

PICUM Input to the UN Special Rapporteur on the Human Rights of Migrants

Report on ending immigration detention of children and seeking adequate reception and care for them

The Platform for International Cooperation on Undocumented Migrants (PICUM) was founded in 2001 as an initiative of grassroots organisations. Now representing a network of 167 organisations working with undocumented migrants in 33 countries, PICUM has built a comprehensive evidence base regarding the gap between international human rights law and the policies and practices existing at national level. With eighteen years of evidence, experience and expertise on undocumented migrants, PICUM promotes recognition of their fundamental rights, providing an essential link between local realities and the debates at policy level.

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Immigration detention of children, both of children who are alone or with their families, is a widespread practice in EU member states. Although numbers of children in detention are not adequately collected and published on national level, some data does exist (see below). Nonetheless, statistics might be biased by the fact that many children (and adults) are detained outside of the formal legal framework, for instance when they are registered as adults or held in reception centres or police stations where their freedom of movement is heavily restricted. Moreover, some forms of alternatives to detention might *de facto* amount to deprivation of liberty.

Moreover, a common practice is the detention of unaccompanied children during the age assessment procedure. For instance, in the hotspot of Lampedusa in **Italy**, unaccompanied children have been *de facto* detained during their identification and while awaiting transfer to other centres. They often remained detained for prolonged periods and in poor conditions. Unaccompanied children have also been detained in other detention centres in Italy while waiting for the age assessment procedure and its results.

Upcoming legislative changes concerning child detention in the EU

Two main legislative proposals are likely to influence the future of child detention in the European Union. Firstly, the process of recasting the EU Returns Directive is ongoing. The Return Directive regulates detention in the context of the removal procedure. The current [Directive](#), from 2008, states that detention of unaccompanied children and families with children is only allowed as a measure of last resort (art. 17). This provision has allowed Member States to detain children, with the [Fundamental Rights Agency](#) estimating that **on any given date in 2016, at least 180 children were detained in 15 EU MS**. That same year, an unaccompanied Syrian boy was detained for 151 days in Poland, while an unaccompanied 15-year-old was detained for 195 days in Latvia (FRA, 2018).

The Recast Return Directive represents an opportunity to change this provision, and to end child detention in the EU. However, this has not been the case in the Commission's [proposal](#) and the Council's partial general [approach](#), both of which maintain the same provision as the current Directive. On the opposite, the draft report prepared by rapporteur Tineke Strik on behalf of the LIBE Committee of the European Parliament includes a strong provision against child detention. This will be discussed in the next months by the Parliament.

The second development is the Asylum and Migration Pact, which will be published in the next few months and be accompanied by legislative proposals. We anticipate that these risk increasing detention by formalising a common border procedure, under which migrants apprehended at the borders and coming from so-called safe countries will be subjected to automatic detention in view of their deportation. While in theory this won't apply to children, the current practices of prioritising migration management concerns over the best interest of the child, and of wrongly registering children as adults, sheds doubt on how this will be ensured.

Child detention in national laws

According to the most recent exhaustive overview of national legislation (the 2018 [FRA report](#)), Ireland is the only EU Member State that prohibits immigration detention of children for asylum as well as for return purposes. Other Member States do not permit detention in principle, but do not forbid it completely (Belgium, for instance, which has recently detained children in families) or have a policy not to detain children (a.o. Italy, Portugal, Spain). Other countries do not detain *asylum-seeking* children (Germany, The Netherlands, Czech Republic, Cyprus).

Also indicated in the FRA report, half of EU Member States do not allow *unaccompanied* children to be detained for asylum and/ or return purposes. The detention of unaccompanied

children pending removal is prohibited in nine EU Member States and allowed in 19 EU Member States.

De facto and de jure detention of children in Greece

The situation in Greece develops weekly, if not daily. The below is a snapshot of the current situation and important recent legal developments as of 13 May 2020.

Changes in the law

In November 2019, the Greek Parliament passed the law "[On International Protection and Other Provisions](#)," intended to address issues in the asylum and migration system. If the law were to be implemented in its entirety, it would increase the use of detention and eliminate safeguards for highly vulnerable populations, amongst others. For instance, article 46 expands the use of detention and increases the maximum length of time a person can be detained to 18 months, with previous periods of pre-removal detention not counted. The law also, in practice, allows for detention decisions to be made by police.

The law **explicitly allows the detention ("protective custody") of unaccompanied children in police stations and pre-removal facilities** (art. 48). PICUM member [ARSIS](#) assists (unaccompanied) children and youth in camps in mainland Greece and has confirmed to us that unaccompanied children are regularly detained in police stations. According to the National Center for Social Solidarity [as [reported](#) by Human Rights Watch] 331 children were in police custody awaiting transfer to a shelter on 31 March 2020, a sharp increase from the 180 children in January. It seems that the situation of unaccompanied children has not radically changed since [2016](#), despite two rulings by the European Court of Human Rights ([HA and others v Greece](#), [Sh.D. and others v Greece](#)) and a [government-led plan](#) to build more shelters for them.

The Greek Parliament passed a new [bill](#) on "improving legislation on migration" on 9 May 2020, speeding up asylum procedures ([analysis](#)).

Children in the Reception and Identification Centres (RIC) on the Aegean islands

Some **12,400 children**, including approximately 1,600 unaccompanied children, are said to live in the Reception and Identification Centres on the Aegean Islands (UNHCR Aegean Islands weekly snapshot of 4 – 11 May 2020). According to the [data](#), 60 per cent of the children are younger than 12 years old.

Although these open-air centres are not formal detention centres, the government's "containment policy" means that people have lived in the camps for months and years on end and cannot leave the islands on their own accord. Moreover, the 2019 law calls for the existing RICs on Lesbos, Chios, Samos, Leros, and Kos to be replaced with "closed reception facilities"

(art. 46). In February 2020, the Greek government [announced](#) plans to use “emergency” powers to begin building migrant detention centers on the Aegean islands.

De facto detention in ports

According to [Amnesty International](#), people who had arrived between 1 and 20 March 2020 were held in port facilities and ships across the islands. In Lesbos alone, around 500 people, including over 200 children, were said to have been held for over 10 days on a Greek Navy ship.

Developing situation on mainland Greece

Children and pregnant women have been reported in the new camps in Malakasa and Serres on mainland Greece, which house 1,340 and 600 people respectively. The Guardian [reported](#) that most are said to have a deportation order but might not have understood the content and been forced to sign the Greek-language document. Human Rights Watch [signalled](#) that the pregnant women among the new arrivals were not able to access prenatal and antenatal care, or assistance during childbirth.

Updates on migration detention and COVID-19

Please note that the following parts concern mostly adult detainees. We do not have specific information on the detention of children during the COVID-19 pandemic (yet).

In the EU, many [NGOs](#) have been calling for the release of migrants in detention, both for health concerns (both for them and the staff working in the detention centres) and because their detention is unlawful under EU Return Directive and international human rights law since there’s no reasonable prospect of removal.

In the UK, all cases are being reviewed and a significant number of detainees have been [released](#) as they cannot be removed imminently.

On 19 March, Belgium [released](#) half of its immigration detainees. In the Netherlands, about 200 individuals have also been [released](#). In all these cases, those with nowhere to go were not provided with emergency shelter, and now face homelessness.

In Spain, all immigration detainees have been [released](#). Individuals have been released by judges based on an assessment of their individual circumstances, looking at whether there was a reasonable prospect of removal within the maximum time limit for detention, which in Spain is 60 days. Undocumented people who did not have access to other forms of accommodation are provided accommodation in state-funded reception programs run by NGOs such as CEPAIM, Red Cross, Andalucía Acoge.

Existing Alternatives to Detention and their evaluation

In the past years, there has been growing practice on case management-based alternatives to detention (ATDs) in Europe, with governments, local authorities and civil society organisations developing new programmes in a number of states – both for single adults, families with children and unaccompanied children.

For instance, since 2018, the [United Kingdom](#) Home Office has been developing a pilot programme in order to test the benefits of case management as a methodology for ATD. The programme is designed in close cooperation with local NGOs, and is based on an holistic approach based on five pillars: (a) stable living conditions; (b) reliable information; (c) community support; (d) active engagement with migration services; (e) counselling about planning the future (either in case of stay in the country or of return to the country of origin).

Quantitative and qualitative monitoring and evaluation are fully embedded in the programme in order to collect evidence and improve understanding on the effectiveness of this approach as well as to guide future developments, including plans to roll out three more pilots with different target groups in the near future.

In **Utrecht, the Netherlands**, the government has been funding a case management programme run by the local civil society organisation [SNDVU](#). It targets undocumented people at risk of detention and homelessness in the Netherlands. As an alternative to detention, SNDVU provides shelter, pocket money, legal aid, social support, and professional guidance (*case management*). All participants are accompanied by a contact person (*case manager*), who ensures they have access to clear and accessible information on their migration procedures.

While the government's funding has allowed to scale up the project and provide services to a higher number of individuals, local organisations have also underlined the importance of preserving the focus on the provision of independent case management and case resolution.

The "[European Alternatives to Detention \(ATD\) Network](#)" (EATDN) is a group of European NGOs which aims to reduce and end immigration detention by building evidence and momentum on engagement-based alternatives. The Network brings together NGOs running case management-based alternative to detention pilot projects in six European countries (Bulgaria, Cyprus, Poland, the UK, Italy and Greece) with regional-level organisations. Each adapted to their own national context, the pilot projects work with a range of migrant cohorts and use monitoring and evaluation to test the effectiveness of case management in increasing people's ability to engage and work towards case resolution.

In **Poland**, 23 families, with a total of 21 children between them, took part in the project. While case management was mainly addressed to parents, it played a key role in addressing children

needs ensuring access to health and education and providing support to adults in their parenting role.

Some numbers:

Between 2002 and 2019, the project in [Utrecht](#) reached high resolution rates: 59% of participants were regularised and integrated into the local community, 19% returned to their countries of origin, 13% were reinserted into national asylum shelters, and 9% absconded.

Similar results have been found by an [interim evaluation report](#) on three ATD pilots in Bulgaria, Cyprus and Poland, all members of the EATDN, where, after two years of implementation, 97% of the participants remained engaged or achieved case resolution. In 94% of the cases, the pilot project increased the individuals' ability to participate in informed decision making, and in 93% of the cases it improved their coping and well-being.

These numbers confirm previous [research](#) by the International Detention Coalition (IDC), based on 250 examples of alternatives to detention in 60 countries, which found compliance rates of up to 95%.

Limitations in accessing detention centres

Based on information from our members, NGOs face restrictions and difficulties in accessing detention centres in Belgium, Greece, Italy, Netherlands, Spain and UK, and are denied access to the detention centres in Cyprus and Hungary.

The situation is further worsened since the beginning of the COVID-19 pandemic, and many of our members reported not being allowed into detention centres anymore. This is, for instance, the case of Belgium, where NGOs and members of the Parliament have been denied access to detention centres since the beginning of the crisis. Limitations have also been reported in Italy and Greece.

PICUM resources

- PICUM and others, 2019, [Child Immigration Detention in the EU](#)
- PICUM, (2018[2015]), [Protecting undocumented children: Promising policies and practices from governments](#) (includes chapter on detention)
- International Detention Coalition, European Alternatives to Detention Network, and PICUM, 2020, [Implementing case management based alternatives to detention in Europe](#)
- PICUM, IOM, UNICEF, OHCHR, Child Circle, ECRE and Save the Children, 2019, [Guidance to respect children's rights in return policies and practices Focus on the EU legal framework](#)
- PICUM and others, 2019, [Durable solutions and the best interest of the child in the context of return processes](#)