Children's Alternatives to Detention protecting their Rights in Europe (CADRE)

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As of February 2021, the ICJ-EI (International Commission of Jurists) is implementing a two - year project on “Children’s Alternatives to Detention protecting their Rights in Europe (CADRE)”, seeking to promote the expansion, implementation and improvement of viable and effective alternatives to detention for migrant children in full respect of their rights in the European Union. This effort aims to contribute to ending the resort to detention of children in migration by promoting viable alternatives to detention, meaning arrangements which can ensure the children’s well-being and rights under EU and international law.

Implementing partners / focus countries:

Aditus / Malta, Foundation for Access to Rights / Bulgaria, Greek Council for Refugees / Greece, Helsinki Foundation for Human Rights / Poland, Defense for Children International / Belgium, Hungarian Helsinki Committee / Hungary, Association for Juridical Studies on Immigration - ASGI / Italy, with the support and the participation of the Agency for the Welfare of Asylum Seekers / Malta.

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Aims of the project

- Partners aim to train professionals who work with migrant children, and on detention and alternatives to detention in the focus countries, namely public officials, civil society organizations, lawyers and judges - on the human rights implications of alternatives to detention, by instilling a child-rights culture centered around their best interests and access to child - friendly procedures.
- The project aims to equip these participants with awareness of and access to best practices and standards, skills and ability to implement them, and to foster a transnational and multidisciplinary community of experts from different backgrounds for mutual support and exchange on developments in the field.

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- The project aims to ensure an effective and consistent application of EU and international law and standards on alternatives to detention, benefitting migrant children at risk of being detained or whose rights may be violated in alternatives to detention, in the focus countries, and in the long-term, across the EU more generally. In this framework,

The project partners:

(i) held three transnational workshops attended by at least 60 experts from seven EU countries followed by several online public conferences / talks; (completed)

(ii) Will develop four training modules translated into six different languages and other e - learning tools; (final stage)

(iii) Will hold national trainings in the five focus countries, (pending)

and **(iv)** Will widely disseminate all publications and materials, including through developing a webpage with a database and videos (pending).

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Content of the three transnational workshops:

June 2021: Alternatives to detention v. alternative forms of detention of migrant children. Towards the identification of the rights-based practices.

October 2021: Exchange of experiences and good practices on human rights compliant alternatives to detention.

November 2021: Exchange of good practices on access to remedies for human rights violations in alternatives to detention for migrant children.

In the above closed meetings there were invited also two professionals from each country that were belonging in an “Expert Advisory Group”.

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Through roundtable discussions of the last transnational workshop, participants shared their practices and experiences on the procedural rights of children, including the **right to a remedy** to challenge the lawfulness, necessity, and proportionality of the choice of a form of care applied as an alternative to detention, as well as for alleged violations of children's rights during such care.

The roundtable dealt with issues **of representation, including legal representation, effective remedy, rights of the child to be heard and child-friendly procedures**, within the different legal systems of the European Union (EU). These practices were assessed in light of international human rights law principles in order to select best practices that could be promoted throughout the EU. On November 18th, the group discussed access to information, access to a lawyer and legal representation, right to be heard, and child-friendly procedures. On November 19th, access to remedies for human rights violations for children in detention, in alternative forms of detention, and in alternatives to detention that might be in violation of children's rights were discussed. The final session focused on good practice examples in strategic litigation and advocacy from Greece, Belgium and other EU countries

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IMPORTANT ASPECTS:

Access to procedural rights

Participants agreed that in order to provide legal services and information, it is key to build a relationship of trust with the children, cooperate with other professionals, build alliances with local communities and government officials and put in place a child-friendly approach.

Access to information

During the workshop the close connection between access to information, right to be heard and best interests assessment was highlighted. Various participants argued that to assure access to information, the quality and sensitiveness of the interpretation, the previous satisfaction of the child's basic needs and the presence of a safe space are of the utmost importance. Regarding the access to quality interpretation, a good practice from Belgium is the creation of national platforms of interpreters, in order to have well-trained interpreters, aware of the cultural implications of interpretation and sensitive to certain sensitive issues, as gender-based violence. It is also important for the interpreter to know how to work with children as they are often traumatized. All the participants acknowledged the importance of putting the children's basic needs first and of gaining the trust of the child, which is a process that requires time. In the same time, lawyers have to take quick decisions in the asylum process without having the time to deeply analyse a case therefore giving the children the necessary support and providing them will all the relevant information is key. A number of actors should be involved in the information provision process: psychologists, case managers, interpreters, cultural mediators, lawyers, social workers and guardians. They should all cooperate with each other .

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Access to legal representation

Although it was stressed that immigration detention of children is unlawful in international law and has a traumatic impact on them, it was also recognized that detention is still a common practice in several EU countries. In some countries access to legal representation is not enshrined in the law, which may entail risks. It was recommended to insist on authorities to inscribe this access to a lawyer in national law. This could also pose a serious obstacle to children's access to legal representation ,because often lawyers and civil society organisations do not have access to detention centres and do not even know whether there are any migrant children detained. Nevertheless, it was claimed that civil oversight on places of detention is not only a legal duty, but it makes also perfect sense. Participants shared strategies on how to promote this civil oversight, the most successful one seems to establish strong alliances with local communities. It can help in finding, identifying and supporting minors thanks to the referral by other members of the communities and other detainees. Another common strategy was a cooperative approach towards authorities (and mainstream child protection authorities). To be granted access to the detention centres and information about detainees, it could be helpfulto show the government how this access can also be of interest to them. For example, by helping authorities to identify vulnerable subjects or by offering interpretation and cultural mediation services. If government officials and enforcement authorities do not cooperate, the involvement of the national ombudsperson or bar association to visit the detention center could be useful. If a specific lawyer is requested, even through social media, the access to the detainee is granted.

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Right to be heard

As for the right of the child to be heard, participants said that case management, with its holistic and interdisciplinary approach, could help saving time and not retraumatizing the child. For example, by not forcing the child to tell the same story of abuse over and over again). Furthermore, experts' opinions gained in this phase could also be used during legal proceedings such as psychologists' opinions on trauma. The European Commission proposals for new quicker asylum and border procedures (Asylum Procedures Regulation and Screening Regulation in EU Pact) were flagged as important. To build a relationship of trust with the child and assess their best interests takes time, therefore the fast procedures may not be best suited. It was stressed that interviewers have to take on a human and empathetic approach during the hearings. In this regard, a proper child- and cultural-sensitive education of professionals is necessary. There were some discussions on having a new hearing of the child during the appeals procedure. Participants discussed and some agreed that there should be room for a new direct hearing of the child in the appeals procedure, if the credibility of the child is contested. It was also pointed out that the right to be heard does not necessarily always need to entail the child's physical hearing in court, but can be very well substituted in written proceedings.

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Child-friendly procedures

Participants agreed on:

- the importance of making the interview environment more child-friendly

(by providing toys, fidgets, paper, etc.).

- the legal system should provide the possibility to interview an accompanied child without the presence of their family members as this might be useful and even necessary if the child may have a specific asylum claim or in case of a conflict within the family.
- how in some countries such as Belgium, the appeal is a written-only procedure in which the principle of child-friendly justice is not applied and respected at all.

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In case of official detention

The first obstacle in many countries to access to remedies for human rights violations is the lack of legal capacity of the child to appoint a *legal representative*. Another very common obstacle is linked with the *access to the client* when held in a detention centre. Furthermore, the absence in national law of *remedies* to challenge detention were noted.

In case of de facto detention

It was acknowledged that the main problem with alternative forms to detention (or de facto detention) is the **absence of a legal provision** against which a remedy is available. As a participant stated: 'how can you challenge something that is not considered detention at all and thus does not legally exist?

Some participants shared that one strategy could be the use of an appeal for the omission to issue a detention order. In Bulgaria a remedy that has been used to put an end to de facto detention not based on any order is a legal challenge against unlawful inaction and the challenge of an unlawful factual action. In Malta, the general habeas corpus guarantee is often used as it is a de facto detention, even a form of deprivation of liberty. Participants also suggested that more often reference should be made to international legal arguments and mechanisms (e.g. ECtHR decisions, the General Comments of the Committee on the Rights of the Child).

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In case of alternatives to detention

It was argued that even alternatives to detention possibly violate children rights by inter alia affecting their quality of life (e.g. the fact that they have to go to the police station every morning to report could prevent them from finding an occupation or get educated). Therefore, there should be a possibility **to challenge alternatives to detention**, if they cannot guarantee the respect for the human rights of the child, even if this alternative to detention does not amount to de facto detention. Legal pathways that were shared to address the problem consist of filing a complaint against the government to pay damages, challenging – on the basis of proportionality – the alternative to detention as a form of restriction of movement, or raising the possible violation of art. 8 ECHR (regarding violation of private life). Discussion was held about where to actually challenge the alternative to detention, and some participants noted that it should be with the authority that decided not to detain the child but to impose the alternative to detention. In some cases, there is a separate administrative act that imposes that alternative to detention. It was argued that a decision about the alternative to detention is taken, best interests assessment, and the human rights compliance of the chosen form of alternative to detention should be considered. It was discussed that it would be useful if judicial authorities would not only make a decision on detention, but also on alternatives to detention. Same access to rights, including right to information and transparency, should be guaranteed in cases of alternatives to detention.

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Good practices in strategic litigation and advocacy

Examples given from Greece and Belgium such as the abolition of protective custody of children (in Greece) and the judicial rejection of the Belgian legislation of immigration detention of children started the discussions on strategic litigation and advocacy. It was said that it is important to avoid seeing the child as a migrant first but rather underlining its child status and the rights that come with it.

It was shared that the pressure on governmental institutions from multiple types of actions was essential in Greece: sensibilization of the general public, press conferences, reports to the Ombudsperson and strategic litigation through the cases and interim measures of the ECtHR, as well as the interim measures granted by the European Committee on Social Rights in the case of migrant children.

Participants discussed best practices in ensuring access of children to remedies for human rights violations in official or de facto detention, and when subject to alternatives to detention. The potential of national litigation as well as applications to the European Court of Human Rights, European Committee on Social Rights, and UN Committee on the Rights of the Child, including for interim measures, was explored. **Participants shared experiences of the abolition of protective custody in Greece and of the judicial rejection of the Belgian legislation on detention of children (: the two good examples).**

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INDICATIVE DIFFERENT FORMS OF ALTERNATIVES TO DETENTION APPLICABLE TO CHILDREN

-Case management (community assessment & placement (CAP) model)
-Family-based care (kinship, foster, other care settings
-Residential Facilities
-**Accommodation Centres**
- Supervision
-**Regular Reporting**
-Bail, bond, guarantor or surety
-Assigned Residence
-Sponsorship Schemes
-Return Houses

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About Greece

The main available alternative to detention in Greece is **the accommodation in one of the available accommodation facilities,** which include shelters, supported Independent Living apartments, Safe Zones and hotels. Also relocation scheme is and could provide a solution. Foster family is also an alternative to detention that could lead to desirable results but until now, it's not applicable in practice in Greece.

Belgium: **Return houses** (an "alternative" to immigration detention that ideally combines case management support with the requirement to reside at a designated location in preparation for voluntary or enforced departure.Moreover, the Jesuit Refugee Service in Belgium has implemented a small pilot project (Plan Together) offering community-based alternatives to detention to a group of refugees and forced migrants, running from September 2020 to February 2023. This was set in place in response to three main problems in Belgium, namely that it does not resort to less coercive measures before ordering detention, that return houses are effectively an alternative form of detention rather than an ATD, and that Belgian law still allows for detention of children

Bulgaria: The International Organization for Migration, in collaboration with the Bulgarian State Agency for Refugees, has opened a **safe area** for unaccompanied children that are waiting to be granted international protection in Sofia. In this area, 24-hour care and specialized services are provided in an environment that meets the needs of children. The maintenance of the facilities however is projects-bound.

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Poland: Alternatives to detention were introduced into Polish law on 1 May 2014, both to the Act on Foreigners and the Protection Law.. One or more measures may be applied to foreigners (also families with children). These measures include: an **obligation to report** to the Border Guard authority, **bail** in the amount specified in the decision, not lower than twice the minimum wage, a **deposit of the travel document** to the authority indicated in the decision. These measures include an obligation **to reside at an indicated place**.

Malta: In practice, detention alternatives have been granted by the Immigration Police in those cases where detained asylum-seekers are able to provide an address in the community.
Regular signing at a police station tends to be the main requirement in such cases.

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Four Modules that are at a final stage:

– Module I. Care of migrant children: the need for alternatives to detention
– Module II. Alternative forms of care or accommodation
– Module III. Access to fair and child-sensitive procedures
– Module IV. How to communicate and work with children subject to alternatives to detention

Feedback for the Database: Decisions about UaMs? (e.x. GCR shared 5 decisions on age assessment procedure)

WHEN?

In a national workshop organized by GCR before June 2022.

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Thank you!

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