Are there “alternatives” for children?

Michael Flynn
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Proposed change in focus of panel:

From: Alternatives to detention: Effective and beneficial tools for the states?

To: Alternatives to detention: Effective and beneficial tools for ending the detention of children?
Are there “alternatives” for children?

**Summary:** If immigration detention is never in the best interests of children, then not detaining them should be framed as an obligation, not as an “alternative.” This raises the question of whether it is possible to develop "alternatives to detention" in a way that does not bolster the logic of detention itself. How have states exploited this paradox by developing alternatives that fail to move policy and practice away from prioritizing detention? Are there long-term unintended consequences of advocating alternatives? And what would be ideal characteristics of an "alternative” policy that is effective at ending the detention of children?
Global Detention Project
OBJECTIVES

Documenting the use of detention as a response to migration and refugee movements and promoting the rights of detainees

- Foster transparency in detention policies and practices
- Promote respect for fundamental rights of detainees
- Reinforce advocacy of detention reforms
- Encourage policy-relevant scholarship
Border crisis in Latvia?

Despite having only a very small number of unauthorized entries, Latvia calls the situation at its borders with Russia and Belarus “alarming” and has begun constructing a multi-million Euro border fence.

See detention profile.

Featured Publications


Working Papers | Izabella Majcher and Mariette Grange | February 2017

The authors describe the normative framework governing immigration detention established in core international treaties and discuss how human rights bodies apply this framework when reviewing states’ policies and practices. Their assessment of the impact and implementation of fundamental norms reveals gaps in the international protection regime and highlights how states’ responses to this regime have shaped contemporary immigration detention systems.
In contrast to many of its European neighbours, the Netherlands has sharply reduced its immigration detention capacity as a result of decreasing numbers of immigration detainees. Observers argue that these decreases are in part due to the fact that the government “takes the obligation to consider alternatives more seriously than it did before adoption of the EU Returns Directive. On the other hand, detention numbers have soared in the Kingdom of Netherlands’ Caribbean islands, Curacão and Aruba, as growing numbers of people from nearby Venezuela flee their failing economy.

**Introduction**

The number of immigration detainees in the Netherlands has dropped significantly in recent years, from 6,104 in 2011 to 2,776 in 2015. According to some accounts this is due in part to the fact that the government “takes the obligation to consider alternatives more seriously than it did before the EU Return Directive was adopted”. Another reason is a Council of State ruling prohibiting mobile surveillance teams of the Royal Military Constabulary to arrest irregular migrants at the border with other EU countries. Fever detention has in turn spurred a reduction in the capacity of the Dutch immigration detention estate, from 1,950 in 2011 to 913 in 2014.

Other reform efforts have included proposed new rules on the conditions of detention. After the success of an asylum seeker in early 2013 in the Rotterdam Detention Centre, the Security and Justice Inspectorate conducted an investigation and found out that the government acted negligently in terms of medical and legal assistance. This led to the drafting of the Return and Detention Act. The Act, which was still in Parliamentary debate as of late 2015, would regulate conditions and regime of detention, which are currently governed by rules applicable to prisons.

**Quick Facts**

- Immigration detainees (2015): 2,176
- Detained asylum seekers (2014): 261
- Detained minors (2012): 402
- Females expelled (2015): 8,525
- International migrants (2015): 1,979,530
- New asylum applications (2014): 21,811

**Profile**

- Introduction
- Laws, Policies, Practices
- Detention Infrastructure
- PDP Version of 2016 Profile
Global Phenomenon: GDP Map of Detention Sites
Are there “alternatives” for children?

Key concerns and ways forward

1. Lack of clarity = lack of ability to assess impact
2. Slippery slope: Is liberty an alternative?
3. Alternatives as expansion of the surveillance state
4. Challenges in transit states
5. Bolstering the logic of detention
6. The way forward: From alternatives to prohibition?
1. Lack of Clarity: Words, Names, Laws

**Detention?**
- Rétención (France, Argentina, Lebanon), Albergar (Guatemala), Accommodation (Bulgaria, Ukraine)

**Detention centers?**
- Governmental Shelters (Saudi Arabia), Welcome Centers (Italy), Residential Centers (US), Estaciones Migratorias (Mexico)

**Alternatives to detention?**
  a. Any measure that ensures a person is not detained – how do you measure?
  b. **Lose the narrative:** Ankle bracelets

**How do we define detention of children?**
COMMON PROBLEMS

1. Governments often fail to respond to information requests

2. There is often no public source of statistics, governments fail to develop stats or they refuse to release them

3. Lack of access to detention centers by independent oversight bodies, media, NGOs
Lack of Transparency: GDP-Access Info Joint Study (2014-2015): Repeated FOIA requests to 33 countries over two years

» Over half of the countries monitored (19/33) did not disclose the locations of where migrants are detained

» 12 countries did not provide statistics on the total number of migrants detained

» 17 countries did not disclose information on the number of detained asylum seekers

» 19 countries failed to provide a breakdown of the numbers of unaccompanied and accompanied minors in detention

» Only six countries – Hungary, Lithuania, Luxembourg, Poland, Slovakia, and Sweden – provided full answers to all questions
2. Slippery slope: Is liberty an “alternative”

**Example:** Draft “principles and guidelines” regarding human rights of migrants

**Section on detention:** "Legislation should include the obligation of administrative or judicial bodies to start from liberty as the first alternative ..."

**GDP response:** We are concerned about framing "liberty" as an "alternative." ... Liberty is not an alternative, it is a core human right that can only exceptionally be deprived.
3. Alternatives as expansion of the surveillance state

**Key problem:** Adoption of “alternatives”, but not less detention

**Case of the United States:** Ankle bracelets is officially viewed as an “alternative” / Trump administration decision to replace Obama-era “case management for families. **Detention Watch Network:** “As a basic litmus test for whether or not they are being used correctly, alternatives must always decrease the number of people in detention. Instead, as ICE’s budget for alternatives to detention has increased, so has its budget for detention.”

**Case of Malta:** 2015 “Strategy for the Reception of Asylum Seekers” provides that immigration officers can order “alternative” measures when they do not think detention is warranted. **UNHCR commented** that these regulations lack sufficient clarity to be consider alternatives to detention, particularly due to the fact that the measures are to be applied when no detention decision has been taken in the individual case. In short, the conditions outlined in the new policy document appear to be alternatives to liberty rather than alternatives to detention
4. Challenges in Transit States

**Key problem:** How do you apply “alternatives” when the population intends to move on?

**Case of Greece:** *Xavier Créach:* Even when you find a space in an alternative program for a child, they have already moved on.

**Case of Mexico:** 2015 launch of pilot ATDs coincided with largest increase in detention of children perhaps ever in any country – and yet Mexico has used ATDs to bolster their image in human rights venues.
5. Bolstering the logic of detention

**Key problem:** Framing the non-detention of children as an “alternative” legitimates the use of detention

*Adriano Silvestri:* Interior Ministries say that they need detention as a stick to make sure alternatives are effective.
6. Ways forward

1. How can “alternatives” lead to less detention? Alternative + Prohibition
   a. States must adopt a law or regulation that explicitly provides at least a limited form of prohibition, ie. non-detention of children/families in the first instance
   b. If for some exceptional reason detention is deemed necessary, then non-custodial measures must then be considered

Lesson of Belgium: Arguably the best case to date in pairing alternatives with non-detention regulation. However, the law providing alternative for families failed to prohibit the detention, instead saying that “in principle” they should not be detained in the first instance. Thus, (1) even when alternatives were being applied, the families were considered legally to be “detained”; (2) some Belgian jurisdictions rejected the necessity to consider alternatives: (3) when migratory pressures mounted, the country easily capitulated and reverted back to detention.

2. From alternatives to prohibition?
Developing tools to track detention globally
Global Phenomenon: Detention Centers around the World
Growing involvement of private companies and non-state actors

Security companies, contractors, international organizations, non-profits

Detention numbers

Until most recent period, numbers appeared to be levelling off in many destination countries, while increasing in transit and periphery

Institutionalization

Emerging dedicated bureaucracies, facilities

Externalisation of detention

Encouraging, financing, insisting on detention in neighbouring countries
TRENDS: Detention numbers in the Council of Europe

- GDP has been able to identify or receive data on only 23 countries of the 47 CoE Member States for the most recent period (between 2010-2015)
- Overall, numbers appear to have decreased during this period. However, available numbers for 2016 show sharp increases (Austria: 14,600 first half of 2016)

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<td><strong>Total</strong></td>
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Number of Immigration Detainees

Transparency: Access to Info, Statistics and Trends

globaldetentionproject.org
TRENDS: Detention on migration routes

Southeast Asia Migration Routes

An estimate of 27,151 migrants have made the journey by sea in 2015.

Rate of change/development:
- Rapid increase in recent years
- Current estimated at 27,151
- Total of sea: 3,000

Recovery of migrants stranded in Indonesia
- tasarım: Malaysian authorities
- Rate of new arrivals: 2,000

Since January 2015, the journey, involving 27,151 migrants, is estimated to have started in May 2015.

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