

KEY POINTS

- Every day thousands of children are detained simply because they do not have the right documents
- Evidence shows that detention is seriously damaging to the short and long-term mental health and development of young people
- The detention of a child due to their or their parents' migration status constitutes a child rights violation
- There has been a move in some countries away from detaining children and using more innovative child protection approaches
- The Child-sensitive Community Assessment and Placement (CCAP) model provides a decision making tool for governments, NGOs and other stakeholders to prevent child immigration detention

The Issue

Every day, all around the world, tens of thousands of children are affected by immigration detention. Whether detained themselves or impacted by the detention of their guardians, children are particularly vulnerable to abuse and neglect. Children that are unaccompanied or separated from their parents or guardians are particularly at risk in places of immigration detention, and because they are minors, often they are unable to advocate for their fundamental human rights.

States detain children who are refugees, asylum seekers, and irregular migrants for a number of reasons, such as health and security screening, to verify their identities, or to facilitate their removal from the territory. Sometimes, children may be inadvertently detained because there is a failure to distinguish between child and adult migrants, or if children are unable to establish their age.

Such practices constitute a child rights violation and are always contrary to the best interests of the child. This has recently been clarified by the Committee on the Rights of the Child (CRC) and States have been urged to "expeditiously and completely cease the detention of children on the basis of their immigration status."¹

The good news is that there are alternatives. More effective and humane approaches to migration

¹ CRC Report of the Day of General Discussion, *The rights of all children in international migration* (2012).

management exist that allow States to achieve their policy goals without harming the health and well-being of children.

The Impact on Child Health and Development

Regardless of the conditions in which children are held, a number of studies have shown that detention has a profound and negative impact on child health and development. Even very short periods of detention can undermine child psychological and physical well-being and compromise their cognitive development. Children held in detention are at risk of suffering depression and anxiety, and frequently exhibit symptoms consistent with post-traumatic stress disorder (PTSD) such as insomnia, nightmares and bed-wetting. Feelings of hopelessness and frustration can manifest as acts of violence against themselves or others.

Reports on the effects of immigration detention on children have found higher rates of suicide, suicide attempts and self-harm, mental disorder and developmental problems, including severe attachment disorder.² They also found "marked differences between adults and children in the distress associated with various incidents."³

Family Care and Support

Sometimes children are detained due to their parents' migration status or because States believe that it is in the best interests of the child to keep children with their parents in immigration detention. This is in conflict with a child's right to liberty, and may also contravene a child's individual right to seek asylum.

However, the best interests of the child are also not served when parents or guardians are detained and their children transferred to an alternative care system. The separation of children from their parents or guardians for such reasons is in conflict with the rights of the child and erodes the functioning of families. As a result, children often lose the support and protection of their parents, or are forced to take on roles beyond their level of

² M Dudley and B Blick, Appendix E to *The heart of the nation's existence - a review of reports on the treatment of children in Australian detention centres*, ChilOut (2002); S Mares and J Jreidini, *Psychiatric assessment of children and families in immigration detention - clinical, administrative and ethical issues*, Australian and New Zealand Journal of Public Health 520 (2004); Human Rights and Equal Opportunity Commission, *A Last Resort? National Enquiry into Children in Detention* HREOC, (April 2004); Z Steel, S Momartin, C Bateman, A Hafshejani, D M Silove, N Everson, K Roy, M Dudley, L Newman, B Blick, S; Z Steel, *The politics of exclusion and denial: the mental health costs of Australia's refugee policy*, p.10 (May 2003).

³ Z Steel, p.8 (May 2003).

maturity. For this reason, the CRC has clarified that migrant families with children should be accommodated as a family in non-custodial, community-based contexts while their immigration status is being resolved.⁴

There Are Alternatives

While globally the use of detention has been increasing, there has also been a recent move in some countries to avoid detaining children consistent with international law and good practice. Governments are increasingly seeking innovative ways to prevent refugee, asylum seeker and migrant children from being detained in the first instance, or to expeditiously seek the release of children into child-sensitive Alternatives to Detention (ATD).

Research shows that ATD, when implemented properly, are more effective, cheaper, and respect the human rights of migrants; they lead to high rates of compliance with migration-related decisions, high rates of voluntary return, and are on average more cost effective than traditional detention models. Building trust, respecting and valuing the dignity of the migrant, and providing a fair, transparent process are fundamental.

To promote and facilitate such policy and practice, the IDC has developed a Child-sensitive Community Assessment and Placement (CCAP) model,⁵ which provides a decision making tool for Governments, NGOs and other stakeholders seeking to prevent child immigration detention.

The five-step CCAP model takes into account State interests in managing complex migration, while at the same time recognising that it is never in the best interests of a child to be detained.

RECOMMENDATIONS

- Children should never be detained for migration purposes.
- The best interests of the child must be the primary consideration in any action taken in relation to child migrants, including decisions to detain children or their parents/caregivers
- States should expeditiously and completely end the immigration detention of children
- States should implement child-sensitive alternatives to detention
- States, NGOs and other stakeholders can use the Child-sensitive Community Assessment and Placement (CCAP) model to prevent child immigration detention

⁴ CRC Report of the Day of General Discussion, *The rights of all children in international migration* (2012).

⁵ International Detention Coalition, *Captured Childhood*, (2011) available at <http://idcoalition.org/wp-content/uploads/2012/03/Captured-Childhood-FINAL-June-2012.pdf>.

- Step 1: Prevention -

A presumption in law or policy against the detention of children. It applies prior to the arrival at a State's territory of any child who is a refugee, asylum-seeker or migrant.

- Step 2: Assessment and Referral -

Ideally takes place within hours of a child migrant being discovered at the border of, or within, a State's territory. It includes screening the individual to determine age, the assignment of a guardian to unaccompanied or separated children, the allocation of a caseworker to children who are travelling with their families, an intake assessment, and the placement of the child or family into a community setting.

- Step 3: Management and Processing -

Involves 'case management,' including an exploration of the migration options available to the child and their family, a best interest determination, and an assessment of the protection needs of the child and/or their family.

- Step 4: Reviewing and Safeguarding -

Ensuring that the rights of children and their best interests are safeguarded. It includes legal review of decisions taken regarding children and their families, including decisions about where children are accommodated and about their legal status. It also includes an opportunity on the part of States to review the conditions accompanying the child or family's placement in the community following a final immigration status decision.

- Step 5: Case Resolution -

The realisation of sustainable migration solutions for the child and their family.

Conclusion

The detention of children due to their or their parents' migration status can result in lasting physical and psychological harms and constitutes a child rights violation. It is never in the best interests of a child to be detained for immigration purposes, and States should ensure that a minimum level of protection and support for child migrants is available in the community. A tool to help States implement child-sensitive ATD is the Child-sensitive Community Assessment and Placement model. This tool helps States to achieve their policy goals without harming the health and well-being of children.