



Research Report

UNICEF

Reducing the detention of refugee and migrant children by creating practical alternatives.

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INTRODUCTION

The plight of refugee and migrant children has been and still is a pressing concern that demands our collective attention, and immediate action on the part of every delegate present in the United Nation UNICEF committee. In the most recent years, the world has witnessed an unprecedented increase in the number of displaced children, forced to flee their homes due to conflict, persecution, and environmental challenges and an increasing host of other issues. This surge has given rise to the disturbing practice of detaining these vulnerable young lives, a practice that not only violates their basic human rights, as insured by the very institution we find ourselves residing over, it also has far-reaching consequences for the well-being of our global community.



Nyeritea Kay Nakney and her three children, displaced people in Bentiu, South Sudan (March 2023).¹

The United Nations has long been at the forefront of efforts to protect the rights of refugees and migrants, with a firm commitment to upholding the principles of dignity, compassion, and justice for all. This report focuses on the urgent need to address the alarming rates of detention faced by refugee and migrant children and proposes practical alternatives that prioritise their well-being while respecting international law we hold in such high regard.

Detention of children, often in overcrowded and inadequate conditions, exposes them to physical and psychological harm, disrupting their education, and jeopardising their future prospects. The repercussions of such practices extend beyond the individual lives affected, impacting the social fabric of the communities and nations involved. Moreover, the persistence of this issue undermines the very foundations of human rights and challenges the credibility of the international community in safeguarding the most vulnerable among us.

This report aims to shed light on the gravity of the situation, providing a comprehensive analysis of the causes and consequences of detaining refugee and migrant children. It also outlines a set of practical alternatives that member states can adopt to ensure the protection and well-being of these children, aligning with international standards and best practices. By presenting factual and an unbiased report on the events and history of this field filled with evidence-based recommendations, the report seeks to inspire collaborative efforts among nations, civil society, and other stakeholders to forge a path towards a more humane and effective approach to the challenges posed by mass migration.

In the spirit of the United Nations' mission to promote peace, security, and the well-being of all people, we invite member states to consider the findings and recommendations of this report and join forces in creating a world where the rights and dignity of refugee and migrant children are upheld. We also wish to extend our hope that we as a council are able to come to a conclusion that can resolve this ever present issue that affects the members of not just our society, but of our family that we hold most dear.

¹ McConnells, Andrew, and UNHCR. *After flood waters submerged their village, Nyeritea Kay Nakney and her three children travelled by canoe to a camp for internally displaced people in Bentiu, South Sudan (March 2023)*. Mar. 2023. *UNHCR.Org*, <https://www.unhcr.org/news/stories/climate-change-and-displacement-myths-and-facts>.

Definitions of Key Terms

The topic of the detention of refugees and migrant children is one that is multifaceted, and filled with all sorts of terminology and acronyms that are crucial to understand if you are to create legislation dictating UN policies and initiatives.

Refugee vs. Migrant

“The main difference is choice. Simply speaking, a migrant is someone who chooses to move, and a refugee is someone who has been forced from their home.”², this may be a basic definition, but its a great starting off point that everyone can agree on. From then on something that will often come up is the proper categorization of different displaced people, with different groups, nations and International governing bodies having differing criteria, along things such as economic, cultural, physical, and political reasons for their displacement.

With the UN defining a refugee as: “Refugees are people who have fled war, violence, conflict or persecution and have crossed an international border to find safety in another country.”³.

“The United Nations defines an international migrant as any person who has changed his or her country of residence. This includes all migrants, regardless of their legal status, or the nature, or motive of their movement.”⁴, this definition is much broader, but migrants have very few legal protections in comparison to Refugees, which can lead to the purposeful mis-classification due to the biases of the overseeing body.

Asylum Seekers

A person who has fled their own country and applied for protection as a refugee but whose claim has not yet been determined by a government nor International governing body.

Detention Center

Facilities where individuals, including children, are held in custody, often as part of immigration enforcement or border control measures. Certain centers have had a history of abuse both confirmed and claimed, as well as often inhumane living conditions.

ATD

Standing for Alternatives to Detention, these are non-custodial measures that allow authorities to monitor and manage the movements of individuals without resorting to detention, offering more humane and rights-based solutions.

The Best Interests of the Child

This is guiding principal that is meant to emphasise the rights and needs of children. It can also be described as: “A threefold concept which includes a substantive right, a fundamental and interpretative legal principle and a rule of procedure that is aimed at ensuring the full and effective enjoyment of all the rights recognised in the United Nations Convention of the Rights of the Child (UNCRC) and of which the primary consideration is to ensure the holistic development of the child.”⁵

Trauma Informed Care

An approach that recognizes the widespread impact of trauma and emphasises creating an environment sensitive to the needs of individuals who have experienced trauma.

²<https://www.britannica.com/story/whats-the-difference-between-a-migrant-and-a-refugee>

³ “Refugees.” *UNHCR*, www.unhcr.org/about-unhcr/who-we-protect/refugee

⁴ “International Migration.” *United Nations*, United Nations, www.un.org/en/global-issues/migration#:~

⁵ “Best Interests of the Child (BIC).” *Migration and Home Affairs*, home-affairs.ec.europa.eu/networks/european-migration-network-emn

Family Reunification

The process of reuniting family members who have been separated due to migration, often a critical aspect of ensuring the well-being of children.

Non Refoulement

A principle of international law that prohibits the return of individuals to a country where they may face persecution or serious harm.

CRC

Refers to the United Nations Convention on the Rights of the Child (CRC), an international treaty outlining the rights and protections afforded to children.

Global Compact of Refugees

A comprehensive framework adopted by the United Nations, outlining a cooperative approach to address refugee issues, including the promotion of alternatives to detention.

Human Rights

Human rights are defined by the UN as: “Rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status.”⁶, this is a term key to better understand the the conflict surrounding this issue. Human Rights and the specifics will be further elaborated on later in the report.

General overview

The issue of detaining refugee and migrant children is a deeply intricate and pressing matter that intertwines with the broader dynamics of global migration, human rights, and the well-being of the most vulnerable individuals in our global community. This comprehensive exploration aims to delve into the historical roots, the current state of affairs, and the widespread consequences of this practice, examining its impact on specific countries, cultures, and organisations. Additionally, a thorough examination of the human rights implications serves to underscore the urgent need for immediate action, emphasising the imperative of adopting practical alternatives that prioritise the dignity and rights of every child.

The historical backdrop of detaining refugee and migrant children is entwined with the evolution of global immigration and asylum policies. Throughout centuries, the treatment of displaced children has been moulded by the complex interplay of political landscapes, armed conflicts, and shifting societal attitudes. Detention, often employed as a tool of immigration control, has undergone adaptations in response to the ebb and flow of historical developments.

The early 20th century bore witness to the aftermath of the First World War, resulting in significant population movements and the displacement of countless families. Against this backdrop, the League of Nations took a crucial step by establishing the Nansen International Office for Refugees in 1921, marking an initial global response to the challenges posed by forced migration. While efforts were made to shield displaced populations, including children, the absence of a comprehensive legal framework allowed for varied and often inadequate treatment. The Nansen International Office for Refugees had to have some changes to its mandate as: “In 1923, the original mandate of the High Commissioner to cover Russian refugees was extended to include the Armenian refugees. To begin with, the High Commission provided both material assistance as well as legal and political protection to refugees. In 1924 the International Labor Organization assumed responsibility for material assistance, but five years later returned this function to the High Commission. Meanwhile, as the refugee problem broadened, the High Commissioner’s mandate was broadened to take in Assyrians,

⁶ “Human Rights.” *United Nations*, United Nations, www.un.org/en/global-issues/human-rights

Assyro-Chaldeans, and Turkish refugees.”⁷. This change to become a more inclusive and wide reaching organisation really highlights its importance to the history of the issue.

With the escalation of geopolitical tensions during the Second World War, the predicament of displaced children gained heightened attention. The groundwork laid by the Nansen Office eventually led to the establishment of the United Nations High Commissioner for Refugees (UNHCR) in 1950, playing a pivotal role in shaping international responses to refugee situations, with specific considerations for the treatment of children. The latter part of the 20th century witnessed the formulation of international conventions that specifically addressed refugees and children's rights. The 1951 Refugee Convention and the 1989 United Nations Convention on the Rights of the Child (CRC) provided foundational principles for the protection of these vulnerable populations. Despite these strides, the treatment of refugee and migrant children remained a complex challenge, frequently involving detention as a means of immigration control.

In 1997, notably in the United States, the Flores Settlement emerged as a landmark development. This legal agreement established standards for the treatment and release of minors in immigration custody, reflecting a growing awareness of the unique vulnerabilities of children in detention settings. “The Flores settlement is just that, a legal agreement settled in 1997 that outlines certain protection for immigrant children while in U.S. custody. Its most well-known provision, recently, prohibits the detention of children for more than 20 days.”⁸.

The 2016 New York Declaration for Refugees and Migrants highlighted the need for a compassionate approach to displaced children. This led to two key agreements in 2018: the Global Compact on Refugees and the Global Compact for Safe, Orderly, and Regular Migration. The Global Compact on Refugees emphasises international cooperation, prioritising the rights and well-being of refugees, including children. It encourages alternatives to detaining migrant children, focusing on their best interests. Similarly, the Global Compact for Safe, Orderly, and Regular Migration addresses migration challenges, emphasising the protection and well-being of migrant children. It calls for child-sensitive policies and urges alternatives to detaining them, aligning with global efforts to ensure humane treatment and uphold the rights of displaced minors. These agreements, stemming from the New York Declaration, represent a collaborative international effort to address refugee and migrant challenges, with a specific focus on protecting and prioritising the rights of children. They advocate for alternatives to detention, aiming for a more compassionate and just global response to migration issues.

The following are drawn from the the 2016 New York Declaration:

“Protect the human rights of all refugees and migrants, regardless of status. This includes the rights of women and girls and promoting their full, equal and meaningful participation in finding solutions.

- Ensure that all refugee and migrant children are receiving education within a few months of arrival.
- Prevent and respond to sexual and gender-based violence.

⁷ “The Nobel Peace Prize 1938.” *NobelPrize.Org*, www.nobelprize.org/prizes/peace/1938/nansen/history/.

⁸“History and Update on Flores Settlement.” *CWLA*, www.cwla.org/history-and-update-on-flores-settlement/. Accessed 17 Nov. 2023.

- Support those countries rescuing, receiving and hosting large numbers of refugees and migrants.
- Work towards ending the practice of detaining children for the purposes of determining their migration status.
- Strongly condemn xenophobia against refugees and migrants and support a global campaign to counter it.
- Strengthen the positive contributions made by migrants to economic and social development in their host countries.
- Improve the delivery of humanitarian and development assistance to those countries most affected, including through innovative multilateral financial solutions, with the goal of closing all funding gaps.
- Implement a comprehensive refugee response, based on a new framework that sets out the responsibility of Member States, civil society partners and the UN system, whenever there is a large movement of refugees or a protracted refugee situation.
- Find new homes for all refugees identified by UNHCR as needing resettlement; and expand the opportunities for refugees to relocate to other countries through, for example, labour mobility or education schemes.
- Strengthen the global governance of migration by bringing the International Organization for Migration into the UN system.”⁹.

As we navigate the complexities of the present, the detention of refugee and migrant children stands as a persistent and intricate challenge. The intricate dance of global migration, driven by conflicts, persecution, and environmental factors, has resulted in an unprecedented number of displaced individuals, including children. The detention of these minors unfolds across various contexts, spanning from border control facilities to immigration detention centres. The consequences are vast, ranging from immediate physical and psychological harm to disruptions in education and long-term prospects.

The advent of the COVID-19 pandemic in 2019 added an additional layer of complexity to this already challenging issue. The conditions in detention facilities, already strained, were further exacerbated by the need for health and safety measures. Concerns intensified about the safety and well-being of detained children, especially in overcrowded facilities, shedding light on the vulnerabilities faced by this population during a global crisis. The pandemic underscored the urgent need for reforms and the implementation of practical alternatives that prioritise the health and rights of vulnerable populations. Governments and organisations worldwide found themselves grappling with the dual challenge of addressing the immediate health risks posed by the pandemic while also reassessing and reforming detention practices for the long term. The repercussions of detaining refugee and migrant children reverberate across diverse geographical, cultural, and organisational landscapes. In areas directly affected, communities contend with the strain on local resources and social structures as they strive to integrate displaced families. The consequences extend beyond immediate humanitarian aspects, impacting economic, educational, and healthcare systems in host communities. Countries enforcing stringent detention measures find themselves entangled in the delicate balance between security concerns and the ethical treatment of vulnerable populations. The cultural fabric of host communities is shaped by the inclusivity or exclusion of refugees and migrants, leaving a lasting imprint on socio-cultural dynamics. The integration of diverse cultures and the fostering of inclusivity contribute to the richness of host societies, challenging preconceived notions and building bridges between communities.

⁹ *The New York Declaration for Refugees and Migrants* | Ohchr, www.ohchr.org/en/migration/new-york-declaration-refugees-and-migrants. Accessed 17 Nov. 2023.

Humanitarian organisations and non-governmental organisations (NGOs) actively engaged in the field confront the immediate repercussions of inadequate conditions within detention centres. Beyond the immediate crisis response, these organisations grapple with the enduring impact on the mental health and development of detained children. The long-term consequences pose ongoing challenges for organisations striving to provide sustained support and assistance to affected populations. The strain on organisations and agencies is further intensified by the dynamic and evolving nature of global migration patterns. Effective responses require flexibility, adaptability, and collaboration between various stakeholders, including governments, NGOs, and international bodies. The complex nature of the issue demands innovative solutions that transcend traditional humanitarian responses, integrating perspectives from diverse sectors.

At the heart of the detention of refugee and migrant children lies a profound and overarching human rights concern. As stated in Article 1 of the Universal Declaration of Human Rights, “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.” This principle emphasises the equal dignity and rights of every child, irrespective of their migration status. Article 5 of the Universal Declaration of Human Rights further asserts that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” The indiscriminate detention of children constitutes a violation of this fundamental right, as it inflicts harm upon them both physically and psychologically. The principle of non-refoulement, enshrined in international refugee law, is crucial in this context. Article 9 of the Universal Declaration of Human Rights declares, “No one shall be subjected to arbitrary arrest, detention or exile.” Detaining children based on their migration status not only defies this right but also contradicts the international commitment to ensuring the safety and well-being of displaced individuals, including children. In the complex tapestry of human rights, the consequences of violating the rights of detained children ripple beyond individual experiences, impacting the very fabric of our shared humanity. Article 25 of the Universal Declaration of Human Rights reinforces the importance of providing “a standard of living adequate for the health and well-being of himself and of his family.” The detention of children not only contradicts this right but also challenges the essence of a humane and just society. Addressing the detention of refugee and migrant children through practical alternatives becomes not just a moral imperative but a collective opportunity for the international community to reaffirm its commitment to human rights. These principles, drawn from the Universal Declaration of Human Rights, emphasise the equal dignity, protection, and well-being of every child, and they should guide our collective efforts to create a more compassionate, just, and equitable world.¹⁰

In conclusion, the challenge of detaining refugee and migrant children is a complex and evolving issue that demands urgent attention and comprehensive solutions. The historical context reveals the evolving nature of immigration policies and the gradual recognition of the specific vulnerabilities of children in migration settings. The current status underscores the persisting challenges and the added complexities introduced by the modern age. As we navigate these challenges, it becomes imperative for global stakeholders to collaborate.

¹⁰ “Universal Declaration of Human Rights.” *United Nations*, United Nations, www.un.org/en/about-us/universal-declaration-of-human-rights.

Major parties involved

This issue has a lot of different groups that have an interest in trying to maintain or reform the system, it is necessary to know and understand the goals of these different parties.

UNHCR

The UNHCR is a key international agency dedicated to protecting and supporting refugees and advocating for their rights. It plays a central role in coordinating global efforts to address the challenges faced by refugee and migrant children. With their goal being stated as: “UNHCR, the UN Refugee Agency works to ensure that everybody has the right to seek asylum and find safe refuge, having fled violence, persecution or war at home.”¹¹

IOM

“An intergovernmental organisation in the field of migration dedicated to ensuring the orderly and humane management of migration, to promote international cooperation on migration issues, to assist in the search for practical solutions to migration problems and to provide humanitarian assistance to migrants in need, be they refugees, displaced persons or other uprooted people.”¹²

NGOs

Numerous NGOs, such as Save the Children, UNICEF, and Human Rights Watch, actively work to protect the rights and well-being of refugee and migrant children. They often provide direct support, advocate for policy changes, and raise awareness about the challenges these children face.

International Red Cross and Red Crescent Movement

These organisations provide humanitarian assistance and support to those affected by conflict and disasters, including refugees and migrants. They play a vital role in delivering essential services and promoting respect for the rights of individuals.

National Governments

Governments of countries hosting refugees and migrants are crucial stakeholders. Their policies and actions, including immigration and asylum procedures, greatly influence the well-being of refugee and migrant children. The different stances of countries are so many and varied it is important for the delegation reading this report to understand the stance of their own country on the topic.

Timeline of Key Events

There is a long and storied history of the issues of refugees and migrant children in the UN, so here is a chronological listing of major events.

1951: Adoption of the United Nations Convention Relating to the Status of Refugees

This establishes the legal framework for the protection of refugees, including principles related to the rights and treatment of refugee children.

¹¹ “UNHCR, the UN Refugee Agency.” *UNHCR*, www.unhcr.org/. Accessed 17 Nov. 2023.

¹² “International Organization for Migration (IOM).” *Migration and Home Affairs*, home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary

1989: Adoption of the United Nations Convention on the Rights of the Child (CRC)

The adoption of this ends up emphasising the rights of children, regardless of their migration status, and articulating the principle of the best interests of the child.

1997: The Flores Settlement in the United States

This settlement sets standards for the detention and release of minors in immigration custody, providing some legal protections for detained children.

2004: UNHCR issues guidelines on the detention of asylum-seekers,

The UNHCR publishes guidelines emphasising the importance of using detention as a last resort and highlighting alternatives.

2016: The New York Declaration for Refugees and Migrants is adopted

The declaration paves the way for the Global Compact on Refugees and the Global Compact for Safe, Orderly, and Regular Migration.

2018: Adoption of the Global Compact on Refugees and The Global Compact for Safe, Orderly, and Regular Migration

Caused by the New York Declaration for Refugees and Migrants which includes commitments to reduce and eventually eliminate the detention of refugee children, promoting alternatives and emphasising international cooperation. It also provides a comprehensive framework for international cooperation on migration, with specific references to the well-being of migrant children.

2019: UNHCR and IOM issue joint guidelines on the protection of children travelling alone

Guidelines are produced by the UNHCR that emphasise the need for a child-rights approach in all actions concerning unaccompanied and separated children.

2020: The COVID-19

The pandemic amplifies challenges faced by refugee and migrant children, with concerns raised about their vulnerability in crowded detention settings.

Previous attempts to solve the issue.

There has been no true attempt to solve this issue, just a marinade of different attempts to either solves or limit a single facet of this issue, this is due to how vast and impactful this issue has. The research report has delved into several noteworthy endeavours, including the Flores Settlement Agreement, a significant legal benchmark in the United States that set standards for the treatment and release of minors in immigration custody. Additionally, different iterations of UNHCR Guidelines, issued by the United Nations High Commissioner for Refugees, have sought to provide guidance on the detention of asylum-seekers. The New York Declaration for Refugees and Migrants and its subsequent manifestations, namely the Global Compact on Refugees and the Global Compact for Safe, Orderly, and Regular Migration, have represented international efforts to establish frameworks for addressing the challenges associated with displaced populations.

The engagement of Non-Governmental Organisations (NGOs) and human rights advocacy groups has played a pivotal role in raising awareness about the detrimental effects of detaining children. These organisations actively participate in advocacy, litigation, and public awareness campaigns, leveraging their influence to advocate for policy changes and promote viable alternatives to detention.

Furthermore, at the grassroots level, local authorities and communities in various regions and countries have taken proactive measures to address the issue. Innovative programs have been implemented to provide support and integration services specifically tailored to the needs of refugee and migrant children. By doing so, these local initiatives aim to reduce reliance on detention, focusing on fostering a more compassionate and effective approach to the challenges faced by displaced children.

Possible solutions

Expansion of Alternatives to Detention (ATD):

- Promote community-based programs and support services that allow families and children to live in the community while their immigration status is being processed.
- Implement case management systems that track individuals' progress and ensure compliance with immigration procedures without resorting to detention.

Legal Reforms and Compliance:

- Review and reform national laws and policies to align with international human rights standards and principles, ensuring that detention is only used as a last resort and for the shortest possible time.
- Strengthen oversight mechanisms to monitor and enforce compliance with legal standards, particularly regarding the detention of children.

Capacity Building and Training:

- Provide training for immigration officials, law enforcement, and judiciary personnel on child rights, trauma-informed care, and alternatives to detention.
- Enhance the capacity of relevant agencies to process asylum claims and immigration cases efficiently, reducing the need for prolonged detention.

International Cooperation:

- Foster international collaboration to share best practices, resources, and expertise in the development and implementation of alternatives to detention.
- Support countries facing significant migration challenges with resources and capacity building to manage immigration flows effectively.

Early Identification and Screening:

- Implement robust screening processes to identify vulnerable individuals, especially children, at an early stage, allowing for appropriate support and interventions.
- Develop and implement child-sensitive and gender-sensitive identification procedures to address the specific needs of children and their families.

Best Interests of the Child:

- Prioritise the best interests of the child in all decisions related to immigration and asylum processes.
- Establish guardianship systems to ensure that children have appropriate representation and advocacy throughout legal proceedings.

Community Integration Programs:

- Develop and implement programs that facilitate the integration of refugee and migrant children into local communities, including access to education, healthcare, and social services.
- Foster community awareness and acceptance through education and outreach initiatives.

Data Collection and Research:

- Conduct research on the long-term effects of detention on children and families to build a stronger evidence base for the advocacy of alternatives.
- Regularly collect and analyse data on immigration processes, detention practices, and the outcomes of alternative programs.

Public Awareness and Advocacy:

- Raise public awareness about the rights and well-being of refugee and migrant children, dispelling misconceptions and fostering empathy.
- Engage in advocacy campaigns to mobilise support for policy changes that prioritise the humane treatment of children in migration.

Humanitarian and Emergency Responses:

- Develop and implement contingency plans and responses for humanitarian emergencies, such as natural disasters and conflicts, to ensure the protection and well-being of displaced children.

Further Readings

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