

**Human Rights Watch Submission on Ending Immigration Detention of Children and Seeking Adequate Reception and Care for them**

Human Rights Watch welcomes the Special Rapporteur’s decision to devote his forthcoming report to the means of ending immigration detention of children and seeking adequate reception and care for them.

At least 80 states deprive children of liberty for migration purposes, with at least 330,000 children deprived of liberty each year for reasons related to migration, according to the UN independent expert on deprivation of liberty of children.[[1]](#footnote-1) That number “is likely to be a significant under-estimation of the true figure, due to limitations regarding the quality, consistency and coverage of information around the world,” the independent expert found.[[2]](#footnote-2)

Human Rights Watch has researched and reported on the immigration detention of children in countries that do so in large numbers (for instance, the United States and Mexico) and that hold children in particularly abusive conditions (including Australia’s use of offshore processing on Nauru, and in Greece, Indonesia, and Thailand as well as the United States), along with more isolated but no less damaging instances of immigration detention of children elsewhere in the world (such as in Lebanon and Turkey).[[3]](#footnote-3)

**Legislation or policies restricting immigration detention of children**

Twenty-four jurisdictions do not detain children for migration-related reasons. That list includes many states in South and Central America; seven states in sub-Saharan Africa; in the Asia-Pacific region, Japan, Laos, and Taiwan; and Ireland.[[4]](#footnote-4)

In some countries that do employ immigration detention of children, legislation or policies in principle limit the practice in ways that would offer significant protections if fully implemented. Too often, however, exceptions in law or policy blunt these measures’ effectiveness.

For example, in the United States, law and policy require expeditious transfer of children to specialized facilities and favor release to family members or foster care settings. Nevertheless, US immigration authorities regularly hold unaccompanied children and families with children for far longer than the established time limits. In a stark illustration of this tendency, 250 unaccompanied children were held in a small border station near El Paso, Texas, for weeks in mid-2019, left to care for themselves, deprived of regular access to soap or showers, and afforded little communication, if any, with their parents or other family members.[[5]](#footnote-5)

Moreover, most of the standards relating to immigration detention of children in the United States are contained in a consent decree, an agreement reached by the government to settle a lawsuit. The government has periodically sought modification of the agreement to give it greater flexibility with respect to the length and conditions of immigration detention of children. For instance, the US Department of Justice argued in federal court in June 2019 that the requirement to hold children in “safe and sanitary” conditions did not necessarily require regular access to showers, soap, toothbrushes and toothpaste, and other means of maintaining personal hygiene.[[6]](#footnote-6) More recently, it has attempted to introduce regulations that would supersede and significantly weaken the standards set forth in the consent decree.[[7]](#footnote-7)

In Greece, unaccompanied children have been routinely detained for prolonged periods, sometimes in facilities that hold boys and girls together. In particular, Greek law allows police to hold unaccompanied children in “protective custody” while awaiting transfer to a shelter for 25 days, and under very limited circumstances for up to 45 days, but in practice children are held for longer than these already lengthy periods, some for up to two months.[[8]](#footnote-8)

In 2019, the European Court of Human Rights ruled twice against Greece’s abusive practice of detaining unaccompanied migrant and asylum-seeking children in police cells under its “protective custody” regime, and the European Committee on Social Rights also ordered the immediate release of unaccompanied children from “protective custody.”[[9]](#footnote-9) In at least three other cases, in 2019, the European Court of Human Rights issued interim measures against Greece ordering authorities to immediately transfer unaccompanied children out of detention and to suitable accommodations.[[10]](#footnote-10) Nonetheless, as of March 31, 2020, police stations throughout Greece held 331 unaccompanied migrant children in “protective custody.”[[11]](#footnote-11)

As in Greece, states often employ Orwellian euphemisms to feign compliance with international standards.[[12]](#footnote-12)

In Mexico, where 10,000 to 40,000 children have been held in immigration detention in each of the last five years,[[13]](#footnote-13) immigration officials have sometimes claimed that no children are apprehended and detained because Mexican law describes these actions as children’s “rescue” and “lodging.”[[14]](#footnote-14)

In Canada, authorities distinguish between children who are subject to formal detention orders and those who are “housed” with detained parents. In reality, children who are “housed” in detention facilities, a category that includes Canadian citizen children, are subject to the same detention conditions as children who are under formal detention orders. But because Canada’s immigration authorities do not regard them as legally detained, the tribunal that conducts detention review hearings does not consider their situations.[[15]](#footnote-15) In 2018-2019, the category of children “housed” in detention but not technically subject to detention orders constituted approximately 87 percent of all children who spent time in immigration detention. “Housed” children spent an average of 19.1 days in detention—nearly five times as long as children subject to formal detention orders.[[16]](#footnote-16)

**Non-custodial measures and better practices**

While migration to Europe, North America, and Australia from the Global South generates considerable attention, much of the world’s migration is within the Global South.

Many countries in the Global South that receive large numbers of migrants do not hold children in immigration detention.[[17]](#footnote-17) Some of those that do detain children have also introduced non-custodial measures. For instance, the United Nations High Commissioner for Refugees (UNHCR) has reported that in Indonesia “women and children and other vulnerable asylum-seekers whose status is confirmed by UNHCR are released to community accommodation centres operated by IOM, or to shelters for unaccompanied minors operated by UNHCR through its partner, CWS [Church World Service].”[[18]](#footnote-18)

In 2018, Canadian authorities implemented community case management, voice reporting, and other alternatives to detention,[[19]](#footnote-19) reducing the number of children in immigration detention.[[20]](#footnote-20)

Greece’s Supported Semi-Independent Living Program provides supervised independent living arrangements for 16- to 18-year-old unaccompanied asylum seekers. In addition to housing, the program links children with education, health, psychosocial development, legal aid, and interpretation. An interdisciplinary team that includes a social worker, a psychologist, and other specialists “offers psychosocial support with a view to the teenagers’ gradual independence.”[[21]](#footnote-21)

**Challenges and obstacles in implementation of alternatives to detention**

Too often, promising practices are unevenly implemented or underutilized. For instance, the United States abandoned its Family Case Management Program in 2017 even though “[a]ccording to ICE [US Immigration and Customs Enforcement], overall program compliance for all five regions [was] an average of 99 percent for ICE check-ins and appointments, as well as 100 percent attendance at court hearings.”[[22]](#footnote-22) A community-based pilot project in Mexico that placed unaccompanied children in supervised, open group homes was only serving 20 children in 2018, several years after it began.[[23]](#footnote-23)

In Canada, there have been serious gaps in implementing policy changes that require the best interests of the child to be a primary consideration and provide that the detention or “housing” of children should be employed only in “extremely limited circumstances” involving risks to public safety or national security. Nevertheless, 99 percent of cases of children “housed” in 2018 and 2019 where children did not involve public safety or national security concerns. In addition, there is significant regional variation, with more children in Québec than elsewhere in Canada “housed” in detention and separated from their families; in addition, children in Québec are detained for longer periods than elsewhere in Canada.[[24]](#footnote-24)

1. Manfred Nowak, *The United Nations Global Study on Children Deprived of Liberty* (2019), pp. 455, 465. [↑](#footnote-ref-1)
2. Ibid., p. 465. [↑](#footnote-ref-2)
3. See, for example, Human Rights Watch, *In the Freezer: Abusive Conditions for Women and Children in US Immigration Holding Cells* (New York: Human Rights Watch, 2018), <https://www.hrw.org/report/2018/02/28/freezer/abusive-conditions-women-and-children-us-immigration-holding-cells>; Human Rights Watch, *Closed Doors: Mexico’s Failure to Protect Central American Refugee and Migrant Children* (New York: Human Rights Watch, 2016), <https://www.hrw.org/report/2016/03/31/closed-doors/mexicos-failure-protect-central-american-refugee-and-migrant-children>; Amnesty International and Human Rights Watch, “Appalling Abuse, Neglect of Refugees on Nauru: Investigation on Remote Pacific Island Finds Deliberate Abuse Hidden Behind Wall of Secrecy,” August 2, 2016, <https://www.hrw.org/news/2016/08/02/australia-appalling-abuse-neglect-refugees-nauru>; Human Rights Watch, *“Why Are You Keeping Me Here?” Unaccompanied Children Detained in Greece* (New York: Human Rights Watch, 2016), <https://www.hrw.org/report/2016/09/08/why-are-you-keeping-me-here/unaccompanied-children-detained-greece>; Human Rights Watch, *Barely Surviving: Detention, Abuse, and Neglect of Migrant Children in Indonesia* (New York: Human Rights Watch, 2013), <https://www.hrw.org/report/2013/06/23/barely-surviving/detention-abuse-and-neglect-migrant-children-indonesia>; Human Rights Watch, *Two Years with No Moon: Immigration Detention of Children in Thailand* (New York: Human Rights Watch, 2014); Human Rights Watch, “Lebanon: Migrant Family Detained,” August 29, 2019, <https://www.hrw.org/news/2019/08/29/lebanon-migrant-family-detained>; Human Rights Watch, “Turkey: Syrians Being Deported to Danger,” October 24, 2019, <https://www.hrw.org/news/2019/10/24/turkey-syrians-being-deported-danger>. [↑](#footnote-ref-3)
4. *Global Study on Children Deprived of Liberty*, p. 463. [↑](#footnote-ref-4)
5. See Clara Long (Human Rights Watch), “Children at Risk in US Jails,” Dispatch, June 20, 2019, <https://www.hrw.org/news/2019/06/20/children-risk-us-border-jails>; Nicole Austin-Hillary and Clara Long (Human Rights Watch), “We Went to a US Border Detention Center for Children. What We Saw Was Awful,” *CNN*, June 25, 2019, <https://www.cnn.com/2019/06/24/opinions/children-migrant-centers-at-border-long-austin-hillery/index.html> (viewed April 2, 2020); Michael Garcia Bochenek (Human Rights Watch), “Candidates’ Homestead Visits Will Highlight the Plight of Detained Migrant Children,” *USA Today*, June 27, 2019, <https://www.hrw.org/news/2019/06/27/candidates-homestead-visits-will-highlight-plight-detained-migrant-children>. [↑](#footnote-ref-5)
6. See Manny Fernandez, “Lawyer Draws Outrage for Defending Lack of Toothbrushes in Border Detention,” *New York Times,* June 25, 2019, <https://www.nytimes.com/2019/06/25/us/sarah-fabian-migrant-lawyer-doj.html> (viewed April 2, 2020); Caitlyn Dickerson, “Migrant Children Are Entitled to Toothbrushes and Soap, Federal Court Rules,” *New York Times,* August 15, 2019, <https://www.nytimes.com/2019/08/15/us/migrant-children-toothbrushes-court.html> (viewed April 2, 2020). [↑](#footnote-ref-6)
7. Human Rights Watch, “New Rules Allow Indefinite Detention of Children: Detention Has Severe Consequences for Children’s Health and Safety,” August 21, 2019, <https://www.hrw.org/news/2019/08/21/us-new-rules-allow-indefinite-detention-children>. [↑](#footnote-ref-7)
8. See Human Rights Watch, *“Why Are You Keeping Me Here?”*; Human Rights Watch interviews in Greece, February 2020. [↑](#footnote-ref-8)
9. See *Affaire H.A. et Autres c. Grèce*, Arrêt, Requête N° 19951/16 (Eur. Ct. H.R. February 28, 2019); *Affaire Sh.D. et Autres c. Grèce, Autriche, Croatie, Hongrie, Macédoine du Nord, Serbie et Slovénie*, Arrêt, Requête N° 14165/16 (Eur. Ct. H.R. June 13, 2019); *International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece*, Decision on Admissibility and on Immediate Measures, Complaint No. 173/2018 (European Committee on Social Rights May 23, 2019). [↑](#footnote-ref-9)
10. See Greek Council for Refugees, “The European Court of Human Rights Grants Interim Measures in Favour of Two Detained Unaccompanied Girls,” March 28, 2019, <https://www.gcr.gr/en/news/press-releases-announcements/item/1069-the-european-court-of-human-rights-grants-interim-measures-in-favour-of-two-detained-unaccompanied-girls> (viewed April 8, 2020); Association for the Social Support of Youth, “The ECHR Grants Interim Measures Putting an End to the Detention of Unaccompanied Minors in Police Stations,” October 12, 2019, <http://www.arsis.gr/en/press-release-the-echr-grants-interim-measures-putting-an-end-to-the-detention-of-unaccompanied-minors-in-police-stations/> (viewed April 8, 2020); Refugee Support Aegean, “European Court of Human Rights Asks Greece to Transfer Two Unaccompanied Boys Detained in Police Station to Suitable Shelter,” November 6, 2019, <https://rsaegean.org/en/european-court-of-human-rights-asks-greece-to-transfer-two-unaccompanied-boys-detained-in-police-station-to-suitable-shelter/> (viewed April 8, 2020). [↑](#footnote-ref-10)
11. National Centre for Social Solidarity, “Situation Update: Unaccompanied Children (UAC) in Greece,” March 31, 2020, <http://www.ekka.org.gr/images/ΣΤΑΤΙΣΤΙΚΑ_2020/EKKA%20Dashboard%2031-3-2020.pdf> (viewed April 8, 2020). [↑](#footnote-ref-11)
12. See generally Report of the Working Group on Arbitrary Detention, A/HRC/36/37, July 19, 2017, para. 53 [↑](#footnote-ref-12)
13. See, for example, Rebekah F. Ward, “México retiene a niños en estación migratoria pese a orden judicial,” Reuters, August 10, 2019, <https://lta.reuters.com/articulo/inmigracion-mexico-eeuu-idLTAKCN1V00M4-OUSLT> (viewed April 14, 2020). For Mexico’s official data on apprehension and immigration detention of children, see Gobierno de México, Dirección de Estadística, “Boletines Estadísticos,” <http://www.politicamigratoria.gob.mx/es/PoliticaMigratoria/Boletines_Estadisticos> (viewed April 9, 2020). See also Human Rights Watch, *Closed Doors*, Appendix: Analysis of Apprehension, Returns, and Refugee Recognition Data. [↑](#footnote-ref-13)
14. See Ley de Migración [Immigration Law], Diario Oficial de la Federación, May 25, 2011, as amended, Diario Oficial de la Federación, October 30, 2014, <http://www.diputados.gob.mx/LeyesBiblio/pdf/LMigra_301014.pdf> (viewed April 14, 2020). [↑](#footnote-ref-14)
15. See Immigration and Refugee Board of Canada, “Persons Subject to a Detention Review,” February 20, 2020, <https://irb-cisr.gc.ca/en/statistics/detentions-reviews/Pages/dentenSub.aspx> (viewed April 6, 2020); Immigration and Refugee Protection Regulations (SOR/2002-227), s 248, s 248.1, and s 249 (Canada); Joint Submission by Human Rights Watch and the University of Toronto’s International Human Rights Program to the Committee on the Rights of the Child’s Consideration of Canada’s fifth and sixth periodic reports, March 2020, <https://www.hrw.org/news/2020/03/04/joint-submission-committee-rights-childs-review-canada>. [↑](#footnote-ref-15)
16. Canada Border Services Agency, “Annual Detention Statistics – 2012-2019,” August 20, 2019, <https://www.cbsa-asfc.gc.ca/security-securite/detent/stat-2012-2019-eng.html> (viewed April 6, 2020). [↑](#footnote-ref-16)
17. See, for example, Pablo Ceriani Cernadas, “Immigration Detention Through the Lens of International Human Rights: Lessons from South America,” Global Detention Project Working Paper No. 23, September 2017 (noting that “[o]ver the last decade, many South American countries have explicitly and repeatedly rejected policies aimed at criminalizing irregular migration and enforcing punitive tools such as detention . . .”); *Global Study on Children Deprived of Liberty,* pp. 484-85. [↑](#footnote-ref-17)
18. UNHCR, “Beyond Detention 2014-2019: National Action Plan: Indonesia,” June 2017, <https://www.unhcr.org/5666a2ea9.pdf> (viewed April 7, 2020). As of 2015, Indonesia detained 830 children for immigration-related purposes. UNHCR, “Indonesia: Progress Under the Global Strategy Beyond Detention 2014-2019, Mid-2016,” August 2016, <https://www.unhcr.org/57b583457> (viewed April 7, 2020). For background on immigration detention of children in Indonesia, see, for example, Human Rights Watch, *Barely Surviving*. [↑](#footnote-ref-18)
19. Canada Border Services Agency, “Alternatives to Detention: Questions and Answers,” (July 24, 2018) <https://www.cbsa-asfc.gc.ca/security-securite/detent/qa-qr-eng.html>. [↑](#footnote-ref-19)
20. Canada Border Services Agency, “Annual Detention Statistics – 2012-2019,” August 20, 2019, <https://www.cbsa-asfc.gc.ca/security-securite/detent/stat-2012-2019-eng.html>. [↑](#footnote-ref-20)
21. METAdrasi, “Supported Independent Living for Unaccompanied Minors,” n.d., <https://metadrasi.org/en/campaigns/supported-semi-independent-living-for-unaccompanied-minors/> (viewed April 7, 2020). [↑](#footnote-ref-21)
22. See US Department of Homeland Security, Office of Inspector General, “U.S. Immigration and Custom Enforcement’s Award of the Family Case Management Program Contract (Redacted),” OIG-18-22, November 30, 2017, p. 5; Aria Bendix, “ICE Shuts Down Program for Asylum Seekers,” *Atlantic*, June 9, 2017, <https://www.theatlantic.com/news/archive/2017/06/ice-shuts-down-program-for-asylum-seekers/529887/> (viewed April 9, 2020). [↑](#footnote-ref-22)
23. See UNHCR, *Progress Report Mid-2016: Beyond Detention* (Geneva: UNHCR, 2016),p. 24, <https://www.refworld.org/pdfid/57b850dba.pdf> (viewed April 9, 2020); “Alternatives to Detention: Fostering Effective Results: Practical Guidance,” 1st preliminary draft, September 2018, p. 21, <https://rm.coe.int/alternatives-to-immigration-detention-practical-guidance-1st-draft/16808e49c8> (viewed April 9, 2020). [↑](#footnote-ref-23)
24. See Joint Submission by Human Rights Watch and the University of Toronto’s International Human Rights Program to the Committee on the Rights of the Child’s Consideration of Canada’s fifth and sixth periodic reports,” March 2020, <https://www.hrw.org/news/2020/03/04/joint-submission-committee-rights-childs-review-canada> (viewed April 6, 2020); Canadian Council for Refugees, “Immigration detention and children: Rights still ignored, two years later,” November 2019, <https://ccrweb.ca/sites/ccrweb.ca/files/children-detention-nov-2019.pdf> (viewed April 6, 2020); Canada Border Services Agency, “Annual Detention Statistics – 2012-2019.” For details of the policy changes, see Immigration and Refugee Protection Regulations (SOR/2002-227), s 248 and s 248.1; Public Safety Canada, “Ministerial Direction to the Canada Border Services Agency: Minors in Canada’s Immigration Detention System,”November 6, 2017, <https://www.publicsafety.gc.ca/cnt/trnsprnc/ns-trnsprnc/mnstrl-drctn-cbsa-en.aspx>; Canada Border Services Agency, “National Directive for the Detention or Housing of Minors,” September 26, 2019,<https://www.cbsa-asfc.gc.ca/security-securite/detent/nddhm-dndhm-eng.html>; Immigration and Refugee board of Canada, “Guidelines Issued by the Chairperson, Pursuant to paragraph 159(1)(h) of the Immigration and Refugee Protection Act,” April 1, 2019, <https://irb-cisr.gc.ca/en/legal-policy/policies/Pages/GuideDir02.aspx> (viewed April 6, 2020). [↑](#footnote-ref-24)