: UNHCR.

23. Robinson V. and Segrott J. (2002), *Understanding the decision making of asylum seekers*. London: Home Office. Retrieved 16.06.2010 at <http://rds.homeoffice.gov.uk/rds/pdfs2/hors243.pdf>.

24. There are Alternatives, A handbook for preventing unnecessary immigration detention, International Detention Coalition 2011, p. 009.

25. *Ibid.*, p. 002.

26. Laban C., Komproe I., Gernaat H. and de Jong J. (2008), *The impact of a long asylum procedure on quality of life, disability and physical health in Iraqi asylum seekers in the Netherlands*.

3.5. Combined benefits of alternatives

33. It is obvious that if the States want to manage migration successfully, minimise risks and significantly cut costs and save on resources, they need to opt for alternatives and stop detaining migrants. It would appear that when detention is avoided, the chance of migrants absconding is rather low, and the chances of keeping them in proper health and ensuring their well-being are much higher. In addition, the government manages to better adhere to its international and local human rights commitments, avoids public criticism and provides an example of good practice to other States.

34. Despite numerous studies and recommendations produced by international organisations, human rights groups and special rapporteurs, there is still huge room for action to achieve the goal and bring detention rates of children down. It is evident that much more has to be done to persuade governments about the benefits of alternatives and negative effects originating from any type of detention. Many more resources are required to promote reforms and to train civil servants involved in the process in the best practices to manage the migration-related problems. Training should target migration services, the police, the judiciary and the prosecution authorities, as well as social services dealing with the issue.

4. Policy and practice of the member States

4.1. Positive practice

35. Some member States have stopped the detention of children, including unaccompanied minors. They are either not detained or there is an alternative legal provision or practice in place to enable them to be released (Belgium, Denmark, France, Hungary, Ireland, Italy, the Netherlands and the United Kingdom).²⁸

36. Austria, Germany, Denmark, the Netherlands, Slovenia and the United Kingdom have also opted for a presumption against detention in law, policy or practice. Presumption against detention gains effect when established in law. This presumption is strengthened when alternatives to detention are also established in legal acts. The effectiveness of such laws is dependent upon their proper implementation. Those laws might also include mechanisms to monitor the use of alternatives and ensure that unnecessary restrictions are avoided.²⁹

37. Several States are taking decisive steps to avoid detention and establish special shelters or launch special, targeted projects to enforce alternatives. Those States are setting proper standards and promoting best practice in the region. These approaches are certainly not uniform and each model has its strengths and weaknesses, though all of them have a few common elements:

- detention is not practiced;
- costs are significantly reduced;
- migrants are in better health and their well-being is ensured;
- rates of compliance are still high.

38. Hungary prohibited the detention of migrant children³⁰ and, with the assistance of local NGOs, established a shelter for unaccompanied children. The Netherlands is piloting four alternatives to detention. One of the programmes works with migrants who are obliged to leave the country.³¹ In Sweden, asylum seekers are registered upon arrival and after being issued an identity card and having spent about a week in transit they are moved into a reception programme. The authorities accommodate those who do not have their own funds to cover accommodation costs. As a rule, they are placed in a private apartment rented for them by the government. These migrant children are receiving the same medical care as Swedish children. Migrants are assigned a caseworker; they can receive free legal aid and participate in special courses of the Swedish language. They receive a daily allowance and in some cases they are even allowed to work.³² Belgium has

27. *There are Alternatives, A handbook for preventing unnecessary immigration detention*, International Detention Coalition, 2011, p. 052.

28. *Ibid.*, p. 024.

29. *Ibid.*, p. 022.

30. Section 56 of Act II of 2007 on the Admissions and Rights of Residence of Third-Country Nationals.

31. *Global Trends in Immigration Detention and Alternatives to Detention: Practical, Political and Symbolic Rationales*, *Journal on Migration and Human Security*, Volume 1, Number 3(2013), Robin Sampson and Grant Mitchell.

developed policies not to detain children. The project works directly with migrant families and accommodates them in designated apartment buildings. In Spain, migrants who enter the refugee determination process can be housed in an open reception centre only if they cannot afford private accommodation. The government manages some open centres and several of these are under the control of non-governmental organisations. The capacity of these centres is rather limited; therefore the priority is given to vulnerable individuals including families with children. Residents are assigned a social worker that assists them with their case and access to education, health-care and other social systems of the country.³³

4.2. Issues of concern

39. Regrettably, the introduction of alternatives to detention in national laws is not itself a prerequisite for the application of the alternatives in practice. As mentioned above, most of the member States do not produce proper statistics on alternatives to detention, which makes it rather difficult to assess the levels of their application.

40. Available statistics from nine member States indicate that some States make regular use of alternatives (Austria, Czech Republic and Romania), while this does not appear to be the case in Bulgaria, Croatia, Latvia, Lithuania, Slovakia and Slovenia.³⁴ In those countries, the authorities resort to detention of migrants in the majority of cases.

41. Italian law does not prohibit the detention of children accompanied by parents in detention centres for migrants, but the detention of unaccompanied children in those centres is prohibited.³⁵ In Poland, children are detained with their parent(s), usually in separate family units within the detention centres.³⁶ The Aliens' Law of Lithuania provides that an alien under the age of 18 may be detained only in extreme cases, taking into consideration the alien's best interests.³⁷ The Aliens' Law provides a list of alternatives which can be applied when the alien's identity has been established and he or she does not constitute a threat to national security and public policy, and provides assistance to the court in determining his/her status in Lithuania.³⁸

42. The British Government pledged to end the detention of children for immigration purposes by May 2011. However, a Freedom of Information request by the Children's Society revealed that in the four-month period between May and August 2011, almost 700 children were detained in the United Kingdom. The Children's Society also found that the United Kingdom Home Office is not sufficiently monitoring these cases, as they are not collecting information on the length of the detention of these children or why they were detained in the first place.³⁹

43. Furthermore, the government proposed an alternative to detention: "pre-deportation accommodation", which also remains highly contested. Families who refuse to leave the United Kingdom may be held in "pre-departure accommodation" for up to 72 hours, or in "exceptional circumstances", up to a week. The government has assured that the centre, a converted special needs school near Gatwick, will be family-friendly and only used as a last resort, as advised by an Independent Family Returns Panel, and will take into account the welfare of children. However, families will not be free to come and go, and the centre will have 24-hour security and a 2.3 meter high perimeter fence. Thus, the "pre-departure accommodation" retains many of the defining features of detention centres, and PICUM and many civil society organisations are concerned that it will still have significant negative effects on children.⁴⁰

44. Greece continues to receive a large number of migrants each year, but the system of reception is poorly organised. Even though detention should be applied only as a measure of last resort; all migrants, including accompanied and unaccompanied children picked up by the Greek police force are still routinely detained for up to a few months.⁴¹

32. Ibid., p. 035.

33. There are Alternatives, A handbook for preventing unnecessary immigration detention, International Detention Coalition, 2011, p. 034.

34. Fundamental Rights Agency (FRA), annual report 2012, p. 60, Table 1.6.

35. PICUM submission to the OHCHR Special Rapporteur on Migrants, Thematic report on detention, 26 January 2012, p. 4.

36. Act of 13 June 2003 on Granting Protection to Aliens.

37. The Aliens' Law, Article 114, paragraph 3.

38. Ibid., Article 115, paragraph 1.

39. PICUM submission to the OHCHR Special Rapporteur on Migrants, op. cit.

40. Ibid.

45. It is evident that in numerous member States, the law provides possibilities to apply alternatives, but for various reasons, detention is still practised, and in some States is applied more often than alternatives. A change of attitude and the allocation of resources and trained personnel is required to achieve positive results. States should develop effective systems of alternatives, start producing proper nationwide statistics, and train their officials in the application of alternatives to detention. Officials in charge of the process should be encouraged to apply alternatives and avoid the detention of children.

5. Concluding remarks and recommendations

46. There is compelling evidence that immigration detention of children has a detrimental impact on their mental and physical health. The detention of children violates their rights, and deprives them of access to general education and proper health care. The impact of detention on children is similar to its effect on adults. However, because of children's particular vulnerabilities, detention may cause additional problems for their developmental and physical health. The detention environment itself impacts on children's development and psychosocial health. The prison-like environment, the lack of freedom and the constant surveillance and control is confusing and intimidating.⁴²

47. Statistics show that the situation varies from country to country and no uniform approach has been developed so far. While a few States are taking measures to avoid the unnecessary detention of children and opt for alternatives, the majority of States still resort to detention while applying different policies and using specialised institutions.

48. The laws of most member States prohibit the detention of children and provide the possibility of applying alternatives. Nevertheless, the majority of these States are not applying the alternatives in practice or alternatives are used only rarely. In some States, deficient legislation is supplemented with wrong policies and practice. The situation requires concerted efforts from the State authorities to put an end to the detention of migrant children and, based on the practices described in this report, start developing effective models for the application of alternatives to detention.

41. Ibid.

42. Impacts of Detention on Children, Chapter 5, p. 48.