

**STEERING COMMITTEE FOR HUMAN RIGHTS  
(CDDH)**

**“Immigration Detention of Children: Coming to a Close?”  
Prague, 25–26 September 2017**

**Conference Report**

Drafted by the Office of the Czech Government Agent before the European Court of Human Rights,  
Ministry of Justice of the Czech Republic,  
on the basis of the presentations given and discussions held during the Conference.

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## INTRODUCTION AND REASONS FOR THE CONFERENCE

The immigration detention of children has for some time now been a subject of increasing debate. Due to the vulnerability of children and the harmful effects of detention, international institutions and other relevant actors have consistently emphasised the need to end this practice and implement effective alternatives. Significant developments have already taken place at European and international level, and States themselves have made important commitments.

The two-day international expert conference organized by the Ministry of Justice of the Czech Republic in cooperation with the Council of Europe sought to further explore the international obligations of States in the field, as well as the most effective ways in which to respect the right to liberty of children on the move. The Conference provided an opportunity to gain in-depth information and knowledge about the immigration detention of children and alternatives to detention. It aimed to enhance the overall understanding of the relevant international human rights standards, views and approaches of regional and universal monitoring, judicial and quasi-judicial bodies, current actions promoting an end to the immigration detention of children, efforts, good practices and lessons learnt in implementing effective alternatives to immigration detention, and other relevant experiences gained from the field. The conference also sought to explore avenues for future actions. To this end, it brought together a number of key stakeholders with extensive legal and practical expertise, including representatives of international organisations, judges, policymakers, governmental experts and civil society representatives,<sup>1</sup> and provided a platform for constructive discussions and sharing of good practices. The Conference also contributed to the relevant on-going work in the Council of Europe on the issues at hand.<sup>2</sup>

In sum, the Conference served as a thought-provoking and constructive source for innovative solutions, upholding both the human rights of children as well as the legitimate aims of States in the context of migration. It was a forum for identifying concrete ways forward in this complex field.

This report reflects and groups into sections the main ideas presented and discussions held throughout the Conference. It aims to serve as a source of information and guidance for further work in the field.

### I. REALITY, EXPERIENCES AND FINDINGS FROM THE FIELD

In 2016, an unprecedented 65.6 million people were forcibly displaced globally, with the worldwide refugee population hitting a record high of 22.5 million people. Almost half of them were children.<sup>3</sup> Indeed, the migration and refugee crisis has been called a veritable children's rights crisis, where children are at risk of severe hardship and trauma. They come from different countries and scenarios and for different reasons, often fleeing poverty or war, but they have two things in com-

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<sup>1</sup> Speakers and moderators at the Conference were: Pinar Aksu, Oldřich Andryšek, Antigoni Angelaki, Mária Barna, Tomáš Boček, Xavier Créach, Christel De Craim, Maciej Fagasinski, Doris Fiala, Michael Flynn, Christos Giakoumopoulos, Dalibor Jílek, Ben Lewis, Nuala Mole, Nils Muižnieks, Héctor Hugo Alemán Pacheco, Robert Pelikán, Eva Pflieger, Stamatina Poulou, Ann Power-Forde, Irene Ritman, Maria Rossidi, Emil Ruffer, Morten Ruud, Robyn Sampson, Kirsten Sandberg, Vít Alexander Schorm, Frank Schürmann, Romina I. Sijniensky, Adriano Silvestri, Katarzyna Słubik, Stephanos Stavros, Thomas Straub, Ivona Todorovska, Margaret Tuite, Angela Valenza, Adriana van Dooijeweert, and Benoit van Keirsbilck.

<sup>2</sup> For more, see Sub-chapter 3.1.

<sup>3</sup> See the CDDH Analysis of the legal and practical aspects of effective alternatives to detention in the context of migration, 26 October 2017, CDDH-MIG(2017)02Rev, available at: <https://rm.coe.int/steering-committee-for-human-rights-cddh-analysis-of-the-legal-and-pra/1680780997>

mon: they are all vulnerable and in need of protection. Some of these children end up in detention, a practice raising serious concerns of compatibility with international and regional human rights standards.

It was consistently emphasized throughout the Conference that the detention of children in the migration context is a reality in a number of Council of Europe Member States, and not always an exception as required by international and European law. Some argued that this practice “is making a comeback” and is increasing in numbers and that normalizing detention might become a major conceptual change for our societies.

According to recent findings and limited available statistics, detention of unaccompanied children seeking asylum is banned only in approximately half the EU Member States.<sup>4</sup> Detention of unaccompanied children in return procedures is prohibited only in approximately a third of the EU Member States.<sup>5</sup> Only one country in the EU prohibits the detention of migrant children completely.<sup>6</sup>

A number of speakers with extensive practical experience presented their findings from the field in different Council of Europe Member States and settings. Their experiences and findings are reflected in this chapter.

#### 1.1. STRUCTURAL CONCERNS AND CHALLENGES OF NATIONAL SYSTEMS OF MIGRATION DETENTION

National systems of migration detention of children often show structural problems, such as lack of clarity of terminology in national legislations;<sup>7</sup> gaps in identification procedures of children;<sup>8</sup> deficient age assessment procedures, including breaches of the presumption of minority; deficient guardianship systems; lack of individual assessment, including the assessment of the child’s best interests; erroneous considerations of detention as a measure of last resort and missing considerations of proportionality and necessity; introduction of automatic/mandatory detention for certain categories of migrants; prolonged detention;<sup>9</sup> discriminatory practices; barriers in access of independent oversight bodies and NGOs providing *inter alia* social or psychological support to detention centres, etc.

Furthermore, a number of Council of Europe Member States lack child-specific legislation in the area of immigration detention and, particularly, alternatives to detention. Even if adequate legal frameworks and safeguards exist in law, they are often not implemented in practice. It was stressed that a lack of alternatives to detention is one of the most damaging structural problems affecting children, which urgently needs to be addressed.

Lack of accurate data pertaining to the number of children deprived of liberty under migration legislation in Europe also falls within the challenges faced in the current environment. There is often no public source of statistics, since governments either do not establish such statistics, or may refuse

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<sup>4</sup> See FRA Report on European legal and policy framework on immigration detention of children, 2017, available at: <http://fra.europa.eu/en/publication/2017/child-migrant-detention>. For further information on non-EU Council of Europe Member States see: <http://website-pace.net/documents/19863/3390925/2017-ImmigrationDetentionPracticesStudy-EN.pdf>

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> E.g. definitions of “detention” or “alternatives to detention”.

<sup>8</sup> Children are sometimes not even officially registered as detained persons but solely as “accompanying” a detained migrant adult. Also, fear of being detained can be a deterrent factor for migrants to be willing to register and undergo identification procedures.

<sup>9</sup> For various reasons, such as deficient and prolonged identification procedures or a lack of health examination.

to publish them. In this respect, some argued that governments often do not respond to information requests.<sup>10</sup> Such statements were, however, challenged by others.

Some Council of Europe Member States adhere to a position that alternatives to detention are a part of the system of immigration detention of children. One of the speakers argued that alternatives to detention can be conceived to bolster the logic of detention itself, i.e. portraying the non-detention of children as an “alternative” that legitimizes the use of detention. There is a danger that States could exploit this paradox by developing alternatives that fail to move policy and practice away from prioritizing detention and that the number of persons in detention will not decrease, even if alternatives are put in place.

Various speakers emphasized that the detention of migrant children needs to be considered from a wider perspective of migration flows in Europe and diversities in national migration policies and systems. Among the underlying challenges was limited access to territory and procedures, an increased focus on preventing departures and enforcing returns, lengthy and bureaucratic processes, differences in success rates of asylum applications, lack of coordination, and dysfunctional or absent family reunification procedures. It was argued that a lack of effective family reunification procedures supports illegal flows from transit to destination countries and gives more space to smugglers. It was likewise maintained that a solution would be to ensure legal pathways for children to reunite with their families, to make the fundamental right to family reunification effective in practice, and to remove existing obstacles for the exercise of this right.

## 1.2. CONDITIONS OF DETENTION

Although the conditions in detention centres where children are placed – either alone or with their families – vary, detention *per se* increases risks of ill-treatment. In recent years, a number of reports have documented human rights violations suffered by detained migrant children, related to conditions in places such as police stations, prisons for convicted criminals, containers, garages, and other facilities not adequately equipped for the purpose of placement of children and their families. Concerns were expressed, in particular, over overcrowding, limited access to hygiene and health care, physical violence, insufficient outdoor activities, insufficient clothing, no child-focused training of staff, lack of provision of information in a language the child understands, etc. It is crucial to act on such reports, including those from the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the International Committee of the Red Cross, which have often been a valuable source of these findings.

Several countries propose to build more “child-friendly” detention centres. It was stressed, however, that providing playgrounds, toys and child-friendly corners is no substitute for ensuring that children are not deprived of their liberty in order to safeguard the child’s well-being and best interests.

## 1.3. IMPACT OF DETENTION ON MIGRANT CHILDREN

Generally speaking, migrants who are detained face severe and specific stress factors because of their particular situation. Detention affects otherwise healthy persons. More than 50% of them experience mental health problems, and thus become vulnerable.

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<sup>10</sup> For more, see the Global Detention Project Database, available at: <https://www.globaldetentionproject.org/>.

Speakers highlighted, specifically, negative long-term effects on children’s mental health and emotional and cognitive development, notwithstanding whether they are detained in adequate conditions or not. Speakers mentioned, in particular, reported cases of trauma, post-traumatic stress disorders, anxiety, depression, fear, disruption of family dynamics, sleep disorders, nightmares, depressive moods, concentration and memory impairment, irritability, intrusive thoughts, loss of control, suicidal ideations, behaviour problems, such as aggressive behaviour, self-harm, panic symptoms, development delays, loss of predictability, loss of sense of justice and meaning, emotional incontinence, flashbacks, psychotic symptoms, social isolation, forced detachment from community and loss of hope. If an entire family is detained, the mental health status of parents is key, since the whole structure of the family changes when the parent stops functioning as a parent. Detention can also seriously affect children’s adjustment to life after detention and has negative impacts long after their release.

According to one speaker who was detained as a child in immigration detention, there is no difference between a migration detention centre and a prison. Children may experience a treatment comparable to that of criminals. *De facto* criminalization and the feeling of being punished were among common testimonies of migrant children.

The provision of assistance and treatment is of particular importance and can include family and child therapy, individual therapy, verbal and non-verbal group therapy, art and music. Three indispensable factors for the provision of assistance and treatment were, *inter alia*, identified: independence, interpretation and private space.

## II. APPLICABLE INTERNATIONAL HUMAN RIGHTS STANDARDS

### 2.1. STANDARDS ON DETENTION OF MIGRANT CHILDREN

International judicial and quasi-judicial bodies interpreting some of the core international and regional human rights treaties increasingly argue that child detention in the migration context is a violation of the fundamental rights of the child. Renowned experts presented positions of the European Court of Human Rights, the UN Committee on the Rights of the Child, and the Inter-American Court of Human Rights.

#### 2.1.1. THE EUROPEAN COURT OF HUMAN RIGHTS

According to the European Court of Human Rights’ (hereinafter “the ECtHR”) case-law, migrant children in detention are particularly vulnerable. Their vulnerability is based on detention *per se*, their age and their migration status.

The speakers identified the following guiding principles on detention of migrant children in the ECtHR’s case law particularly on Articles 3, 5 and 8 of the Convention: child’s extreme vulnerability takes precedence over other interests;<sup>11</sup> the specific circumstances of the individual case must be considered, including the best interests of the child;<sup>12</sup> legal void must not exist in domestic law; domestic courts must consider both lawfulness and necessity of detention;<sup>13</sup> detention must be an

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<sup>11</sup> See e.g. *Popov v. France* (nos. 39472/07 and 39474/07, ECtHR judgment of 19 January 2012).

<sup>12</sup> See e.g. *Rahimi v. Greece* (no. 8687/08, ECtHR judgment of 5 April 2011).

<sup>13</sup> See e.g. *Popov v. France* (cited above).

exceptional measure and a measure of last resort;<sup>14</sup> alternatives to detention must be considered before resorting to detention;<sup>15</sup> detention is prohibited if conditions are incompatible with the child's needs, irrespective of the duration of such detention;<sup>16</sup> even if conditions are adapted to the child's needs, the detention is a source of stress and anxiety for a child and is acceptable only for the shortest time possible.<sup>17</sup>

The ECtHR has delivered a number of judgments, especially under Articles 3 and 5(1)(f) of the European Convention on Human Rights, that have gradually but considerably restricted the possibility to detain migrant children, pushing States to consider alternatives more stringently than before. Particularly noteworthy are five judgments against France,<sup>18</sup> delivered in the summer of 2016, in which the ECtHR *inter alia* stressed that, even when the material conditions of the facilities were considered appropriate, the accumulation of psychological and emotional strain to which children in administrative detention were subjected, necessarily had negative consequences on them. The ECtHR considered the harmful impact of detention on children and how this violates the principle of the best interests of the child, and concluded that their detention was a violation of Article 3 of the Convention.

In summary, although the ECtHR has not prohibited detention of migrant children *per se* under Article 3 of the Convention, it has considerably restricted the room for manoeuvre for States that detain migrant children. In other words, the ECtHR adopts a restrictive approach and very strict conditions towards the detention of migrant children. It takes into consideration, *inter alia*, the dilemma that accompanied children should not be separated from their parents and at the same time should not be detained.<sup>19</sup> It is noteworthy that the ECtHR has so far found a violation of Article 3 of the Convention in all the cases concerning immigration detention of children, while numerous cases have never reached the ECtHR, partly because contact with children and/or their families has often been lost after their release. Some argued that the current state of the relevant ECtHR case-law even suggests that the detention of migrant children is possible only in extraordinary circumstances and for a very limited period of time, not exceeding hours or days prior to their removal. In this respect, it was noted that the Convention lays out only *minimum standards* and that the national legislation can and should go beyond that.

Moreover, under Article 5(1)(f) of the Convention, the legality of detention is subject to certain conditions. In particular, there must be a strict link to the specific purpose of detention, i.e. to prevent the unauthorized entry of a person on the territory of a State Party or to secure the removal of a person from the territory. The legality of the detention will fade away if it is not strictly related to the purpose and, significantly, if that particular purpose is not pursued diligently. Furthermore, the detention under Article 5(1)(f) should not become a penalty, drawing inspiration from Article 31 of the 1951 Convention relating to the Status of Refugees that prohibits penalisation of refugees. In addition, the ECtHR adds a "necessity test" in the case of children. If the same aim can be achieved by other means, detention would not be compatible with the Convention.

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<sup>14</sup> See e.g. *Rahimi v. Greece* (cited above); see also *Popov v. France* (cited above); and *A.B. and Others v. France* (no. 11593/12, ECtHR judgment of 12 July 2016).

<sup>15</sup> See e.g. *Yoh-Ekale Mwanje v. Belgium* (no. 10486/10, ECtHR judgment of 20 December 2011); see also *Popov v. France* (cited above) and *A.B. and Others v. France* (cited above).

<sup>16</sup> See e.g. *Muskhadzhiyeva v. Belgium* (no. 41442/07, ECtHR judgment of 19 January 2010); see also *Rahimi v. Greece* (cited above) and *Popov v. France* (cited above).

<sup>17</sup> See e.g. *A.B. and Others v. France* (cited above).

<sup>18</sup> *A.B. and Others*; *R.M. and Others*; *A.M. and Others*; *R.K. and Others*; *R.C. and V.C.*, ECtHR judgments of 12 July 2016 against France. These cases concern small children with their families held in immigration detention between 7 and 18 days. In all these cases, the ECtHR found a violation of Article 3 of the Convention.

<sup>19</sup> *Tarakhel v. Switzerland* (no. 29217/12, ECtHR judgment [GC] of 4 November 2014).

It was argued *de lege ferenda* that it is a difficult exercise to balance between Articles 5(1)(f) and 3 of the Convention. The ECtHR will probably not develop its case-law to conclude that the detention of migrant children is as such contrary to Article 5(1)(f). This can probably be achieved only if it can be argued that Article 5(1)(f) should be read in light of the absolute nature of Article 3. This would, however, be a big step for the ECtHR to take.

### 2.1.2. THE UN COMMITTEE ON THE RIGHTS OF THE CHILD

The UN Committee on the Rights of the Child (hereinafter “the CRC”) has done significant work on the interplay between immigration detention and children’s rights.<sup>20</sup> Its views have evolved over the years but are now unequivocal, concluding, in essence, that in the context of migration<sup>21</sup> the detention of children who are either alone or with other family members constitutes a children’s rights violation and always contravenes the principle of the best interests of the child. As a consequence, States are obliged to adopt alternatives to detention that allow children to remain with their family members in non-custodial, community-based contexts, including when they are waiting to be returned, while using the least restrictive means necessary.<sup>22</sup>

### 2.1.3. THE INTER-AMERICAN COURT OF HUMAN RIGHTS

The Inter-American Court of Human Rights (hereinafter “the Inter-American Court”) focused on the issue of detention of children in the migration context in its Advisory Opinion no. 21/2014. In its assessment, the Inter-American Court conducted a necessity and proportionality scrutiny. While the Court was aware of the legitimate aims and concerns of States in border management and immigration proceedings, it found that the detention of children exclusively for migratory reasons exceeds the requirements of necessity and would, therefore, constitute an arbitrary detention. The Court was of the view that there are other less severe measures that could be appropriate to achieve such objectives and, at the same time, satisfy the child’s best interests. In this regard, the Inter-American Court called upon States to treat children on the move first and foremost as children, and to prioritize a rights-based approach that focuses on the care and well-being of the child through appropriate child protection systems. The protection and comprehensive development of the child should therefore prevail over any consideration of nationality or immigration status. When the child’s best interest requires keeping the family together, the Inter-American Court was of the view that the imperative requirement not to deprive the child of his or her liberty extends to her or his parents. In such cases, authorities need to search for alternative measures to that of detention of the whole family.

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<sup>20</sup> Generally, children are protected by the Convention on the Rights of the Child up to 18 years of age and are not to be treated as adults even when above 15. Detention is understood by the CRC as any custodial setting from which a child is not permitted to leave at will, regardless of how it is termed. See CRC, Report of the 2012 Day of General Discussion: The rights of all children in the context of international migration, 2012, available at: [http://www2.ohchr.org/english/bodies/crc/docs/discussion2012/2012CRC\\_DGD-Childrens\\_Rights\\_InternationalMigration.pdf](http://www2.ohchr.org/english/bodies/crc/docs/discussion2012/2012CRC_DGD-Childrens_Rights_InternationalMigration.pdf).

<sup>21</sup> I.e. for the reason of children’s and their parents’ immigration status. There are hardly any other reasons that might justify the detention (possibly, but under very limited circumstances, another reason could be the protection from trafficking or exploitation).

<sup>22</sup> See, in particular, Draft CMW-CRC Joint General Comment on the Human Rights of Children in the Context of International Migration (2<sup>nd</sup> draft, 2017); CRC’s Concluding observations: Estonia (2017), Bulgaria, France, Slovakia, the United Kingdom (2016); CRC’s 2012 Day of General Discussion: The rights of all children in the context of international migration (2012); CRC’s General comment No. 6: Treatment of unaccompanied and separated minors outside their country of origin (2006).

After the Advisory Opinion no. 21/2014 had been delivered, the representatives of the OAS<sup>23</sup> Member States at the OAS General Assembly described the document issued by the Court as “appropriate” given the challenges currently faced in this area. They reiterated the relevance, applicability and vision contained in the document. They also noted the importance of taking into account the contents of the Advisory Opinion for countries in the region to adapt their legislation in accordance with its terms.<sup>24</sup> The Advisory Opinion has already been implemented in a number of countries in the region.

## 2.2. STANDARDS ON ALTERNATIVES TO DETENTION

When States implement alternatives to detention, international human rights standards do not cease to apply. In other words, “beyond detention” does not mean “beyond human rights protection”.

The following general conditions arise from the ECtHR’s case-law.<sup>25</sup> First, States have a positive obligation to examine, in each case, whether alternatives to detention would be sufficient. In respect of children, omission to examine alternative measures constitutes in itself a violation of the right to liberty. Second, alternatives to detention are not a menu *à la carte*. They should be considered along a sliding scale of measures from the least to most restrictive, allowing for an analysis of proportionality and necessity for every measure. Third, alternatives to detention must respect human dignity.<sup>26</sup> Fourth, they must be applied without discrimination on any ground, such as sex, race, colour or national origin. Fifth, they must be subject to review.

Although alternatives to detention can never involve deprivation of liberty,<sup>27</sup> they may raise issues under a whole range of human rights. Certain types of alternatives may, in themselves, or in combination with other measures, constitute interferences with the freedom of movement, i.e. amounting to the restriction on freedom of movement,<sup>28</sup> with the right to respect for private and family life, home, correspondence,<sup>29</sup> and the right to property.<sup>30</sup> Such interferences are not allowed unless they are in accordance with the law, pursue a legitimate aim, and are necessary in a democratic society, i.e. proportionate to the legitimate aim.<sup>31</sup>

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<sup>23</sup> Organization of American States.

<sup>24</sup> Press release C-427/14.

<sup>25</sup> When these general conditions were presented at the Conference, only selective references to the ECtHR case-law were made.

<sup>26</sup> *M.S.S. v. Belgium and Greece* (no. 30696/09, ECtHR judgment [GC] of 21 January 2011); *Tarakhel v. Switzerland* (cited above).

<sup>27</sup> For more on the meaning of the deprivation of liberty and on the differences between the deprivation of liberty and the restriction on freedom of movement, see the case of *De Tommaso v. Italy* (no. 43395/09, ECtHR judgment [GC] of 23 February 2017).

<sup>28</sup> Article 2 of Protocol no. 4 to the European Convention on Human Rights; Article 12 of the International Covenant on Civil and Political Rights; Article 31 of the Convention relating to the Status of Refugees.

<sup>29</sup> Article 8 of the European Convention on Human Rights; Article 17 of the International Covenant on Civil and Political Rights; and several guarantees in the UN Convention on the Rights of the Child.

<sup>30</sup> Article 1 of Protocol no. 1 to the European Convention on Human Rights.

<sup>31</sup> For case-law on the restriction on freedom of movement, see *De Tommaso v. Italy* (cited above) and *Baumann v. France* (no. 33592/96, ECtHR judgment of 22 May 2001).

### III. ROLE AND ACTIVITIES OF INTERNATIONAL GOVERNMENTAL AND NON-GOVERNMENTAL ORGANIZATIONS

It has been continuously emphasized that moving from the practice of detention to the general principle of non-detention, while finding practical solutions and alternative measures, is not an easy task. Helpful guidance has been and continues to be developed by international governmental and non-governmental organizations, including by UNHCR with its Beyond Detention Strategy and other initiatives, by the EU with its FRA's recent report "European legal and policy framework on immigration detention of children",<sup>32</sup> by the Council of Europe with its work conducted by the Commissioner for Human Rights, the Special Representative of the Secretary General on Migration and Refugees, the Parliamentary Assembly and the intergovernmental steering committees, and by NGOs, in particular those gathered under the International Detention Coalition.

#### 3.1. THE COUNCIL OF EUROPE

In April 2015, the Parliamentary Assembly launched the Parliamentary Campaign to End Immigration Detention of Children as part of the Global Campaign under the same title.<sup>33</sup> In its Resolution no. 2020, the Parliamentary Assembly recalled that unaccompanied children should never be detained. Moreover, it stated that the detention of children because of their or their parents' immigration status is contrary to their best interests and is a child rights' violation, notably as defined in the UN Convention on the Rights of the Child. The Assembly also called on Governments to adopt alternatives which allow children to remain with their family members or guardians in non-custodial, community-based contexts while their immigration status is being resolved. The Parliamentary Campaign is based on this Resolution and implemented by the Assembly's Committee on Migration, Refugees and Displaced Persons. It aims to change national legislation where detention is still allowed, but also to change policies because in many cases detention is not permissible by law but still used in practice. Since its launch, the Campaign has been supported by nearly 1000 parliamentarians, representatives of national authorities, civil society and the international community, who have signed the petition to end immigration detention of children, including some high level actors, such as heads of States and heads of parliaments. The Campaign uses a number of tools to achieve its goals, including awareness raising activities among parliamentarians, trainings on monitoring detention places of migrant children,<sup>34</sup> and exploring viable alternatives based on existing good practices.

In the Council of Europe's intergovernmental steering committees, important work on the codification of existing international standards relating to the immigration detention<sup>35</sup> and on the legal and practical aspects of alternatives to detention in the context of migration<sup>36</sup> is under way.

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<sup>32</sup> Available at: <http://fra.europa.eu/en/publication/2017/child-migrant-detention>.

<sup>33</sup> The IDC together with the Office of the UN High Commissioner for Human Rights and the UN Committee on the Rights of the Child established the Global Campaign to End Immigration Detention of Children in 2012. For more, see: <https://endchilddetention.org/>.

<sup>34</sup> See PACE and the Association for the Prevention of Torture (APT), Visiting immigration detention centres: A guide for parliamentarians, September 2013, available at: <http://website-pace.net/documents/10704/109544/20130924-GuideDetentionCentres-EN.pdf/f896709f-cc33-4427-83dc-aeacb3f825d7>.

<sup>35</sup> See the on-going work of the Committee of experts on administrative detention of migrants (CJ-DAM) established by the Steering Committee on Legal Co-operation (CDCJ), available at: <https://www.coe.int/en/web/cdcj/activities/administrative-detention-migrants>.

<sup>36</sup> See the CDDH Analysis of the legal and practical aspects of effective alternatives to detention in the context of migration, 26 October 2017, CDDH-MIG(2017)02Rev, available at: <https://rm.coe.int/steering-committee-for-human-rights-cddh-analysis-of-the-legal-and-pra/1680780997>

The Drafting Group for Human Rights and Migration (CDDH-MIG) was set up by the Steering Committee for Human Rights (CDDH) to conduct an analysis of the legal and practical aspects of effective alternatives to detention in the context of migration. The Analysis gives a coherent and precise overview of the applicable international human rights standards in the field, highlighting critical themes as well as clarifying both the similarities and differences between varied bodies of the Council of Europe, the UN and the EU. The Analysis identifies essential elements that render alternatives to immigration detention effective in terms of compliance to migration procedures, respect for human rights and cost efficiency. It highlights how these essential elements may, ultimately, be more significant in terms of compliance than the particular types of alternatives used. A non-exhaustive and indicative list of different types of possible alternatives to detention in the context of migration is also provided, explaining their central features as well as potential benefits and drawbacks. Certain critical challenges in the field at large are highlighted as well as prospective ways in which to overcome these in practice. As a concrete follow-up to the ongoing work, it is envisioned that a first step would be developing a practical and user-friendly handbook providing guidance to authorities about how to effectively implement alternatives to immigration detention. A conceivable second step might be the development of guidelines on effective alternatives to immigration detention, possibly focusing on children in particular.<sup>37</sup>

The Committee of experts on administrative detention of migrants (CJ-DAM) was established under the authority of the European Committee on Legal Co-operation (CDCJ) to codify existing international standards relating to the conditions of detention of migrants. The purpose of the future codifying instrument, which should have the form of a recommendation by the Committee of Ministers, is to protect migrants deprived of their liberty and to provide guidance to competent national authorities. In May 2017, the first draft of the codifying instrument was introduced, and subsequently a number of key actors were consulted, including those from civil society. It was stressed that the codifying instrument should reflect existing norms also in the light of current evolutions and practice, especially regarding tendencies expressed in soft law sources towards ending the immigration detention of children, and that the codification should not translate into anchoring the least protective of existing standards. It was also emphasised that the codifying instrument must adopt a human rights based approach in order to fulfil its purpose and to be in compliance with the principles and objectives of the Council of Europe.

The newly established Ad hoc Committee on the Rights of the Child (CAHENF) is also active in this field. It was mandated by the Committee of Ministers to make proposals concerning standards on legal guardianship and age assessment, that should be completed by 2019. Work is underway to draft a recommendation concerning guiding principles and guidelines for an effective guardianship for unaccompanied children in migration. This work will be completed in 2018. The CAHENF will also draft guidelines on age assessment procedures to assist States with the task of transposing these principles into concrete procedures that respect children's rights.

Finally, it should be noted that the Prague Conference was a part of the *Council of Europe Action Plan on Protecting Refugee and Migrant Children*, coordinated by the Special Representative of the Secretary General on Migration and Refugees. The Action Plan proposes concrete support to member States in the field, focusing on ensuring children's access to rights and child-friendly procedures, providing effective protection and enhancing the integration of children who remain in Europe. Further action is planned to provide specific guidance on alternatives to immigration detention. Importantly in this context, the Council of Europe Commissioner for Human Rights has initiated a five step plan to abolish migrant detention, namely (1) include clear alternatives in law and policy, (2) develop a well-stocked toolbox of alternatives, (3) present a roadmap and firm deadline for the abo-

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<sup>37</sup> Ibid.

lition of child detention, (4) step up exchange of good practices and (5) improve data gathering on detention practices. The Commissioner has repeatedly spoken out against the trend of criminalising asylum seekers and migrants, and invariably warned against the harmful effects of detention on the mental health of migrants, especially children.

### 3.2. THE EUROPEAN UNION

The FRA recently published a comparative report entitled “European legal and policy framework on immigration detention of children.”<sup>38</sup> It outlines the fundamental safeguards provided for in EU and human rights law to prevent unlawful and arbitrary detention. It also maps relevant national legal frameworks in the EU Member States and the approaches taken in respect of the detention of migrant children. Among the difficulties encountered in the drafting process were a lack of national statistics and inconsistencies between the grounds for detention in EU law and the European Convention on Human Rights. This report is complemented by a Parliamentary Assembly of the Council of Europe Study of immigration detention practices and the use of alternatives to immigration detention of children, with a focus on non-EU Council of Europe Member States.

Furthermore, two documents of the European Commission were flagged. The first one, a European Commission Recommendation, was published with an effort to encourage the EU Member States to make returns more effective. It includes a number of recommendations to this end.<sup>39</sup> The second document, a European Commission Communication, reminds the EU Member States that the detention of migrant children is a measure that can be used only in very exceptional circumstances.<sup>40</sup>

### 3.3. UNHCR

UNHCR, like the OHCHR and the ICRC, holds a position that children should not be detained for migration related purposes. Such detention is never in their best interests and appropriate care arrangements and community-based programmes need to be in place.<sup>41</sup>

UNHCR is involved in a number of activities in the field. These include the Beyond Detention Strategy, court interventions, strategic litigation, operational work to help States to find alternatives, etc.

The Beyond Detention Strategy has three main goals. Firstly, to support governments to end the detention of migrant children. Secondly, to ensure that alternatives to detention are available in law and in practice. Thirdly, to ensure that conditions of detention, when it is necessary and unavoidable, meet international standards. The Strategy uses a number of tools to achieve these goals, including problem analysis and diagnosis, advocacy interventions, awareness-raising and campaigning, capacity building and monitoring places of immigration detention.

To this end, UNHCR has published various supporting materials, such as a Practical Manual on Monitoring Immigration Detention,<sup>42</sup> Vulnerability Screening Tool,<sup>43</sup> Detention Checklist,<sup>44</sup> Stateless

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<sup>38</sup> Available at: <http://fra.europa.eu/en/publication/2017/child-migrant-detention>.

<sup>39</sup> European Commission Recommendation on making returns more effective, 7 March 2017, C(2017)1600 final.

<sup>40</sup> European Commission Communication on the protection of children in migration, 12 April 2017, Com(2017)211 final.

<sup>41</sup> UNHCR's position regarding the detention of refugee and migrant children in the migration context, January 2017, available at: <http://www.refworld.org/docid/5885c2434.html>.

persons in Detention: A tool for their identification and enhanced protection,<sup>45</sup> and learning programmes: Fundamentals of Immigration Detention, Alternatives to Detention, and Immigration Detention Monitoring.

### 3.4. CIVIL SOCIETY ACTORS

While Governments are the primary “duty bearers”, they may choose to enlist the assistance and support of other actors in meeting these primary duties, but remain responsible for ensuring that they are carried out. In other words, the role of civil society is to complement and supplement, but not substitute, the fulfilment of obligations of States. All over Europe, civil society, in particular non-governmental organizations, have made an invaluable contribution to the alleviation of the suffering of asylum seeking and migrant children, including when placed in detention. NGOs have been able to fill some gaps, where Governments have failed to assume their primary duties.

In the context of migration detention of children and alternatives to detention, NGOs form strong networks, such as the International Detention Coalition<sup>46</sup> or the new European Alternatives to Detention Network,<sup>47</sup> and focus on a broad portfolio of activities, including the provision of assistance (shelter, education, healthcare, legal assistance, etc.), case management, social and psychological support, monitoring (places of detention, implementation of alternatives, forced returns), advocacy activities and strategic litigation, campaigns, liaising between victims and the authorities, awareness raising activities and leisure activities.

Although it might be difficult for NGOs to find the right balance between criticizing the actions of the governments and actively participating in governments’ policies,<sup>48</sup> and for the governments to measure the effectiveness and credibility of NGOs, the following conditions for cooperation between the governments and NGOs were identified: existence of a strong civil society with a capacity to act; recognition from the authorities of the role and mission of NGOs; clarity of the roles and responsibilities between governments and NGOs; existence of places and bodies where a dialogue and access to the governments is possible (e.g. regular meetings in formal commissions, facilitation of the cooperation by National Human Rights Institutions); independence of NGOs, including the question of funding; and existence of a broad range of NGOs with different objectives and means of action to complement each other.

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<sup>42</sup> UNHCR, Association for the Prevention of Torture (APT) and the International Detention Coalition (IDC), Monitoring Immigration Detention: Practical Manual, 2014, available at: <http://www.refworld.org/docid/53706e354.html>.

<sup>43</sup> UNHCR and IDC, Vulnerability Screening Tool – Identifying and addressing vulnerability: a tool for asylum and migration systems, 2016, available at: <http://www.refworld.org/docid/57f21f6b4.html>.

<sup>44</sup> UNHCR, Detention Checklist, July 2017, available at: <http://www.refworld.org/docid/59a4111e4.html>.

<sup>45</sup> UNHCR, Stateless Persons in Detention: A tool for their identification and enhanced protection, June 2017, available at: <http://www.refworld.org/docid/598adacd4.html>.

<sup>46</sup> For more, see <https://idcoalition.org/>.

<sup>47</sup> Established in March 2017 to collect evidence and data about effective alternatives to detention in Europe, to run pilot projects on alternatives to detention and to present findings to decision-makers and civil society.

<sup>48</sup> On the one hand, NGO lawyers often fight for procedural safeguards for detainees, but, on the other hand, this might be seen as legitimizing detention.

#### IV. EFFECTIVE ALTERNATIVES TO DETENTION, CHILD PROTECTION PRINCIPLES AND EXAMPLES OF GOOD PRACTICE

Research and practice have shown that children’s rights are better protected in places in which they are not deprived of liberty, where they can lead relatively normal lives, access education and benefit from social networks, health care and other support that they require. It has been reported that persons accommodated in non-custodial accommodation can better prepare for the next steps in their life, whether they will be able to continue to live in the country of reception or will have to return to their country of origin.

##### 4.1. EFFECTIVENESS OF ALTERNATIVES

Alternatives to immigration detention remain largely unused in practice, most notably due to wide-spread concerns about their effectiveness. It is, therefore, important to enhance, spread and further develop not only principles but also practices that States believe in and want to adopt. In order to achieve it, alternatives to detention must be effective and respect legitimate interests of States. They should be enshrined in national legislation in order to facilitate their use in practice.

There are a number of indicators to measure effectiveness of alternatives to detention, such as their impact on the decision on migration status, level of compliance with immigration procedures, respect for human rights, impacts on the facilitation of return, and cost-effectiveness.

##### 4.1.1. ESSENTIAL ELEMENTS OF EFFECTIVENESS

Based on the work of the CDDH-MIG, the following essential elements of the effectiveness of alternatives were presented: screening and assessment;<sup>49</sup> access to information; legal assistance; building trust in asylum and migration procedures; provision of coaching or case management services; safeguarding dignity and fundamental rights.<sup>50</sup> Generally speaking, emphasis was placed on finding partners that could serve together with the relevant authorities to provide proper care arrangements and case management systems, thereby nurturing genuine and regular dialogue between the authorities and migrants, helping to ensure compliance with procedures.

##### 4.1.2. ENGAGEMENT-BASED APPROACH

It was consistently highlighted that there is a significant scope for expansion of alternatives to detention in Europe, especially those that focus on engagement. The focus in Europe has long been on what might be called “traditional” or “enforcement”-based alternatives to detention borrowed from the criminal justice system. These restrictions and conditions allow governments a greater sense of control over certain actions and the choices of individuals, but there is little evidence that restrictions *per se* promote case resolution and compliance with final decisions. It was advised to

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<sup>49</sup> Screening and assessment are important tools for ensuring that the authorities have identified all children and are taking their situation into account. It is also an essential strategy for building trust in the system and for addressing a range of barriers that may impede case resolution. A number of sources are available that provide guidelines and examples of screening processes to identify children, child-sensitive age assessments that are holistic and do not rely on outdated medical interventions, and best interest determinations. For more, see Vulnerability Screening Tool developed by UNHCR and the IDC (cited above).

<sup>50</sup> For more, see the CDDH Analysis of the legal and practical aspects of effective alternatives to detention in the context of migration, 26 October 2017, CDDH-MIG(2017)02Rev, available at: <https://rm.coe.int/steering-committee-for-human-rights-cddh-analysis-of-the-legal-and-pra/1680780997>

shift the focus and develop engagement-based alternatives that actually work to improve the effectiveness of procedures in achieving case resolution and respect basic rights.

The growing body of international research, best practice and evidence indicates that the most effective elements to manage people outside of detention are those elements that engage migrants in immigration procedures, in particular through tailored case management. “There Are Alternatives” Report<sup>51</sup> presents such examples and provides guidelines for implementing engagement-based alternatives. It involves, *inter alia*, a social work approach, empowering and building trust with migrants to work towards the resolution of their migration matters.

It was noted that migrants are more willing and able to comply with a negative outcome of migration procedures under three basic conditions: first, if they believe that they have been through a fair and efficient process, second, if they have been informed, supported through the process and their basic needs met, and, third, if all the options to remain in the country legally have been explored.

#### 4.1.3. BEST INTERESTS OF THE CHILD

The underlying consideration for the proper application of alternatives to detention is the assessment of the principle of the best interests of the child. The concept must be implemented via two main avenues: on the one hand, it is a general principle which has to be defined in law and taken into consideration in policies and decisions related to children, and, on the other, it is an individualized procedure that must adapt to every child’s stage of maturity, family circumstances, cultural context, and experience, if any, of emotional, physical and/or sexual abuse, lack of family support, etc. In other words, the best interests principle requires that due attention is given to the child’s specific situation and protection risks.<sup>52</sup> Measures to implement the best interests of the child in national migration systems include consultations with children through participatory assessments that are systematic, age-appropriate and gender-sensitive; the collection of data by sex and age; giving primary consideration to the best interests of the child in resource allocation; the insertion of child-specific aspects in guidelines, policies, country operation plans, sub-project agreements and standard operating procedures, etc.<sup>53</sup>

##### 4.1.3.1. Guardianship

Effective guardianship systems taking into account the best interests of the child play a key role when dealing with unaccompanied or separated migrant children. An unaccompanied child must be appointed a guardian as soon as possible after identification by the authorities, whether or not they are in detention. Guardianship constitutes an essential safeguard for the protection of children’s rights, including the right to be heard and informed, the right not to be discriminated against, the right to development, the right to health, the right to education, the right to be free from violence, access to material needs and welfare benefits, etc. Qualified, independent and promptly appointed guardians with the necessary powers and safeguards enshrined in law, including parental responsibilities, should secure access to these rights and work out a durable solution in the best interests of each particular child. These guardians should undergo a professional training, preferably with a specialization on migrant children, and have experience, expertise and competence in building a rela-

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<sup>51</sup> For more, see the International Detention Coalition (IDC), *There are Alternatives: A handbook for preventing unnecessary immigration detention* (revised edition), 2015, available at: <http://www.refworld.org/docid/57d022a24.html>.

<sup>52</sup> UNHCR Guidelines on Determining the Best Interests of the Child, May 2008, available at: <http://www.refworld.org/docid/48480c342.html>.

<sup>53</sup> *Ibid.*

tionship of trust with the child in question, taking its views into account. Building a relationship of trust with an unaccompanied or separated child is, however, hardly possible when the child is detained.

#### 4.1.3.2. *Age Assessment*

It is also a key factor to respect the presumption of minority, until proven otherwise. It is in the best interest of the child to be officially recognised as a child as certain safeguards, protective measures and rights are in place in States only for children. The best interests principle should guide the age assessment procedures and children should not be detained whilst undergoing age assessment but should benefit from alternatives to detention.

## 4.2. EXAMPLES OF GOOD PRACTICE

Research has recorded over 250 examples of alternatives to detention in over 60 countries.<sup>54</sup> It was found that alternatives can achieve high compliance rates, high levels of case resolution and voluntary return, at a fraction of the costs of detention.

However, every example given has to be adapted for the system in each country since there are many variables at stake. Therefore, effective mechanisms must be individualized.

### 4.2.1. *UNACCOMPANIED AND SEPARATED CHILDREN*

Two fundamental considerations were noted. First, as with all children placed in alternative care, it is crucial to avoid institutionalised settings to the largest extent possible. Second, based on the fact that individualized protection is key, effective guardianship systems<sup>55</sup> for unaccompanied and separated children should be established.

#### 4.2.1.1. *Foster Care*

Foster care systems were repeatedly presented as one of the preferred models for unaccompanied and separated children in the given field. A foster care family was recognized as the best environment for a child to develop and be supported in a family setting. There are well established foster care programs for migrant children in a number of European countries,<sup>56</sup> with increasing investments. Such systems can take up to 50% of migrant children in a country<sup>57</sup> or a region.<sup>58</sup>

Given the example of foster care in the Venice region of Italy, the Italian authorities take the following steps upon a child's arrival. First, children are asked if any relatives or family friends live in the area. If not, their parents are sometimes called to ask for any contacts in their networks that could help. If this does not result in a contact, the child is often placed in residential care. However, if a needs assessment shows that the child needs to live in a family, foster families are found. While these are of the same cultural background when possible, many of them are Italians. Similarly, a practice in Greece shows that foster families do not necessarily have to be from similar cultural back-

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<sup>54</sup> See the International Detention Coalition (IDC), *There are Alternatives: A handbook for preventing unnecessary immigration detention* (cited above).

<sup>55</sup> For more, see Sub-chapter 4.1.3.1. above.

<sup>56</sup> Such as the Netherlands, the United Kingdom and Italy.

<sup>57</sup> The Netherlands.

<sup>58</sup> The Venice region in Italy.

grounds as that of the children. Communication is not usually a problem since the family develops its own communication channels with the child.

#### 4.2.1.2. *Kinship Care*

Kinship care is a placement of a child with members of his/her extended family, or with close friends of a family known to the child. Taking Sweden as an example, around 40% of unaccompanied migrant children are placed in kinship care. Authorities undertake screening and training of these families before placement occurs. Research has shown that kinship care provides greater stability than placement in recruited foster families or in residential care, with children moving fewer times than their peers. It can also provide shared language, which facilitates communication, and shared culture, which fosters identity.

#### 4.2.1.3. *Designated Accommodation Facility for Children*

In Greece, the necessary steps for the support of unaccompanied and separated children include identification of such children, registration, placement under protective custody until their transfer to an accommodation facility for children is possible, identification of free space in accommodation facilities, completion of medical examinations, and placement of children to the designated accommodation facility.

### 4.2.2. *FAMILIES WITH CHILDREN*

#### 4.2.2.1. *Open Family Centres*

Open family centres in the Netherlands were one of the examples presented for families with children, providing the right to family life, but restricting the freedom of movement to the area of a municipality. Adult members of families have a duty to report weekly to the authorities. NGOs have unlimited access to the centres. Although the Netherlands used to have border detention for families with children, the authorities in cooperation with UNHCR and the IDC developed tools for effective border screening, making such detention superfluous. However, for the purposes of the realization of returns and only as a measure of last resort, the Netherlands recently opened a special closed centre for families with children, which was developed with the aim of eliminating to the greatest extent possible the impression of detention. There is no barbed wire. The family units, equipped with a kitchen, a living room and bedrooms, are oriented to the middle of the centre consisting of a green garden. Emphasis is placed on privacy and family unity. Education, health care and other support is available. Specially trained staff do not wear uniforms. Strong subsidies for NGOs are available.

In Austria, an apartment building on the outskirts of Vienna has been adapted for the placement of families with children.<sup>59</sup> The building is used when the authorities order an alternative to detention in the form of designated residence, reporting obligation or their combination. Families are not restricted in their freedom of movement. An NGO provides assistance and return counselling. No uniformed officers are present in the building. The underlying objective is to provide positive experience for the families. The project has been presented as successful with increasing numbers using alternatives, decreasing numbers using detention, and low rates of absconding. However, the authorities still use the possibility to detain families with children, but only towards the very end of the return procedure for a maximum of 72 hours and in an environment adapted for children. It was argued that such measures may be necessary in order to ensure the enforcement of a return deci-

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<sup>59</sup> Two-room apartments are usually designed for two adults and three children.

sion. Even at that stage, however, the possibility to use available alternatives is being considered in each individual case.

#### 4.2.2.2. *Placement with Conditions for Families*

A “Family Returns Process”, introduced by the United Kingdom in 2001, places an emphasis on the need to safeguard and promote the welfare of children. It starts once a family has exhausted their appeal rights. The process involves a set of conditions or requirements for the family: mainly that they attend a Family Removals Conference as the first step in an escalating process. During this conference, their options and the consequences of different choices are explored. They are provided with information about the options and support available to the family. The family has one week to consider these before they return for a Family Departure Meeting to give their decision and to initiate next steps. The process involves three stages, with a clear escalation procedure. The first is an assisted return, in which the family departs independently either with or without support. The second is a required return, where the family is offered an opportunity to depart on self-check in removal directions. The third is an ensured return, which can only be implemented after it has been referred to the Independent Family Returns Panel for consideration and approval. An evaluation of the 2014–2016 period reported that 97% of those who departed on the program did so without enforcement actions. The data shows that more families are entering the Family Returns Process and, as a proportion, many more are returning to their country of origin without the need for an ensured return.<sup>60</sup>

#### 4.2.2.3. *Case Management*

A holistic case management approach in the form of the Family Case Management Program for families facing return operated in the United States of America between January 2016 and June 2017. It was designed to test the premise that, by meeting needs and providing information, participants will be more ready, willing and able to comply with all aspects of the immigration process. Families were selected based on their level of vulnerability and flight risk. Upon entering the program, qualified case managers (20:1 family unit to case manager ratio) undertook an initial assessment with each family to identify needs and concerns. They then developed a family case plan, including referral to required services, additional information and monitoring through check-ins and home visits. The service framework has three main components: access, orientation and monitoring. Case managers worked with families to access community services, depending on their needs. They would also provide orientation to the migration system and ensure each family attended a “Know Your Rights” information session. Finally, monitoring would be tailored to each family and undertaken by designated officers. Together, the three components served as a method to promote compliance while allowing participants to remain in their community as they moved through the immigration process. Unfortunately, there was no formal evaluation before the program was closed by the new administration in June 2017. However, it was clear that the program was producing very good results. By April 2017, the program had worked with more than 630 families. 99% of participants successfully attended their court appearances and check-in appointments with immigration officers. Anecdotal evidence suggested that the program also produced independent departures when re-

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<sup>60</sup> For more, see Independent Family Returns Panel Reports 2011–2012 and 2014–2016, available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/257175/ifrp-report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257175/ifrp-report.pdf) and [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/583790/Independent\\_Family\\_Returns\\_Panel\\_report\\_2014-16.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/583790/Independent_Family_Returns_Panel_report_2014-16.pdf).

quired, with better coping and well-being outcomes for children and families. The program cost US\$36 per day per family, compared with US\$164 per day per person in detention.<sup>61</sup>

In Poland, an NGO run<sup>62</sup> pilot project for vulnerable persons, in particular families with children who were either released from detention or imposed alternatives to detention, offers holistic services that are aimed at engaging migrants in immigration procedures, including return procedures, empowering them, assisting them in developing trust in the procedures, supporting their case resolution, providing legal advice and psychological support. The project uses an individualized approach through an engagement-based case management model inspired by the Revised Community Assessment and Placement (CAP) model, developed by the International Detention Coalition.<sup>63</sup> This pilot project also experiments with various case-management tools and approaches, drawing on experiences of other countries, in order to discover the most effective ways forward in Poland. It was noted that case-management is not mainstreamed in Polish social work and that the project has not yet been supported by the Government. However, the project aims to develop mutual trust and prove that these efforts can benefit migrants as well as the authorities by giving them non-enforcement tools to manage migration; tools which are cheaper but simultaneously effective and human rights compliant.

#### 4.2.3. OTHER EXAMPLES FROM OUTSIDE EUROPE

Examples of alternatives given were not limited to the European continent. It was stressed that Europe needs to look beyond its own borders. When it comes to the immigration detention of children, Europe has a lot to learn from countries outside the region. There are various functioning arrangements around the globe, such as group care places for asylum seeking children in Yemen, residential care arrangements designed for children in Indonesia and Israel, system of appointments of guardians in Argentina, etc.<sup>64</sup> These examples share a strong case management approach in different forms (guardians, substitute families, social workers, local NGOs, psychologists) as a common characteristic.

## CONCLUSIONS AND RECOMMENDATIONS FOR WAYS FORWARD

The following bullet points summarize main conclusions and recommendations expressed throughout the Conference.

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<sup>61</sup> For more, see Immigration and Customs Enforcement, Fact sheet: Stakeholder referrals to the ICE/ERO Family Case Management Program, 2016, available at: <http://discuss.ilw.com/content.php?5693-News-ICE-Factsheet-on-the-Family-Case-Management-Program>; see also Loiselle, Mary F., Geo Care's new family case management program, GEO World, 2-3, 2016, available at: <http://www.geogroup.com/userfiles/1de79aa6-2ff2-4615-a997-7869142237bd.pdf>; see also Bendix, Aria, ICE Shuts Down Program for Asylum-Seekers, The Atlantic, 9 June 2017, available at: <https://www.theatlantic.com/news/archive/2017/06/ice-shuts-down-program-for-asylum-seekers/529887/>.

<sup>62</sup> The pilot project is run by the Association for Legal Intervention (SIP). For more, see <https://interwencjaprawna.pl/en/>.

<sup>63</sup> For more, see the International Detention Coalition (IDC), There are Alternatives: A handbook for preventing unnecessary immigration detention (cited above).

<sup>64</sup> For more, see UNHCR, Options Paper 1: Options for governments on care arrangements and alternatives to detention for children and families, 2015, available at: <http://www.refworld.org/docid/5523e8d94.html>

## GENERAL REMARKS

- There is a **very narrow space** in international human rights law **for the practice of immigration detention of children**. Soft law sources consistently maintain that the detention of migrant children can never be in their best interests.
- Migration detention has significant **harmful effects** on children, in particular their physical and mental health, well-being and development, even if the detention is of a short duration and conditions are adequate.
- Alternatives to detention are cheaper than detention, cause less harm for children and societies, uphold international human rights standards and can prove effective in terms of compliance when implemented in an appropriate manner.

## RECOMMENDATIONS FOR GOVERNMENTS

- Governments should set out a **roadmap to end immigration detention of children**. Mainstreaming the prohibition of detention in law and in practice is one of the ultimate goals. Even if this cannot be achieved immediately, it is important to publicly demonstrate the intention to achieve such a goal and to identify the steps that need to be taken.
- If a child, in exceptional circumstances, is placed in immigration detention, it is fundamental to **limit its duration** to an absolute minimum and uphold appropriate conditions.
- The lack of alternatives to detention in Europe needs to be urgently addressed. **A range of alternatives to detention** must be firmly anchored in national legislation and must always be considered before resorting to detention.
- **Engagement** based rather than enforcement based alternatives should be applied instead of detention wherever possible. Emphasis should be placed on **proper case management** and the provision of information. Trust between those managing the process and the migrant child is essential. The overall quality of the process in which migrants are engaged and involved in alternatives to detention often determines their effectiveness. State officials, civil servants and advisors, who are convinced of the need for change, need to create and sustain stronger networks of mutual support and good practice.
- **Child-friendly procedures** must be developed, **screening of vulnerabilities** must be carried out and **effective guardianship** systems must be in place, whether or not the child is placed in detention or an alternative to detention.
- **Holistic, humane and human rights compliant age assessment procedures** must respect the presumption of minority until demonstrated otherwise.
- **Data collection** needs to be improved. There are significant gaps in national statistics of immigration detention as well as the application of alternatives and their effectiveness.

## RECOMMENDATIONS FOR INTERGOVERNMENTAL AND NON-GOVERNMENTAL ORGANIZATIONS

- Efforts should be made to convince policy makers and prominent government figures that there are effective alternatives and show them how they can be used in practice.

- International organizations and NGOs are encouraged to conduct more **research** in the field, demonstrating the impacts of immigration detention on children and the success rates of alternatives to detention.

#### OVERALL CONCLUSIONS

- European **solidarity**, mutual **cooperation**, **sharing of good practices**, and a **collective response** of all relevant actors, especially governments and NGOs, are essential and should be demonstrated in practice. An alliance of actors that will push for change is needed.
- There is a clear need to look at **the broader context** of migration policies. Changing the ethos away from deterrence to the provision of basic care and protection may not only prove more humane but also more fruitful for States in terms of compliance to immigration procedures. Ensuring access to territory and procedures, prompt and effective processes (such as age-assessment, appointment of a guardian, and the provision of information) and implementation of speedy family reunification policies are crucial for reaching the goal of respecting the right to liberty of migrant children.
- In a free democratic society, all actors must do everything in their power to avoid getting used to the image of children behind bars. This Conference, and the inspiration it has given, may signal the start of a 'reverse' process that will seek to secure human rights, the rule of law, and democracy. It should be a process that reduces the unnecessary suffering of the most vulnerable individuals, and strengthens trust in our common values. In due course, such development could be called "the Prague Conference Process".

