



## **An Introduction to Data Construction on Immigration-related Detention**

**By Michael Flynn**

**July 2011**

The aim of this paper is to introduce activists and scholars to efforts by the Global Detention Project to construct rigorous data on the facilities used to detain irregular migrants and asylum seekers in detention as they await deportation or to have their claims assessed. The paper proposes a set of conceptual tools that can be used to study the evolution of detention systems and undertake comparative analysis of national detention estates. Using a broad assortment of material—including legal opinions, international norms, on-the-ground reports, and academic and human rights literature—the paper proposes a carefully circumscribed definition of migration-related detention as well as a framework for developing data on various dimensions of this practice. It then discusses in detail a selection of variables to demonstrate the utility of an empirically-grounded approach to scholarship and advocacy on this issue.

### **I. What Is Immigration Detention?**

The Global Detention Project defines immigration-related detention as “the deprivation of liberty of non-citizens because of their immigration status.”

A few things to note about this definition: First, it does not distinguish between asylum seekers, irregular migrants, stateless people, or refugees. Instead, it intentionally fits all of these categories into a single box—“non-citizen.” To some extent, this definition is contrary to efforts by states and rights experts to analytically separate asylum from other forms of migration.<sup>1</sup> Further, in some parts of the world—notably the European Union—asylum seekers are segregated from other migrants with respect to their places of housing or confinement: asylum seekers are supposed to be housed in “open” “reception centres,” while undocumented migrants are confined in “closed” detention centres (JRS, 2010).

However, in many countries, there is little effort to separate asylum seekers from irregular migrants within detention systems. What is more, “reception

---

<sup>1</sup> For a discussion of these categories, see Oberoi, 2009, pp. 3-6.

centres” and so-called shelters can sometimes resemble detention centres in all but name (Gallagher and Pearson, 2010). Thus, while there is a clear rationale for assessing differences in the legal regimes that treat asylum seekers and undocumented migrants, when analyzing detention systems it is preferable to view all non-citizens as a single cohort. Such an approach is better suited to capture the range of facilities used to detain people on status-related charges or procedures. It also provides a pithy analytical category for encompassing the broad range of people subject to this form of deprivation of liberty.

Second, this definition encompasses both criminal incarceration and administrative detention. Human rights and scholarly discourses on the subject of immigration-related detention tend to focus on administrative detention because in most countries, immigration violations are considered “civil” rather than criminal matters, and thus detention for status-related reasons usually takes the form of an administrative process.

However, a narrow focus on administrative detention fails to capture a critical aspect of contemporary detention regimes: that many countries—from Malaysia to Lebanon to Italy to the United States—charge irregular immigrants and asylum seekers with criminal violations stemming from their status. As a result, when assessing detention regimes used for confining people on status-related violations, it would seem necessary to include facilities that are used to incarcerate people on status-related criminal convictions, otherwise researchers risk overlooking an increasingly important form of this kind of detention.

This definition also involves a carefully circumscribed meaning of “deprivation of liberty.” Some scholars have sought to define detention broadly to include “restriction of movement or travel within a territory in which an alien finds him or herself” (Helton, 1989). This concept, however, is patently too broad to facilitate a sharp analytical focus on detention facilities and the realities detainees face behind bars.

On the other hand, some states have sought to apply a minimalist concept of migrant detention, and thereby remove certain types of confinement from the debate over the issue. Germany’s Constitutional Court, for example, ruled in 1996 that the confinement of asylum seekers for nearly three weeks in secure airport facilities did not constitute deprivation of liberty (Goodwill-Gill, 2001: 25). Similarly, Turkey has refused to acknowledge, despite successive rulings by the European Court of Human Rights against it, that its confinement of irregular migrants in so-called guesthouses amounts to deprivation of liberty (see *Abdolkhani and Karimnia v. Turkey* and *Z.N.S. v. Turkey*).

What these competing concepts underscore is the confusion that often surrounds discourse on immigration detention. From a social science perspective, it is critical to carefully carve out the phenomenon from these competing ideas in such a way as to allow for comparative assessment. This paper thus proposes defining deprivation of liberty as “forcibly-imposed

confinement within an enclosed space for any length of time.” Put another way, it means being locked up against one’s will.

Integral to this definition is the notion of the use of force—or compulsion—underlying immigration detention. Some jurists have questioned the applicability of this concept when people can be released if they agree to immediately return to their home countries. But as one scholar writes, “detention by the state should never be considered consensual because to do so introduces an unwelcome and unworkable subjective element into the protection of the liberty of detainees” (Wilsher, 2004: 905).

Lastly, it is important to keep in mind potential challenges presented by the notion of “status-related violations.” Generally, unless they have committed unrelated breaches of the law, detained non-citizens have been taken into custody as a result of complications stemming from their immigration status vis-à-vis the country in question. Some states systematically detain asylum seekers until their claims to refugee status can at least be initially reviewed; migrants are confined at ports of entry when they do not appear to have proper authorization to either permanently or temporarily reside in the country; and irregular immigrants (including “criminal aliens” who lose their residency status as a result of convictions for particular crimes) are subject to detention pending deportation when authorities deem them to lack authorisation to reside in the country.

In all these cases, central to the decision to take the person into custody is a perceived problem with his or her status. However, some countries justify the detention of non-citizens in ways that avoid status-related questions. In Morocco, for instance, immigration detainees are generally held in a form of preventive detention that is not justified on status considerations. Rather, they are held on grounds of “disturbing the peace,” which potentially could make them fall outside the definition presented in this paper (Flynn and Cannon, 2010: 12).

Coming up with a one-size-fits-all definition is a challenging undertaking, especially when assessing a phenomenon that can radically change shape from one country to the next. In this case, while Morocco presents a challenge with respect to our definition of migration-related detention, to some extent it is the exception that proves the rule. Morocco appears to be the only country where this form of detention is not officially justified at least in part on status considerations.

## II. Data Framework

Having set out a clear-cut definition of the phenomenon of migration-related detention we can proceed with a discussion of the facilities used for this type of confinement. This section of the paper proposes a broad framework for developing data on detention centres and identifies constituent elements of this framework. It is followed by a detailed discussion of a select group of dimensions that are particularly well suited to comparative study and which highlight various benefits of this type of analysis.

To systematically construct—or “code”—data on immigration detention facilities, this paper proposes assessing facilities according to roughly two dozen distinct dimensions, which can be divided into three broad categories of characteristics: **general**, **operational**, and **bureaucratic**. As we’ll see in the following section, there is a fourth, cross-cutting category, **privatization**, which includes dimensions from the other categories mentioned above.

It is important to note that not all dimensions will apply to all facilities. For instance, “area of authority,” a bureaucratic characteristic, is a term of art used by U.S. immigration authorities to describe the specific geographic jurisdiction within which a facility operates. This concept also has relevance in other federal systems, like Germany and Switzerland, where detention facilities fall under the specific jurisdiction of one or more cantons or Landers. However, most countries will not have similar bureaucratic or political structures.

**I. General characteristics.** This category of characteristics covers basic, first-level information about detention centres. Among the dimensions included here are facility **name**, **location**, **status** (is it in operation? when did it begin being used for the purposes of migrant detention?), and **contact** information. Additionally, this category includes information about facility **type**, a critical component of any categorization scheme. As this paper discusses in more detail below, the types of facilities in use around the world vary greatly and can include everything from federal penitentiaries and ad hoc camps to dedicated immigration detention facilities and offshore processing centres. Establishing well defined criteria for identifying the kinds of facilities a country uses can provide us with an important measure of how states treat their immigration detainee population, as well as an important point of comparison with other states.

**II. Operational characteristics.** This category includes data on the internal operations of detention facilities. Inputs include information about the **security regime** in place within a facility (for example, is it high- or low-security); the **length of time** a person is held in a specific facility; the **demographics** of detainees; whether or to what degree detainees in a facility are **segregated** according to their gender, legal status, and/or age; the official **capacity** of facilities as well as reported and average **populations**; the **management** structure; the amount of **space** provided detainees in their cells; the **provision** of food and other basic necessities; the level of **access** detainees have to family members, doctors, lawyers, or non-governmental advocates;

whether the facility employs **armed guards**; the kind of **record-keeping** kept by a facility with respect to admissions and departures; and the degree of **non-state service provisions** in a facility.

**III. Bureaucratic characteristics.** This category involves documenting information on the larger context within which a detention centre operates, including data on which government agency has **custodial authority** over the detainees; whether the facility is **owned** by the state, a private for-profit or not-for-profit entity, or an international organisation; **budgetary** information (for example, estimates on the daily average cost of holding a detainee at a given facility); whether a facility receives **funding** from a non-national entity, like the International Organisation for Migration, the European Union, or the government of another country; and **area of authority**, which refers to the specific geographic jurisdiction within which a facility operates.

### III. Detailed Typologies

One of the benefits of applying this type of framework to the study of detention regimes is that it opens the phenomenon to critical investigation, which hardly possible in the rather limited discourse of “open” and “closed” “camps.” To demonstrate some of these benefits, this section of the paper selects several dimensions from those mentioned above for detailed examination. These categories also seem particularly well suited to providing data points for measuring changes in detention regimes over time as well as for comparable study of different national detention estates and the decision-making behind them.

The seven categories investigated here are:

- **General characteristic:** Facility type;
- **Operational characteristics:** security regime, segregation, management, and non-state service provisions;
- **Bureaucratic characteristic:** Custodial authority, and ownership.

#### Facility Type

Types of detention facilities vary greatly from one country to the next, as do the official designations used to describe sites and the particular nature of the sites themselves. Where states choose to confine migrants can tell us a great deal about how these people are perceived by states and whether authorities have taken steps to differentiate between administrative and criminal detention.

This paper proposes a facility typology that has three main categories—**Criminal**, **Administrative**, and **Ad hoc**—each of which can be divided into several subcategories. This division into three categories rests on a basic distinction in types of detention centres. **Criminal** designates any facility that confines criminal suspects or convicts. **Administrative** designates facilities

that are only used to hold people who are not charged with criminal violations. **Ad hoc** refers to any facility that is improvised to fulfil a role it is structurally or administratively not intended to do so.

**Criminal**

- Prison
- Police station
- Juvenile detention centre

**Administrative**

- Migrant detention centre
- Immigration office
- Offshore detention centre
- Reception centre
- Transit zone

**Ad hoc**

- Detention centre
- Camp
- Hotel
- Military base
- Other structure

**Criminal.** Many countries—notably, the United States and Canada, as well as most developing countries—use jails, prisons, and/or police lock-ups as short- or long-term detention sites for administrative detainees held on migration-related charges. This designation can also refer to juvenile detention centres. Administrative detainees confined in prisons are often held alongside criminal detainees.

Although there do not appear to be any hard and fast statistics on this, criminal facilities might be the most widespread form of immigration detention, in part because many countries will likely not dispose of the requisite budget to establish a dedicated immigration detention infrastructure.

As much as any other detention quality discussed here, the use of criminal facilities to hold migrants in administrative detention poses serious questions with respect to whether authorities are endeavouring to confine migrants in an environment that does not resemble incarceration. As *The CPT Standards* states, “Even if the actual conditions of detention [for immigration detainees] in the establishments concerned are adequate ... the CPT considers such an approach to be fundamentally flawed. A prison is by definition not a suitable place in which to detain someone who is neither convicted nor suspected of a criminal offense” (CPT, 2009: 38).

Important to note, there is widespread use of police stations for briefly holding migrants who have been arrested on suspicion of breaching immigration laws. As discussed below in the section on transit zone detention centres, facilities used for very short-term detention (less than three days) arguably should not be included in data about a country’s immigration detention infrastructure.

There are both practical and legal reasons for this: First, insofar as any police station in a country that authorizes police forces to apprehend suspected irregular migrants could potentially be used to briefly hold a migrant before being transported to a designated holding facility, researchers could easily be overwhelmed in massive amounts of marginal data that would tell us very little about the real contours of immigration detention in a country. Secondly, it is a well established practice to briefly detain someone for questioning on suspicion of violating laws. In the context of migration, this form of detention occurs most commonly at ports of entry, where authorities typically briefly apprehend people who are suspected of not having requisite entry papers.

**Administrative.** This category can include any facility used exclusively to hold (or intern) people on non-criminal grounds. It is important to note, however, that while the unique focus of this paper are the facilities used to hold migrants, the practice of administrative detention is not limited to this issue. Many other forms of administrative detention exist, including: internment of persons with mental illness; administrative detention or confinement for public or health grounds; detention for security reasons; and administrative detention in the context of an armed conflict.

Domestic legal systems are often not as detailed regarding these detention situations, which can result in administrative detainees facing legal uncertainty. Among the difficulties these detainees can face are lack of access to the outside world, limited possibilities of challenging detention through the courts, and/or lack of limitations on the duration of detention.

There appear to be five main types of immigration-related administrative detention facilities: migrant detention centres, immigration offices, offshore detention centres, reception centres, transit zones.

- *Migrant detention centre* is a generic category that can be used to designate any facility that is officially sanctioned to hold only migrants, regardless of whether they are asylum seekers or irregular migrants or whether they are in pre- or post-deportation order procedures. A “Migrant detention centre” will *not* have any of the attributes associated with other types of detention sites listed here (for example, it will not be a “Prison,” nor it will not be located in a “Transit zone,” nor will it be used for holding exclusively asylum seekers). In wealthier countries, these are often purpose-built facilities, though in some cases former prisons and rehabilitated hotels have been sanctioned for this purpose.
- *Immigration office* refers to detention sites located inside regional or local offices of a country’s immigration authority or border patrol. Although they sometimes carry discrete names or designations—for example, “Detention Houses” in Japan or “Estaciones Migratorias” in Mexico—these sites share in common that they form part of an office or bureau of an immigration agency. The sites typically encompass a delimited space, usually in the form of a few cells or locked rooms located within an immigration or border patrol building, and are typically structured for short-term confinement, until detainees are expelled, released, or transferred to long-term

detention centres or other holding facilities (such as “Migrant detention centres” or “Prisons”). Many of the detention sites in South Korea, like the Masan Immigration Office, should be coded “Immigration office” because they are described by that country’s human rights ombudsman as being immigration offices that have detention facilities within them. Similarly, in the United States, many immigration offices are described in official documentation as having “holding rooms,” like the Houston Field Office (Houston FO Holdroom).

- *Offshore detention centre.* This refers to detention sites that a country locates outside its national borders or on territory it has “excised” for immigration purposes. Similar to “Transit zone” detention sites, offshore detention centres have sometimes been used to prevent migrants from making asylum claims as well as from enjoying other legal guarantees. Although offshore sites are located outside the country in question, detainees held at such sites remain in the custody of authorities of that country. Australia’s “Pacific Solution,” which came to an end in 2008, was a notorious example of this type of detention.
- *Reception centre.* Sometimes called “accommodation centres” or “shelters,” these are facilities that are used uniquely for housing/confining asylum seekers or other specific vulnerable groups (like victims of trafficking) who are afforded particular protections in relevant international treaties. While it is common in many countries outside Europe to provide some form of housing to these vulnerable groups, to a great extent this category is shaped around the situation in the European Union, which has a directive on minimum standards for the treatment of asylum seekers.<sup>2</sup> A key challenge in assessing reception centres is that many states refuse to acknowledge that these facilities are detention centres even when people “housed” in a particular centre are physically prevented from leaving the facility (Buhrlé, 2006). Nevertheless, within the framework of the definition of “deprivation of liberty” provided earlier in this paper, reception centres that do not allow people to leave should be considered detention centres and thus included in data on a country’s detention infrastructure. Determining whether a reception centre operates in a way that is in accordance with the limited aims of a states’ asylum procedures can be particularly challenging, and depend on the individual case. Article 7 of the EU’s Reception Directive provides for detention in some instances, stating: “When it proves necessary, for example for legal reasons or reasons of public order, Member States may confine an applicant to a particular place in accordance with their national law.” EU states diverge considerably in their use of detention for asylum seekers, as well as in their interpretation of the extent to which provisions of the Reception Directive apply to detained asylum seekers (Academic Network, 2006).
- *Transit zone.* This paper defines as a “transit zone” detention facility any site of deprivation of liberty located at ports of entry into a country where at

---

<sup>2</sup> Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers.

least some of the detainees are not considered to have officially entered the country, thereby placing them in a particularly vulnerable position. Transit zones could conceivably be located at every port of country in the world, which could present serious methodological difficulties regarding the development of data on a country's detention infrastructure. Additionally, these sites are generally used for very short-term confinement, usually for less than 48 hours. Nevertheless, there have been numerous high profile cases (including *Amuur v. France*) in which people have been detained in transit zones for periods far exceeding the 72-hour threshold proposed in this paper. To the extent there is evidence of lengthy detention at a particular transit site, then that facility should be clearly identified in detention data. However, lacking that evidence, such facilities should not be considered part of a country's immigration detention infrastructure under this proposed data scheme.

**Ad hoc.** One of the most prevalent forms of detention for migrants, particularly in developing countries, are ad hoc sites. These can include locked rooms or cells in hospitals, hotels, police stations, or government offices, as well as open air camps. "Ad hoc" sites share in common that they are structurally and/or administratively not designed to serve as immigration detention centres. They also tend to be hastily established facilities that are created to respond to large migration flows.

In many industrialised countries, hotels are a representative type of ad hoc site because they are not specifically set up to be used as detention sites. Additionally, many main migrant destination countries, notably Spain, maintain "ad hoc" (or, *habilitado*) detention centres that are only meant to be used in exceptional circumstances (APDHA, 2008).

In the developing world ad hoc sites can take a variety of forms, including open air camps located near borders (*not* including officially sanctioned refugee camps) and improperly built structures that operate outside the normal migration operations. One case of ad hoc detention was the camp located in Bossasso, North East Somalia/Puntland, which operated briefly in the 2006 with assistance from UNHCR and the IOM. According to an IOM Field Mission report, "At the beginning of November 2006 there were approximately 500 Ethiopians residing at a closed centre awaiting the screening process. ... The centre was located a few miles away from the Bossasso airport on a secluded dry piece of land encircled with hills. The authorities had at least four armed officers making sure no one escaped from detention. The weather is extremely hot, dry, and dusty and shelter for the migrants consisted of plastic sheets mounted on wood sticks" (IOM, 2006: 3-6).

In coding a site as ad hoc, researchers help underscore vulnerabilities in particular detention situations, including that migrants are potentially being detained in precarious physical surroundings and/or outside proper legal channels.

## **Security level**

In place of the “open” or “closed” distinction commonly used in Europe to describe immigration detention facilities, this paper proposes adapting prison classification schemes to characterize detention facilities. Because of the broad array of facilities used around the world to hold immigration detainees, it is necessary to have a more fine-grained classification system to be able to convey the various security arrangements—or levels of deprivation of liberty—that detainees face.

Additionally, as rights watchdogs like the UN Working Group on Arbitrary Detention often note, the use of detention in the case of migrants and asylum seekers must reflect the limited needs of this kind of detention—that is, to facilitate the removal of migrants or the adjudication of their cases. Thus, serious questions about potential mistreatment can be raised if immigration detainees are held in high-security facilities. For this reason, it is critically important to develop a more detailed classification scheme than open-closed.

Further, although a case can be made that “criminal aliens” with records of violent offenses require a high-level security environment as they await deportation, such environments generally appear to be unnecessary to the non-criminal aims of immigration detention (Schriro, 2009: 2-3).

Prison classification systems generally begin with the type of prisoner to be confined in a particular facility. Is he or she a high-security risk, a violent offender, an escape risk? Does the prison in question provide the necessary level of security for this type of prisoner? Thus the distinction in many countries between high-, medium-, and low-security prisons.

Immigration detainees, on the other hand, are deprived of their liberty for non-violent offenses—status-related violations (this includes so-called criminal detainees, who enter deportation proceeding and are transferred to immigration custody after serving prison sentences for criminal offenses). Nevertheless, the types of facilities migrants are held in often correspond to differing levels of security used in prisons.

In adapting prison classification schemes to reflect the particularities of immigration detention, the paper assesses a combination of factors, including the physical attributes of a detention site (locked cells, armed guards, etc.), its level of surveillance, and/or the degree of liberty allowed detainees. The paper proposes coding facilities along a sliding scale:

- **High-security**
- **Secure**
- **Semi-secure**
- **Non-secure**
- **Mixed regime**

Assessing a site’s “security” is not scientific and is often based on limited information or unclear descriptions of detention facilities. However, the

general rule of thumb is that the less freedom of movement detainees have, the higher the level of security.

- *High security*: Complete deprivation of liberty, including confinement to a cell with little or no time to move about the facility or have access to recreation. Examples of high-security detention facilities include many federal prisons and local jails used in the United States, Canada, as well as many developing countries. Some dedicated immigration detention facilities can be coded as high-security.
- *Secure*: Complete deprivation of liberty, though detainees are generally allowed to move about the facility during certain periods of time. The vast majority of detention facilities will be classified as secure.
- *Semi-secure*: This category reflects a particular adaptation in some immigration detention systems to only partially restrict the freedom of movement of migrants. Some reception centres, for instance, allow detainees to leave the facility for certain hours of the day while requiring them to return to secure confinement each evening. This type of confinement should be coded “semi-secure.” It is important to note that this category only applies when a facility has physical attributes—such as locked doors, guards, or barbed-wire fences—that prevent people from leaving at will. If, for example, a reception centre allows asylum seekers to leave without penalty during the day to attend classes or visit family, but does not physically restrain them from leaving during hours when they are supposed to be at the facility, it should be coded “non-secure” and not be included in detention data. Semi-secure facilities can have similar attributes as some low-security prisons. Ireland, for example, which does not have a dedicated immigration detention facility and thus makes use of its prisons to confine its very small population of immigration detainees, uses a low-security prison in Dublin whose various attributes warrant a semi-secure designation. All detainees at the facility, which is called the Training Unit, are encouraged to apply for temporary leave for periods that can last up to a week or more. When this period of liberty ends, people must return to low-security confinement at the prison (Irish Prison Service, website).
- *Non-secure*: This category of facility—which corresponds to what are often termed “open” facilities in Europe—is by definition not a detention facility and should not be included in detention data. A non-secure site is any facility that does not physically restrain a person from leaving at will. That an asylum seeker could face serious repercussions for not returning to his or her designated reception centre is not a sufficient condition to warrant classification as a detention centre. Although non-secure facilities are by definition not detention centres, it is important to have this concept built into our data scheme in order to properly code facilities that have secure and non-secure sections (see “Mixed regime” below).
- *Mixed regime*: These are facilities that have both secure and non- or semi-secure sections. An example of such a facility is the Southwest Youth

Village in Vincennes, Indiana (United States). This facility is described by U.S. immigration authorities as being used to hold unaccompanied minors under the authority of the Department of Health and Human Services' Office of Refugee Resettlement. According to the Southwest Youth Village website, the facility has two sections, a section for "residential treatment for 148 male and female youth, ages 9-21, in gender-specific housing units and activities"; and a detention centre that offers "pre- and post-disposition services for 40 males and females in a self-contained building with sight and sound separation from residential youth." The residential treatment is considered a semi-secure section and the detention centre a secure section, thus the facility is coded "Mixed regime." Important to note, a mixed regime is only applied when both sections of the facility fall under the same administration. If the sections have separate administrative bodies, then they should be considered two separate facilities.

### **Segregation**

This category provides information about whether children and adults ("Age segregation"), women and men ("Gender segregation"), and criminal and administrative detainees ("Legal segregation") are given separate areas of a facility or share the same space. It also denotes when a facility provides space for "Family units." Designations are provided only when they are applicable to the site in question. Thus, for instance, it is not necessary to denote "Legal segregation" in a migrant detention facility, which by definition does not hold criminal detainees. If a facility holds only one gender or one age group, that fact is also noted in this category if it is not already clear from the name of the facility and/or its "Facility type" designation.

The issue of segregation raises a number of questions with respect to the human rights of migrants as there are well established norms regarding the treatment of vulnerable groups, like women and children, in detention. The decision to confine an administrative detainee alongside criminal detainees could also be considered a form of criminalisation.

Commenting on established international norms with respect to this issue, one scholar writes, "In current times, the most obvious example [of a non-criminal detainee] is of persons who are detained because they have entered a country illegally or sometimes because they are seeking asylum. Such persons should not be detained alongside persons who are accused of or who have been convicted of criminal offences. If they are delivered to the custody of the prison authorities, they should not be treated in the same way as persons who have been convicted or accused of criminal offenses" (Coyle, 2002: 123).

### **Privatisation (ownership, service provisions, management)**

The privatisation of immigration detention is a growing phenomenon across the globe (Flynn and Cannon, 2009). Privatisation is a cross-cutting dimension that includes a range of phenomenon, including both operational and bureaucratic characteristics, such as turning over facility management to

a private company, hiring private security guards, using a private company to provide basic services in a facility, or selling off detention facilities to private corporations.

There are a number of important research issues highlighted by the issue of privatisation, including the potential for diminishing basic services in order to increase profits as well as the notion that in deciding to take a person into custody, the state takes on responsibility vis-à-vis that person which should not be handed over to a private entity.

Additionally, carefully coding privatization can inform studies of the political economy of state detention regimes: In deciding to privatise detention operations, a state opens the door to the potential that one of the rationales for bolstering detention efforts is not to meet the limited aims of administrative detention, but to satisfy the profit motives of companies. As one private prison expert has argued, “Allowing the private sector to run immigration detention will mean ... an ever increasing number of people coming into the system and staying there longer ... as companies seek to maintain and expand their markets” (Nathan, 2010).

Although it can be difficult to observe a direct causal relationship between the lobbying efforts of private contractors and worsening and/or expanding detention practices, the establishment of deeply rooted private incarceration regimes can engender an institutional momentum that takes on a life of its own, leading to what one author calls the creation of an “immigration-industrial complex” (Fernandes, 2007). Discussing the U.S. experience with privatised immigration detention, journalist Deepa Fernandes writes, “With the increase in prison beds to house immigrants comes the pressure to fill them” and “given the tight connections between the private-prison industry and the federal government” efforts to expand bed space will likely increase (Fernandes, 2007: 199).

Among the main variations of privatisation that should be coded in detention data are whether a facility is owned or managed by a private company or other non-state actor, and whether certain services have been outsourced.

*Management* refers to the entity that operates the facility in question. Facility operators can include state agencies, for-profit companies, not-for-profit groups, and international or inter-governmental institutions. Sometimes, management of a site is shared by official and non-official entities, in which cases both should be listed. It is important to note that “management” is a distinct category from both “ownership” and “custodial authority.”

*Non-state service provisions* is a category of information that covers everything from facility security personnel to food services, and from social counselling to healthcare. Non-state service providers can include for-profit companies, not-for-profit agencies, and international organizations. This paper proposes highlighting the following types of non-state services: security, food, social, and health.

### **Custodial authority**

This bureaucratic category refers to the official body—typically a ministry and the agency within the ministry—that has ultimate custody over the non-citizens detained at a given site. In some instances, researchers may find that international organizations like UNHCR or non-national institutions like the European Union either have or share custody with state agencies.

#### **Ministries**

- Interior
- Justice
- Immigration
- Social Affairs
- Foreign
- Ombudsman or similar
- Security
- Labour
- Health

#### **Subministries**

- Immigration agency
- Correctional agency
- Border police
- National police
- Gendarmie

#### **International or inter-governmental institution**

- EU
- UNHCR
- IOM

This category aims to provide evidence of how migrants are perceived by states as well as the kind of custodial environment they are likely to be subjected to. For instance, if a state gives custody of migrant detainees to a national security agency, it is a clear sign of what some scholars call the “securitisation” of immigration.<sup>3</sup>

A case in point is the U.S. Department of Homeland Security (DHS), created in wake of the 9/11 terrorist attacks. The DHS subunit Immigration and Customs Enforcement (ICE), is a partially militarised agency that describes itself as DHS’s “principal investigative arm” and the “second largest investigative agency in the federal government” (ICE, website). It was created in 2003 through a merger of the enforcement elements of the U.S. Customs Service and the Immigration and Naturalization Service, the former an agency of the Treasury Department and the later of the Justice Department. The treatment of immigration detainees in the United States has been consistently denounced by rights groups as well as by its own oversight agencies, who accuse authorities of using detention in a quasi-punitive manner instead of as a means to achieve the limited aims of immigration procedures. This is not to argue that there is a monocausal link between custodial authority and the

---

<sup>3</sup> For a discussion of the securitisation in the context of immigration, see: Ole Waever, Barry Buzan, et al., *Identity, Migration, and the New Security Agenda in Europe*, 1993.

treatment of immigration detainees in the United States (or in other countries), but it is a sharply focused piece of evidence for comparative study of detention regimes.

A very different case is that of Sweden. Immigration detention in that country is the responsibility of a specialised body, the Swedish Migration Board (*Migrationsverket*), which is part of the Ministry of Justice. The Migration Board endeavours to emphasise that administrative detention of irregular immigrants is a process that is separate from criminal procedures and that migrant detention centres are not prisons (Winiarski, 2004). This approach to immigration detention is a result of a policy evolution that began in the 1990s. Until 1997, the Swedish police, which was then charged with overseeing immigration detention, contracted detention services to private contractors. However, in the mid-1990s reports of mistreatment surfaced, accompanied by detainee protests and public indignation. Following public debate, officials ceased contracting detention services to the private sector and shifted responsibility for the practice to the social services sector (Flynn and Cannon, 2009: 12). After a 2009 visit by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Sweden received a favourable review of its detention infrastructure, which has led to its characterisation as a European role model (Le Figaro 2009).

Documenting custodial authority can sometimes be unobvious. For instance, although the U.S. Federal Bureau of Prisons oversees all federal prisons in the United States, immigration detainees confined in those prisons fall under the authority of DHS ICS. In another case, UNHCR jointly operates with the government of Romania an “Emergency Transit Centre” for people in need of urgent evacuation from their country. The facility operates as a semi-secure site. Those housed in the facility appear to be under the joint custody of UNHCR and Romania’s Ministry of Home Affairs. Thus, the coding for this facility would be Ministry of Home Affairs / UNHCR.

#### **IV. Conclusion**

As this paper has endeavoured to demonstrate, migration-related detention—or the detention of non-citizens because of their status—is an extraordinarily diverse phenomenon whose close association with criminal incarceration raises a number of questions about whether or to what degree this form of detention adheres to the limited requirements of immigration policy. While a number of national and international entities have highlighted this problem, to date little effort has been made to propose a methodology that would allow for critical inquiry detention estates. This paper argues that to do this, it is critical to establish criteria for constructing data at the level of the individual detention centre. The paper proposes an overarching model for constructing data on detention sites, and then assesses a discrete number of dimensions that can assist comparative study of the phenomenon.

It seems clear that as migratory pressures grow, so will states' use of detention to respond to these pressures. As a global phenomenon, migration-related detention requires a global view that can provide scholars and policy-makers with a solid basis for assessing detention regimes. This paper aims to encourage this process and provide some initial guideposts for how such a global view can be achieved.

## References

- Abdolkhani and Karimnia v. Turkey*. 2009. Judgment of the European Court of Human Rights. Application no. 30471/08. 22 September 2009.
- Academic Network for Legal Studies on Immigration and Asylum in Europe (ANLSIAE). 2006. *Comparative Review of the Implementation of the Directive 2003/9 of 27 January 2003 Laying Down Minimum Standards for the Reception of Asylum Seekers in the EU member States*. Institute for European Studies. Brussels: March 2006.
- Agamben, Giorgio. 1998. *Homo Sacer: Sovereign Power and Bare Life*. Stanford University Press: 1998.
- Amuur v France*. 1996. European Court of Human Rights. Judgment of 25 June 1996.
- Asociación Pro Derechos Humanos de Andalucía (APDHA). 2008. *Centros de Retención e Internamiento en España*. October 2008.
- Austin J, Hardyman P. 2004. *Objective Prison Classification: A Guide for Correctional Agencies*. U.S. Department of Justice: July 2004.
- Barcia, I. 2003. The Detention of Foreign Nationals After September 11: An International Perspective. *Benders Immigration Bulletin* 8: 1745-1756
- Buhrle, C. 2006. Administrative Detention in the Context of the Reception of Asylum Seekers. Jesuit Refugee Service Europe. Brussels: 30 June 2006.
- Bustamante, J. 2010. Human Rights of Migrants: Report of the Special Rapporteur on the Human Rights of Migrant. UN General Assembly. August 3, 2010.
- Coyle, A. 2002. *A Human Rights Approach to Prison Management*. International Centre for Prison Studies. London: 2002.
- Ek, Richard. 2006. "Giorgio Agamben and the Spatialities of the Camp: An Introduction." Swedish Society for Anthropology and Geography: 2006.
- European Committee for the Prevention of Torture (CPT). 2009. *The CPT Standards*. Council of Europe: 2009: 37-55.
- European Committee for the Prevention of Torture. 2009. *Preliminary observations made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment which visited Sweden from 9 to 18 June 2009*. Council of Europe. Strasbourg, 23 July 2009.
- European Union Agency for Fundamental Rights (FRA). 2010. *Detention of Third-Country Nationals in Return Procedures: Thematic Report: September 2010*. European Union.
- Flynn M, Cannon C. 2010. Report on the Joint Global Detention Project– International Detention Coalition Workshop in Geneva, Switzerland, 2-3 October 2010. Global Detention Project: Geneva: November 2010.  
[http://www.globaldetentionproject.org/fileadmin/publications/GDP\\_Workshop\\_Report\\_2010.pdf](http://www.globaldetentionproject.org/fileadmin/publications/GDP_Workshop_Report_2010.pdf) (accessed 7 December 2010).
- Flynn M, Cannon C. 2010. The Privatization of Immigration Detention: Towards a Global View. Global Detention Project working paper. September 2009.  
[http://www.globaldetentionproject.org/fileadmin/docs/GDP\\_PrivatizationPaper\\_Final5.pdf](http://www.globaldetentionproject.org/fileadmin/docs/GDP_PrivatizationPaper_Final5.pdf) (accessed 1 December 2010)
- Gallagher, A., Pearson E. 2010. The high cost of freedom: A legal and policy analysis of shelter detention for victims of trafficking. *Human Rights Quarterly* 32: 73-114.

- Global Detention Project, website, <http://www.globaldetentionproject.org/> (accessed 2 December 2010).
- Goodwin-Gill, G. 2001. *Article 31 of the 1951 Convention relating to the Status of Refugees: Non-penalization, Detention, and Protection*. UN High Commissioner for Refugees: Department of International Protection: October 2001.
- Dueck J. et al. 2001. *HURIDOCS Events Standards Formats: A Tool for Documenting Human Rights Violations*. HURIDOCS. 2001.
- Fernandes, D. 2007. *Targeted: Homeland Security and the Business of Immigration*. Seven Stories Press. New York: 2007.
- Goodwin-Gill, G. 1986. International Law and the Detention of Refugees and Asylum Seekers. *International Migration Review*. Vol. 20, No. 2: 194-219.
- Guild, E. 2005. Report for the European Parliament: Directorate General Internal Policies of the Union: A Typology of Different Types of Centres in Europe. Centre for European Policy Studies: 2005.
- Helton, A. 1989. The detention of refugees and asylum seekers: A misguided threat to refugee protection. In *Refugees and International Relations*, Loescher G et al (eds); Oxford University Press: Oxford; 135-140.
- Holland, S. 2008. Ranking Rights: Problems and Prospects for a Quantitative Global Human Rights Index. Issue paper of the Measurement & Human Rights Program at the Carr Center for Human Rights Policy, Harvard Kennedy School of Government. Volume 1, Issue 4, August 2008.
- International Organization for Migration (IOM). 2006. *Field Mission Report: Stranded Ethiopian Migrants in Bossasso, North East Somalia/Puntland*. IOM MRF Nairobi. November 2006.
- Irish Prison Service. Website. "Training Unit." [http://www.irishprisons.ie/prisons-training\\_unit.htm](http://www.irishprisons.ie/prisons-training_unit.htm) (accessed 10 December 2010).
- Jesuit Refugee Service (JRS). 2010. *Becoming Vulnerable in Detention: Civil Society Report on the Detention of Vulnerable Asylum Seekers and Irregular Migrants in the European Union (The DEVAS Project)*. JRS – European Regional Office. Brussels: 2010.
- Kalhal, A. 2010. Rethinking Immigration Detention. *Columbia Law Review*. Vol. 110: 42-58.
- Le Figaro*. 2009. "Des prisons modèles en Suède." 24 July 2009.
- Levy, C. 2010. Refugees, Europe, Camps/State of Exception: 'Into the Zone,' the European Union and Extraterritorial Processing of Migrants, Refugees, and Asylum-Seekers (Theories and Practice). *Refugee Survey Quarterly*. Vol. 29, No. 1 (UNHCR 2010): 92-119.
- Lopez G, Stohl M. 1992. Problems of Concept and Measurement in the Study of Human Rights. In *Human Rights and Statistics*, Claude (ed); University of Pennsylvania Press: Philadelphia.
- Migreurop. 2009/2010. *European Borders: Controls, Detention, and Deportations*. Migreurop: 2009/2010.
- Nathans, S. 2010. Presentation at the Graduate Institute for International and Development Studies. Geneva: 2 March 2010. <http://www.globaldetentionproject.org/publications/newsletter/public-event-2-march-2010.html> (accessed 8 December 2010).

Oberoi, Pia. 2009. "The Enemy at the Gates and the Enemy Within: Migrants, Social Control, and Human Rights." Working Paper. International Council for Human Rights Policy. 2009.

Ricupero, Isabel, and Michael Flynn. 2009. "Migration and Detention: Mapping the International Legal Terrain." Global Detention Project working paper. Programme for the Study of Global Migration, Graduate Institute of International and Development Studies. Geneva. November 2009.

Samers, M. 2010. *Migration*. Routledge: New York.

Schriro, D. 2009. *Immigration Detention Overview and Recommendations*. U.S. Department of Homeland Security, Immigration & Customs Enforcement.

Sinnerbrink, S. 2005. "From *Machenschaft* to Biopolitics: A Genealogical Critique of Biopower." *Critical Horizons* 6(1): 239-265.

Steps Consulting Social. 2007. *The Conditions in Centres for Third Country National (detention camps, open centres as well as transit centres and transit zones) with a Particular Focus on Provisions and Facilities for Persons with Special Needs in the 25 EU Member States*. European Parliament: Directorate-General Internal Policies: Policy Department C: Citizens Rights and Constitutional Affairs. Brussels: 2007.

United Nations High Commissioner of Refugees (UNHCR). Reception Standards for Asylum Seekers in the European Union. UNHCR. Geneva: July 2000.

U.S. Immigration and Customs Enforcement (ICE). Website. ICE Overview. <http://www.ice.gov/about/overview/> (accessed 10 December 2010).

Verkaik, R. 2010. Immigrants should not be in jail, says prisons watchdog. *The Independent*. July 14, 2010.

Waever O, et al. 1993. *Identity, Migration, and the New Security Agenda in Europe*. Palgrave Macmillan: 1993.

Walters, William. 2010. "Deportation, Expulsion, and the International Police of Aliens." In Nicholas De Genova and Nathalie Peutz, editors. *The Deportation Regime: Sovereignty, Space, and the Freedom of Movement*. Duke University Press: 2010.

Wilsher, D. 2004. The Administrative Detention of Non-Nationals Pursuant to Immigration Control: International and Constitutional Law Perspectives. *International and Comparative Law Quarterly*. Vol. 53, No. 4 (Oct. 2004): 897-934.

Working Group on Arbitrary Detention (WGAD). 2000. Fact Sheet No. 26. Office of the United Nations High Commissioner for Human Rights.<sup>^</sup>

*Z.N.S. v. Turkey*. 2010. Judgment of the European Court of Human Rights. Application no. 21896/08. 19 January 2010.