



GLOBALDETENTIONPROJECT

Is Ending the Detention of Children an “Alternative”?

By Michael Flynn

Migrants, State Obligations and Rights in a Globalized Context
UNIGE, 11-12 October 2017

Key Points

- 1) **The detention of children:** The “low-hanging fruit” of advocacy on the human rights of migrants
- 2) **What are “alternatives” to the detention of children and are they effective for ensuring the rights of children?**
- 3) **Looking forward: From “alternatives” to prohibition?**

Children: Alternatives or Obligations?

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

 GLOBALDETENTIONPROJECT

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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




When Is Immigration Detention Lawful? The Monitoring Practices of UN Human Rights Mechanisms: Global Detention Project Working Paper No. 21

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.

[Read more](#)

 GDP News & Activities

Submission to the UN Committee on Migrant Workers: Algeria

March 2017

In this submission the Global Detention Project raises questions about the extent of criminal prosecution in Algeria of undocumented migrants, details about the locations of detainees, and...

GDP DATABASE

GLOBAL IMMIGRATION DETENTION OBSERVATORY

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IV. INTERNATIONAL LAW

V. INSTITUTIONAL INDICATORS

VI. SOCIO-ECONOMIC INDICATORS

DETAILS

Country: Netherlands

Region: Europe

Sub region:

Western Europe

Organizations and Alliances:

Schengen Area

European Union

North Atlantic Treaty Organization (NATO)

Council of Europe

United Nations (UN)

EDIT COUNTRY DETAIL

MAP INFORMATION

MapSatellite

TOTAL CENTRES

14

LAST UPDATE

Mar 2017

COMPLETED FIELDS

61%

NETHERLANDS IMMIGRATION DETENTION

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, Curaçao and Aruba, as growing numbers of people from nearby Venezuela flee their failing economy.

QUICKFACTS

Immigration detainees (2015):

2,176

Detained asylum seekers (2014):

261

Detained minors (2012):

402

Persons expelled (2015):

8,620

International migrants (2015):

1,979,500

New asylum applications (2014):

21,811

PROFILE

Introduction

Laws, Policies, Practices

Detention Infrastructure

PDF Version of 2016 Profile

INTRODUCTION

The number of immigration detainees in the Netherlands has dropped significantly in recent years, from 6,104 in 2011 to 2,176 in 2015.[1] 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.[2] 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.[3] Fewer detainees have in turn spurred a reduction in the capacity of the Dutch immigration detention estate, from 1,950 in 2011 to 933 in 2016.[4]

Other reform efforts have included proposed new rules on the conditions of detention. After the suicide of an asylum seeker in early 2013 in the Rotterdam Detention Centre, the Security and Justice Inspectorate conducted an investigation and found 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 2016, would regulate conditions and regime of detention, which are currently governed by rules applicable to penitentiaries.[5]

An Initiative of the Global Detention Project - Response Time: 0.001 s

2016 © Foundation Tufator v.1.15 dbase 2016/06/24

Global Phenomenon: GDP Map of Detention Sites



DETENTION OF CHILDREN: Definitions and Framework

Immigration-related detention

Deprivation of liberty of non-citizens for reasons related to their non-citizen status.

Basic framework

Immigration detention is to be used as a measure of last resort on the basis of an individual assessment of the necessity, proportionality and reasonableness of such a measure and only after determining whether a less coercive measure can be applied to achieve the same end.

Central consideration for children

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

DETENTION OF CHILDREN: Momentum towards liberty?

Committee on the Rights of the Child (2012)

“The detention of a child because 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. In this light, States should expeditiously and completely cease the detention of children on the basis of their immigration status.”

Special Rapporteur on Torture (2015)

The deprivation of liberty of children based exclusively on immigration related reasons exceeds the requirement of necessity because the measure is not absolutely essential to ensure the appearance of children at immigration proceedings or to implement a deportation order. Deprivation of liberty in this context can never be construed as a measure that complies with the child’s best interests.

European Court of Human Rights (2016)

Even when the material conditions in some detention centres are appropriate, the conditions inherent in such establishments are a source of anxiety for young children.

Are there “alternatives” for children?

Key concerns

- 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**

1. Lack of Clarity: Words, Names, Laws

Detention?

Rétencion (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?

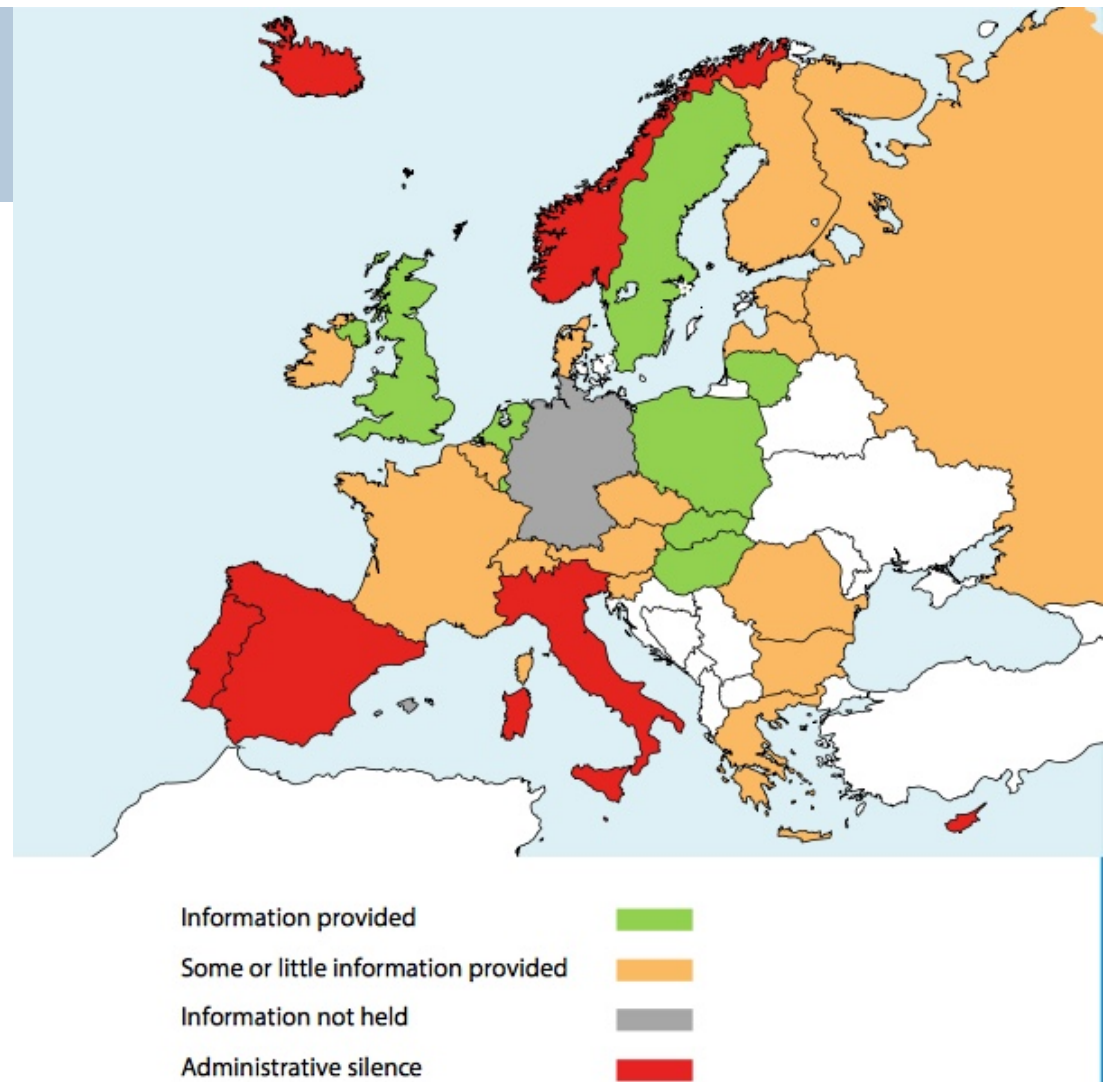
Lack of Clarity: Transparency

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

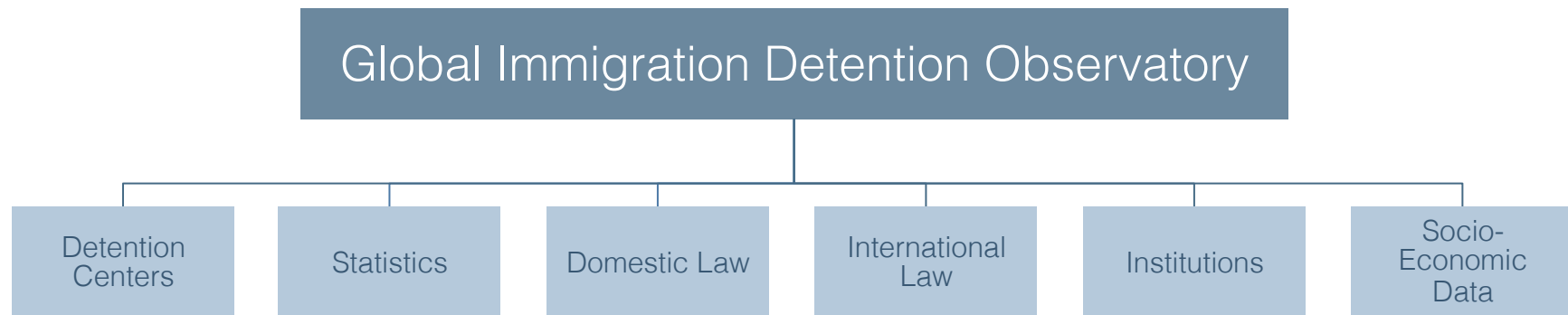
1. How can “alternatives” lead to less detention? Alternative + Prohibition

- 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



KEY TRENDS

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**

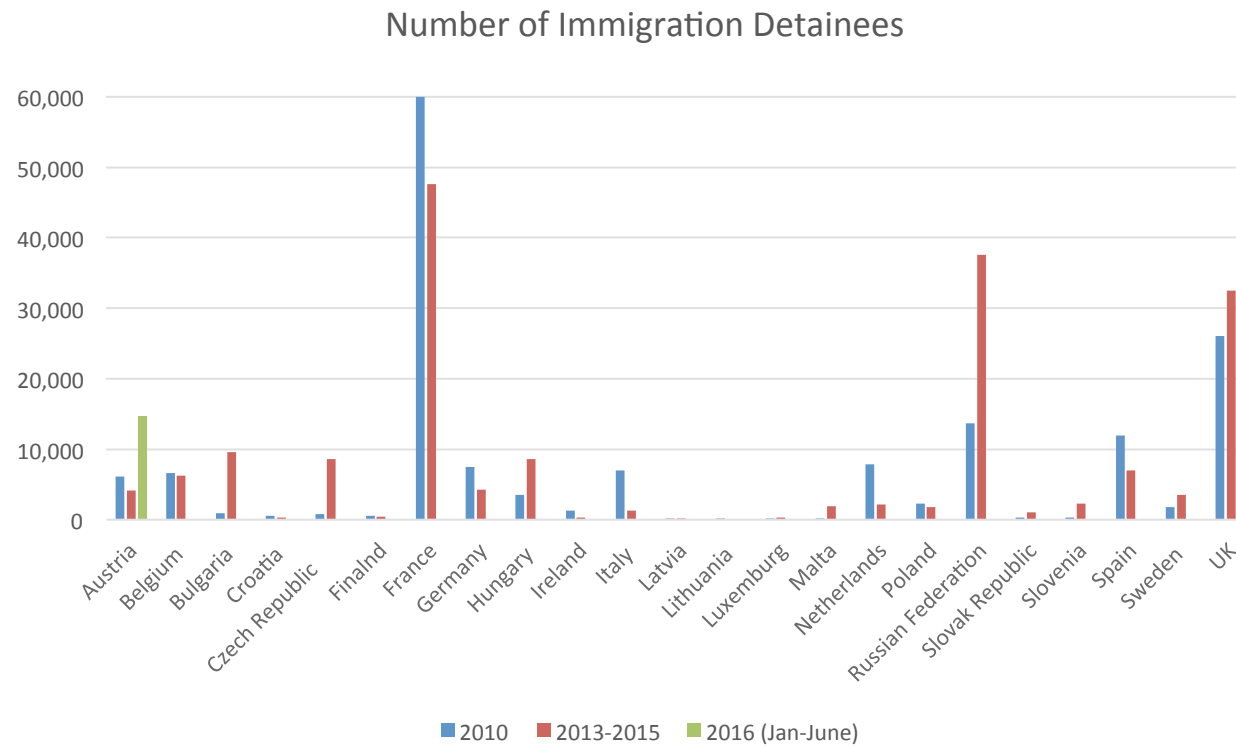
Encouraging,
financing, insisting on
detention in
neighbouring
countries

TRENDS: Detention numbers in the Council of Europe

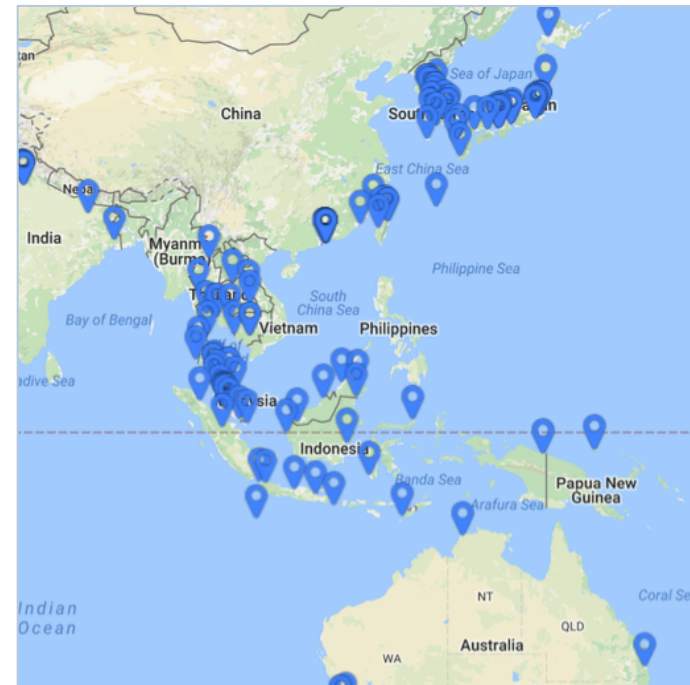
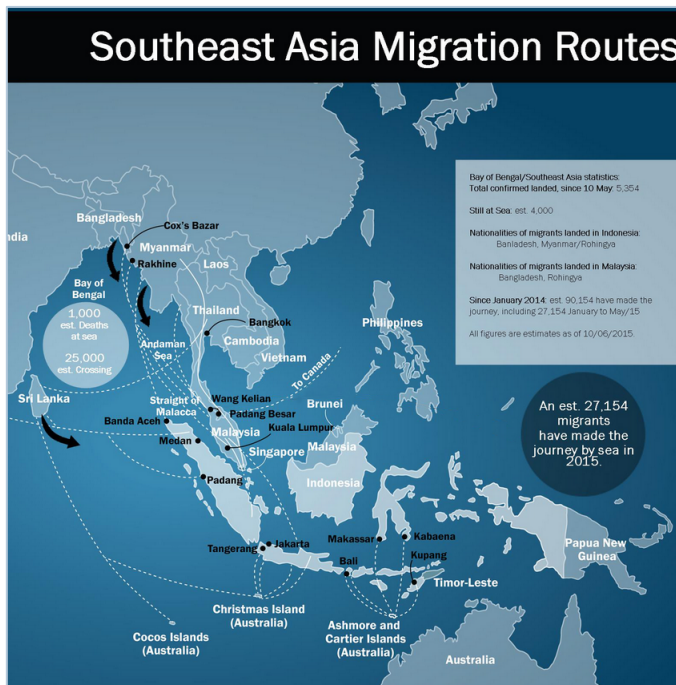
- GDP has been able to identify or receive data on only 23 countries of the 47 CoE Member States for the most recent period (between 2010-2015)
- Overall, numbers appear to have decreased during this period. However, available numbers for 2016 show sharp increases (Austria: 14,600 first half of 2016)

	2010	2013, 2014, or 2015
Austria	6,153	4,171
Belgium	6,553	6,229
Bulgaria	973	9,530
Croatia	559	258
Czech Republic	822	8,563
Finland	534	444
France	60,000	47,565
Germany	7,495	4,309
Hungary	3,509	8,562
Ireland	1,279	335
Italy	7,000	1,279
Latvia	187	221
Lithuania	132	353
Luxemburg	200	243
Malta	61	1900
Netherlands	7,812	2,176
Poland	2,310	1,754
Russian Federation	13,638	37,522
Slovak Republic	319	1,058
Slovenia	340	2,338
Spain	11,915	6,930
Sweden	1,810	3,524
UK	26,000	32,466
Total	153,129	138,626

Transparency: Access to Info, Statistics and Trends



TRENDS: Detention on migration routes





GLOBALDETENTIONPROJECT

Global Detention Project
Geneva, Switzerland

+41 (0) 22 548 14 01

admin@globaldetentionproject.org

globaldetentionproject.org