

FORCED MIGRATION review

Issue 44
September 2013

Detention, alternatives to detention, and deportation

Detention of refugees, asylum seekers and other migrants is widely used by many states as part of their migration management strategy, often as the precursor to deportation. However, there are viable, more humane alternatives.

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Be careful what you wish for

Michael Flynn

Can the promotion of liberal norms have an unintended – and damaging – impact on how states confront the challenges of irregular immigration?

The T Don Hutto Residential Centre is not a nursing home, as its name might imply. It is a privately run for-profit immigration detention facility near Austin, Texas, that confines undocumented female immigrants who are designated for deportation by the US Department of Homeland Security's Immigration and Customs Enforcement (ICE). Until 2009, Hutto was notorious for being one of only two US facilities that detained entire families. Named after a pioneer of prison privatisation, Hutto is located in a former prison that was converted to a family detention centre in 2006 at the behest of Congress.

Before 2006, apprehended migrant families tended either to be released to await the resolution of their immigration cases, or family members were placed in separate facilities; children were placed in the custody of the Office of Refugee Resettlement while parents were confined in detention facilities for men or women. According to one account, when "Congress discovered this, it took immediate action to rectify the situation to ensure that ICE's practices were in keeping with America's tradition of promoting family values".¹ In short, detaining families at Hutto was meant to protect an important human right – the right to family life.

However, almost overnight Hutto sparked heated debate about the treatment of undocumented immigrant children and families. In 2007, the American Civil Liberties Union successfully settled a lawsuit it had brought against ICE, which contended that conditions inside the detention centre violated standards for the treatment of minors in federal immigration custody. Two years later, in 2009, the Obama administration announced that it was officially ending the detention of children and families at Hutto, and converted the centre into an adult female-only detention

facility. By 2010, the facility had undergone an intense makeover, becoming a centrepiece in the government's efforts to put a kinder, gentler face on detention – transformed from derided jailer of children to purportedly friendly lock-up of immigrant women.

In early 2011, a UNHCR official described the Berks County Family Shelter – a misleadingly named detention facility which today is the only site in the US where families are detained – as the embodiment "of the best practices for a truly civil immigration detention model". The official explained that "UNHCR believes strongly that the vast majority of asylum seekers should not be detained" but that, in the event that families are detained, Berks is the model to follow. It is clearly important to applaud improvements in the treatment of detainees but is it a good idea for the international community's premier agency protecting asylum seekers to give its imprimatur to efforts to detain them?

Two key features of contemporary immigration detention are its gradual institutional entrenchment in the nation-state (as observed in the shift from prisons to dedicated detention facilities) and its global expansion. These developments appear to be driven by two processes: firstly the diffusion of normative regimes aimed at protecting non-nationals and secondly, the externalisation of interdiction practices from core states of the international system to the periphery. As a result, we are witnessing the emergence of dedicated immigration detention regimes even in countries where there is little evidence of systematic efforts to detain people as recently as ten to fifteen years ago.

Rights actors frequently focus their advocacy on detention by promoting the proper treatment of detainees and applauding efforts by states to differentiate between criminal incarceration

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and the administrative detention of irregular migrants and asylum seekers. However, there is cause for concern that the emergence of specialised immigration detention regimes can lead to an increased use of detention.

A case in point is Europe. In contrast to the US, most European countries ceased some time ago to use prisons for the purposes of immigration detention, in part due to pressure from rights-promoting bodies like the Council of Europe. The recent EU Returns Directive provides that member states must use specially planned facilities for confining people as they await deportation. But the process of shifting from informal to formal detention regimes, which has occurred over the last two decades, has paralleled the growth in immigration detention in this region.

Externalisation

At the same time that detention operations are becoming increasingly specialised in destination countries, these states are endeavouring to export to other countries their efforts to prevent undocumented migration, raising questions about the evasion of their responsibility to adhere to international standards. A case in point is the West African nation of Mauritania, which in 2006 opened its first dedicated detention centre for irregular migrants in the port city of Nouadhibou with assistance provided by the Spanish Agency for International Development Cooperation. Spain's involvement in establishing the detention centre has raised questions over which authority controls the facility and who guarantees the rights of the detainees. While the centre is officially managed by the Mauritanian National Security Service, Mauritanian officials "clearly and emphatically" stated in October 2008 that Mauritanian authorities perform their jobs at the express request of the Spanish government.²

As the Mauritania case demonstrates, efforts by core countries to deflect migratory pressures are leading to the externalisation of controls to states that are not considered main destinations of migrants and where the rule of law is often weak. This raises questions about the culpability of western liberal democracies in

a) the abuses detainees suffer when they are intercepted before reaching their destinations and b) circumventing – by externalising detention practices – the need to conform to international standards relating to a state's right to detain and deport, such as the right to liberty and the prohibition of *refoulement*.

Liberal states often betray a distinct discomfort when locking people up outside criminal processes, especially people protected by additional norms such as those contained in the UN Refugee Convention. States disguise the practice by using misleading terminology – calling detention facilities 'guesthouses' (Turkey), 'guarded shelters' (Hungary) or 'welcome centres' (Italy). They frequently limit access to detention statistics. They selectively apply only those human rights norms that do not call into question the 'sovereign right' to detain and deport. They export detention pressures to the exterior so as to avoid norm-based responsibilities such as admitting asylum seekers. And they endeavour to characterise many of the people subject to this form of detention in such a way as to provoke public fears, and thereby to justify locking up migrants.

Migrant rights advocates should consider de-emphasising discourses that focus only on improving the situation of non-citizens in state custody and re-emphasising the taboo against depriving anyone of his or her liberty without charge. Instead of spurring states to create special institutions – or standard operating procedures – for keeping migrants in their custody, advocates should work to ensure that limitations on freedom remain the exception to the rule.

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1. Women's Refugee Commission and Lutheran Immigration and Refugee Service, *Locking Up Family Values: The Detention of Immigrant Families*, February 2007, pp1-2. <http://tinyurl.com/WRC-LRIS-lockingup-2007>

2. European Social Watch, 'Spain: The Externalisation of Migration and Asylum Policies: The Nouadhibou Detention Center', 2009. <http://tinyurl.com/ESW-Spain-2009>