

VISITING PLACES WHERE CHILDREN ARE DEPRIVED OF THEIR LIBERTY AS A RESULT OF IMMIGRATION PROCEDURES



Guide for
Parliamentarians



Defence for Children
DCI-BELGIUM

The worldwide movement for children's rights



END
IMMIGRATION
DETENTION
OF CHILDREN



Parliamentary Assembly
Assemblée parlementaire

COUNCIL OF EUROPE



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DCI is an independent grassroots and rights-based non-governmental organisation (NGO) that promotes and protects children’s rights at a local, regional, national, and global level. DCI is one of the leading NGOs regarding juvenile justice and children deprived of liberty with a presence in five continents: 47 national sections (7 in Europe) and an International Secretariat.

The text takes into account input from ombudspersons, Parliamentarians, United Nations High Commissioner for Refugees (UNHCR), the International Detention Coalition, Detention Forum, the Platform for International Co-operation on Undocumented Migrants (PICUM), and the secretariats of the Committee for the Prevention of Torture (CPT) and of the Parliamentary Assembly (PACE).

The 2013 Guide “Visiting immigration detention centres: a guide for parliamentarians”, drafted by the Parliamentary Assembly of the Council of Europe (PACE) together with the Association for the Prevention of Torture (APT), also served as a reference.

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1. www.defensedesenfants.be
 2. www.childrensrightsbehindbars.eu
 3. CRBB 2.0 is implemented by DCI-Belgium in cooperation with three national NGOs with the financial support of the European Union.

Special message from the General Rapporteur of the Parliamentary Campaign to end immigration detention of children

In Europe we have many States that do not differentiate between children and adults arriving in the mixed migration flows. This has resulted in widespread use of immigration detention of children who are unaccompanied, separated or who are accompanying their parents. Immigration detention of children falls short of the safeguards and rights enshrined in International and European human rights standards applicable in our continent.

In March 2015, I was appointed as General rapporteur for the PACE Campaign to end immigration detention of children. I was tasked to contribute to raising awareness in Council of Europe member states on the need to end immigration detention of children and to adopt alternatives to detention that fulfill the best interests of the child.

During this campaign I have visited a number of places where children have been deprived of their liberty due to their immigration status. During such visits, I have witnessed children behind bars, I have seen how detention affects their health. There is the urgent need not only to cease this practice, but also to find and adopt valuable alternatives to detention in order to protect children and guarantee their fundamental rights.

As parliamentarians, we have the power to ensure that policies and practices in place respect children's rights and the principle of the best interest of the child in the context of migration. This practical guide has been developed to equip you to visit places of immigration detention and provides suggestions

on key actions that parliamentarians can take to prevent unlawful and arbitrary detention of children, respond to violations identified in this context, and shape the laws, policies and institutions accordingly.

As parliamentarians, we can make a lasting difference in the lives of migrant children present in our countries and in Europe. I trust that you will find this guide useful and that it will inspire you in your actions to make the elimination of immigration detention a reality for children.

Doris Fiala

General Rapporteur

Parliamentary Campaign to end immigration detention of children

Foreword by the Commissioner for Human Rights

In my work, I have found that children on the move are sometimes detained together with adults and ill-treated. In addition, they are sometimes not provided with basic health care and often lack access to education. In many detention places, they are not provided with a guardian and lack information about their situation and existing legal remedies. The fear of detention is one of the reasons why many children on the move abscond and disappear and thus, become highly vulnerable to trafficking, exploitation and many other serious human rights violations.

Migrant children should never be detained on grounds of their or their parents' migration status. Detention is never in their best interest, whether travelling alone or with their families. It cannot be justified by the need to provide protection to unaccompanied children or to protect family unity.

There is ample evidence that detention has long-standing harmful effects on children's physical and psychological health and well-being, even if the duration of detention is short. Creating more "child-friendly" detention places, an option considered by some member states, cannot be considered a human rights compliant solution either.

Instead, states should devote more resources to developing alternatives to detention. I have visited non-custodial facilities accommodating families with children and I could see that their living conditions were much more respectful of the rights of the child than those prevailing in closed centres. Moreover, such options are often less costly for states than detention. They also help better prepare subsequent steps in the life of children, whether they will stay in the host country or are returned to their country of origin.

Yet, immigration detention is on the rise in Europe. Pending a comprehensive ban on child detention, it is therefore important that the situation be regularly monitored so that violations of children's rights and the negative impact of detention on children are brought to the fore.

Members of parliament can play an important role in raising public awareness about the difficult situation of migrant children in detention. They can usefully complement the work carried out by specialised bodies like National Preventive Mechanisms against torture and the European Committee for the Prevention of Torture (CPT). On the basis of monitoring work, they can advocate for alternatives to detention that are more respectful of children's rights.

This guide is a useful tool to help parliamentarians carry out this challenging but indispensable task.

I encourage them to make full use of it and to work for change.

Nils Muižnieks

Commissioner for Human Rights

Introduction

In recent years, European countries have faced an increase in the number of children that are migrating with or without their parents or legal primary caregiver(s). It is estimated that children represent around a quarter of all migrants worldwide. More than 100,000 undocumented child migrants entered Italy, Greece, Bulgaria, and Spain in 2016 of whom some 33,000 were unaccompanied. Germany alone received over 260,000 asylum applications from children, of which nearly 35,000 were unaccompanied or separated children.⁴ Children migrate within the European continent or arrive from non-European States alone or with family members. Some are separated during their journey. Their motivations are diverse: to escape war, conflict, violence, or natural disasters, to be reunited with family, to meet educational aspirations, or to achieve economic objectives.

Many of these children have faced a number of violations of their rights on the way to Europe, and again upon reaching Europe. These children may have been confronted by sexual and gender-based violence and abuse, exploitation, physical and psychological harm, smuggling and trafficking, and detention. This shows the weakness of the protection systems that should take care of the rights and well-being of these children.

European States are increasingly using detention to respond to irregular migration, despite calls from the international community to end this practice. In addition to criminalising the act of irregular border crossing or unauthorised stay in a country, States are using detention to identify migrants, assess their age, screen their health, determine their legal status (including their asylum claims) and to ease their removal to their country of origin or a third country. This is despite clear guidance from human rights experts that children should *never* be detained for reasons related to their, or their parents' or guardians' immigration status. Immigration detention is never in the child's best interests.

4. UNHCR, UNICEF, and IOM, *Refugee and Migrant Children- Including Unaccompanied and Separated Children- in Europe, Overview of Trends in 2016*, April 2017.

There is no accurate data pertaining to the number of children deprived of their liberty under migration legislation in Europe. Children are sometimes not even officially registered as detained persons but solely as “accompanying” a detained migrant adult.

The places and conditions in which migrant children are held vary widely. Even when the material conditions appear to be appropriate for the detention of adults, they are scarcely adapted to the particular needs of children.

The issue of migrant children in detention is of particular concern to the Council of Europe. Since April 2015, the Parliamentary Assembly has been campaigning to end the immigration detention of children, and the Council of Europe Action Plan on Protecting Refugee and Migrant Children in Europe (2017-2019) has prioritised measures to avoid resorting to the deprivation of liberty of children on the sole ground of their migration status. At the global level, the Committee on the Rights of the Child and the United Nations High Commissioner for Refugees considers that children should not be detained for immigration related purposes.

The closed nature of places of detention necessarily put individuals at risk of mental health deterioration and human rights violations. Detention places children in a situation where there is a particular imbalance of power due to their entire dependence on the administration of the detention facility. This in itself increases the vulnerability of children, while the conditions and duration of any such detention are in themselves liable to constituting inhuman or degrading treatment as prohibited under the applicable regional and national standards. The heightened vulnerability of children in this situation makes outside scrutiny essential to ensure that the rights of children are upheld.

This guide aims to reinforce the capacity of parliamentarians in their role as monitors of places of detention. It offers, at a glance, the tools needed in order to visit a detention facility for migrants, how to appropriately collect information from and about children detained in these facilities, as well as how to follow up on visits and provoke needed change.

Key vocabulary

Administrative detention: a term used to describe arrest and detention without charge or trial. It is used for non-criminal purposes. In many countries, violations of the immigration law lead to administrative detention.⁵

Alternatives to detention: any legislation, policy or practice that allows migrants to reside in the community subject to a number of conditions or restrictions on their freedom of movement.⁶

Asylum seeker/refugee: an asylum seeker is an individual seeking international protection, whose claim has not yet been finally decided on by the country in which he or she has submitted it. Not every asylum seeker is recognised as a refugee, but every refugee is initially an asylum seeker.

Child: every human being below the age of 18 years unless under the law applicable to the child, majority is obtained earlier.⁷

Immigration detention: is generally administrative in form, but it can also be judicially sanctioned. It is generally not meant to be punitive in purpose (as opposed to criminal detention). The term covers any person deprived of liberty on account of his or her immigration status or for an alleged breach of conditions of entry, stay or residence in a territory.

Migrant child: a child who migrates or has migrated alone or with adult(s). Migrant children are outside the territory of the State of which they are nationals. They could be included in particular categories of persons – notably refugees, victims of trafficking or separated children (see below).

5. PACE/APT, *Visiting immigration detention centres; a guide for parliamentarians*, 2013 p.7.

6. Sampson R., Mitchell G. and Bowring L. (2011), *There are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention*, International Detention Coalition, Melbourne, p.2.

7. United Nations Convention on the Rights of the Child, Article 1.

National Preventive Mechanism (NPM): independent domestic visiting body designated or created by a State party under the Optional Protocol to the United Nations Convention against Torture (OPCAT). These bodies conduct visits to all places of detention in order to analyse the treatment, conditions and administration therein. Their counterparts are the European Committee for the Prevention of Torture (CPT) at Council of Europe level and the Subcommittee on Prevention of Torture (SPT) at the United Nations level.

Place of detention: any place where a person is deprived of liberty. In the migration context, it may occur in places such as police cells, prisons, purpose-built detention centres but also in locked airport rooms, guarded hotel rooms or warehouses.

Refugee: a person who “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country... or unwilling to return to it”⁸

Separated child: a person under 18 who is separated from both parents or his/her previous legal/customary primary caregiver. S/he might be totally alone or be accompanied by extended family members. For the purpose of this guide, this term is preferred to unaccompanied child.

8. UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, Article 1(A)(2).

1. Why should parliamentarians visit migrant children in detention? (visit *raison d'être*)

Immigration detention centres are out of sight and out of mind to society. Administrative inspectorates, as well as national human rights structures, may not be competent to visit these places and civil society is often not permitted access.

In most European countries, parliamentarians have an explicit or implicit right to visit places of detention, including immigration detention centres. In other countries, they can do so following advance permission.

Visits by parliamentarians have an important deterrent effect and reduce the risk of human rights violations. Visits to places of detention play a key role in increasing transparency and accountability and strengthening public confidence. Migrant children in detention are particularly at risk of being subject to human rights violations. Children in immigration detention may be considered an insignificant minority and therefore neglected or not taken into account.

By carrying out visits specifically dedicated to migrant children, as a parliamentarian, you can play a crucial role in collecting facts regarding their situation. You can see the concrete conditions of detention, the impact of the detention on children and advocate for their release.

2. Migrant children should not be detained

a. International and European standards

“In all actions concerning children, the best interests of the child shall be a primary consideration”

United Nations Convention on the Rights of the Child, Article 3

“No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time”

United Nations Convention on the Rights of the Child, Article 37

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

European Convention on Human Rights, Article 3

“Everyone has the right to liberty and security of person”

European Convention on Human Rights, Article 5

A number of international and European conventions regulate directly or indirectly the deprivation of liberty of children.

Children, whether separated or travelling with their family, should never be detained for the sole reason of their migration status or that of their parents.⁹ The Committee on the Rights of the Child states that children should never to be subject to punitive measures based on their or their parents' migration status. The Committee has also considered that any immigration detention

9. See, Principle 8 of the UN Human Rights Council, Principles and practical guidance on the protection of the human rights of migrants in vulnerable situations, 24 February 2017, A/HRC/34/31.

of a child contravenes the principle of the best interests of the child, and constitutes a child rights violation. Deprivation of liberty due to a lack of appropriate travel/resident documentation is never in the best interest of the child. Migrant children should be treated first and foremost as children, with non-custodial, community-based alternatives to detention being offered to all separated children and to families with children.¹⁰ UNHCR has adopted a similar position aiming at ending child detention and promoting the development of alternatives,¹¹ UNICEF has also called for an end to immigration detention of children.¹²

The European Court of Human Rights has repeatedly found that immigration detention of children constituted inhuman and degrading treatment.¹³ The Committee for the Prevention of Torture (CPT) has stated that every effort should be made to avoid resorting to the deprivation of liberty of an irregular migrant who is a child.¹⁴ The Commissioner for Human Rights has called for the abolition of child detention in the migration context,¹⁵ while the Special Representative of the Secretary General on Migration and Refugees has noted that immigration detention is never in the best interests of the child and stated that the lack of alternatives to detention is one of the most damaging structural problems affecting migrant and refugee children.¹⁶

b. Detention is damaging to children

Detention for migration purposes can never be in the best interest of the child.

Deprivation of liberty generates anxiety for every human being and is especially traumatic for children. Constant control and surveillance is very disturbing and stressful to a child, thus increasing already high levels of mental distress and aggravating trauma experienced in the country of origin or on the route

10. PACE, Resolution 2020 (2014), *The alternatives to immigration detention of children*, October 2014.

11. See, UN High Commissioner for Refugees (UNHCR), *UNHCR's position regarding the detention of refugee and migrant children in the migration context*, January 2017.

12. UNICEF, *A child is a child: Protecting children on the move from violence, abuse and exploitation*, May 2017.

13. See, for example, ECtHR, *A.B and Others v. France*, No. 11593/12, 12 July 2016.

14. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *19th General Report of the CPT's activities*, October 2009, para. 97.

15. Council of Europe, Commissioner for Human Rights, *High time for states to invest in alternatives to detention*, January 2017.

16. Council of Europe, Special Representative of the Secretary General on Migration and Refugees, *Thematic Report on migrant and refugee children*, SG/Inf(2017)3, March 2017.

to the country of destination. Children deprived of their liberty often have difficulties understanding why they are being “punished” despite having committed no crime.

“I am too young to suffer like this. I started too early to cry, to be afraid and to feel unprotected. I hope I will soon leave this place because here time is ‘circular’, it does not make sense, nothing changes and I am losing valuable energy. I cannot waste any more time, I have to build a future”.

A 15-year old detained child

Detained children are at risk of suffering depression and frequently show symptoms related to post-traumatic stress disorder (PTSD) such as insomnia, nightmares and bed-wetting. Feelings of hopelessness and frustration, and of seeing their parents powerless in the same situation, can manifest as acts of violence against themselves (such as suicide attempts and self-harm) or mental disorder and developmental problems.

“We were living in a small room and they locked it. And you cannot do anything. Sometimes you are sitting. You are not able to sit how you are sitting all the day... I have been there 17 days without taking bath, without changing clothes and they allow me to go to the toilet two times, in the morning and in the night. After that, I hated my life. I waited and I begged my god to take me out of here.” Abdi from Somalia, aged 16.

Detention of children also raises a number of issues regarding education and social integration, as well as damaging social skills and family ties. Such a psychologically detrimental experience will certainly have a profoundly negative impact on the health and development of a child, regardless of the material conditions in which they are held. Even very short periods of detention can compromise the cognitive development of a child, with the impacts potentially lasting an entire lifetime.

Detention also puts children at heightened risk of sexual abuse or violence, with the risk of abuse especially high when children are held alongside adults not related to them, especially those of the opposite sex. Prolonged stays in inappropriate conditions have been found to increase a child’s risk of exposure to sexual exploitation or sexual abuse.¹⁷

17. Council of Europe, Lanzarote Committee, *Special Report: Protecting children affected by the refugee crisis from sexual exploitation and sexual abuse*, March 2017, p.3.

c. Alternatives to detention

Alternatives to detention are safer for children, more effective for migration management and cheaper for States.

These alternatives could take the form of placement in the community, in open centres for migrants, or house arrest possibly combined with reporting requirements, the handover of travel documents, or supervision by the authorities. In its 2014 Resolution, the PACE promoted the Child-sensitive Community Assessment and Placement Model (CCAPM), a non-custodial, community-based alternative to detention programmes for children and their family.¹⁸ Family reunification should also be envisaged as an alternative for separated children. A list of existing alternatives is included in Annex 2.

18. PACE Resolution 2020 (2014), *The alternatives to immigration detention of children*, October 2014.

3. Basic information regarding the detention of migrant children

Despite immigration detention of children being prohibited by International and European standards and its proven negative consequences, children of every age continue to be detained for migration purposes.

a. How long are they detained?

Duration of detention varies enormously, if considered as adults, or accompanied by adults, the duration of detention can last from a few days to up to 18 months under certain circumstances. It is of the utmost importance that the detention of children should be avoided. If children are detained, it should be in **exceptional circumstances**, for the **shortest possible period of time**, with limits on the length of detention that are strictly adhered to. The principles of the best interests of the child, and respect for his or her inherent right to life, survival and development should always be applied when a decision to detain a child is taken.

When you are visiting children in detention remember to pay attention to the duration of detention not least because of the harmful effects on the mental and physical health of detained children. Remember that even if detention is short-term, it may not respect international human rights standards.

b. Who detains them?

The detention of migrants is the responsibility of public authorities and may include immigration or prison authorities, police, border guards, military and security forces. Some States outsource the whole immigration detention function to private companies (that are often companies that run prisons) or part of it, such as health care, catering or educational/occupational activities.

c. Why are they detained?

Even though migrant children should not be deprived of their liberty, children are detained on a daily basis in Europe. State authorities justify it according to different objectives. Upon arrival, children with or without their parents/primary caregiver(s) are often held for identification purposes, to analyse their legal status, or to assess their bonds with adults accompanying them.

The detention can also happen when authorities have doubts regarding the age of the person. Consequently, children are held while their age is assessed often through contested and unreliable medical procedures (notably dental or bone X-rays).

They are also held while their legal status is determined including the determination of their asylum claims, their status as a separated child, or if they fall under the responsibility of another State notably according to the “Dublin Regulations”.¹⁹

The deprivation of liberty could be justified by a State for the purposes of deporting or extraditing a child to their country of origin or another country.

d. When and how detention takes place?

Bearing in mind that immigration detention of children is never in their best interest, it should only take place as a measure of last resort, in clearly defined circumstances after having established that other less coercive alternative measures cannot be applied effectively to the same end. It should also be for the shortest period of time. Families should not be separated; for example by placing the parents in one wing (or establishment) and their child(ren) elsewhere or by detaining a parent and letting the rest of the family in the community. Such separation would be also traumatising for a child.

You should examine the existence of laws and policies providing for effective alternatives to detention as well as how they are used in practice. The length of detention and the importance of family unity are also important aspects that you should monitor.

19. This regulation is a European Union (EU) law that determines the EU Member State responsible to examine the asylum application of the concerned migrant. Usually, the responsible State is the country through which the migrant entered the EU territory.

There are a variety of facilities where migrant children are held under immigration legislation. The most common places are detention centres for migrants. These centres should not resemble prisons as the migrants held there are not criminals. They should be held in specifically designed buildings in conditions that are tailored to their legal status and particular needs. Children should be accommodated with their parents or a primary carer in dedicated units that resemble - as much as possible - family accommodation. Staff working in these units should be appropriately trained. Children should be offered a range of constructive activities: education, physical activity, leisure and recreation.

In practice, detained migrant persons often receive less protection, in relation to the procedures governing their detention and the conditions of their detention, than persons detained for criminal reasons. This is even more the case for children. The material conditions vary drastically in each European country but also among detention facilities in the same country. The conditions in many detention facilities fall below international children's rights standards; frequently due to the detention of children together with adults, or due to the absence of appropriate equipment, staff and care.

Children are also commonly held upon arrival in a country when they have been rescued, found, arrested by law enforcement agents such as police or border control officers. During this phase, they can be kept in police or border control stations but also in buses, cars, boats or other means of transportation. In the case of mass arrival, they can also be held in places which are not designed and intended for detaining persons, such as large gymnasiums, warehouses, hotels or even containers.



4. Preparing a visit to places where migrant children are held

a. Guiding principles

The most important guiding principle should be the “**do no harm**” rule. Detained children are particularly vulnerable and their safety and best interests must be paramount at all times when carrying out a monitoring visit. No action by the visiting body should jeopardize this.

A conflict of interest can arise between the need to obtain information and the safety of the children deprived of their liberty. Speaking with the child could place them at risk of reprisals from the staff or other detained persons, or of psychological and emotional harm or trauma caused by an inappropriate interview. Equally, it is important not to raise false expectations of what can be done for them, and to ensure that any monitoring findings are reported without exposing children to the risk of sanctions.

In this context, it is imperative that parliamentarians are **sensitive** to the traumatic effect that recalling certain events may have on children, and to their potential trauma, psychological disorder and/or fragility. They should be aware of child-friendly communication skills.

For reasons of ethics and efficiency, it is also crucial that those conducting visits respect the following principles:

- ▶ Exercise good judgment
- ▶ Respect the authorities and the staff in charge
- ▶ Respect the persons deprived of liberty
- ▶ Respect confidentiality
- ▶ Respect security
- ▶ Be consistent, persistent and patient
- ▶ Be accurate and precise
- ▶ Be sensitive
- ▶ Be objective
- ▶ Be credible
- ▶ Behave with integrity
- ▶ Be visible

b. Preparation of the visit

There are various types of visits to places where children are deprived of their liberty; each with select objectives that affect the way in which they are carried out.

Preventive visits can take place at any time; mainly before, rather than in response to, a specific event or a complaint from a detainee. The aim is to identify those aspects of detention that could lead to a violation of the rights of the child. These visits have a holistic approach that focus on improvement in the long-term.

Investigative visits attempt to respond to individual cases and resolve a case or a specific situation. They focus on past acts and omissions in order to identify immediate improvements. For example, an investigative visit could be carried out in the case of allegations of separated children being held without specific care along with adult migrants.

A distinction should also to be drawn regarding the setting of the visit.

In-depth visits could last several days or weeks and involve a multidisciplinary team that looks at the functioning of a place of detention. Their main objective is to document the situation thoroughly, analyse risk factors and identify both problems and best practices. These visits are carried out regularly by monitoring bodies such as the NPMs, the CPT or the SPT.

“Snapshot” visits are much shorter (from a few hours to half a day) and involve an individual or a small team. The main objective is to get an overall picture of the place of detention and the situation of detained persons. These visits also aim to produce a deterrent effect and to contribute to the accountability of management.

Parliamentarians are much more likely to conduct “snapshot” visits.

To understand the general context in which children’s deprivation of liberty occurs, parliamentarians should gather all available information concerning the legal, social and political context of detained migrant children and the most recent available statistics, reports and information on the matter. Important elements to consider are:

- ▶ the international legal framework, in particular the United Nations and Council of Europe standards and the jurisprudence of the European Court of Human Rights;

- ▶ the applicable national/local policy in relation to the detention of migrant children;
- ▶ the national legal framework: who may be deprived of liberty, at what age, for what reasons, by whom, where/in what kind of facility(s), for how long;
- ▶ the different places where children may be deprived of their liberty, the rules and regulations that govern these places, the authorities responsible for these institutions, their capacity, their regime, the status and different groups of children deprived of their liberty within these places;
- ▶ information on the practice and on specific incidents regarding the place(s) to be visited, including from media, monitoring bodies, civil society or researchers.

c. Defining the objectives of the visit

Do not expect to be able to examine all aspects of detention systematically during a single short visit. Objectives of the visit should be defined in accordance with the available time.

It is wiser to define a **precise, clear, and narrow objective** if the visiting team is unable to spend much time at the place of detention. Having unrealistic objectives may lead to collecting insufficient information on each of the topics you wanted to analyse. Your motto should be “*do little but do it well*”. Therefore, it is crucial to be clear from the outset as to the purpose and the objectives of the visit, such as:

- ▶ understanding how children are held;
- ▶ focusing on a specific issue (follow-up on a complaint received, investigate a particular matter such as the length of detention or the absence of special care for children);
- ▶ following up on a previous visit to check on a specific aspect of detention, individual cases or implementation of previous recommendations by parliamentarians or other bodies.

d. Setting up the visiting team and organising the work

When carrying out a visit, it is advised that a parliamentarian does this accompanied by at least one other person (assistant, adviser, expert or medical doctor). This allows for the cross-checking of collected information, note-taking during interviews, as well as a discussion of any impressions made during the visit.

When you are carrying out a visit with several parliamentarians, for example as part of a commission, remember to work as a team and identify a head of delegation who shall be responsible for co-ordinating the visit. Divide the different tasks according to your skills and be equally informed and aware of the objectives of the visit.

Since the visits are targeted towards children, keep your visiting teams small, except if there are a large number of children held in the establishment to be visited. The composition of the team should be influenced by:

- ▶ the expertise needed (a paediatrician or child-rights expert);
- ▶ the cultural context and the need for independent interpreter(s). The team should avoid as much as possible to use staff members or other migrants as interpreters;
- ▶ the size of the place to be visited. If it is a small establishment it is best to avoid using a large team, as this can be perceived as intimidating to the migrants;
- ▶ gender considerations: having a member of both genders in the visiting team could help raise sensitive topics.

To ease the visit, preparing a checklist on detention conditions as a means of guaranteeing standardised collection of information can be very helpful (examples of checklists are included below).

The **selection of the establishment** to be visited should be based on relevant information regarding the detention of children. In this context, particular attention should be placed on information provided by press articles or research studies or reports. The visiting team may wish to identify places deemed to be most representative of the different kinds of facilities where migrant children are held in the country. It may also be interesting to visit places that are not frequently visited, less accessible, or not traditionally related to detention such as temporary/ad hoc detention camps.

5. Carrying out the visit

Even if the visit focuses on migrant children, carrying out a visit requires having an overall impression of the establishment and of its way of functioning. The following steps should be considered:

- ▶ the arrival and the initial conversation with the head of the centre;
- ▶ a tour of the detention facility;
- ▶ interviews with migrants – children and adults;
- ▶ interviews/conversations with staff;
- ▶ the final conversation with the head of the centre.

The importance given to each step will depend on the type of visit and the available time. In any case, you should always be prepared to be flexible and to react to situations found, thus adapting your plans accordingly if it is deemed necessary. You should also keep an open mind and remain alert.

A visiting team can be perceived as being intrusive by the authorities in charge of the centre and by the migrants, especially children, who might not have seen or spoken to external visitors since their arrival in the country.

In order to properly evaluate and to have a realistic impression of the situation of detention, it is fundamental to cross-check different sources of information. You should collect the point of view of persons detained (children and adults), the staff, the management and/or other professionals working in the establishment, and to test them against your own observations (what was seen, heard or felt). Consultations of registers and other documents can be useful to understand a given situation.

a. What should you check in a detention centre where children are held for immigration purposes?

To assess the situation of children deprived of their liberty for immigration purposes it is necessary to have an idea of the overall conditions in the place of detention; this includes evaluating the treatment of children in comparison to adults. Depending on the type of visit, you will need to be selective on what is feasible to do during the time spent in the establishment.

Begin with a conversation with the person in charge of the centre to obtain basic information regarding the establishment, as well as to explain the objectives of the visit and the way it will take place.

Ask for a tour of the facility, it is important to see all the premises that are used. A short general tour of the entire facility should be done, thus allowing for a complete visualization of the premises; including living units, specific areas for children, activity rooms, health-care centre, kitchen, isolation rooms, etc. This tour will provide a first general impression of the atmosphere and is an excellent opportunity for you to interact with various staff members and gain an impression about their work and information regarding existing problems or challenges.

During the visit to an immigration detention centre, a number of issues can be raised. Below is an aide-mémoire that outlines different areas that could be raised:

Material conditions

- ▶ Is the establishment below/above its capacity?
- ▶ Is the quantity and quality of food sufficient?
- ▶ Is there access to clean drinking water throughout the facility?
- ▶ Are children provided with hygiene products?
- ▶ Do children have access to washing facilities? Are these clean and sufficient in number?
- ▶ Do children have access to toilet facilities at all times? Are these clean and sufficient in number?
- ▶ Are all children able to sleep on a mattress? What is the quality of the bedding?

Activities and contact with the outside world

- ▶ What access do children have to outdoor exercise? For how long? How regularly? Children and adults together, or separately?
- ▶ Is there recreational equipment that children can use?
- ▶ Are there organised purposeful activities for children (education, leisure and culture)?
- ▶ What form does contact with family and others take (visitor access, frequency, conditions, duration)?
- ▶ Are children allowed free contact with the outside world, such as access to media, telephone (including mobile phones), mail and parcels?

Treatment

- ▶ Are there any allegations of violence among migrants or by staff?
- ▶ Is force or other means of restraint used against adults/children in the facility?
- ▶ Is solitary confinement and other disciplinary measures used in the facility?
- ▶ Have there been any incidents of violence or peaceful protest, hunger strikes, self-harm?

Health care

- ▶ Is there access to medical care including dental services, mental and paediatric health care?
- ▶ Is a doctor or nurse present on a regular basis?

Specific issues relating uniquely to children

- ▶ Are special living conditions and provisions made for children (separation from adults, keeping the family together, child-friendly living spaces)?
- ▶ Are the special needs of children addressed (dietary, security, health care, activities)?
- ▶ Are the staff given specific training in child issues?



b. How to conduct interviews with children

The only way for parliamentarians to grasp the reality of immigration detention is to spend time speaking with migrant children and to hear directly about their experience of the conditions and treatment in detention.

Remember that interviewing detained children is a delicate process and that it is essential to establish a **relationship of trust**.

To properly evaluate the situation of migrant children, it is extremely valuable to speak to them individually. Ideally, multiple interviews/discussions with different children should be conducted so that the child who has given you the information on problems cannot easily be identified, thereby mitigating the risk of reprisals. The choice of the children/persons interviewed should be made by you and not by the staff of the establishment. Those selected should be as representative as possible of the different categories of children detained.

You may choose to speak to the children that have been detained the longest (to hear about the evolution and long-term consequences of their detention), the most recently arrived (to learn about their situation/treatment by the authorities before their detention) or the children with health problems or belong to minority groups.

You may want to have a couple of **collective group discussions** to build a general understanding of the situation in the place visited. These discussions are useful to get a sense of the mood within the establishment and to hear about common concerns (activities, food, relations with staff). Since there is no individual confidentiality, group discussions exclude the possibility of discussing more sensitive issues such as treatment, relations with other migrants, or issues related specifically to individual children.

When conducting **individual interviews** it is essential to ensure confidentiality and trust. The child being interviewed must feel safe and at ease. If possible, the location for the interview should be chosen by the child.

Conducting the interview in private is paramount. Interviews should be out of hearing and preferably out of sight from staff and other migrants. If the child is too young to have an interview on his/her own or does not feel comfortable to speak by him/herself, a person of trust could be present. In this case, the interviewer must keep in mind that the objective is to hear the views of the child and should make all the possible efforts to limit the impact of this additional presence on the interview. For example, if answers are given by an adult, you should double check to see if the child agrees.

Detained migrant children may not be keen to engage in a discussion with a visiting adult. Always make sure that the child has voluntarily agreed to be interviewed after being provided with the necessary information regarding the visit. Remind the child that they can stop the interview at any time.

Remember that no two persons will relate their experiences in the same way or with the same level of detail and clarity. Each child may have a different interpretation of what is important or relevant.

Use open-ended questions this gives the child control (“do you play sports here?”, “how have you been treated?”, “what do you have to eat here?”). Such types of questions encourage recollection of events, whereas closed-ended/leading questions (“was access to the sport facility denied?”, “have you been ill-treated?”, “is the food nice?”) encourage recognition. It is important to keep in mind that children may want to tell the interviewer what they believe he/she wants to hear or what they have been told by the staff or adults.

When listening to the child try to maintain a neutral facial expression and to not show any signs of judgement. Such behaviour could damage the environment of trust.

It is essential to have a **child-friendly** approach when interacting with children:

- ▶ adapt your vocabulary;
- ▶ avoid jargon, complicated or leading questions;
- ▶ be informal and communicate;
- ▶ make sure that the child understands the questions;
- ▶ be patient;
- ▶ remember that you are talking to a child.

The art of listening is crucial when speaking with children. It is recommended to let the child narrate his or her own story and not to dominate the conversation or conduct it as though it were an interrogation. Children should be encouraged to give answers in their own words. It is vital to be sensitive to cultural differences when asking and responding to questions.

Interpretation will most likely be required during the visit. In this case, interpreters should be professional interpreters, fluent in both languages, informed and prepared to work in the migration detention context, and capable of using child-friendly language. Remind interpreters that their personal behaviour, dress code and attitude are of particular importance in order to build and maintain an environment of trust with the child. It is important to familiarise

yourself with the interpreter before any interview, both briefing the interpreter on your expectations for the conversation, and hearing if they wish to advise on any cultural or other issues.

Below is an aide-mémoire that outlines a number of considerations to be taken and tips for conducting an interview:

Before the interview

- ▶ Identify the child you would like to interview.
- ▶ Obtain their informed consent.
- ▶ Take precautions to ensure the interview takes place in a private, confidential setting.
- ▶ Make sure the child is comfortable talking to you (check if they would prefer to talk to someone of the opposite gender, a different interpreter).
- ▶ Respect confidentiality.

During the interview

- ▶ Introduce yourself and the interpreter.
- ▶ Remind the child that you will not repeat what they tell you to the detention staff, you are independent to the detention staff and the police.
- ▶ Remind the child that they can stop the interview if they are no longer happy to talk to you.
- ▶ Do not give them false hope about your power to help them.
- ▶ Use open questions.
- ▶ Pay attention to your body language and tone of voice, do not be intimidating.
- ▶ Pay attention to his/her body language and attitude throughout the interview.
- ▶ Do not give biased information.
- ▶ Remember to thank the child for talking to you.

Remember throughout the interview you must DO NO HARM; if the child is distressed by questions or memories, it may be appropriate for you to interrupt the interview and even to seek medical help. You are not there to interrogate the child but to listen to their concerns and gather information. If you use this checklist too mechanically you may give the child the impression that you are interrogating or cross-examining them and this will not be in their best interest.

Key questions to cover during the interview

- ▶ How long has the child been detained?
- ▶ Does the child know why they are being detained?
- ▶ Did the authorities talk to the child about alternatives to detention?
- ▶ How has the child been impacted by detention? How does detention make the child feel?
- ▶ What do they feel about the detention centre? The guards? The other detainees (children and adults)? Why?
- ▶ Does the child have access to education, recreation, leisure and health care? How long do they spend outside their cell?
- ▶ Has the child been separated from their parents in detention? If so, when did they last see their parents?
- ▶ Are the children separated from adults who are not members of their family?
- ▶ (if appropriate) Has the child been subject to an age assessment procedure?
- ▶ If the child is unaccompanied, have they been appointed a guardian? Do they communicate with their guardian, and how often do they meet?
- ▶ Have the authorities talked to the child about trying to reunite them with their family members?

After the interview

- ▶ Debrief with your colleagues, cross-check your impressions, records and observations.
- ▶ Follow-up according to your visit plan (reports, parliamentary questions, media spots, individual case follow-up etc.).
- ▶ Report to appropriate bodies: do you need to inform staff about a safeguarding problem you have observed? Do you need to inform external protection mechanisms or ombudspersons about a situation you have observed?
- ▶ Talk to your parliamentary colleagues about your visit and join the campaign to end immigration detention of children.

6. Follow up to the visit

A visit without follow up does not serve any purpose. To contribute to the improvement of the detention conditions of migrant children or to their release, a visit must be followed up by initiating specific actions. The form of follow up to the visit depends on the objective(s) and type of visit conducted as much as the findings made on the spot. The phase that follows the visit is thus as important as the visit itself, and requires attention and planning.

In essence, the follow up visit should be a type of gap analysis that highlights what is expected and what is actually occurring. Some suggestions of follow up strategies that can be implemented are as follows:

- ▶ provide written feedback to the relevant authorities (minister, immigration detention service and/or person in charge of the place visited) through a letter or a report which could be published or remain confidential. This written feedback should be accurate and as precise as possible. If it contains information regarding the specifics of a particular child(ren), the concerned person(s) should have provided an expression of informed consent;
- ▶ make a parliamentary question relating to the situation found;
- ▶ draft and propose a change in the legislation and/or migration policy;
- ▶ conduct follow-up visits and check the implementation of recommendations;
- ▶ propose revised budgetary allocations in regards to alternatives to detention;
- ▶ engage with the media;
- ▶ engage with key monitoring bodies such as NPMs, the Children Ombudsperson, civil society and/or UNHCR;
- ▶ in the case of a serious incident or situation, file an inquiry and/or a petition.

7. Annexes

Annex 1: Children and detention: legal standards

This annex gives an overview of key legal principles that should be considered in the context of detaining children as a result of immigration procedures.

Prohibition of torture

Article 3 of the European Convention on Human Rights states that *"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."*

The right to freedom

Article 5 of the European Convention on Human Rights states that everyone has the right to liberty. Under certain circumstances, it is possible to deprive someone of the liberty, such as in anticipation of deportation, extradition, or to bring them before a competent authority. This deprivation of liberty is however, only justifiable if this is strictly necessary and when no alternatives are possible.

Children are children first and foremost

Article 2 of the Convention on the Rights of the Child ensures that all children, without distinction, discrimination or exception are entitled to child rights. The Convention is applicable to all children irrespective of the child's, or their parent's, race, sex, language, religious or political views, national, ethnic, or social origin, property, disability, birth or status.

The best interest of the child must be a primary consideration

Article 3(1) of the Convention on the Rights of the Child recognises that all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative

bodies, must consider the child's best interests as a primary consideration. States are therefore obligated to consider this in any immigration decision, such as whether to detain a child or their parents or guardian on the basis of their migratory residence status.

The child's best interests take precedence over administrative considerations

In the European Court of Human Rights case of *Popov v. France*, it was stated that the child's extreme vulnerability must be the decisive factor in making a decision to detain, and the child's best interest takes precedence over considerations relating to migration status.

Children are not to be detained. If they are, it is as a measure of last resort and for the shortest possible period of time.

Article 37 of the Convention on the Rights of the Child states that the deprivation of a child's freedom should be a measure of last resort and for the shortest appropriate period of time. Less coercive measures should be considered first.

The standards of the European Committee for the Prevention of Torture also make clear that every effort should be made to avoid resorting to the deprivation of liberty of an irregular migrant who is a child,²⁰ while the case law of the European Court of Human Rights in the case *A.B. and Others v. France* found that there will be a violation of the European Convention on Human Rights if States fail to consider less coercive measures before resorting to detention.

Children are never placed in detention with adults, unless they are members of the same family

Regional instruments provide for the fact that unaccompanied children particularly should never be accommodated with adults. Article 11(3) of the European Union Reception Conditions Directive (Recast) makes this explicit, and adds that if a family are detained, that they should be accommodated separately in conditions guaranteeing them adequate privacy.

20. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 19th General Report of the CPT's activities, October 2009, para. 97.

Annex 2: Alternatives to detention

This annex provides a non-exhaustive list of possible alternatives to detention which should be considered and advocated for in order to ensure that children are never detained for reasons related to their migration or residency status. These examples include a range of law, policy and practical interventions which MPs could recommend:

Law and policy alternatives

- ▶ Adopting legislation which prohibits the detention of children for immigration purposes, or prohibits the detention of certain categories of children (e.g. separated children).
- ▶ Adopting legislation which specifically mandates the provision of appropriate care, protection and support (“alternatives”) to refugee and migrant children, rather than recourse to detention.
- ▶ Implementing screening procedures for the early identification and assessment of children in migration procedures so that they can be promptly referred to the proper child protection authorities, rather than be at risk of detention.
- ▶ Ensuring child-friendly age-assessment procedures are in place to ensure children are not misidentified as adults and consequently at risk of detention.
- ▶ Ensuring Best Interests Determination (BID) procedures are in place which properly reflect that immigration detention is never a measure consistent with the best interests of the child and instead recommending appropriate placement and care options.
- ▶ Ensuring the integration of unaccompanied and separated children into national child protection systems.

Specific child-appropriate placement alternatives

- ▶ Unconditional release in the community with family members and/or guardians.
- ▶ Unconditional release in the community with family members and/or guardians, with additional caseworker support.
- ▶ Open shelters for children or families in situations of particular vulnerability.
- ▶ Open reception arrangements for asylum-seeking children and families.

- ▶ Family members and/or guardians live freely in the community but must report periodically to migration officials.
- ▶ Family members and/or guardians live freely in the community but must reside in designated housing.

Return homes/coaching: Intensive case management and coaching support provided while families live freely in the community or in open family accommodation, so that families with children are able to voluntarily depart without the use of detention or forced deportation.

Specific placement alternatives for unaccompanied and separated children

- ▶ Kinship care: children are cared for by relatives or other caregivers close to the family and known to the child.
- ▶ Foster care: children are cared for in a household outside his/her family.
- ▶ Group care: children are cared for in small group homes that are run like a family home, with consistent caregivers.
- ▶ Supervised independent living: an adolescent child, or group of adolescent children, live independently but with case management support and community care arrangements provided.
- ▶ Residential care: this is provided in non-family-based group settings and includes transit/interim care centres, children's homes, orphanages, and children's villages. This should be a last option, used only where family-based care (e.g. foster care) or small group care arrangements are not possible, or would not be in the best interests of the child.

Annex 3: Reporting guidelines

This annex is conceived to assist parliamentarians in ensuring that when reporting on a visit they choose images and messages that respect human dignity and the best interests of the child.²¹

Reporting on children has unique challenges, and it is of utmost importance to avoid placing children at risk of retribution or stigmatisation as a result of reporting. While engaging with the media can form a key part of follow-up

21. See, UNICEF, *Reporting Guidelines*, March 2003, and Dóchas, *The Illustrative Guide to the Dóchas Code of Conduct on Images and Messages*, September 2012.

action to a visit, it is recommended to use the media cautiously and strategically, bearing in mind the following guidelines:

- ▶ Respect the dignity and rights of children at all times.
- ▶ Protect the best interests of the child over any other consideration, including over advocacy for children's issues and the promotion of child rights. When in doubt about whether a child is at risk, report on the general situation for children rather than on an individual child.
- ▶ Choose images and messages based on values of respect, equality, solidarity and justice.
- ▶ Do not publish an image or message which might put the child or their family at risk, even when identities are changed, obscured or not used.
- ▶ Avoid images and messages that potentially stereotype, sensationalise, or discriminate against people, situations or places.
- ▶ Use images and messages with the full understanding, participation and permission of the child.

Annex 4: Formula for an interview with a child

Before the interview

- ▶ Identify the child you would like to interview.
- ▶ Obtain their informed consent.
- ▶ Take precautions to ensure the interview takes place in a private, confidential setting.
- ▶ Make sure the child is comfortable talking to you (check if they would prefer to talk to someone of the opposite gender, a different interpreter).
- ▶ Respect confidentiality.

During the interview

- ▶ Introduce yourself and the interpreter.
- ▶ Remind the child that you will not repeat what they tell you to the detention staff, you are independent to the detention staff and the police.
- ▶ Remind the child that they can stop the interview if they are no longer happy to talk to you.
- ▶ Do not give them false hope about your power to help them.
- ▶ Use open questions.
- ▶ Pay attention to your body language and tone of voice, do not be intimidating.
- ▶ Pay attention to his/her body language and attitude throughout the interview.
- ▶ Do not give biased information.
- ▶ Remember to thank the child for talking to you.

Remember throughout the interview you must **DO NO HARM**; if the child is distressed by questions or memories, it may be appropriate for you to interrupt the interview and even to seek medical help. You are not there to interrogate the child but to listen to their concerns and gather information. If you use this checklist too mechanically you may give the child the impression that you are interrogating or cross-examining them and this will not be in their best interest.

Key questions to cover during the interview

- ▶ How long has the child been detained?
- ▶ Does the child know why they are being detained?
- ▶ Did the authorities talk to the child about alternatives to detention?
- ▶ How has the child been impacted by detention? How does detention make the child feel?
- ▶ What do they feel about the detention centre? The guards? The other detainees (children and adults)? Why?
- ▶ Does the child have access to education, recreation, leisure and health care? How long do they spend outside their cell?
- ▶ Has the child been separated from their parents in detention? If so, when did they last see their parents?
- ▶ Are the children separated from adults who are not members of their family?
- ▶ (if appropriate) Has the child been subject to an age assessment procedure?
- ▶ If the child is unaccompanied, have they been appointed a guardian? Do they communicate with their guardian, and how often do they meet?
- ▶ Have the authorities talked to the child about trying to reunite them with their family members?

After the interview

- ▶ Debrief with your colleagues, cross-check your impressions, records and observations.
- ▶ Follow-up according to your visit plan (reports, parliamentary questions, media spots, individual case follow-up etc.).
- ▶ Report to appropriate bodies: do you need to inform staff about a safeguarding problem you have observed? Do you need to inform external protection mechanisms or ombudspersons about a situation you have observed?
- ▶ Talk to your parliamentary colleagues about your visit and join the campaign to end immigration detention of children.

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Immigration detention is never in the best interest of a child. Yet, in Council of Europe member States, thousands of children wake up in immigration detention every day. The situation of these children is often out of sight and out of mind of Governments, lawmakers and the general public. The only way to bring immigration detention of children to an end is for policy makers to be fully aware and take action to change their policies and practices.

Parliamentarians have the power to make this happen. It is thus vital for them to be informed about the effects of immigration detention on children, in order to become effective advocates for the end of this practice. Visits by parliamentarians can also have important deterrent effects and reduce human rights violations in places of detention.

This guide aims to assist parliamentarians to monitor places where children are deprived of their liberty for immigration purposes, by providing information about how to plan such a visit, including useful guidance and checklists.

The Parliamentary Assembly of the Council of Europe launched a *Parliamentary Campaign to end immigration detention of children*, in order to strengthen the role of national parliaments in protecting and promoting the rights of migrant children in line with international and Council of Europe standards, and to promote positive and protective alternative practices to immigration detention. Taking a child rights' approach, this guide complements the Parliamentary Assembly's guide *Visiting immigration detention centres*, bringing an increased focus to the situation of children and the role of parliamentarians in this respect.

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The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, 28 of which are members of the European Union. The Parliamentary Assembly, consisting of representatives from the 47 national parliaments, provides a forum for debate and proposals on Europe's social and political issues. Many Council of Europe conventions originate from the Assembly, including the European Convention on Human Rights.

