

September 2013

The impact of immigration detention on children

Alice Farmer

States often detain children without adequate attention to international law and in conditions that can be inhumane and damaging. Asylum-seeking and refugee children must be treated first and foremost as children, with their rights and protection needs given priority in all migration policies.

Over more than ten years of research in Europe and beyond, Human Rights Watch (HRW) has documented serious violations of children's rights arising from immigration detention of children.¹ Children may be arbitrarily detained, held in cells with unrelated adults, and subjected to brutal treatment by police, guards and other authorities. They are often held in poor conditions that fall far short of international standards governing appropriate settings for children deprived of their liberty.

Children in immigration detention include unaccompanied migrant children, children in families (including young infants), asylum-seeking and refugee children, and children whose parents are seeking asylum or are refugees. Many leave refugee-producing countries such as Afghanistan, Somalia and Sri Lanka and embark on long journeys to seek safety. Children are detained both in transit countries, like Indonesia, Turkey, Greece, Libya and Egypt, and in countries that they or their parents see as the ultimate destination country, such as Australia, the UK and Scandinavian countries.

Greece is one of the major gateways for migrants entering the EU but has particularly bad practices for migrant children.² Unaccompanied children can spend months in detention centres – often in the same cells as unrelated adults – in conditions that the European Committee for the Prevention of Torture called “unacceptable”. Twelve-year-old Sharzad and her 16-year-old brother Sardar from Afghanistan, for example, were detained in the Kyprinou facility in Fylakio when we interviewed them in 2008: “We have been here for 65 days,” she said. “Someone informed us that we would stay here for three

months.... I want to be released and I don't want to stay longer.” Sharzad shared her cell with six adult women to whom she was not related and with whom she was unable to communicate.



Two asylum-seeking boys at Belawan Immigration Detention Centre, North Sumatra.

Once released from detention in Greece, unaccompanied migrant children are typically served an order to leave the country. If they do not leave the country, they may find themselves back in detention, no matter how vulnerable they are or whether they could have a claim for asylum. For instance, a 10-year-old unaccompanied Somali girl who was detained at Petrou Ralli detention facility told us that the Greek authorities detained her four times within six months.

Greece is not alone in its mistreatment of asylum seekers entering the EU. Malta has a harsh policy of automatic detention for virtually all migrants who arrive irregularly in Malta (that is, not through an official

September 2013

port of entry).³ While some migrants, including families, are released within hours or days, others are held for extended periods; asylum seekers can be held for up to a year and those denied asylum can be detained for up to 18 months.

In Malta, we found that unaccompanied children are detained with unrelated adults pending the outcome of age determination examinations. Malta presumes that anyone who is not 'visibly' a child, meaning anyone who looks older than about 12, is an adult. Migrants claiming to be children must go through a prolonged age determination process and are locked up in an adult jail for weeks or months while the proceedings unfold.

In detention facilities, children may be exposed to violence or exploitation. Abdi, a Somali asylum seeker who was 17 when he was detained, told HRW: *"Every day a big man from Mali came and said, 'Give me your food.' And one day I said no and he hit me. I was out on the floor [unconscious] for half an hour. I told the [guards] but they said, 'We don't care'."*

In other parts of the world asylum-seeking and refugee children fare no better. In Indonesia thousands of migrant children, especially unaccompanied children, from Sri Lanka, Afghanistan, Burma and elsewhere, face detention, mistreatment in custody, no access to education and little or no basic assistance. Indonesian law provides for up to ten years of immigration detention without judicial review, and the Indonesian government does not provide migrant children or their families opportunities to obtain legal status, such as to seek asylum. Indonesia frequently detains undocumented migrants, including unaccompanied children and children in families, for months or years in squalid conditions without access to education or, in some cases, outdoor recreation. We have documented cases of brutality in several facilities in which guards beat unaccompanied migrant children, or children are forced to watch while guards beat adults.

Conditions for children who are detained along with their parents can be inhumane and degrading. We met a three-year-old boy in the Suan Phlu immigration detention centre (IDC) in Bangkok in Thailand who had spent almost his entire life in detention.⁴ He was held with his father, a Somali refugee, while his mother was detained in the women's section of the IDC together with his sister. The boy's father described the conditions of detention:

"The room has 50 occupants at the moment, most of whom are smokers. ...The room is hot and dirty which has caused the boy to be sick frequently. The diet for the boy consists of the same rice that everybody else eats. He needs fruits which are neither provided nor available for purchase. ...It is absolutely difficult for a boy of three years old to grow up amidst 50 grown-up men in a locked room and only allowed to go out for a short period of less than two hours in the sunshine after three days."

The toll of immigration detention on children is high. Children are often without access to education for months and years. Immigration detention – which often lacks clear time limits – takes its toll on the mental health of many detainees, and this problem is especially severe for children.⁵ A psychologist who volunteers at an immigration detention centre in Indonesia told HRW that his child clients experience psychological deterioration connected to the prolonged, ill-defined wait: *"They lose hope, they lose dreams. There's no timeframe on when they can have a normal life and go outside as humans. It leads to hopelessness and depression."*⁶

Limits to the use of immigration detention against children

In too many situations of immigration detention, states deprive children of their liberty as a routine response to illegal entry, rather than as a measure of last resort. Yet international law indicates that children should not be detained for reasons related to their migration status, and places strict limits on the exceptional use of detention:

Article 37 of the Convention on the Rights of the Child (CRC) states that detention

of any type should only be used against children as “a measure of last resort and for the shortest appropriate period of time”.

Article 37 of the CRC mandates that all children deprived of their liberty (including children in immigration detention) have the right to “prompt access to legal and other appropriate assistance” and to challenge the legality of the deprivation of their liberty before a court.

The Commissioner for Human Rights for the Council of Europe has stated that “as a principle, migrant children should not be subjected to detention.”⁷

The Committee on the Rights of the Child in General Comment No 6 states that “unaccompanied or separated children should not, as a general rule, be detained,” and “detention cannot be justified solely on... their migratory or residence status, or lack thereof.”

UNHCR specifically argues that “children seeking asylum should not be kept in detention and that this is particularly important in the case of unaccompanied children.”⁸ In the exceptional cases where asylum-seeking children are detained, UNHCR emphasises that this detention must conform to the parameters expressed in article 37 of the CRC. States must also adhere to UN standards on conditions of confinement, including by segregating children from unrelated adults where it is in their best interest, and by always providing education. Where children in families are subject to immigration detention, states should ensure that the child should not be separated from his or her parents against his or her will. The CRC (as well as UNHCR’s specific guidelines for asylum-seeking children) emphasises that immigration detention of children must have at its core an “ethic of care”⁹ prioritising the best interest of the child above immigration enforcement.

In February 2013, the UN Committee on the Rights of the Child urged states to “expeditiously and completely cease

the detention of children on the basis of their immigration status”, arguing that such detention is never in the child’s best interest.¹⁰ In the interim, while immigration detention of children remains, states should impose strict time limits to the child’s detention in order to minimise the loss of education and impact on mental health.

Yet as migration routes become more complicated and asylum seekers travel through many countries in search of refuge, states are increasingly resorting to the use of immigration detention. Children – even unaccompanied children – are found in detention when states should, instead of detaining them and their families, use alternatives to detention and provide children with opportunities to find some normality in their uprooted lives.

Alice Farmer farmera@hrw.org is a researcher in the Children’s Rights Division at Human Rights Watch. www.hrw.org

1. See www.hrw.org/topic/childrens-rights/refugees-and-migrants
2. HRW, *Left to Survive: Systematic Failure to Protect Unaccompanied Migrant Children in Greece*, December 2008 www.hrw.org/reports/2008/12/22/left-survive
3. HRW, *Boat Ride to Detention: Adult and Child Migrants in Malta*, July 2012 www.hrw.org/reports/2012/07/18/boat-ride-detention-0
4. HRW, *Ad Hoc and Inadequate: Thailand’s Treatment of Refugees and Asylum Seekers*, September 2012 www.hrw.org/node/109633/section/12
5. Dr Allan S Keller et al, ‘Mental health of detained asylum seekers’, *The Lancet*, vol 362, issue 9397, 22 November 2003, pp1721-23; International Detention Coalition, *Captured Childhood: Introducing a New Model to Ensure the Rights and Liberty of Refugee, Asylum Seeker and Irregular Migrant Children Affected by Immigration Detention*, Melbourne, 2012, pp48-49. <http://idcoalition.org/ccap/>
6. HRW interview with C A, psychologist, 5 September 2012.
7. Council of Europe, Commissioner for Human Rights, Positions on the Rights of Minor Migrants in an Irregular Situation, Position Paper (2010)6, Strasbourg, 25 June 2010 <https://wcd.coe.int/ViewDoc.jsp?id=16543777>
8. UNHCR, Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum, 1997, paras 7.6-7.8 www.unhcr.org/refworld/pdfid/3ae6b3360.pdf
9. UNHCR, Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, 2012, para 52 www.unhcr.org/505b10ee9.html
10. UN Committee on the Rights of the Child, Report of the 2012 Day of General Discussion on the Rights of All Children in the Context of International Migration, February 2013, para 78 <http://tinyurl.com/OHCHR-CRC-2012>