



**Quaker
Council** for
**European
Affairs**



Child Immigration Detention in Europe

**HUMAN RIGHTS
PROGRAMME REPORT**

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

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

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

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Glossary

Immigration detention

Deprivation of liberty or confinement in a closed place in which a migrant or refugee is not permitted to leave at will, including, though not limited to, prisons or purpose-built detention, closed reception or holding centres or facilities.⁵ Immigration detention is usually of an administrative character due to an alleged breach of the conditions of entry, stay or residence in the receiving country.

Child

A person below the age of 18, unless the laws of a particular country set the legal age for adulthood younger.⁶

Alternatives to detention

Any legislation, policy or practice, formal or informal, that ensures people are not detained for reasons relating to their migration status.

Migrants and refugees

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

Best interests of the child⁷

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

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

Executive Summary

This report explores aspects of child immigration detention in Europe. After briefly describing the legal framework and standards at international and European level, the report gives an overview of the situation in Europe by addressing three main questions:

- How many children are detained in the context of migration?
- What laws and policies regulate the practice?
- What are the existing alternatives to child immigration detention?

The report also discusses the impacts of detention, giving special attention to the different impacts on girls and boys.

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

As some alternatives to child detention already exist, and others are being developed, our report insists on the need to implement alternative care arrangements that would ensure that children are protected from a seemingly costly, ineffective and harmful approach. Detention is not the solution and there are other ways to manage migration in line with a child's best interests.

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

Sylvain Mossou
QCEA Human Rights Programme
September 2018

Introduction

In 2015 there was an unprecedented arrival of migrants to Europe. Thousands died when attempting to cross the Mediterranean (2.750 in 2015, 3230 in 2016, 2553 in 2017).¹ Given the situation, European countries decided to react by adopting internal and external policies and by working with non-EU countries (that migrants have travelled from or through), under what is called “the European Agenda on Migration”.²

One of the objectives of the European Agenda on Migration aims to substantially reduce the number of irregular migrants entering Europe and substantially increase the number of people returned to their countries of origin. However, there have been widespread concerns that human rights and refugee protection standards are being undermined.³ One of those concerns is the use of detention, including child detention.⁴

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

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

In this context, this updated version of the 2017 QCEA report re-examines child immigration detention in Europe. The first two sections describe the legal framework and standards at international and European level. The third section will discuss the situation in Europe by underlining the major challenges and highlighting promising measures that should be used as alternatives.

International human rights law and standards

While Governments do have a legal right to detain non-citizens for migration related reasons in certain limited circumstances (for initial identification and for legitimate removal purposes), the detention must comply with refugee protection and human rights norms, principles and standards; otherwise it becomes unlawful and arbitrary. On detention, International human rights law is clear⁸:

- It should have a clear legal basis in national law,
- It should only be used as last resort measure, for the shortest possible period of time and can only be justified where it is necessary, reasonable, and proportionate to the legitimate purposes⁹ to be achieved, and
- It is only permissible after less coercive alternatives have been found not to be suitable in each individual case. This will require an individual assessment in each situation.

In the case of children, the United Nations Convention on the Rights of the Child (CRC), the most widely adopted and ratified international human rights instrument on the protection of children, prescribed in its Article 37 that “*no child should be deprived of his or her liberty unlawfully and arbitrarily*”. Article 3 further states that “in all actions concerning children ... the best interests of the child shall be taken into consideration.”¹⁰

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

Children should never be detained for migration-related purposes

Article 37 (b) of the Convention states that children can be detained as a last resort and for the shortest possible period of time. However, the CRC committee specified in 2012 that the detention of a child on the basis of their or their parent’s migration status constitutes a child rights violation and always contravenes the principle of the best interests of the child.¹¹

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

The CRC Committee called on states to “*adopt alternatives to detention that allow children to remain with family members and/or guardians in non-custodial, community-based contexts while their immigration status is being resolved, consistent with their best interests, and with children’s rights to liberty and family life.*”¹²

The right to family life must be respected

States should ensure that their migration policies, legislation and measures respect the right of the child to family life and that no child is separated from their parents by state action or inaction unless in accordance with their best interests.¹³ The CRC Committee also added that “*family unity was not a justification for detaining children and alternative measures should be found for the whole family.*”¹⁴

Since 2012, various UN human rights bodies¹⁵ have further confirmed those three key conclusions. They have been reaffirmed on several occasions, most recently in the context of migrant children forcibly separated from their parents and held in detention at the US border under the Trump Administration's zero tolerance policy.

“All children caught up in the global migration crisis should be treated as children first and foremost, regardless of their nationality or migration status, or that of their parents.”

THE COMMITTEE ON THE RIGHTS OF THE CHILD and the COMMITTEE ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES

JOINT GENERAL COMMENTS ON THE HUMAN RIGHTS OF CHILDREN IN SITUATIONS OF INTERNATIONAL MIGRATION

November 2017

“Detaining children, whether unaccompanied or on the basis of their or of their parents’ immigration status, is never in the best interests of the child and constitutes a violation of the rights of the child.”

RENATE WINTER

CHAIR OF THE UN COMMITTEE ON THE RIGHTS OF THE CHILD

February 2018

“The best interests of the child should be the paramount consideration, including in the context of migration management, and children should never be detained for reasons related to their own or their parents’ migration status.”¹⁶

UN EXPERTS

June 2018

In conclusion, there seems to be a clear consensus, especially among various UN Bodies and agencies, that children should not be detained, whether they are unaccompanied or with their families and regardless of their or their parents’ migration status.¹⁷ Therefore, states need to ensure that non-custodial, community-based alternatives are found. Through the December 2016 New York Declaration for Refugees and Migrants, UN member states have committed themselves to working towards ending this practice.¹⁸ This commitment has been further reaffirmed in the inter-governmentally negotiated and agreed United Nations Global Compact on Migration on 13 July 2018.

European laws, policies and standards

The Council of Europe

European Convention on Human Rights

The European Convention on Human Rights (ECHR) does not contain specific provisions regarding the detention of children. However, on many occasions, the European Court of Human Rights, through its case law has recalled that the extreme vulnerability of a child was a paramount consideration and takes precedence over their immigration status. States have an obligation to give primary consideration to the best interests of the child and provide appropriate care for their specific needs, including alternatives to detention, so as to not create a situation which would cause stress and anxiety, with particularly traumatic consequences.^{19 20}

The Committee of Ministers

The Committee of Ministers, the Council of Europe's statutory decision-making body made up of Ministers for Foreign Affairs of the 47 member states, has emphasised that the detention of asylum seekers should be the exception. It considers that *"children, including unaccompanied minors, should, as a rule, not be placed in detention. In those exceptional cases where children are detained, they should be provided with special supervision and assistance"*.^{21 22}

During the 127th Session of the Committee of Ministers in May 2017, the 47 European member states adopted an Action Plan on protecting refugee and migrant children.²³ The Action Plan proposes concrete support to member states at all stages of the migration process, with a special focus on unaccompanied children. One of the Action Plan's pillars focuses on providing effective protection to children with one of the objectives being to avoid resorting to the deprivation of their liberty on the sole ground of their immigration status. One of the proposed measures includes guidance and training on alternatives to detention.

The Parliamentary Assembly (PACE)

The Parliamentary Assembly made up of representatives from the 47 member states, adopted a resolution in 2014²⁴ on the alternatives to immigration detention of children, which echoed the Committee of Ministers' observations. However, it appears to have taken a step further by encouraging member states to prohibit the detention of children for migration purposes by law and ensure that this prohibition is fully implemented in practice, adding that *"alternatives to detention that meet the best interests of the child and allow children to remain with their family members or guardians in non-custodial community-based contexts should be adopted."* In March 2015, the Parliamentary Assembly launched a campaign to ending child immigration detention.²⁵

The Commissioner for Human Rights

The former Commissioner for Human Rights, Nils Muižnieks, spoke out against what he called "the pan-European trend of criminalisation of asylum seekers and migrants, of which detention is a key part. He called it *"a far-reaching interference with migrants' right to liberty"* which has *"very harmful effects on the mental health of migrants, especially children, who often experience detention as shocking, and even traumatising."*



↑ The Parliamentary Assembly of the Council of Europe.
PHOTO: COUNCIL OF EUROPE (CC)

He underlined that “*there are no circumstances in which the detention of a child for immigration purposes, whether unaccompanied or with family, could be in the child’s best interests.*” For this reason, he called on states to work towards the complete abolition of the detention of migrant children which should be a priority for all states. Alternative measures are essential and setting up more ‘child-friendly’ detention facilities “*cannot be seen as a substitute for categorically prohibiting the detention of children*”.²⁶ This position has also been reaffirmed by the new Commissioner, Dunja Mijatovic.

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

The Commissioner’s observations and recommendations are also shared by Tomáš Bocek, the Special Representative of the Secretary General on Migration and Refugees. One of his priorities is to improve the situation of the high number of refugee and migrant children currently in Europe. On 22 March 2017, he published a report²⁷ on the main challenges for migrant and refugee children in Europe. In his report, based on his on-the-ground experience gathered during the fact-finding missions in 2016, he called for urgent measures to find alternatives to detention of children and guarantee minimum living conditions in camps, such as gender-separate sanitary facilities, better lighting and child-friendly spaces in order to eliminate risks of sexual abuse.

The main concerns identified in his report are to be addressed through the aforementioned Committee of Ministers’ Action Plan on protecting refugee and migrant children (2017-2019).

European Union law

At European Union level, there is the Charter of Fundamental Rights which prescribes in its Article 24²⁸ that:

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child’s best interests must be a primary consideration.
3. Every child shall have the right to maintain, on a regular basis, a personal relationship and direct contact with both parents, unless that is contrary to the child’s interests.

More specifically, in the context of migration, there are two directives, namely, the Reception Conditions Directive²⁹ and the Return Directive,³⁰ which include specific provisions for member states to follow in their treatment of children. Both underline the need for the children’s best interests to be a primary consideration. The directives allow for children to be detained only as a measure of last resort and after having established that other less coercive alternative measures cannot be applied effectively. Such detention shall be for the shortest period of time and all efforts shall be made to release the detained children and place them in accommodation suitable for minors.³¹

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In April 2017, acknowledging the challenges faced by migrant and refugee children, the EU Commission published a communication on “The protection of children in migration” in which it essentially says that:

“Given the negative impact of detention on children, administrative detention should be used, in line with EU law, exclusively in exceptional circumstances, where strictly necessary, only as a last resort, for the shortest time possible, and never in prison accommodation [...] everything possible must be done to ensure that a viable range of alternatives to the administrative detention of children in migration is available and accessible”.

On 14 June 2018, the European Parliament and the Council of the European Union reached a political agreement on reforming the Reception Conditions Directive. In this agreement there is an emphasis on the use of adequate alternatives for child detention, including for families with children. However, despite calls from UN child rights experts and advocacy by NGOs, banning child detention did not make the final version.

“EU law should not allow for child immigration detention, even as a last resort, and the reform of the Common European Asylum System is a timely opportunity to ban this practice. There can be no exceptions to this principle.”

RENATE WINTER
CHAIR OF THE UN COMMITTEE
ON THE RIGHTS OF THE CHILD
February 2018

In conclusion, when comparing international and European laws and policies, one can make the following observations:

- At international level, there seems to be a growing consensus that children, whether they are unaccompanied or with their families, should not be detained. UN Child rights experts have explicitly called for a ban of the practice and, at UN level, States have committed to working towards ending it.
- At European level, the Council of Europe has also been pushing towards ending detention and focusing on alternatives.
- At the level of the European Union, EU law puts limitations on the detention of children in the context of migration and, over the past year, the EU has put a stronger emphasis on the need to implement alternatives. However, it stopped short of prohibiting it at a time where EU laws are being reformed.



↑ Inside the European Parliament in Strasbourg.
PHOTO: EUROPEAN PARLIAMENT / PIETRO NAJ-OLEARI (CC)

The situation in Europe

Fleeing poverty, violence, persecution and war, the number of refugees and migrants trying to reach European shores increased substantially during 2015-2016.³² This was due in large part to the war in Syria and Iraq, as well as to other violent conflicts, oppression and poverty in countries such as Afghanistan, Eritrea and elsewhere.³³

Against the backdrop of a slow economic recovery, increased nationalism and fear of further high-profile attacks in public spaces, European countries took a series of measures and adopted external and internal policies to address the challenges of migration. Under the European Agenda on Migration, the EU and its member states have aimed to reduce irregular migration. This has involved reinforcing EU external borders and revising their legal migration and asylum laws and policies.

The European approach to migration has been one that has resulted in portraying migration as a security issue (securitisation of migration). Migration is thus framed as a threat that needs to be dealt with urgently. Such an approach helps justify the adoption of measures that may not only go beyond what is politically or morally acceptable, but may also overlook human rights concerns.

Today, the number of people irregularly coming to Europe has dramatically decreased. More than 186,000 migrants arrived in Europe in 2017 (a 52% decrease compared to 387,739 reported in 2016 and a 82% decrease when compared with more than the million people registered in 2015).³⁴ Yet the political crisis continues. Pressured by nationalistic and xenophobic political parties which are making headway – notably in next year's European elections – the EU and its member states have repeatedly reaffirmed their determination to stop irregular migration, protect EU's external borders and increase the rate of returns.

Last year, in a report, the European Council on Refugees and Exiles documented a wider use of detention in Europe in terms of infrastructure and changing laws to make detention easier³⁵ (see *Justifying detention*, overleaf).

The concerns over the risks of an expansion of immigration detention have not been eased over the past year:

- At EU level, European governments have maintained and even stepped up cooperation with third countries. Amnesty International and Human Rights Watch have denounced the cooperation with Libya which resulted in keeping refugees and migrants in appalling conditions in the country's detention centres.^{36 37} Most recently, at the June 2018 European Council meeting, EU Countries expressed their intention to explore the idea of having "controlled centres" on EU territory and "regional disembarkation platforms" outside the EU.³⁸
- At country level, there have also been concerning developments. The European Migration Network mentions in its 2017 Annual report that several EU member states increased their detention capacities or planned to expand their facilities.³⁹ For example, in Belgium, the government followed through with the construction of a new detention centre for families.⁴⁰ Other member states modified their legislation with regard to detention. In France, the government's new immigration law failed to ban child detention and has even extended the possibility for detention up to 90 days, including for accompanied minors.⁴¹

In the context of these developments and the fact children still make up more than 30% of all asylum seekers across Europe (In 2017, European countries recorded 209,756 asylum claims by children, including 50,325 newly registered asylum claims during the last quarter of 2017),⁴² the following sections examine: the number of children detained in Europe in the context of migration, the laws and policies on this issue, the impacts of detention, including the gendered impacts of it, and the alternatives measures used in different countries.

continued →

JUSTIFYING DETENTION

To justify its use, States have used a wide range of arguments, sometimes in combination:⁴³

- Practical considerations such as having the migrant at the disposal of the authorities for identity checks or public health screenings on arrival,
- Enforcement-related motivations such as securing public order, avoiding the risk of absconding and/or ensuring returns of irregular migrants, and
- Political arguments such as to deter any further arrivals or to protect host societies.

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

- In many countries, including across Europe, it is difficult to get an accurate picture of the number of migrants and refugees being held in detention.⁴⁴
- Detention is costly, ineffective and, more often than not, the practice infringes on human rights standards and refugee protection.⁴⁵
- Alternatives to detention in Europe are rare and underused, and only a small number of individuals are submitted to these schemes.⁴⁶

How many children are detained in Europe?

As noted above, getting data regarding immigration detention is challenging. We reiterated our request to European governments to provide us with their most recent national statistics on child immigration detention.

In order to obtain data, QCEA sent a letter with three questions (see *Annex II*) to European governments (50 countries in total) by filing freedom of information requests, when available, and by emailing official and relevant governmental services, including Ministries of Interior and Justice as well as the European Migration Network.

After having combined the data we received with last year's reports, which included data from the European Union Agency for Fundamental Rights (FRA),⁴⁷ we make the following observations:

1. There is no comprehensive, comparable and reliable data

It is indeed difficult to obtain an accurate picture of the number of children held in immigration detention in Europe. There is no comprehensive, comparable and reliable data. In the table, for roughly half of the countries, there is no data. There are different factors that may explain such results and they may differ from country to country. In our data collection, we have encountered the following situations:

- A lack of answers to our request, as indicated by the number of red boxes in the table.
- Data is not available. For example, Austria has been unable to provide an answer because their detention statistics do not distinguish between adults and children.
- Data provided is annual (for example, in Norway and Switzerland).

continued →

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

FRA REPORT DATA												QCEA DATA																	
31 Dec 2015			31 Mar 2016			1 Sep 2016			15 Nov 2016			1 Dec 2016			July 2018			May 2017			2017*			2016*			2015*		
UA	AC		UA	AC		UA	AC		UA	AC		UA	AC		UA	AC		UA	AC		UA	AC		UA	AC		UA	AC	
Austria																													
Belgium	7	120	0	2	1	0	0	0	0	0	0	0	0	0				0	0										
Bulgaria	0	175	0	37	1	458																							
Croatia	0	2	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0												
Cyprus	0	0	0	0	0	0	0								0	0													
Czech Republic	0	0	0	7	0	19	0	0	0	0	0	0	0	0	0	0	0	0	0										
Denmark	0	0	0	0	0	0	0	0	0	0																			
Estonia	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	4									
Finland	0	3	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	18				1	24					
France	0	120																											
Georgia															0	0													
Germany	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0										
Greece					7	248									112	0													
Hungary	0	199			0	0	0	38	0	19							0	0	0										
Iceland																													
Ireland	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0**	0**									
Italy	0	0	0	0	0	0									0	0													
Latvia	6	1	2	0	6	4	10	1						1		6	2												
Lithuania	0	0	0	0	0	2																							
Luxembourg	0	44	0	0	0	0	0	0	0	0	0	0	0	0						0	28			0	33				
Macedonia															0	0													
Malta	0	0	0	0	0	0								0	0	0	0	0	5										
Moldova														0	0	0	2		0					0	2				
Netherlands	0	0	0	9	4	1	1	2	1	1	1	<5	<5	<5	0	0	0	0	0				26	147					
Norway																							7	46	12	143	89		
Poland	5	16	0	51	1	46	10	99	3	94	0	47																	
Portugal																													
Romania	17	0	5	0										0	0	0	0	0	0										
Slovakia	0	4	0	9	0	24	0	17	0	17	0	0	0	0	0	0	0	0	0										
Slovenia	0	0	0	0	0	0	0	1	13	0							0	0	0										
Spain	0	0	0	0																									
Sweden	0	0	0	0	0	0	0	1	0	0	0	0	0	0									99	9					
Switzerland																	3						31	5	103	4			
United Kingdom	0	0	0	0										0	0	0	0	0	0				42			163			

* additional full-year data provided by countries
 ** data from June 2017
 Blank fields indicate that no data was available, or that none was provided

UA = unaccompanied
 AC = accompanied

continued →

2. A misrepresentation of the extent of this phenomenon

In the table, where data is available, the majority of countries have reported that no or very few children were detained. While this may appear as positive, it is important to note:

- Most of the data only reflects the number of children in detention at a specific point in time and not the number of children detained over the course of a certain period, with the exception of some countries who provided annual data.
- The lack of answers to requests in many cases makes the assessment of the phenomenon very difficult.
- The issue of collecting data is further complicated by different definitions, types and classifications of words such as 'detention'.

As a consequence, the data misrepresents the extent of child immigration detention in a given country. For instance, while in 31 March 2016, the number of children detained in the Netherlands was reported as 9, the overall number for 2016 was reported as 173. The same can be observed with Sweden (No children detained on 1 September 2016, 15 November 2016 or 1 December 2016, but for 108 reported for 2016 as a whole) the UK (no children were detained in detention in May 2017, but the overall number for 2017 was reported as 42) and with the Switzerland (3 unaccompanied children were detained in detention in May 2017, but the overall number for 2017 was reported as 31).

For an affluent continent like Europe, with good data collection for other forms of detention, the failure to know how many children are detained is unacceptable.

Poor data collection has been recognised at international level by the UN General Assembly⁴⁸ which emphasised the need for better data on children and commissioned a Global Study on Children Deprived of Liberty which might be able to offer better data regarding this issue. The key output of the study should be an in-depth, comprehensive global report which was initially scheduled to be presented to the United Nations General Assembly (UNGA) at its 73rd regular session (September 2018).⁴⁹ However, due to constraints – reportedly of a financial nature – the report has encountered delays.

What are the laws regarding child immigration detention?

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

Accompanied vs. unaccompanied

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

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

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

* varies according to region

Banning detention below a certain age

A certain number of countries deal with detention by setting a minimum age under which a child would not be detained. In Switzerland, detention of children under 15 years of age is not permitted under Federal Law. In Austria and Latvia, unaccompanied children may not be taken into detention pending removal below the age of 14 years while in Finland and Poland, the limit is set at 15.

Gaps between laws, policies and practice

In light of the above observations, the detention of unaccompanied children is either prohibited or used only in exceptional circumstances. Similarly, the detention of accompanied children, albeit more frequent, appears also to remain limited as the practice is mostly used in specific situations. Similar observations were made in the FRA report which also suggests that in some countries when the practice is not prohibited, it is used rarely. While this suggests that in many countries' laws and policies are drafted in order to ensure that detention remains an exceptional measure for children, the following remarks call for a more nuanced assessment of the situation.

Firstly, the majority of countries (as seen in the table), if not all of them, have not prohibited child immigration detention altogether. Ireland⁵⁰ appears as the exception. Indeed, the country prohibits the detention of children for immigration purposes (asylum or return procedures), whether they are accompanied or not. Most European countries' policies therefore leave the possibility for detention, which goes counter to international human rights standards that increasingly support a no-detention policy for children as it is detrimental to their best interests.

Secondly, for federal states like Switzerland and Germany, practices regarding detention may differ because federal law provides some flexibility in terms of implementation.

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

- In **Hungary**, it is reported that when unaccompanied children apply for asylum and are aged over 14, they are transferred to the closed transit facilities at the border with Serbia where they are deprived of liberty.⁵¹
- **Belgium** has been able to limit the detention of accompanied children. However, there have been concerns from civil society organisations which have led to the creation of a campaign: “We do not detain a child. Full stop”.⁵² It has brought together fifty organisations against the government's late 2016 announcement to build a closed centre especially for families with children.⁵³ Unfortunately, the government followed through with it and reportedly have put a family with four children in the newly-created facility.⁵⁴

- In **France**, the annual report⁵⁵ on administrative detention, published by six civil society organisations, underlines that 2016 reached a record in terms of the number of children detained in spite of condemnations by the ECHR. 182 children were detained in mainland France and in one of the country's overseas territories, Mayotte, the number goes up to a dramatic 4285 children detained. In the 2017 annual report, the numbers went up for children detained in mainland France (304 accompanied children) and remained high for Mayotte (2493 detained children).⁵⁶ Furthermore, France recently failed to ban child detention in its revision of the immigration law. The law has actually extended the possibility for detention up to 90 days, including for accompanied minors.⁵⁷

- In **Bulgaria**, the detention of unaccompanied children is prohibited. However, according to a 2016 report⁵⁸ by the NGO The Bulgarian Helsinki Committee, a regular practice is to include unaccompanied minors in the detention orders of adults who are not related to them in order to circumvent the prohibition to detain them. The main reason is the failure of the social services for child protection to assist in providing accommodation for these children in other appropriate facilities. In his April 2018 country report, The COE's Special Representative on migration and refugees, Tomas Bocek, remarks that:

*“The amendments introduced in December 2017, which will become effective on 6 June 2018, have, regrettably, weakened the standard of protection for unaccompanied children. The specific safeguards regarding detention of unaccompanied children only as a last resort and after consideration of the best interests of the child are no longer provided for in the law.”*⁵⁹

- In **Malta**, in 2015, the government amended legislation which, along with new policy, prohibits the detention of any vulnerable applicant including minors and alleged unaccompanied minors. While this resulted in having no children detained, in practice any migrant, including children, arriving in Malta irregularly are first taken to a closed centre, the Initial Reception Facility (IRC), for health checks and initial identification for a maximum of 7 days. Children staying in this centre, even for a short period of time, are therefore detained.⁶⁰

The problems with age assessment procedures

Age assessment is a procedure by which the authorities determine the chronological age of an individual lacking legal documents. It helps determine whether the person is an adult or a child. The outcome of age assessment is important because if you are recognised as a child, certain safeguards, services and rights in migration and asylum procedures would apply.

However, a review⁶¹ of age assessment policies, procedures and practice in Council of Europe member states has highlighted the following concerning findings:

- Rights and procedural safeguards during age assessment procedures afforded under international and European standards are not upheld consistently across member states.
- Age assessments methods have been criticised for their lack of scientific and empirical basis, reliability and the associated high risk of producing arbitrary results (with margin of error of 1 to 2 years).⁶² Some methods have even raised concerns regarding risks of physical or mental harm they may cause.
- States may be concerned that young adults would claim to be children in order to benefit from the special services and safeguards provided to children. They may also have a vested interest in considering young persons as adults because the safeguards put in place to protect children are more onerous.
- Inadequate or faulty age assessment procedures put children at risk of being wrongfully detained.

In the light of these findings, strong safeguards for age assessments procedures are needed to ensure that a person under 18 years old will not be detained in unsuitable detention facilities and consequently be exposed to greater risks of abuse and violence.

In November 2017, the Council of Europe's Parliamentary Assembly called on European governments to support the development of a child-sensitive model of age assessment for young migrants in Europe to replace inaccurate and potentially traumatising medical tests.⁶³

EXAMPLES OF SAFEGUARDS FOR AGE ASSESSMENT PROCEDURES

In **Italy**, a Presidential Decree entered into force around in January 2017. The decree clarifies the procedure for determining a child's age and sets out a number of important guarantees:⁶⁴

- Firstly, only where there are serious doubts can the police order a multidisciplinary age assessment. The assessment must be conducted by a multidisciplinary team at a public health facility and include social interaction, a paediatric evaluation and a psychological or neuropsychiatric evaluation, in the presence of a cultural mediator, in accordance with the best interests of the child principle.
- Secondly, the report of the age assessment procedure must specify the margin of error of the methods used and be shared with the individual and their guardian. A possibility to contest the age assessment is also foreseen in the decree.

In **Finland**, interview practices in relation to age assessment were recently revised so that the applicant and their representative are now heard before changing the applicant's status from minor to adult.



The impact of detention

Immigration detention harms people mentally and physically. The risks for children can be particularly acute.⁶⁵ Research has found depression and post-traumatic stress amongst children to be direct consequences of their detention.⁶⁶ For many children their experience in immigration detention takes place in the context of previous trauma experienced in their home country or during their journey to and within Europe. Some accompanied children experience the added pressure of poor mental health of a parent or other factors which prevent their guardian from adequately caring for them.⁶⁷

A list of possible impacts, as identified by research, is shown below.

Negative experiences of child immigration detainees⁶⁸

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

Consequences of detention for children

- Increased risk of abuse
- Disruption of the family unit and parent roles
- Loss of interest in play⁶⁹
- Disruption to natural child development (for example, the absence of educational and play facilities can reverse cognitive development)
- Depression
- Anxiety, including separation anxiety
- Eating disorders
- Sleeping disorders, insomnia and bedwetting⁷⁰
- Mutism

The situation for immigration detainees is compounded by poor mental health provision in Europe in general, and especially for people in all forms of detention. Research on criminal and youth justice systems in Europe consistently identify support for trauma and other mental health needs as key failing, with little progress being made.⁷¹

Younger children will be less able to understand the reasons for their detention, or that it is temporary. Witnessing abusive or violent relationships between detainees or involving staff is also likely to have an impact on their development. The next section considers this impact through a gender lens.⁷²

Gendered impacts of detention

In recent years, gender has become nominally recognised as an integral concept to assess lived realities of children in immigration detention.⁷³ However, gender continues to be ignored or sidelined in most policy discussions.

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

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

GENDER: DEFINING THE ISSUE

Gender is defined as “socially constructed characteristics of women and men,” including masculine and feminine identities and behavioural norms.⁷⁴ As a system, gender interacts with other social categories such as ethnicity, race, sexual orientation and class to assign values to men and women, and allocate power positions and resources to groups in public and private spheres.

Girls

Girls, and unaccompanied girls in particular, are typically classified as the most vulnerable groups in contexts of detention. Concerns include both mental and physical well-being, particularly protecting girls from physical and sexual violence.⁷⁵

Heightened exposure to risks to sexual violence, ranging from verbal sexual harassment, rape or longer term psychological abuse or control.⁷⁶ Inadequate security and surveillance can thus severely compromise safety and privacy and make even the most routine activities such as shower and (night-time) toilet visits extremely dangerous. A standard procedure in Swedish detention centres is to place girls in gender-segregated sections to ensure safety from fellow male detainees.⁷⁷

Girls are also more susceptible to pathogenic diseases caused by squalid and unsanitary conditions and require female healthcare specialists such as gynaecologists. For instance about 70 percent of women that come from countries where female genital mutilation is a dominant cultural practice, such as Nigeria, Eritrea and Somalia, are estimated by UNHCR to be FGM survivors.⁷⁸ A lack of qualified culturally trained humanitarian and government staff could aggravate the ill-effects of circumcisions and the perpetuation of these practices, as forced migrants tend to bring their customs and practices after they flee their countries.⁷⁹

The vulnerabilities of girls often set terms in gender mainstreaming, but it is important to consider the gender dimension for boys.⁸⁰ Particularly as, the number of males in detention is much higher than females. For example in the UK 90 percent of immigration detainees are male.⁸¹ Gender-disaggregated data for child immigration detainees in Europe is not published.

Boys

Institutional control of boys is often shaped in response to fear of male sexuality and/or physical strength. As a consequence, boys often encounter disciplining approaches and practices that are harmful during their development. Many boys (between 14-17 years) originate from conflict affected countries e.g. Eritrea, Syria and Afghanistan where they witnessed extreme levels of violence.⁸² The effects of pre-existing physical injuries and trauma are often only fully apparent when they enter places of detention. The settings of detention buildings surrounded by barbed wire, uniformed staff, restricted freedom of movement and locations in secluded areas intimidate young detainees and exacerbate traumas, distress and behavioural difficulties.

Recreational activities, formal education and training are critical to reintegrate boys into socially constructive structures and if needed resensitise boys to violence and other criminality.⁸³ Research found that detainees in Greece were locked in detention sometimes for 100 days (exceeding the legal maximum of 25 days).⁸⁴ In Amygdaleza detention centre in Greece the conditions of confinement of male detainees and the lack of basic care services, led to increased depression, violence, self-harm and suicide attempts.⁸⁵

Gender-segregated policies, which are created to safeguard girls, can lead to male dominated spaces where hyper-masculine norms are reproduced and male violence increases, especially when boys are detained with adult men.⁸⁶

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

Boys are also prone to sexual violence. In Italy, reports revealed that some boys have been sexually abused prior to arrival in Europe.⁸⁷ In one reported incident, a three year old boy was raped in an asylum centre.⁸⁸ Cultural stigma of male rape and the absence of trusted relationships with detention staff are barriers to the reporting of sexual violence.

Finally, despite hostile anti-migrant climates, there is a hierarchy of sympathy whereby particularly female refugees are considered as victims, while asylum seeking and migrant boys are framed as potentially dangerous, or criminalised.⁸⁹ These imageries lead to heightened scrutiny, physical coercion, excessive force brutal treatments from (prison)/guards, police or other authorities, such as is the case in Macedonia where police brutality against refugees has taken place.⁹⁰

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



ILLUSTRATION: ERIK DRIES (QUAKERS IN THE NETHERLANDS)

What are the alternatives?

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

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

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

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

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

• = measure in use

1. Alternatives exist but are under-used

A past study made an analysis of existing alternatives to detention in a selected number of EU countries (Austria, Belgium, Lithuania, Slovenia, Sweden and the United Kingdom). The research revealed that alternatives to detention are underused and only a small number of individuals are submitted to these schemes.⁹¹

CASE MANAGEMENT APPLIED TO MIGRATION

Case management is a social work approach which is “*designed to ensure support for, and a coordinated response to, the health and well-being of people with complex needs*”. A case manager is not a decision-maker but the link between the individual, the authorities and the community. The case manager promotes informed decision making, timely case resolution and well-being while ensuring the individual's full engagement with immigration procedures.⁹³

2. Existing alternatives focus mostly on restriction and control and not on engagement with migrants to promote cooperation with immigration procedures

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

Most civil society organisations would define alternatives in its broader sense, that is, any law, policy or practice by which persons are not detained for reasons relating to their migration status any legislation.⁹² Children would be provided with access to education, healthcare and will be able to remain with their family (in the case of accompanied children).

The objective is to provide human rights-based, child-sensitive alternative care arrangements. This approach promotes the use of support mechanisms such as case management, legal advice and access to minimum standards, to promote compliance and case resolution outcomes while protecting well-being (see *box opposite*).

continued →



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

continued →

However, others, notably governments, tend to have a narrower perspective of alternatives. They are more likely to consider that lighter forms of detention using lower degrees of coercion should be considered as alternatives. Indeed, most alternatives – like the ones in the table above – focus more on enforcement and control while reducing the degrees of coercion with a list of imposed restrictions and/or conditions placed on the individual (reporting, designated residence, bail and surrender of documents/passports, etc.). Governments tend to justify this approach by invoking enforcement-related motivations such as avoiding the risk of absconding, maintaining public order or ensuring the compliance of irregular migrants with return orders (see *Justifying detention*, page 14).

However, there seems to exist little evidence that they are effective in increasing compliance or case resolution. Furthermore, out of these two approaches to alternatives to detention, the latter amplifies the risk of implementing alternatives that, while less restrictive and coercive than detention, would still have potentially harmful impacts, notably on children. For example, in Slovenia, the measure of mandatory stay in the area of an asylum centre for children is described as an alternative to detention, by the authorities whereas it still remains a deprivation of liberty. In some *Länder* in Germany, detention of accompanied minors has been avoided by detaining only one of the parents. This still has a significant impact on family life and thus negatively impacting children.

3. Engagement-based alternatives as a more effective approach

Engagement-based alternatives with quality case management are said to be more affordable than detention (up to 80% cheaper than detention) and can achieve higher compliance rates (up to 95% appearance rates and up to 69% independent departure rates for refused cases) as people are more likely to stay engaged and comply with immigration requirements, including negative decisions on their status, when they feel they have been through a fair process, have been able to explore all migration outcomes and have their basic welfare needs met.⁹⁴ These arguments are not only shared by UNHCR in its *Global Strategy Paper: Beyond Detention 2014-2019*⁹⁵ but also by the EU Commission itself, recognising that “early intervention and holistic case management focused on case resolution” has been proven to be successful as an alternative to detention.⁹⁶

A POSITIVE EXAMPLE OF ALTERNATIVES

Structured engagement can improve outcomes for government and families in the return process

In the UK, the Family Returns Process has successfully reduced the detention of families with children, with 97% of the 1,470 families who left the country in 2014-16 returning without enforcement action or detention. The success of the family returns process demonstrates the benefits of face-to-face dialogue with migrants: the Family Returns Panel ascribes the improved rates of non-enforced return to improved engagement with families, noting that “the creation of the FEM role for example has greatly improved communication with families and helps them to understand the process and prepare for a return both practically and psychologically”.⁹⁷

The perceived success of this aspect of the UK system must be seen in context. The UK has received a low number of children seeking asylum. It has also been widely criticised in recent years for their hostile environment policy towards migrants. For more information on the situation in the UK, kindly visit the following website: bit.ly/2Cz9JtE

In the light of these observations, the following conclusions can be drawn:

1. The need for alternatives to immigration detention has been emphasised at different levels (Council of Europe, EU and UN). However, in many European countries, governments have struggled in developing and implementing alternatives to detention. When alternatives exist, they focus on restrictive measures. New guidance from the Council of Europe on alternative to detention was adopted in January 2018 providing support to European governments on developing and implementing effective and rights-based alternatives to detention (see box opposite),
2. Focusing on engagement-based alternatives appear to more be effective because they help reduce the need for detention, the costs associated with it and achieve higher levels of compliance rates (see box: *The European Alternatives to Detention Network*, page 26).

It is however important to note that there are no one-size-fits-all models of alternatives. This means that alternatives need to be designed to meet the needs of the specific context and group.

For children, a special attention is crucial to make sure that their well-being and best interests are taken into account at all stages of immigration-related procedures. This could be done by adopting and implementing alternative care arrangements (see *A model to prevent child detention*, page 27). The provider of social assistance in Bavaria, Condribs,¹⁰⁶ is a positive example of the application a child sensitive model to avoid detention and promote the best interests of the child.

NEW GUIDANCE ON EFFECTIVE ALTERNATIVES TO DETENTION

New guidance from the Council of Europe on alternative to detention was adopted in January 2018 by representatives of all forty-seven member states of the Council of Europe through the Steering Committee on Human Rights, its foremost inter-governmental human rights body.⁹⁸ This guidance provides support to European governments on developing and implementing effective alternatives to detention. According to the guidance, essential elements of effective alternatives include:

- Using screening and assessment to make informed decisions about management and placement options;
- Ensuring individuals are well-informed and provide clear, concise and accessible information about their rights, duties, and consequences of non-compliance;
- Providing meaningful access to legal advice and support from the beginning and continuing throughout relevant asylum or migration procedures
- Building trust and respect through a spirit of fairness and cooperation, rather than focus on control or punishment;
- Supporting individuals through personalised case management services; and
- Safeguarding the dignity and fundamental rights of individuals, ensuring that basic needs can be met.

The European Alternatives To Detention Network⁹⁹

The European Alternatives to Detention (ATD) Network is a group of European NGOs which aims to reduce and end immigration detention by building evidence and momentum on engagement-based alternatives. The Network brings together NGOs running case management-based alternatives to detention pilot projects in four European countries (Bulgaria, Cyprus, Poland and the UK) with regional-level organisations.

Bulgaria

Protecting migrants with precarious status: decreasing the use of detention and applying community-based alternatives¹⁰⁰

In this project, a case management team engage over a period of two years with 50-60 migrants with return orders. They provide them with holistic support on an individual basis, with the goal of avoiding the need to detain them and decreasing the risk of absconding, while helping them stabilize in the community until case resolution is attained.

Cyprus

Implementation of alternatives to detention of third country nationals¹⁰¹

The project aims to promote the adoption of alternatives to detention in Cyprus, through the use of a holistic approach, that includes capacity building to government and non-government stakeholders, advocacy on the adoption of ATDs and case management of 40 cases based on the Revised Community Assessment and Placement (CAP) model, developed by the International Detention Coalition (IDC).

Poland

No Detention Necessary – pilot project on alternatives to detention of migrants in return procedures¹⁰²

The project aims to promote and expand the use of alternatives to detention in Poland by introducing an engagement-based case management model based on the Revised Community Assessment and Placement (CAP) model, developed by the International Detention Coalition (IDC). The project supports migrants released from detention facilities as well as the ones threatened with detention by means of providing them with case management, legal advice, and psychological care.

United Kingdom

Community Support Project¹⁰³

The project aims to demonstrate that alternatives to detention can be effective for migrants with complex needs and who would otherwise face indefinite detention. The project aims to reduce the risk of absconding and reoffending by young male ex-offenders with barriers to removal, assisting them to meet the conditions of their release and avoid long-term detention. Through one-to-one case management, participants develop skills and confidence to stabilise their lives, participate in the community and maintain contact with the authorities.

A model to prevent child detention: the Child-Sensitive Community and Assessment Placement Model (CCAP)¹⁰⁴

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

1. Prevention

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

2. Screening, assessment and referral

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

- Screening individuals to assess their age. Making sure that age assessment procedures are only used when there are serious doubts.
- Assigning a guardian to unaccompanied or separated children. FRA developed a handbook¹⁰⁵ which could be of use for EU Member States.
- Appointing a case manager in order to assess, oversee, advise, support and manage the case throughout the process of awaiting a final migration outcome.
- Undertaking an 'intake assessment' by the case-manager where the immediate needs and risks associated with the child are assessed. This assessment will inform a decision on the most appropriate accommodation and support required to meet basic needs and protect the child.

3. Case management and Processing

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

4. Reviewing and safeguarding

This step ensures that the rights of children and their best interests are safeguarded through regular independent review of any decisions taken including placement, conditions applied and legal status.

5. Implementing official decisions

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

Recommendations

Working towards ending child immigration detention would require European countries to focus on children's inherent dignity and rights above immigration enforcement and control. Implementing the following recommendations would enable better monitoring of cases of child detention and would allow European governments to follow through on commitments and actions to work towards ending child detention.

Data collection

- Having comprehensive and comparable data is an important element which stakeholders, especially decision makers, need to rely on in order to design and implement adequate laws and policies. European countries should therefore systematically collect disaggregated data on children (boys and girls) in immigration detention and make them available.
- At the level of European Union, the comparability of such data through Eurostat should be encouraged by the EU Commission. Equivalent mechanisms of comparability should also be found across the wider European area.
- European countries are also strongly encouraged to provide as much detailed and accurate data as possible to the Global Study on Children Deprived of Liberty, commissioned by the UN. It will help identify examples of best practices and alternative approaches aimed at reducing the number of children deprived of liberty according to child rights principles, as well as to provide copies of relevant laws, studies, policies, and reports.

Implementing the best interests of the child

- States need to set up and/or improve procedures to assess the best interests of the child before any decision affecting the child is taken and to ensure that they receive primary consideration. A non-exhaustive list of elements would include:
 - child's identity
 - parent or (current) caregiver's views
 - child's views
 - preservation of the family environment, maintaining or restoring relationships
 - care, protection and safety of the child
 - health and education
 - situation of vulnerability
- UNHCR and UNICEF have provided tools and guidance to understand what the child's best interests are and the factors that need to be taken into account when assessing them.¹⁰⁸

A "child's rights" approach to age assessment

- States need to ensure that there are procedural measures and safeguards in place to guarantee that child's rights are respected and protected during age assessment procedures. In practice this would include:
 - Conducting age assessment only when there are serious doubts;
 - Ensuring children's right to be heard and to express their views. This includes making sure that children are assisted by a legal representative and/or guardian throughout the procedure;
 - Using age assessment methods that are child-sensitive, adapted to gender and cultural sensitivities, conducted in a timely manner and by independent, impartial and trained professionals;
 - Where there is a margin of error of age assessment results, this should be applied in favour of the person whose age is being assessed;
 - Providing children with an effective complaints mechanism and appeals procedure as they have the right to an effective remedy.

- One of the tools that could provide guidance to states is the standards for child-friendly age assessment that will be drawn up by the Council of Europe's Group of Experts on Children's Rights and Safeguards in the context of migration.¹⁰⁹
- Another tool which should provide advice to EU member states on how to apply these considerations in practice is the recently published European Asylum Support Office (EASO) guidance on age assessment in laws and in practice.¹¹⁰
- Starting with making a better use of some of the different alternatives measures that already exist, European countries should adapt them so as to respect child's rights. This would entail allowing the child to live in the community, enjoy the right to family life if they are accompanied, and the access to education, health, legal aid and the provision of effective oversight mechanisms. Such steps will gradually allow states to manage their asylum and migration policies without resorting to detention.
- European states should make sure to fully engage with the Council of Europe's action plan on protecting refugee and migrant children (2017-2019).

Gender sensitivity

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

Alternative care arrangements

- European countries need to develop and implement effective child's rights-based alternatives to detention. This would include:
 - Establishing in law and policy that children should not be detained and that alternatives to detention need to be available;
 - Using screening and assessment to make informed decisions about management and placement options.
 - Assigning a guardian to unaccompanied/separated children or allocate a case worker to children who are travelling with their families;
 - Place them in an appropriate community setting that takes into account age, gender and cultural background;
 - Making sure that age assessment procedures are only used when there are serious doubts.
 - Undertake a best interests determination, and an assessment of protection needs
 - Provide legal review for various decisions taken regarding children and their families and effective oversight mechanisms.

The Child Sensitive Community and Assessment Placement Model developed by the International Detention Coalition could serve as a useful guide.¹¹¹

- The EU Commission should provide further support and guidance to member states to develop alternatives to detention. The Commission could use a combination of guidelines to member states and funding (through its Asylum, Migration and Integration Fund, operating grants and other funds) to encourage states to develop case management-based alternatives to detention pilot projects, together with civil society organisations. The European Alternative to Detention Network's work is an initiative that is worth considering.

Conclusion

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

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

Without denying the lack of solidarity on the continent and the fact that some countries face difficult situations (Greece, Spain and Italy as countries of reception; Germany, Italy and France with the most asylum applicants in 2017)¹⁰⁷ we nevertheless urge countries to work towards alternative care arrangements and cooperate with one another because detention is not the solution. There are other ways to manage migration in line with a child's best interests, which don't rely on ineffective, costly and harmful measures to a child's rights and well-being. A child is a child and should be treated as such wherever they come from.

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

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

Annex I

Legal sources

AT	Aliens Police Act <i>Article 71 para 1</i> <i>Article 79 para 1, 3</i> <i>Article 80 para 2</i> <i>Article 77 para 3</i> <i>Article 76 para 1, 2</i>
BE	Immigration Act, <i>Article 74/19 §1 and §2</i>
BG	Asylum and Refugees Act, <i>Article 45e (1)</i>
CT	Aliens Act (Official Gazette no. 130/11, 74/13, 69/17, 46/18) <i>Article 54, para 2</i> <i>Article 101</i> <i>Article 132</i> <i>Article 135</i>
CY	Article 9ET(1), Refugee Law
CZ	Act on the Residence of Foreign Nationals, <i>Section 124 (6)</i> Asylum Act, <i>Section 46a (3) in combination with Section 2(1)(i)</i>
DE	Residence Act <i>Section 62, para. 1 sentence 3</i> <i>Section 21, para 1</i> Directive 2008/115/EC, <i>Article 17</i>
DK	Danish Aliens Act, <i>Sections 35 and 37</i> Aliens Act, <i>Sections 36–37</i>
EE	Obligation to Leave and Prohibition on Entry Act (OLPEA), <i>Subsection 32 (1) of the Act on Granting International Protection to Aliens, §6</i> Family Law Act, <i>§176</i>
EI	Immigration Act, <i>Article 74/19</i>
ES	Royal Decree 162/2014 Aliens Law, <i>Article 61, 62.4</i>
FI	Aliens Act <i>Section 122</i> <i>Sections 118-120</i>

GE	Article 65 (2) of the Law of Georgia on the legal status of foreigners and non-citizens and includes refugees Minister of Internal Affairs No. 631 of August 19, 2014 on the Approval of the Rules for Detaining a Foreigner and Temporary Placing
GR	Law 4375/ 2015, <i>Article 45</i> Law 4907/2011, <i>Article 25, 32</i> Presidential Decree 220/2007, <i>Article 19</i> Law 3907/2011, <i>Article 11 (5)</i>
HU	Act No.80 of 2007 on Asylum, as amended on 28 March 2017, <i>Article 31/B (but Article 80/J(6) allows their detention in the transit zones if aged above 14 years in case of mass migration state of emergency)</i> Admission and Right of Residence of Third-Country Nationals 2007, <i>Act II, Article 56 (2)</i>
IS	Art 114 law on foreigners Art 115, paragraph 5 law on foreigners nr. 80/2016 Art 115 paragraph 6 law on foreigners in combination with Art 95 of the law on criminal procedure (nr. 88/2008)
IT	Article 19(4) LD 142/2015 Article 7(5) LD 142/2015
LV	Immigration Law <i>Article 50.8, paragraph 1</i> <i>Article 53</i> <i>Article 54, part 6</i> <i>Article 51</i> Immigration Act <i>Section 51 Part 2</i>
MK	<i>Official Gazette of the Republic of Macedonia No. 35, dated 23 March 2006</i>
MT	Reception of Asylum-Seekers Regulations, <i>Article 14 (1)</i> Common Standards and Procedures for returning illegally staying third-country nationals regulations

MD	Law No. 200, <i>Para 64 (1)</i> , 85, 86 RM Government Directive No. 492, <i>Chapter II (1)</i>
NL	Geneva Convention, <i>Article 1F</i> Dutch Alien Act <i>Articles: 6, 59, 59a and 59b</i> Alien Decree <i>A5/2.4</i> <i>A7/7.3</i>
NO	Norwegian Constitution, <i>Article 94</i> Human Rights Act of 1999, <i>Section 2</i> Immigration Act 2008 <i>Section 106 Paragraph 1, 2, 3</i> <i>Section 99 Paragraph 1</i> 1981 Criminal Procedural Act <i>Section 184 second paragraph</i>
PL	Act on granting protection to foreigners within the territory of the Republic of Poland, <i>Articles 62 and 67 in combination</i> <i>with provisions of Chapter 6</i> Act on Foreigners, <i>Article 397</i>
PT	Law 27/2008 (Lei No.27/2008), as amended in 2014, <i>Article 35B (6)</i>
RO	Government Ordinance 194/2002 Law 122/2006 Law 272/2004
SK	Residence of Aliens and Amendment and Supplementation of Certain Acts: <i>Article 88 paragraph 1 and 8;</i> <i>Article 88a paragraph 3 of Act No.</i> <i>404/2011 Coll.;</i> <i>Article 89 of Act No. 404/2011 Coll.</i>
SV	Slovenian International Protection Act, <i>Article 84</i> Aliens Act, <i>Article 76</i>
SE	Swedish Aliens Act, <i>Chapter 10, Section 1,</i> <i>3rd paragraph</i>
SZ	La loi fédérale sur l'étrangers (LEtr; RS142.20), <i>Article 79, 81</i>
UK	Immigration Act 1971 Immigration Act 2016

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

Annex II

Sample of letter sent to governments

Object: Request for information

To whom it may concern,

Quaker Council for European Affairs is an international not-for-profit organisation working on peace and human rights. Last year, we published a report on the issue of child immigration detention in Europe in which we got information from you. As we are looking to update our report with reliable and objective information, we would be very grateful if we could get, again, answers from you on the following questions. In these questions, we are using definitions from the UN Convention on the Rights of the Child, the UN Refugee Agency and the International Detention Coalition:

- A child is “*any person under the age of 18*”. We are interested in children who are detained in the context of migration, whether or not they seek asylum. We are interested in children who are unaccompanied, with their family or with a non-family member.
- Detention refers to “*the deprivation of liberty, or confinement in a closed place which a person is not permitted to leave at will, including, though not limited to, prisons or purpose-built detention, closed reception or holding centres or facilities*”.
- Alternatives to detention refers to the measures which allow refugee and migrant children to reside in community with freedom of movement while their migration status is being resolved or while awaiting deportation or removal from the country.

Questions

A. How many children are currently detained in the context of migration? If no current data are available, can you give us the most recent information that you have?

B. Have the laws regarding the detention of migrant children changed? If so, what are they and what do they say?

C. What alternatives do you have to ensure the non-detention or reduce the immigration detention of children?

We appreciate and thank you for the time you will devote to responding to our questions.

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Notes

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