

10-31-2018

Alternatives to Immigration Detentions With Particular Focus on Children

Lyra Jakuleviciene

Mykolas Romeris University, Lithuania, lyra.jakuleviciene@mruni.eu

Follow this and additional works at: <https://scholarhub.ui.ac.id/ijil>

Recommended Citation

Jakuleviciene, Lyra (2018) "Alternatives to Immigration Detentions With Particular Focus on Children," *Indonesian Journal of International Law*. Vol. 16: No. 1, Article 5.

DOI: 10.17304/ijil.vol16.1.745

Available at: <https://scholarhub.ui.ac.id/ijil/vol16/iss1/5>

This Article is brought to you for free and open access by the Faculty of Law at UI Scholars Hub. It has been accepted for inclusion in Indonesian Journal of International Law by an authorized editor of UI Scholars Hub.

ALTERNATIVES TO IMMIGRATION DETENTION WITH PARTICULAR FOCUS ON CHILDREN

Lyra Jakulevičienė *

* Mykolas Romeris University, Lithuania
Correspondence : lyra.jakuleviciene@mruni.eu

Abstract

Immigration detention is costly, ineffective and raises a number of human rights concerns. Numerous studies have demonstrated the detrimental effect of such detention on states and individuals. This prompted the States to search for alternative solutions that would, on the one hand – assist in reaching the objectives of migration control of foreigners on their territories, on the other – ensure that human rights of migrants and refugees are not undermined. Although various legal models of alternatives to detention (ATDs) already exist, the alternatives are still finding obstacles on their way to legislation and practice of various States. The research paper dwells into the newest developments in international law and State practice with regard to regulation, application and challenges of ATDs taking into consideration the particular situation of unaccompanied minors. It focuses on the analysis of the benefits and setbacks of ATDs available throughout different regions of the world and examines the relevance of ATD models for transit and destination countries.

Keywords: *alternatives to detention, immigration detention, unaccompanied minors, detention of asylum seekers, best interests principle, migrants*

Submitted : 01 June 2018 | Revised : 28 September 2018 | Accepted : 05 October 2018

I. INTRODUCTION

Immigration detention has been in the spotlight of the world's media recently due to the United States of America (USA) policies over immigrants and their massive detention, resulting in separation of families and other consequences that raised a number of human rights concerns. Furthermore, security considerations have been used to justify extensive detention policies due to increased risks of terrorism in many regions of the world, over alleged fears that asylum-seekers and refugees would pose threats to host countries. Within Europe, increased flows of migrants and refugees in 2015 resulted in the growth of detention and other restrictions, which affected also migrant and asylum-seeking children and adolescents.

However, the topic is far from new and its scope extends far

beyond the legitimate powers of sovereign states to control the entry of foreigners into its territories. In particular, the issue becomes even more acute and requires separate attention when children are involved.

The overall objective of this research paper is to examine the need, benefits and recent legal developments on alternatives to immigration detention (ATDs) as a tool that can address immigration detention concerns and assist the States in managing the flows of migrants and asylum-seekers on their territories. In particular, the paper analyses:

- a) the main concerns related to extensive use of immigration detention around the world;
- b) recent developments in international law and State practice with regard to ATDs;
- c) the benefits and setbacks of selected alternatives available throughout different regions of the world;
- d) the suitability of selected ATD model for unaccompanied minors from the perspective of transit and destination countries.

The paper argues that ATDs may provide a needed balance between the urge to achieve migration objectives of States and ensure human rights concerns that are inherently linked to immigration detention.

II. THE EFFECT OF IMMIGRATION DETENTION ON STATES AND INDIVIDUALS

States around the world use immigration detention, including for asylum-seekers, as part of their migration policies for several purposes among others: a) to deter irregular movements of persons; b) to enforce public order and protect national security; c) to ensure returns of migrants who do not have legal rights to remain in their territories. How are these purposes validated by practice? Firstly, does detention prevent the flows of migrants and asylum seekers? In case of asylum seekers the answer is clearly no, because they do not have a choice and seek protection at any cost, including taking restrictions as inevitable ones. With regard to migrants, existing evidence suggests that deterrence policy is not effective, because in spite of use of increasingly restrictive detention policies worldwide for the past 20 years, the number of

irregular migrants has not been reduced.¹ According to the United Nations (UN), since 2000, the total number of international migrants increased by almost 50 per cent and in 2017, reached an estimated 258 million persons. During the period from 2000 to 2017, the total number of international migrants increased from 173 to 258 million persons, an increase of 85 million (49 per cent).² In Europe, although the overall number of migrants attempting to cross the Mediterranean by eastern route were reduced significantly in 2016 as a result of European Union (EU) - Turkish deal, greater proportion of migrants are taking the most dangerous route across the central Mediterranean.³ Furthermore, existing studies suggest that immigration detention does not change the intention of detainees to either stay or leave the country; but if the detainee initially planned to leave the host country, detention will sharpen this intention thus contributing to secondary irregular movement.⁴ There are also practical considerations, e.g., the migrants may have very limited understanding of the policies in the host country.

Secondly, detention practices as a tool of deterrence might be considered unlawful under international law as it fails the individual assessment of the necessity to detain. According to international law, States may detain asylum-seekers when it is necessary in the individual case, reasonable in all circumstances and proportionate to a legitimate purpose.⁵

¹ International Detention Coalition, “There are alternatives. A handbook for preventing unnecessary immigration detention”, 2015, p. 3, available at: <http://idcoalition.org/wp-content/uploads/2016/01/There-Are-Alternatives-2015.pdf>. Accessed on 14 September 2018.

² UN Department on Economic and Social Affairs, Population Division. Population facts, December 2017, available at: http://www.un.org/en/development/desa/population/publications/pdf/popfacts/PopFacts_2017-5.pdf. Accessed on 3 September 2018.

³ The Guardian, “Migrant sea route to Italy is world’s most lethal”, 11 September 2017, <https://www.theguardian.com/world/2017/sep/11/migrant-death-toll-rises-after-clampdown-on-east-european-borders>. Accessed on 11 September 2018.

⁴ Mieke Kox, “Leaving Detention? A Study on the Influence of Immigration Detention on Migrants’ Decision-Making Processes Regarding Return”, IOM, 2011, available at: <http://www.iom-nederland.nl/images/Rapporten/AVRD%20Report%20Leaving%20Detention.pdf>. Accessed on 13 September 2018.

⁵ E.g., UN Human Rights Committee General Comment on Article 9 of the ICCPR, available at: <http://www.refworld.org/docid/553e0f984.html>. Accessed on 3 September 2018.

With regard to using detention for addressing security considerations, even though keeping individuals under strict supervision might make their verification easier, it does not help to address security concerns. For example, research shows that there is little evidence that terrorists take advantage of refugee flows to carry out acts of terrorism or that refugees are somehow more prone to radicalization than others, and that very few refugees have actually carried out acts of terrorism.⁶ Europol noted in 2018 that there was no evidence that terrorists were systematically using refugee flows to enter Europe.⁷

Lastly, does detention assist in enforcing returns? While sometimes detention can help to prevent absconding of persons and in this way facilitates the preparation for return, in cases where return is not possible detention does not help to enforce it. To the contrary, in such a situation keeping individual in detention would become arbitrary. For example, in the United Kingdom (UK), almost 40 per cent of detainees who spent more than 3 months in detention were eventually released in the community with their cases still pending. Prolongation of detention would not help in these situations. Meanwhile alternatives to detention increase the compliance rates as will be shown later.

As we have seen above, the most frequent reasons for justifying detention frequently fail their purposes. At the same time, detention in the context of immigration has detrimental effects on States and individuals in terms of costs and human rights concerns. From the perspective of detrimental effect on States, detention may raise tensions in the communities, as it alienates asylum-seekers from the society and may raise xenophobic attitudes within the local community. It may be too costly for the detaining State in comparison with other less

⁶ “Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism”, 2016, p. 4, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/285/61/PDF/N1628561.pdf?OpenElement>. Accessed on 11 September 2018.

⁷ Europol, “European Union Terrorism Situation and Trend Report of 2018,” p. 28, available at: <https://www.europol.europa.eu/activities-services/main-reports/european-union-terrorism-situation-and-trend-report-2018-tesat-2018>. Accessed on 13 September 2018.

restrictive measures (e.g. community supervision),⁸ as it requires human resources (including security and specialized staff), security devices and technologies, food and shelter must also be guaranteed, as well as medical and legal support.⁹ Also, litigation costs for detention cases may be relevant as detained asylum-seekers challenge their detention and expose governments to litigation for potentially unlawful detention both nationally and internationally. In addition, States may be subject to legal sanctions and criticism from international bodies (e.g., the Human Rights Committee, the European Court of Human Rights, the American Court of Human Rights and others) when detaining persons who are not criminals. Last, but not least, detention may have the effect that the person may be discouraged from cooperating with the authorities in administrative procedures or integration processes.

From the perspective of individuals, international refugee law provides for non-penalisation of asylum-seekers for irregular entry or stay due to their vulnerability¹⁰ and requires detention to be applied as a measure of last resort complying with various requirements. Also, medical and psychological studies demonstrate that detention has serious impact on physical, mental health and well-being of individuals. The Jesuits Refugee Service (JRS) - Europe carried out interviews with 685 detained asylum-seekers. They reported numerous health problems caused by immigration detention of detainees (e.g., depression, self-uncertainty, psychological stress, decreased appetite

⁸ “Alternatives to Immigration and Asylum Detention in the EU. Time for Implementation,” January 2015, p. 22, available at: <http://odysseus-network.eu/wp-content/uploads/2015/02/FINAL-REPORT-Alternatives-to-detention-in-the-EU.pdf>. Accessed on 13 September 2018; IDC, ‘Ten things IDC found about immigration detention’, available at: <http://idcoalition.org/cap/handbook/capfindings/>. Accessed on 13 September 2018; K. Marsh, M. Venkatachalam, K. Samenta (Matrix), “An economic analysis of alternatives to long term detention,” September 2012, available at: <http://detentionaction.org.uk/wordpress/wp-content/uploads/2011/10/Matrix-Detention-Action-Economic-Analysis-0912.pdf>. Accessed on 13 September 2018.

⁹ “Alternatives to Immigration and Asylum Detention in the EU. Time for Implementation,” p. 23.

¹⁰ Art. 31, UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: <http://www.refworld.org/docid/3be01b964.html>. Accessed 14 September 2018.

and varying degrees of insomnia).¹¹ A medical study conducted in the USA demonstrated that 86 per cent of detained asylum-seekers had symptoms of depression, 77 per cent - anxiety and 50 per cent - post-traumatic stress disorder (PTSD), with one quarter reporting suicidal thoughts.¹² Detention has serious consequences for children by causing psychological and development problems. For example, from mental health assessments of 243 children in detention centers in Australia and on Christmas Island from April 2014 to June 2014, 34 per cent of children in detention (compared to 2 per cent outside detention) had mental health disorders that would be comparable in seriousness to children referred to hospital-based child mental health out-patient services for psychiatric treatment.¹³ Secondly, medical problems developed as a consequence of detention, involves financial aspects as well. Addressing these medical problems requires substantial financial resources and the success of integration of person in the community is seriously curtailed. For example, mental health impairment increases reliance on health care and, potentially, social welfare systems. The lifetime health costs of long-term detention have been estimated in Australia at an additional 19,000 USD per person.¹⁴

¹¹ JRS Europe, DEVAS project, “Becoming vulnerable in detention” (June 2011), available at: <http://www.refworld.org/docid/4ec269f62.html>. Accessed on 13 September 2018.

¹² Allen Keller, “From persecution to prison”, June 2003, available at: <http://physiciansforhumanrights.org/library/reports/from-persecution-to-prison.html>. Accessed on 13 September 2018.

¹³ Australian Human Rights Commission, “The Forgotten Children: National Inquiry into Children in Immigration Detention (2014)”, 11 February 2015, p. 59, available at: <https://www.humanrights.gov.au/publications/forgotten-children-national-inquiry-children-immigration-detention-2014/4-overview>. Accessed on 13 September 2018.

¹⁴ Tony Ward, “Long-term Health Costs of Extended Mandatory Detention of Asylum Seekers,” Melbourne: Yarra Institute for Religion and Social Policy, 2011, available at: <http://www.yarrainstitute.org.au/Portals/0/docs/Ward.long-term%20costs%20v12Oct.2011.pdf>. Accessed on 14 September 2018.

II. ALTERNATIVES TO DETENTION – HUMAN RIGHTS FRIENDLY MIGRATION MANAGEMENT SOLUTION

The harmful consequences of detention examined above and others prompted the States to search for alternative solutions that would, on the one hand – assist in reaching the objectives of migration control of foreigners on their territories, while on the other – ensure that human rights of migrants and asylum seekers are not undermined. Alternatives to detention can be defined as “any legislation, policy or practice that allows asylum-seekers to reside in the community subject to a number of conditions or restrictions on their freedom of movement”.¹⁵ In the EU context, ATDs are defined as “non-custodial measures, applied when an individual is exceptionally liable to detention, but which is less restrictive and might involve various levels of coerciveness.”¹⁶ The Council of Europe considers that ATDs refer to a range of different practices, which may be utilized to avoid detention and, thus, respect the principle of necessity and proportionality.¹⁷ Noteworthy, that alternatives to detention are only relevant if there are grounds to impose a detention measure in the first place.

There are various legal models of alternatives to detention applied across the world. At the same time, the alternatives are still finding obstacles on their way to legislation and practice of various States.

Among the recent developments in international law and State practice with regard to ATDs, the human rights bodies and EU legislation has obliged the States to consider ATDs as part of the obligation to apply immigration detention as a last resort.¹⁸ In addition, many countries

¹⁵ UNHCR, “Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention,” 2012, para. 8, available at: <http://www.refworld.org/docid/503489533b8.html>. Accessed on 14 September 2018.

¹⁶ European Union: Council of the European Union, *Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast)*, 29 June 2013, OJ L. 180/96 -105/32; 29.6.2013, 2013/33/EU, available at: <http://www.refworld.org/docid/51d29db54.html>. Accessed on 14 September 2018.

¹⁷ Steering Committee for Human Rights, “Draft analysis of the legal and practical aspects of effective alternatives to detention in the context of migration,” 26 October 2017, para. 17, p. 7-8, available at: <https://rm.coe.int/draft-analysis-of-the-legal-and-practical-aspects-of-effective-alterna/168076cd25>. Accessed on 14 September 2018.

¹⁸ See, e.g., the recent judgment of the European Court of Human Rights in a case of

prohibit or limit in their legislation the use of detention of certain vulnerable applicants. For example, in China, the Exit and Entry Law excludes certain vulnerable migrants from detention, including minors under 16 years of age, persons with disabilities, persons with serious illnesses, pregnant women, and those over 70 years of age. Indonesia introduced a law in 2011 permitting the release of children and other vulnerable individuals from immigration detention.¹⁹

Furthermore, as concerns minors, the UN human rights treaty monitoring bodies, the Committee on the Rights of the Child and the Committee on Migrant Workers, were recently of the opinion that the “Offences concerning irregular entry or stay cannot under any circumstances have consequences similar to those derived from the commission of a crime. Therefore, the possibility of detaining children as a measure of last resort, which may apply in other contexts such as juvenile criminal justice, is not applicable in immigration proceedings as it would conflict with the principle of the best interests of the child and the right to development.”²⁰ The UN Committee on the Rights of the Child went a step further than the UN Human Rights Committee with regard to its approach to the immigration detention of families with children by stating that “immigration detention being a clear violation of the Convention was a subject that was repeatedly discussed and underscored. It was emphasized that “regardless of the situation, detention of children on the sole basis of their migration status or that of their parents is a violation of children’s rights, is never in their best interests and is not justifiable”.²¹

S.Z. v. Greece, Application no. 66702/13, 21 June 2018, available at: <http://www.refworld.org/cases/ECHR,5b2cc52e4.html>. Accessed on 3 September 2018; EU Recast Reception Conditions Directive (No. 2013/33/EU), Recital 20 and Article 8(2); EU Return Directive (No. 2008/115/EC), Recital 16 and Article 15(1), EU Dublin Regulation (No 604/2013), Recital 20 and Article 28(2).

¹⁹ “There are alternatives. A handbook for preventing unnecessary immigration detention”, pp. 21 and 24.

²⁰ Global Detention Project, “Annual Report 2017”, June 2018, p. 3, available at: https://reliefweb.int/sites/reliefweb.int/files/resources/GDP-AR-2017_WEB.pdf. Accessed on 13 September 2018.

²¹ UN Committee on the Rights of the Child (CRC), “Report of the 2012 Day of General Discussion on the Rights of All Children in the Context of International Migration,” 28 September 2012, para. 78, available at: <http://www.refworld.org/docid/51efb6fa4.html>. Accessed on 13 September 2018.

Besides the legal reasoning that immigration detention is never in the best interests of children, it exceeds the requirement of necessity of detention, as there are always other options to deal with children, it is disproportionate, thus arbitrary, as well as may constitute torture, inhuman or degrading treatment, which is prohibited by international law.²² In the regional context, the Inter-American Court of Human Rights in its 2014 advisory opinion concluded that in immigration context “States may not resort to the deprivation of liberty of children who are with their parents, or those who are unaccompanied or separated from their parents, as a precautionary measure in immigration proceedings; nor may States base this measure on failure to comply with the requirements to enter and to remain in a country, on the fact that the child is alone or separated from her or his family, or on the objective of ensuring family unity, because States can and should have other less harmful alternatives and, at the same time, protect the rights of the child integrally and as a priority”.²³

There are many benefits that alternatives can bring in ensuring human rights of asylum-seekers and migrants on the one hand and guaranteeing the attainment of objectives of various restrictions that States sometimes need to use for the purpose of managing asylum and migration processes. The benefits of ATDs are clearly their “human face” if compared with detention, lower costs and less harm to the individual subject to restrictive measures. It is well documented that when alternatives are implemented effectively this can bring a range of benefits to the States and the asylum-seekers, in terms of compliance with immigration and asylum procedures, cost-effectiveness and respect for human rights and welfare needs. Studies and actors in the field have consistently emphasized the added value of alternatives.²⁴ By virtue of ATDs asylum seekers may reside in the community enjoying

²² UN Special Rapporteur on Torture, “Thematic Report on torture and ill-treatment of children deprived of their liberty,” 5 March 2015 (A/HRC/28/68), para. 80.

²³ See Inter-American Court of Human Rights (Inter-American Court of Human Rights, Advisory Opinion OC-21/14 of August 19, 2014, *Rights and guarantees of children in the context of migration and/or in need of international protection*, para. 160, available at: http://www.corteidh.or.cr/docs/opiniones/seriea_21_eng.pdf. Accessed on 13 September 2018.

²⁴ “Draft analysis of the legal and practical aspects of effective alternatives to detention in the context of migration,” para. 231, p. 71.

the freedom of movement and receiving some support. This encourages them to develop and strengthen links with the community and help preserve family life. Also, better access to services might be available than during detention. Empirical evidence proves that alternatives to detention are considerably less expensive due to lower operational costs and less litigation and compensation. Also, it may involve no costs if persons are released into the community with supervision or reporting and this may also contribute to their cooperation. Considering that the methodology of calculating the total costs of detention differs from State to State, the statistics cannot be compared, but community-based alternatives to detention have demonstrated savings of USD \$49 per person/per day cost in the USA, AUD \$86 in Australia and CAD \$167 in Canada.²⁵ ATDs help to reduce litigation costs, which may be particularly high if detention is judged as arbitrary. For example, Australia paid out over 16 million Australian dollars in compensation to former detainees over a ten-year period.²⁶ The UK Home Office paid out almost £15 million between 2011 and 2014 in compensation following claims for unlawful detention.²⁷ At the same time, it is important to note that the cost-benefits of more frequent recourse to ATDs will only be realized if alternatives are used instead of detention, but not merely expanded in addition to maintaining or even expanding the existing immigration detention capacity of States.²⁸

Besides being less expensive than detention, ATDs may also contribute to higher compliance by asylum seekers with the procedures of the host country and more effective cooperation. A study of 13 alternatives to detention implemented in different countries around the

²⁵ UNHCR, Executive Committee of the High Commissioner's Programme Standing Committee, "Conference Room Paper on Alternatives to detention," EC/66/SC/CRP.12, 3 June 2015, p. 4, available at: <http://www.unhcr.org/559643e59.pdf>. Accessed on 13 September 2018; See also: IDC, "There are alternatives. A handbook for preventing unnecessary immigration detention," p. 11.

²⁶ IDC, "There are alternatives. A handbook for preventing unnecessary immigration detention", p. 12.

²⁷ Detention Action, "Without detention. Opportunities for alternatives", September 2016, p. 50, available at: <http://detentionaction.org.uk/wordpress/wp-content/uploads/2016/09/Without-Detention.pdf>. Accessed on 13 September 2018.

²⁸ "Draft analysis of the legal and practical aspects of effective alternatives to detention in the context of migration," para. 239, p. 73.

world commissioned by UNHCR discovered that the rate of absconding was between 1 and 20 per cent, while 10 out of 13 alternatives carried cooperation rates of over 94 per cent. Research in 2014 found that asylum-seekers are predisposed to comply with immigration procedures and that perceptions of fairness in the asylum procedure were far more important for ensuring compliance than the use of detention.²⁹ Research on ATDs in the EU found that alternatives in Belgium, Sweden and the UK had compliance rates ranging from 77 per cent to 96 per cent.³⁰

There are opinions that what works for destination countries does not so for transit countries, as the motivation of migrants and asylum seekers is to move forward and not to stay. The transit countries usually say when arguing about detention and ATDs, that a person would immediately disappear if released from detention, thus ATDs cannot address the fact that some persons aim at destination countries and do not intend to stay in the host country. However, research shows that in some cases asylum-seekers with a perceived higher risk of absconding—such as those who are transiting another country—may be less likely to move on when ATDs allow them to meet their basic needs through legal avenues and do not put them at risk of detention or refoulement.³¹ Important is the future prospects for these individuals in transit countries. This was noted for example in the low absconding rate (roughly 6 per cent) in Indonesia of unaccompanied minor asylum-seekers awaiting

²⁹ UNHCR, Executive Committee of the High Commissioner's Programme Standing Committee, "Conference Room Paper on Alternatives to detention," EC/66/SC/CRP.12, 3 June 2015, p. 3-4, available at: <http://www.unhcr.org/559643e59.pdf>. Accessed on 13 September 2018.

³⁰ "Alternatives to Immigration and Asylum Detention in the EU. Time for Implementation," p. 114.

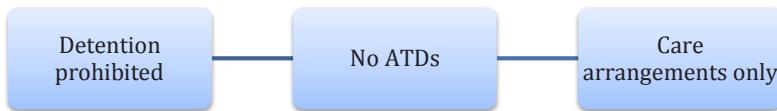
³¹ IDC, "There are alternatives. A handbook for preventing unnecessary immigration detention," p. IV.

a resettlement outcome in a supported community-based shelter.³² In Thailand, an NGO-run programme providing community assistance to unaccompanied asylum seeking children has seen very low absconding rates of 3 percent between September 2014 - May 2015.³³ At the same time, when designing ATDs, it is important to consider the profile of the host country – if it is a transit or a destination country.

III.COMMUNITY SUPERVISION MODEL FOR UNACCOMPANIED CHILDREN

Indeed, if we support the strengthening global view that detention of children in immigration context is impermissible under international law, emphasizing ATDs might reinforce the legitimacy of child detention measures. In this context, we should only analyze the care arrangements rather than ATDs (as illustrated in the Picture 1 below).

Picture 1

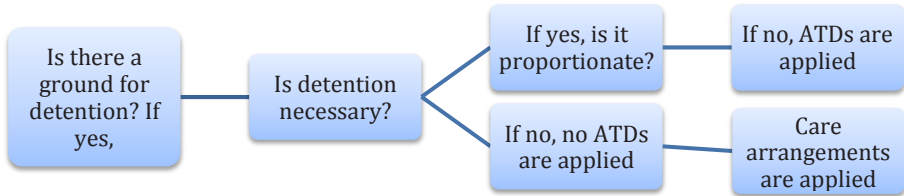


However, there are too many States yet that use detention of children in practice, thus any alternative measure that prevents immigration related detention that would otherwise be used, needs to be considered (as illustrated in the Picture 2 below).

³² Grant Mitchell, “Engaging Governments on Alternatives to Immigration Detention,” *Global Detention Project Working Paper No. 14*, July 2016, p. 6, available at: <https://www.globaldetentionproject.org/wp-content/uploads/2016/07/GDP-Mitchell-Paper-July-2016.pdf>. Accessed on 9 September 2018. There are three shelters that are available for UASC who are refugees or who have applied for asylum. Children are provided with basic necessities, health and psycho-social care, language and computer skills classes, and recreational activities (UNHCR, “Options Paper 1: Options for governments on care arrangements and alternatives to detention for children and families,” 2015, p. 14, available at: <http://www.refworld.org/docid/5523e8d94.html>. Accessed on 11 September 2018).

³³ IDC, “There are alternatives. A handbook for preventing unnecessary immigration detention”, p. 10.

Picture 2



Specific alternatives have been developed to avoid the detention of children in both asylum and return procedures. These may involve reporting conditions, community supervision, financial and non-financial guarantees, directed residence and others. Options for unaccompanied minors can range from their placement in foster families to communities and institutional setups. Although placement in a family might be considered as the most desirable option for unaccompanied minors, there are a number of obstacles that prevent them from this solution. For instance, in many states it is difficult to find foster families who would be willing to temporarily take care of migrant children or they are not able to do it because of language and other obstacles. Also, differently from small kids adolescents are willing to have more independence in their decisions and living, they may be more willing to stay in the centers where they can speak their own language, eat culturally appropriate food and so on. Therefore, there might be a need for outside family care and placement options that could effectively ensure their supervision (against negative influence, trafficking networks and alike) and at the same time living with minimum restrictions as not to affect negatively their development.

One of such options is supervised independent living. It involves independent living arrangement for an adolescent child or a group of adolescent children. Independent living arrangements must be monitored and the role of the community in supporting these children is crucial.³⁴ These arrangements in the community should be adequately resourced

³⁴ UNHCR, Options Paper 1, p. 12; UNHCR, “Child protection Issue Brief: Alternative Care,” January 2014, available at: <http://www.refworld.org/docid/52f0e4f34.html>. Accessed on 9 September 2018.

not to leave the unaccompanied minors vulnerable and insufficiently supported, particularly during the period of time where their refugee claim is being assessed – a state of considerable heightened anxiety and limbo.³⁵

Supervised living in the community has been implemented in practice in several countries. For instance, in Yemen, a supervised small group home arrangement was implemented through a rent of small group homes (with a capacity of 6 to 8 children) next to neighboring families who were nominated by the community leaders and agreed to play a formal supervisory role over the children. Each child in alternative care received regular home visits by the child protection partner and community outreach workers.³⁶ Sicilian NGO AccoglieRete has been implementing a peer guardianship project whereby the adolescents were assisted by peer guardians and were living in the community. 25 youth (between 25-30 years old) have been voluntary legal guardians of unaccompanied minors within the association.³⁷ In Ethiopia unaccompanied minors live side by side with families who agree to support them in communities of 8 shelters facing each other with communal space in the middle of the camp to facilitate social interactions.³⁸ In Sweden, there are several group homes established for children (e.g., in Gothenburg). Group homes for UASCs are set up also in Indonesia, where children are accommodated in shelters. Rooms accommodate between four and six children depending on size, they are provided a weekly stipend to cover the cost of basic necessities and food. Placement is determined by UNHCR with notification to the Directorate General of Immigration (DGI). Educational programmes, basic necessities, psychosocial counselling, medical care, language and computer classes and recreational activities are provided. The children in the facilities can also participate in community charitable activities,

³⁵ IDC, “Captured Childhood,” 2012, p. 71, available at: <http://idcoalition.org/wp-content/uploads/2012/03/Captured-Childhood-FINAL-June-2012.pdf>. Accessed on 9 September 2018.

³⁶ UNHCR, “Child protection Issue Brief: Alternative Care.”

³⁷ The Handbook “Sharing your voice and time for refugees: good practices of youth engagement in refugee integration”, p. 43, available at: <http://www.promiserefugee.eu/wp-content/uploads/2018/02/PROMISE-Handbook-Final-3.pdf>. Accessed on 14 September 2018.

³⁸ UNHCR, “Child protection Issue Brief: Alternative Care.”

such as park clean-up campaigns. The NGO Church of the World Service (CWS) and the Government's Ministry of Social Welfare runs the homes, while the DGI provides authorization for the establishment of these homes and for residents to reside there.³⁹

There are however certain risks involved in settlement of adolescents in the community, e.g.: a) harassment of girls who have been placed within boy-dominated group home, thus safety issues could be a problem; b) sometimes cases of bullying were reported against younger kids from older ones; c) some children have been moved from home to home and thus were unsecure.⁴⁰ Another setback is that the options with full support to these children might be quite costly.⁴¹ However, the benefits of such an alternative is that small group care provides more independence than family-based care, also children can stay with similar age peers, as well as in similar cultural environment, develop self-reliance and responsibility for themselves through independent living.

III. CONCLUSIONS

1. Immigration detention frequently fails the purposes for which it is being used: it does not deter the flows of migrants, which are growing despite the restrictions applied, does not always help to ensure compliance with measures adopted and its effectiveness to address security concerns is limited.
2. The States face negative consequences of detention in terms of its high costs, litigation and criticism from international community, while for individuals immigration detention is a reason of serious health problems, obstacles to integration and mistrust in the system. Furthermore, it negatively impacts the views of the society, which perceive the migrants and asylum-seekers as someone who breached the law.

³⁹ Information of UNHCR (on file).

⁴⁰ Human Rights Watch, "Seeking Refuge. Unaccompanied Children in Sweden," June 2016, available at: <https://www.hrw.org/news/2016/06/09/sweden-migrant-children-face-barriers>. Accessed on 14 September 2018.

⁴¹ E.g. the annual budget based on 80 occupants in group homes in Indonesia is estimated at USD 229,924 (Information of UNHCR).

3. Despite the serious and harmful consequences that immigration detention implies for the States and the individuals, it is still used for various purposes as migration management tool. Therefore the expansion of alternatives to detention is key to ensuring the balance between migration control and human rights of individuals. The design of ATDs needs to take the country profile as a transit or a destination country into account, as this may shape the effectiveness of particular measures.
4. The consideration of alternatives to detention is part of any individual analysis of the necessity and proportionality of immigration detention and it's use as a last resort measure. Recent regional developments (within the EU) manifest its explicit recognition as an obligation to be considered before any detention measure can be justified. Recent developments in international law and State practice further confirm that immigration detention of unaccompanied minors fails the test of the best interests of the child principle that should guide all decisions concerning children.
5. Deliberating the ATDs for unaccompanied minors might reinforce the legitimacy of child detention measures. On the other hand, because States still use detention of children in practice, any alternative measure that prevents immigration related detention needs to be considered and could be a step in improving their situation.
6. Practical experience in implementing supervised living in community models for children confirms that for this arrangement to be effective, community support and adequate resources are needed, as well as certain risks need to be evaluated, monitored and addressed.