



International
Detention Coalition

Human rights for detained refugees,
asylum seekers and migrants

Alternatives to immigration detention in Africa

A summary of member findings from six countries, 2015 - 2016

This report was made possible by the contributions of our members across Africa. Written by Tiffany Shakespeare and Junita Calder with support from Robyn Sampson. Report design by Leeanne Torpey and illustration/ infographics by Haydn Jones.

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1. Introduction

In June 2014, African Members of the International Detention Coalition (IDC) met in Kampala, Uganda. They decided to undertake combined information gathering about immigration detention, with a focus on the detention of children, with the hope of triggering meaningful advocacy actions at National and Regional Levels, aiming to reduce, and ultimately end, the use of immigration detention.

Taking a solutions-focussed approach, at least one member organisation from each of the countries of Libya, Egypt, Tanzania, Kenya, Zambia, and South Africa conducted mapping of legislation, policy and practice related to immigration detention and alternatives to immigration detention in their national contexts.¹

This summary outlines the key findings drawn from this combined data, which was submitted to IDC by members, governments and international actors in late 2015. This data was supplemented by desk-based research between July - September 2016. Further countries will be mapped in the future.

The key challenge encountered by IDC members and trusted partners in conducting this mapping exercise was the lack reliable data. Of the six countries surveyed, only the Zambian government provided an official estimate of the numbers of people affected by immigration detention, either currently, or within the past year. This highlights the real need for the continued strengthening and transparency of data management across the Region.

In relation to alternatives to immigration detention, the report uses the IDC's Community Assessment and Placement (CAP) model as the framework for analysing the use of alternatives in each country. The CAP model was developed by the IDC as an outcome of our global research on alternatives to detention. It is explained fully in *There Are Alternatives (Revised Edition)*.² The CAP model is a tool for governments, civil society and other stakeholders to build systems that ensure detention is only used as a last resort and that community options result in optimal outcomes. The data on detention of children is presented in a separate section as the IDC's focus on vulnerable groups had a particular emphasis on children.³

1.1 Key messages

1

Introducing or improving screening and assessment will lead to systemic improvements

Introducing individual screening and assessment will likely:

- Reduce rates of arbitrary detention by ensuring detention is legal, necessary, proportionate and applied without discrimination in each case
- Reduce rates of unnecessary, multiple detentions of the same person
- Increase identification of children
- Increase identification of vulnerable persons
- Increase understanding of the mixed migrant population

2

Expanding child-appropriate community placement options, particularly for unaccompanied and separated children, will reduce child rights violations

An expansion of child-appropriate placement options will likely:

- Reduce the detention of children, as they will be directed in the first instance to appropriate community placement options
- Reduce the length of time children are detained
- Reduce the harms inflicted on children
- Improve the protection of children on the move

3

Expanding alternatives to detention will reduce pressures on detention systems and improve humane outcomes

An expansion of community placement options will likely:

- Reduce the overall detention population and the length of time detainees are held
- Reduce the pressures within places of detention (such as overcrowding, malnourishment, riots)
- Reduce the harms of detention for those detained
- Improve human rights records



4

Increasing the access of non-governmental organisations to places of detention can ensure resources are being used effectively

Increasing access to places of detention for service delivery and monitoring of detention will likely:

- Ensure that responsibility for service provision is shared among providers, often with a wealth of experience working with the populations in immigration detention and the ability to overcome language and culture barriers
- Contribute to a non-punitive environment with improved public health outcomes, with positive flow on effects within places of detention
- Enable immigration detention to be used in a manner that complies with international and AHCPR requirements, ie immigration detention should only be used exceptionally and as a last resort, after alternative measures have been pursued
- Create oversight to ensure the identification of vulnerable groups, such as children, who should never be detained for migration related reasons



5

Increasing regional cooperation to protect vulnerable migrants (such as children, survivors of trafficking and recognised refugees) will help to stabilise populations and reduce pressures for onwards movement

Increasing regional cooperation to protect vulnerable migrants will likely:

- Enable situations in which the needs of migrants are being met, such as tracing, decreasing the chances of onward movement
- Improve child protection systems through better transnational care of children in need
- Enable governments to meet required criteria of the Migration Dialogue for Southern Africa (MIDSA), the African Commission on Human and Peoples' Rights (ACHPR) and international human rights obligations

1.2 Summary of key findings

Detention

The use of detention as a primary immigration management tool rather than as a last resort – both in administrative and criminal settings⁴ – is widespread in five out of the six countries surveyed. Migrants, refugees and asylum seekers risk arbitrary, unlawful, indefinite, and/or multiple, compounding periods of detention in all six countries, which contravenes international and regional legal obligations.⁵ The six countries are experiencing contradictory pressures around the detention of migrants, asylum seekers and refugees, for example, from the EU to increase detention and from regional alliances like the Migration Dialogue for Southern Africa (MIDSA) to develop alternatives and reduce the use of detention.

The IDC recommends:

- Training of front-line officers to screen migrants, refugees and asylum seekers and ensure individualised determination of decisions to detain
- Increased documentation such as exit visas or temporary stay or work permits to regularise migrants, refugees and asylum seekers whilst their immigration status is being determined
- Periodic, independent review of any detention decision in order to avoid indefinite detention

Alternatives to detention

All six countries exhibit use of alternatives to immigration detention ('alternatives'). The IDC defines alternatives to detention as any law, policy or practice by which persons are not detained for reasons relating to their migration status. Placement in the community is the most prevalent alternative, with individuals being housed in open shelters or issued documentation to regularise their stay whilst their migration status is being determined. A holistic case management approach is also being used in some places, offered by governmental and non-governmental organisations (NGOs) to migrants, refugees and asylum seekers both inside and outside of detention, responding to the unique needs and challenges of individuals. However, case management is less prevalent than one off interventions, due to a lack of resources to provide on-going assistance. The IDC recommends that:

- Alternatives to detention should be available in law and implemented in practice
- Individuals should be placed in an appropriate community setting pending resolution of their immigration status
- Holistic case management is available both in and outside of immigration detention to screen, identify, assist, and refer migrants, asylum seekers and refugees to all services relevant for their situation

Access to places of detention

The six countries each allow varying degrees of access to places of detention. Monitoring may be permitted but bodies mandated to write reports are often not independent and reports are not always published nor made publically available. Access to detention in order to provide services to detainees is more common for international non-governmental organisations than for local NGOs. Resolution of individual cases inside detention is hampered, since access to legal aid is often restricted. The IDC recommends that:

- Independent, national organisations be mandated as monitoring bodies, trained to not only seek improved detention conditions but also to identify and promote the use of alternatives
- When access for service provision is possible, a holistic case management approach is employed

Case management may include the keeping of relevant notes, which can be used for individual welfare monitoring and screening towards appropriate alternatives. However, such data collection can assist even when full case management is not possible, with statistics being anonymised for policy design purposes.

Detention conditions and places

All respondents highlight challenges such as a lack of resources and capacity – both governmental and civil society – to uphold minimum standards of detention conditions. The use of ad hoc detention places such as military bases (South Africa) and football stadiums (Kenya) increases the difficulty of ensuring minimum standards. The IDC recommends that:

- Individual are supported to live in the community while their migration status is being determined.
- If detention must be applied as a last resort, all places of detention must meet international minimum standards.

Detention of vulnerable groups

All countries report the detention of vulnerable groups such as refugees, trafficked persons, survivors of torture/trauma, pregnant women and others. The IDC recommends:

- Training of front line officials so they are able to identify vulnerable individuals in need of specialised support in community settings

Children

Legislation calling for the protection of children exists in all countries mapped to date. While there are reports of some children residing with protection in the community, other children are being detained. The IDC recommends that:

- National policies and law ensure children are not imprisoned

2. Use of Immigration Detention

2.1 Indefinite detention

Whilst four of the six countries have time limits on detention codified in law,⁶ Libyan and Egyptian legislation allows for the indefinite detention of foreign nationals.⁷ In practice, Zambia is the only country that generally keeps to its legal time restrictions.⁸ The other three countries hold detainees for protracted periods of time and, sometimes, indefinitely.

The IDC recommends that periodic, independent assessments should review detention decisions and practices in order to avoid indefinite detention. This type of review is required by human rights laws such as the ICCPR [Article 9], of which all six countries are signatories. Even detention that may be non-arbitrary in its inception will become arbitrary at the moment it is no longer an absolutely necessary, proportionate measure. The only way to determine this is to regularly and periodically assess the continued necessity and proportionality of the detention.⁹

2.2 Arbitrary detention

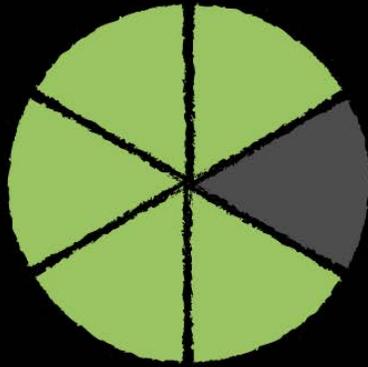
Arbitrary detention is evident in five out of six countries.¹⁰ For example, there have been mass arrests of undocumented foreigners in countries such as Kenya (Operation Usalama Watch, 2014)¹¹ and South Africa (Operation Fiela, 2015).¹² The risk of arbitrary detention is high when individual assessment is ignored. The trend of arbitrary and unlawful detention, combined with an undersupply of affordable legal representation for migrants, refugees and asylum seekers, means recourse to legal remedies is often of limited availability and effectiveness.¹³

The IDC recommends training front-line officers to screen migrants and ensure individualised determination is carried out. The individual, where possible, should then be supported in the community without the use of detention while their migration status is being determined. Legal support should be provided free of charge throughout this legal status determination process.

2.3 Multiple detentions

According to the five countries that responded on this point, the phenomenon of individual migrants being subjected to multiple or compounding periods of detention is widespread. Whilst this does not always contravene national or international law, three administrative problems can be identified that have led to

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Five out of six countries lack consistent access to immigration detention by international organisations.

Increasing the access of non-governmental organisations to places of detention can ensure resources are being used effectively.



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100% DESPITE

of countries surveyed making steps towards reducing child detention, all reported detaining children in adult facilities.

Expanding child-appropriate community placement options will reduce child rights violations



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detention of migrants and sometimes refugees and asylum seekers too - for protracted periods of time. Firstly, migrants are re-detained and re-deported on multiple occasions¹⁴ in four out of six countries surveyed.¹⁵ This is due to a lack of documentation issued by the host government or a lack of suitable alternatives. For example, in South Africa, a lack of alternatives lead to officials releasing people from immigration detention, then immediately detaining them again to 'reset the detention clock', thus avoiding the 120-day limit.¹⁶ Secondly, migrants are sometimes re-detained at the border when trying to exit voluntarily. In these cases, migrants who enter the country with regular status but overstay briefly before choosing to repatriate at their own expense can be caught up in detention and eventually deported at significant cost to host governments. Similarly, those who enter irregularly but subsequently either reach their personal savings targets or fail to find work in the informal economy and then choose to leave of their own accord are frequently detained at point of departure, even if they have already served a period of detention for reasons related to their migration status. Both occurrences have been reported at border crossing points in Libya and Zambia where officials have expressed dissatisfaction with the situation, suggesting instead an exit visa system.¹⁷ Thirdly, migrants can face compounding sentences. Some migrants first serve time in criminal justice settings (relating either to their irregular entry into the country where such is classed as a crime or to committing some other criminal offence, like theft), and then again for an administrative purpose. For example, in Tanzania, migrants who have already served the prescribed time and/or paid a fine for conviction due to their 'illegal'¹⁸ entry are then detained pending their deportation.¹⁹

The IDC recommends that governments improve data collection and migration status documentation, in order to avoid multiple detentions in the same country. This could include the creation of exit visas for those without status in the country who are at the point of departure, or temporary work permits that decriminalise the migrant's temporary stay in the country. Both options would therefore avoid detention at the point of voluntary or independent departure. Where available, the International Organisation for Migration (IOM)'s Assisted Voluntary Return and Reintegration (AVRR) programmes may also create legal exit routes for those without the means to leave voluntarily, unassisted. Secondly, the IDC recommends that administrative loopholes whereby authorities legally surpass caps on the length of detention must be addressed. Policy initiatives must ensure migrants, asylum seekers and refugees are not held for protracted periods of time without meaningful review.

2.4 Contradictory regional pressures

The six countries are experiencing multiple and contradictory pressures relating to the detention of migrants, refugees and asylum seekers. Different regional interests see countries under pressure such as that from the EU and South Africa to increase the interception and detention of migrants, asylum seekers and refugees, while preventing radicalisation. On the other hand, encouragement to live up to their national and international Human Rights commitments and to develop and

implement alternatives, is exerted through processes such as the Migration Dialogue for Southern Africa (MIDSA), the Universal Periodic Review, the African Committee of Experts on the Rights and Welfare of the Child or the African Commission on Human and Peoples' Rights review processes. Many countries face both such competing pressures.

Regional pressure to detain

Two out of six countries clearly identify pressure from regional bodies and alliances to detain. Egypt highlights EU demands and constraints to resort to detention in order to discourage and prevent irregular movements heading to Europe.²⁰ In 2016, the North Atlantic Treaty Organisation (NATO) announced a naval operation that works with Libyan coast guards to intercept boats leaving North African shores. In returning migrants and asylum seekers back to Libyan detention centres, these regional alliances continue to invest in Libya's damaging detention system.²¹

The IDC recommends that advocacy take place at the EU-level, with the aim of minimising the existing pressure placed on countries in Northern Africa such as Egypt and Libya.²² The EU and European government participants in bilateral agreements with North African governments should ensure that none of their training, financing, or material assistance to authorities increases the infrastructure for, nor use of, unnecessary immigration detention. Neither should it aggravate existing detention conditions that lead to human rights abuses.²³

Regional pressure to develop alternatives

South Africa, Tanzania, and Zambia participate in the Migration Dialogue for Southern Africa (MIDSA). As part of the Southern African Development Community (SADC), Member States have upgraded their commitment from exploring alternatives to detention, to developing and implementing alternatives to detention:

1.7 Develop and implement alternative options to detention through the sharing of existing practices in the region and elsewhere in the world, and through consultations with relevant experts, organisations and institutions²⁴

This commitment comes with a plan of activities and outputs for Member States to pursue in 2017-2018, detailed in the MIDSA Regional Action Plan.²⁵

Another source of regional pressure comes from arguments that the significant financial investment required to establish and maintain immigration detention systems would be better spent on alternative measures that benefit both migrant

and host populations.²⁶ The IDC finds such arguments particularly compelling in a region with few resources to staff, maintain and operate detention.²⁷

For example, Zambian law²⁸ provides access to work (business creation) rights for migrants and refugees who have a minimum amount of investment capital to start their own enterprise. This is seen as contributing to the economic growth of the country. It has been suggested that such opportunities also reduce the pressure on people to move onwards.²⁹ The impact of such 'alternative' policies must be quantified through improved data collection and considered as examples of good Regional cooperation and migration management practice. To this end, the IDC commends recent research looking into the beneficial economic impact of cash-based support to refugees on host communities in Rwanda.³⁰

3. Alternatives to immigration detention

All six countries surveyed exhibit use of at least some alternatives to detention ('alternatives'), that is, legislation, policy or practice that ensures people are not detained for reasons relating to their migration status. Previous IDC research has found that alternatives are effective at achieving migration governance objectives whilst costing less and being more humane.³¹ However, implementation of alternatives is not systematic in any of the countries surveyed; unfortunately, the use of detention is commonplace. Both positive and negative trends are evident in the development of legislation and practice, as can be seen when such trends are assessed against the IDC's Community Assessment and Placement (CAP) model. The CAP model encourages three main processes: screening and assessment, community placement, and case management. Its underlying principles are liberty (presumption against detention)³² and minimum standards.³³ In this section, we report on examples of the use of screening and assessment, case management and community placement.

3.1 Screening and assessment

Three out of six countries have domestic legislation that codifies the use of efficient and early screening, assessment, and identification of migrants, asylum seekers and refugees. For example, South African, Kenyan, and Zambian legislation all outline registration with authorities,³⁴ individual assessment, and provision of documentation to avoid automatic detention. In practice, two countries³⁵ report some successful implementation of their screening and assessment laws. For example, Zambia's mixed migration training on its National Referral Mechanism³⁶ has raised awareness and capacity of a variety of institutions to identify vulnerable individuals and refer them to appropriate alternative arrangements.³⁷ Such mechanisms include assessment of immediate protection and assistance needs - and sometimes collection of bio-data - with a view to asylum seekers, refugees and migrants living in the community while more in-depth assessments take place.³⁸

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1 HUNDRED PERCENT

of countries have begun to adopt alternatives to immigration detention.

Expanding alternatives to detention will reduce pressures on detention systems and lead to more humane, sustainable outcomes



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Three out of six countries have legislation to use screening & assessment to avoid harmful, expensive immigration detention.

Introducing or improving screening and assessment will lead to systemic improvements.



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The IDC recommends that governments across the region introduce, and harmonise, screening and assessment mechanisms. The development of such mechanisms should be informed by human rights obligations, and training provided to all border staff during roll out. It is further recommended that a substantial percentage of border staff have a social work or human rights background, as these professionals are trained to assess individuals on a case-by-case basis.³⁹ This would help to ensure consistent treatment of asylum seekers, refugees and migrants and their placement into meaningful alternatives. Finally, the IDC recommends that the good practice of providing identification documentation in host countries becomes widespread. Such documentation is an important protection from detention, and can also facilitate access to community services.

3.2 Case management

Case management⁴⁰ is a strategy for supporting and managing migrants, asylum seekers and refugees both in detention and in the community in a holistic way, ensuring their rights and access to services while they await the resolution of their migration situation.⁴¹ Case management takes into account not only the legal case regarding an individual's migration status, but also each person's specific circumstances (such as family reunification options) and basic needs (such as shelter, health care, etc.). At least three out of the six countries surveyed have laws that call for provision of specific services such as health checks, allow for family reunification and so on. There also exist instances of additional services being provided by international agencies and local NGOs on an ad hoc basis.⁴² However, in most of the countries services do not extend to holistic state-run case management though this is the most effective practice in terms of welfare and compliance⁴³ not to mention creating awareness of and access to existing services. Also, in all countries surveyed there are far fewer legal and social work practitioners than is needed to adequately serve the entire refugee and migrant population.

The IDC recommends that the holistic case management efforts piloted by civil society actors should be supported and expanded, with the ultimate aim of incorporating case management into national border management policies and legislation. Frontline officers would thus be made aware of appropriate referral pathways for all necessary social and legal services, while case managers could provide a single point of contact for meaningful follow up. The IDC also recommends that effective translation and interpretation be provided at all points along the process – but crucially at the point of first contact. Strategic litigation and advocacy that highlights existing provisions for case management and alternatives in current legal frameworks may also help to ensure fair and timely resolution of legal cases and better social outcomes for both migrants, refugees and host communities. Any shift towards widespread application of alternatives will reduce the chance of ill-effects caused by detention while effective case management will ensure the needs of individual persons are met through social service provision and their strengths are maximised for self-support- before, during, and after delivery of a legal migration status decision.

3.3 Community placement

Four out of six countries⁴⁴ have legislation that permits certain migrants, including refugees and asylum seekers, to reside in the community as an alternative to immigration detention. For example, Zambia's Immigration Act provides for bail [Section 57] or report orders [Section 14].⁴⁵ Egyptian law allows for directed residence pending deportation,⁴⁶ and South African law states that children and pregnant women must be held in appropriate and open shelters.⁴⁷ Five out of six countries provided further examples of positive practices. Emergency housing and shelters for vulnerable migrants, asylum seekers and refugees – run by civil society organisations, government agencies, or both in partnership – are in use in Egypt,⁴⁸ Kenya,⁴⁹ and Zambia.⁵⁰ In Kenya, asylum seekers are removed from detention and escorted to refugee camps pending the determination of their claim.⁵¹ In Egypt, Libya and Tanzania, there is evidence of good practice that is *not* prompted by law. It was reported that asylum seekers arriving in Egypt who are awaiting refugee status determination (RSD) by UNHCR, are not arrested when they approach immigration authorities.⁵² However, there is no Egyptian law authorising the residence of migrants and asylum seekers pending RSD.⁵³ By conducting intake screening that looks not only at the vulnerabilities but also strengths of individuals, some detention centre managers in Libya have created innovative release-to-work programmes whereby migrants are issued ID cards and released under the protection of an employer, whose treatment of the migrants is regularly reviewed.⁵⁴ Finally, despite law prohibiting refugees and asylum seekers from traveling more than four kilometres from camps in Tanzania without permits,⁵⁵ the Ministry of Home Affairs issues exit permits to refugees who have a credible reason for exiting. Refugees arrested outside camps without permits are usually sentenced to community service rather than imprisonment, fines, and deportation – as was previously the case.⁵⁶

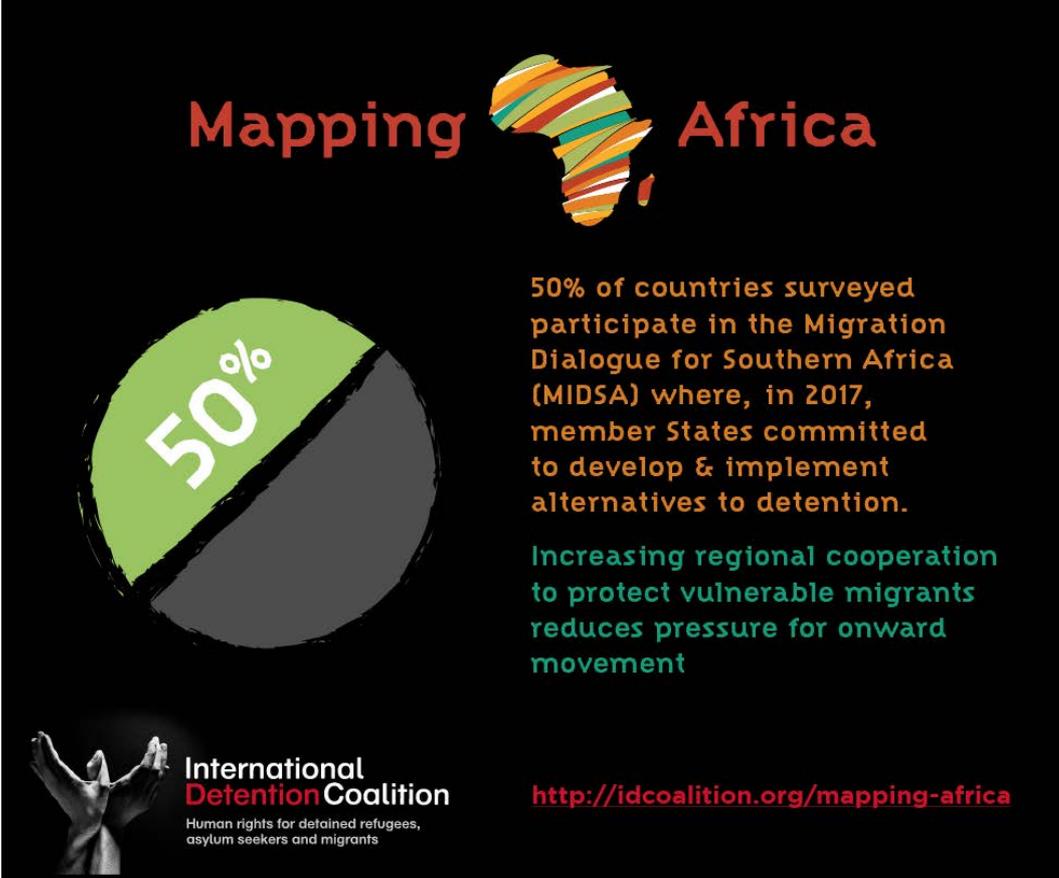
The IDC recommends that wherever possible governments work to close the gap between legislation that allows for the freedom of movement of asylum seekers, refugees and migrants and the implementation of such throughout all parts of their territory. The IDC also recommends that where alternatives have arisen but are not yet provided for in law, these good practices be codified to ensure their continuity and where possible, expanded. Governments should also support the continued development of additional community placement options and their compliance with international standards.

3.4 Positive legislative reforms

Despite the varied landscape of alternatives in law and practice, three out of the six countries, at the time of surveying, have plans to review their refugee and immigration legislation with the potential that they will incorporate more provisions outlining alternatives. The Zambian government intends to review the *Immigration Act* to codify more alternatives, the *Prisons Act* to create purpose built transit or immigration centres,⁵⁷ and the *Anti-Human Trafficking Act* and *Immigration Deportation Act* to ensure they are in line with international legal principles, including the non-punishment of victims.⁵⁸ NGOs are lobbying for additions of

alternatives during the governmental review of Kenya's 2008 *Refugees Act*⁵⁹ and Tanzania's 1995 *Immigration Act* and 1998 *Refugees Act*.⁶⁰

The IDC recommends that civil society engage with governments to expand legal provisions outlining alternatives, particularly when legislative reforms are in the pipeline.⁶¹ Highlighting alternatives that can be developed within existing national legislative and policy frameworks, as well as the benefits of training on such provisions for frontline officers, is especially encouraged. In sum, alternatives to detention should be available in law and consistently implemented in practice.



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50%

50% of countries surveyed participate in the Migration Dialogue for Southern Africa (MIDSA) where, in 2017, member States committed to develop & implement alternatives to detention.

Increasing regional cooperation to protect vulnerable migrants reduces pressure for onward movement

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4. Access to places of detention

Access to detention is usually limited to organisations that provide services, and those that undertake monitoring of conditions. However, the IDC is especially interested in the use of access to identify those detainees who would benefit from referral to an alternative to detention. This is particularly important in situations when the detaining authorities are not adequately screening the detention population for those who should be placed in a community-based alternative. However, our members in Africa are engaged in a variety of activities in detention that may or may not overlap with this aim. Where possible, we encourage that all service providers assess the strengths and/or vulnerabilities of individuals, and any unsuitability of detention conditions be highlighted through monitoring access.

4.1 Access for service provision

Access to places of detention for the purposes of service provision is vital to ensure the legal, social and healthcare needs of individual migrants, asylum seekers and refugees are met, according to their rights under national and international law. Five out of six countries have legislation that grants international organisations access for these reasons.⁶² All six countries report the practice of local and international human rights groups and faith groups entering facilities – through formal or informal arrangements – to provide services, to identify potential refugees and asylum seekers, and to advocate for their release.⁶³ However, entry is often restricted due to finite resources and groups can be denied access on an ad hoc basis, despite being the appropriate mandate holders.

Domestic legislation in all six countries stipulates that access to legal advice should be available for all migrants, asylum seekers and refugees in detention. In theory, legal assistance is offered in at least some places of detention in all countries, by either local⁶⁴ or international⁶⁵ organisations. This ensures migration status cases are resolved with access to rights such as legal aid, information about proceedings, and advice during appeals. However, more often than not, people in each of the six countries⁶⁶ do not have access to legal aid due to insufficient screening and referrals; when they do, it is limited and irregular. Three out of six countries report no access to interpreters.⁶⁷ At least four out of six countries report that migrants, including asylum seekers and refugees are regularly not informed about the reasons for their detention.⁶⁸

The IDC recommends that access to facilities to provide services should be encouraged, and that service providers should be supported to identify those who should not be detained, that is, ‘screened out’ of detention either for reasons of vulnerability or due to their individual resilience factors which would make them more likely to succeed in alternatives. When access is possible, organisations should take a holistic case management approach, make effective referrals and keep extensive records. Data collection can assist even when holistic case management is

not possible, with statistics being anonymised for policy design purposes. Religious communities who regularly minister to their followers within detention centres, as well as consular officers with access to their detained nationals, should be included in regular dialogue and trainings with other service providers.

4.2 Access for monitoring

Access to places of detention for monitoring⁶⁹ is essential for improved resource allocation, transparency, and independent oversight of the management practices of the state authority force,⁷⁰ private company,⁷¹ or militia.⁷² Visits can ensure upholding of Minimum Standards⁷³ reduce the risk of human rights violations (such as torture and inhuman and degrading treatment), and identify vulnerable groups for referral to meaningful alternatives. Legislation in four out of six countries mandates an independent body to monitor conditions in all places of detention, whilst legislation in two of six allows for monitoring of places of either immigration or police detention.⁷⁴ Furthermore, Kenyan law⁷⁵ stipulates that detention monitoring reports by the Independent Policing Oversight Authority (IPOA) must be available for public use. IDC members confirm that these laws are implemented with reports of some *ad hoc* visits taking place. In Zambia, places of detention are monitored at least six times per year during joint visits.⁷⁶ Furthermore, monitoring in Zambia is being supported by UNHCR who want to enhance coordination on detention monitoring by engaging the (Zambian Human Rights Commission, the Department of Social Welfare and others) through Zambia's NAP.⁷⁷ The Refugee Consortium of Kenya (RCK) runs a detention-monitoring scheme with around five missions per year during which they visit police stations, prisons, and immigration offices.⁷⁸ As well as mandated bodies, IDC member data reveals that Embassies, international NGOs, and journalists are sometimes given access to report on detention conditions in at least five of the countries surveyed.⁷⁹

Despite some positive trends, monitoring practices are limited in the majority of cases. Firstly, not all monitoring bodies currently mandated are independent of state authorities and, therefore, influence (such as Libya's governmental DCIM). Others, such as Egypt's National Council for Human Rights, may not be independent in practice. Secondly, monitoring reviews are not made publicly available in five out of six countries.⁸⁰ Zambian reports are only available for internal governmental use.⁸¹ There is often no follow up in Egypt despite public access to monitoring reports.⁸² Finally, despite stipulating a mandated body, five out of six countries highlight a lack of capacity to monitor centres.⁸³

The IDC believes it is helpful for organisations who have access to detention centres for monitoring to keep extensive records and case notes. This allows for more robust monitoring during visits and boosts the amount of information available for holistic case management, legal case resolution, and advocacy work. Secondly, the IDC recommends that all countries ratify the Optional Protocol to the Convention against Torture (OPCAT) without reservation. This would assist with the establishment of a regular monitoring mechanism by independent national and/or international bodies in detention facilities [Article 1].⁸⁴ Finally, the IDC recommends governments mandate NGOs to carry out monitoring, in addition to any international oversight, to

boost local capacity and increase the use of alternatives through effective referrals and the 'screening out' of those who should not be detained.

5. Detention places and conditions

5.1 Places

Two out of six countries⁸⁵ have purpose-built immigration detention centres and five out of six countries routinely use criminal prisons to hold persons for reasons related to their migration status.⁸⁶ All six countries reportedly make use of *ad hoc* or inadequate detention places, such as military bases,⁸⁷ football stadiums,⁸⁸ or airport transit areas.⁸⁹ Whilst each country confirms the separation of genders as common practice, segregation based on legal status and age⁹⁰ varies from country to country, as well as from facility to facility within countries. In South Africa and Zambia, the place of detention and the practice of legal separation is dependent on the stage of the proceedings. In South Africa, migrants, asylum seekers, refugees and criminals are housed together before migrants are identified and moved to Lindela, an immigration detention facility.⁹¹ In Zambia, migrants, including unidentified asylum seekers and refugees are held in police cells before trial for migration-related offences and prisons after trial.⁹²

The IDC recommends that the immigration status of the individual is resolved whilst he or she resides outside of detention places, in the community. Such alternative arrangements should be codified in law. If detention must be applied as a last resort, all places must meet international minimum standards.

5.2 Conditions

Without exception, reports from the six countries highlight a lack of resources and capacity – both of government and civil society – to uphold minimum standards of detention conditions.⁹³ Poor conditions include unhygienic environments, lack of adequate food or unreasonable spacing between meals, lack of medical services, financial and physical exploitation, physical abuse (violent, sexual violations – particularly against women and young boys⁹⁴), extortion, bribery for release, forced labour and so on. Diffusion of accountability between various authorities in charge of places of detention results in inconsistent treatment of people in detention. Especially when authority is delegated to private companies (such as Bosasa, running Lindela in South Africa), or militia groups in Libya, state control is reduced. This makes compliance with national or international legislation more difficult to enforce and requires different advocacy strategies by NGOs and state officials.

The IDC recommends that where detention is necessary and unavoidable, all centres must meet international minimum standards. The international community and civil society can be involved to assist authorities until such time as they are able to ensure such standards without support.

6. Detention of vulnerable groups

Vulnerable individuals, such as refugees, asylum seekers, stateless persons, trafficked persons, undocumented persons, children,⁹⁵ pregnant women, the elderly, survivors of torture and individuals with medical conditions, should receive particular attention due to their specialised needs and the disproportionality of the harm to them – and on-going recovery costs – caused by any period of time they spend detention.⁹⁶

6.1 Positive trends

Five out of six countries are bound by both national and international laws protecting refugees and asylum seekers.⁹⁷ Some groups, such as South Sudanese and Somali nationals in Kenya, have been granted *prima facie* refugee status.⁹⁸ However, Libya has no domestic asylum policy nor has it acceded to relevant international conventions. Zambia alone has a law that protects stateless persons from administrative or criminal detention.⁹⁹ Four out of six have laws that recognise and protect trafficked persons; however gaps in implementation do exist.¹⁰⁰ Charitable assistance to at least some vulnerable groups outside of detention is available in all countries. For example, financial assistance is provided to the most vulnerable refugees in Egypt, such as those with a medical condition or single mothers, through Caritas in partnership with the UNHCR.¹⁰¹

6.2 Negative trends

Notwithstanding these positive trends, five out of six¹⁰² countries also report the widespread detention of vulnerable groups. Three countries cite that particular nationalities or religions are at higher risk of detention: namely, Somalis in Kenya,¹⁰³ and Sub Saharan Africans and Christians in Libya and Egypt.¹⁰⁴ Similarly, the implementation of existing legal safeguards for refugees and, where they exist, for migrants, is restricted due to conflicting legal provisions within countries. For example, the South African Immigration Act 2002, which allows the Department of Home Affairs (DHA) to detain and deport vulnerable persons in an unlawful and arbitrary manner, is routinely applied, thus overriding the Refugees Act 1998 which offers protections for refugees and asylum seekers.¹⁰⁵ Likewise, in Libya, practice on the ground includes the arrest and protracted detention of all individuals without status under Law 19 (of 2010), despite the new constitutional declaration in 2012 proclaiming that refugees and asylum seekers should be given rights.¹⁰⁶

In general, protection issues are prevalent and the IDC recommends increased training of front line officials to improve their ability to identify vulnerable individuals within mixed migration flows, and to make referrals to appropriate alternatives. The IDC recommends taking a holistic case management approach to ensure the needs of vulnerable individual are met in sustainable ways, maximising their own strengths, available resources and reducing the chance of exploitation. The harmonisation of international law with domestic law could also ensure more robust legal safeguards.

6.3 Refoulement

There are confirmed reports of recent incidents of *refoulement*¹⁰⁷ from one out of six countries.¹⁰⁸ Refugees – including pregnant women and children – have been deported from Egypt to Syria, Palestine, Sudan, and Eritrea.¹⁰⁹ Other high-risk deportations take place when individuals have not been screened rigorously enough to rule out the possibility that their deportation may amount to *refoulement* and when asylum seekers are unable to lodge an asylum application after being detained. IDC members in all six countries highlight the risk of violating the non-*refoulement* principle.

The IDC recommends increased and improved screening, provision of legislative and operational safeguards, and increased access to legal aid and information about the migration or refugee status determination process in migrants' own languages to ensure protection from *refoulement* from places of detention.

7. Children

7.1 Positive trends

The detention of children is prohibited in one out of six countries – namely Egypt.¹¹⁰ Two of six countries (South Africa and Kenya) have established that every child has a right not to be detained, except as a measure of last resort.¹¹¹ The law of a further three countries have provisions insisting on the primacy of the best interests of the child.¹¹² All countries also have positive legislation that may act to increase alternatives to detention for children. Laws providing for the community placement of migrant children exist in South Africa, Kenya, Zambia, and Egypt, where children may be held in shelters,¹¹³ released on bail¹¹⁴ or placed in foster care.¹¹⁵ Other positive legislative trends include a Kenyan provision that children found at the border with an unidentifiable nationality, will be presumed to be the nationality of the host country.¹¹⁶

Regardless of legal safeguards, there is evidence from five out of six countries that children are routinely protected in practice. In Tanzania, despite no law differentiating the treatment of children in detention, the UNHCR and partners

follow an official policy of placing unaccompanied refugee children into a foster program, whereby they are appointed culturally and linguistically appropriate refugee foster families in the refugee camps.¹¹⁷ Similarly, *ad hoc* practices by police officers in Tanzania include children being accommodated in the homes of local officers rather than staying in prison with parents.¹¹⁸ However this particular practice is inconsistent with the Convention on the Rights of the Child that prefers family unity for children otherwise subject to detention.¹¹⁹ It would be preferable for parents to be released along with their children to suitable family-friendly alternatives. In Zambia, non-national children are sometimes assigned to foster homes or legal guardians.¹²⁰ Whilst the Zambian Anti-Human Trafficking Act¹²¹ does not distinguish between smugglers and those being smuggled – giving an automatic fifteen year sentence to both groups, even when children are involved – in practice, the president has released subject children.¹²²

7.2 Negative trends

In spite of the aforementioned positive trends, members from all six countries report the detention of children in adult facilities. Any differential treatment of children is rare in Libya. The inadequate protection of children is apparent in South Africa where neighbouring Zimbabwean news sources have documented the insufficiently considered deportation of Zimbabwean children.¹²³

In line with international human rights law, the IDC believes that children should never be detained for migration purposes. States should expeditiously and completely end the immigration detention of children and implement child-sensitive alternatives to detention.¹²⁴ Children should not be separated from their caregivers¹²⁵ and if they are unaccompanied, suitable care arrangements must be made.¹²⁶ The best interests of the child must be the primary consideration in any action taken in relation to child migrants. Cooperation of all relevant government departments and civil society groups, creating or boosting the capacity of national child support referral networks, and dedicated holistic child-sensitive case managers are also recommended.

8. Conclusion

This mapping report has presented information collated from IDC Member data and additional desk research about the laws, policies and practices in six African countries that allow migrants and refugees to live in the community, with freedom of movement, while their immigration status is being resolved or while they are awaiting removal from the host country. Spontaneous measures created by civil society, as well as alternatives to detention codified in law or policy, were briefly examined using the IDCs Community Assessment and Placement (CAP) Model. Each

country surveyed used at least some functioning alternatives to unnecessary immigration detention, a sign of hope for the future.

In addition, the report further sought to describe some of the present realities of immigration detention - particularly of vulnerable groups - throughout the same six countries. This has served to identify opportunities for improved detention monitoring, service provision and system change that would allow an increased use of efficient alternatives, reducing the harm caused and cost incurred through continued use of unnecessary immigration detention. A significant challenge for each state surveyed is to close the gap between policy and practice, moving toward a system that treats all non-citizens in a humane and dignified manner.

The IDC recommendations throughout were made by drawing on our programme of research, which has now spanned more than a decade and identified over 250 examples of community-based migration management practices in over 60 countries. We are very glad to present these findings, together with our African Members and partners, and look forward to increasing our understanding of the particular successes and on-going challenges of this unique continent, which will allow for the expanded use of alternatives to immigration detention in Africa.

Annex 1:

Individual Country Detention Profiles

Egypt

Migrants, refugees and asylum seekers from Syria, Palestine, Iraq, and sub-Saharan African countries have been met with violent and arbitrary imprisonment. Egypt's primary legal provisions relating to immigration detention include the 2014 Egyptian Constitution, Law 89 of 1960 (as amended by Law No. 88 of 2005) concerning the Entry and Residence of Aliens, and the Criminal Code. There is no legal time limit on administrative detention. However, Article 119 of the Child Act provides for the immediate release of children under 15 years old. In practice, Egypt has been condemned for denying migrants access to due process, legal aid, appeals, and interpreters. Sub-Saharan African migrants routinely lack protection in comparison with those from neighbouring and/or more culturally and linguistically similar countries, who tend to be less targeted. With no specific immigration detention facilities, the Ministry of Interior, and increasingly the military, incarcerate migrants in criminal prisons, police stations and *ad hoc* places such as military camps. Vulnerable individuals such children (including unaccompanied adolescents), refugees, asylum seekers, stateless people and trafficked persons are detained, and have even been deported to countries such as Syria and Eritrea. As well as poor detention conditions, Egyptian soldiers have implemented a "shoot-to-stop" policy targeting migrants crossing from Egypt to Israel (2007) and they also target smuggling vessels heading to Europe. Independent organisations have limited access to centres where people are held, and there is no independent body that monitors places of detention. Despite these challenges, civil society and international organisations have been able to provide vital support to vulnerable populations both inside and outside of detention.

Kenya

Kenya is both a significant destination country for migrants and refugees from the Horn of Africa; and a country through which migrants heading to South Africa transit. The primary pieces of immigration legislation are the 2006 Refugee Act (a new bill to replace the Act is being drafted) and the 2011 Kenyan Citizenship and Immigration Act. The latter establishes that entering or remaining in Kenya unlawfully is a criminal offence punishable with up to three years imprisonment and/or a fine of 5,500 USD. All migrants, including vulnerable populations, risk multiple convictions and protracted detention due to a general disregard of legal safeguards. Limited communication between immigration officials, police and prison officers and inadequate awareness of refugee law by front line officials, means migrants, refugees and asylum seekers are locked up in criminal prisons, police stations and refugee camps. Despite occasional security crackdowns and arbitrary arrest of foreigners in recent years, a large population of irregular migrants live freely and are able to contribute to the economy. Some migrants have the opportunity to register with the government and live in the community while their migration status is pending. Finally, NGOs are able to offer legal aid services in detention, with reports

of successful appeals against unlawful sentences. There have also been efforts by Kenyan National Court of Human Rights (KNCHR), the Independent Policing Oversight Authority (IPOA) and Refugee Consortium of Kenya (RCK) to carry out periodic detention visits, and a review of the Refugees Act will hopefully include more alternatives to detention.

Libya

Migrants from Eritrea, Ethiopia, Sudan, Somalia and Syria are exposed to arbitrary and indefinite detention by both government and militia groups who have controlled the war-torn country since the fall of Gaddafi in 2011. Libyan law criminalizes entering, exiting and staying in Libya irregularly and allows for the indefinite detention of foreign nationals for the purpose of deportation [Law No. 6, Regulating Entry, Residence and Exit of Foreign Nationals to and from Libya of 1987]. There is no official distinction between asylum seekers, refugees, migrants, and trafficked persons and the country is not bound to any international conventions creating a right to asylum. However, they have ratified the Convention Against Torture, which specifies the obligation of *non-refoulement*, and the Convention on the Rights of the Child. Those individuals who are detained often stay in centres for many months and are subject to fines and imprisonment from one day to three years [under Section 6 in Law 19 of 2010]. In practice, detainees may be imprisoned indefinitely though some local level officials have shown initiative in creating safe release-to-work schemes and allowing the occasional release of vulnerable individuals into the care of NGOs who can provide housing and medical care. Evidence that anti-black racism is endemic does exist however, with Sub-Saharan African migrants seemingly unfairly targeted and detained in comparison with Arabic migrants who are generally tolerated in the community even without formal documentation. Unable to challenge detention or access legal protection, for the majority of people released may only be possible through bribery or forced labour. Despite attempts by some civil society actors and international organisations to advocate on behalf of detainees, the volatile political situation in Libya means there is no clear authority in some areas and prevents many laws from being enforced. Poor treatment of detainees is possible with minimum accountability, along with and pressure from the EU to prevent migratory flows heading towards Europe, has resulted in a damaging detention system that looks set to expand in an unsustainable manner.

South Africa

South Africa's Refugees Act No. 150 of 1998, the Immigration Act No. 13 of 2002 and corresponding regulations entail an array of positive provisions such as individual assessment, detention as a last resort, bio-registration and other alternatives to detention that are encompassed by the IDC's CAP model. In practice, implementation is limited. These post-apartheid migration policies have not been properly implemented due to rising xenophobia, flows of African and Asian migrant labourers, and an increasing demand on the asylum system, leading to excessive use of detention. The Immigration Act is routinely used instead of the Refugees Act, allowing the South African Department of Home Affairs (DHA) to detain and deport vulnerable persons in an arbitrary manner. Poor service delivery has led to an

increase of long-term detention, poor conditions, deportation of children and restricted access to centres for monitoring projects. This, coupled with DHA's pattern of non-compliance with court orders, prevents reforms being implemented. Lindela, the country's only purpose-built detention facility, is run by private corporation Bosasa, which poses further problems for accountability. Other facilities are run by the police service such as police stations, prisons and *ad hoc* centres on military bases. In spite of these challenges, civil society organisations have been able to offer some legal aid, and to advocate on behalf of detainees through strategic litigation. South Africa's membership in the Migration Dialogue for Southern Africa (MIDSA) is an opportunity for an increased focus on alternatives to detention, given MIDSA's 2016 commitment to develop alternatives to detention. Further developments include the government's Green Paper, launched in June 2016, which argues for a new immigration policy that enables South Africa to manage migration strategically in order to contribute to inclusive economic growth, national security and social cohesion. Proposals include an integrated border force that would ensure efficient and humane delivery of services, work visas for SADC countries and so on.¹²⁷

Tanzania

Tanzania remains a country through which many migrants and refugees transit, especially since recent instability in neighbouring Burundi. The Immigration Act 1995 provides criminal punishments for unauthorised entry or stay. Vulnerable groups, such as trafficked persons, asylum seekers¹²⁸ and refugees should not be detained as a matter of law but inefficient screening and assessment methods fail to ensure protection. All migrants are under threat from unlawful detention, and limited legal support means they are detained for long periods of time. Prisons, local police stations and remand homes are used due to a lack of community placement options or even purpose-built, open, immigration reception centres. Despite poor conditions and protection gaps in places of detention, monitoring is possible and reports suggest that children are protected. Finally, as part of the Migration Dialogue for Southern Africa (MIDSA), Tanzania has commitments to enforce humane migration management and to develop alternatives to detention.

Zambia

Zambia has eight international borders and many migrants from the East and Horn of Africa transit through it en route to South Africa. Immigration detention in Zambia is regulated by the Immigration and Deportation Act number 18 of 2010 and the Refugees Control Act, 1970. Zambia has robust guidelines and tools for protection assistance for vulnerable migrants through the National Action Plan (NAP) developed in collaboration with the IOM, UNHCR and United Nations Children's Fund. This includes a National Referral Mechanism (NRM) that trains front line officials to efficiently screen migrants and identify vulnerable groups. Zambia's membership in the Migration Dialogue for Southern Africa (MIDSA) outlines further commitments to humane management of migration flows and, as of 2016, a commitment to developing alternatives to detention. In practice, vulnerable groups such as refugees and children tend not to be detained.

There are no purpose-built immigration reception centres in Zambia. Despite some reports of limited implementation of alternatives to detention legislation, detention places enable access for service provision and monitoring, and detainees are generally held within the time limits of the law.

Glossary

Term	Definition
Alternative to immigration detention ('alternatives')	Any law, policy or practice by which persons are not detained for reasons relating to their migration status.
Asylum seeker	A person who has made an application to be recognised as a refugee, but who has not yet received a final decision on that application.
Case management	A comprehensive and systematic service delivery approach designed to ensure support for, and a coordinated response to, the health and wellbeing of people with complex needs. Case management centres on understanding and responding to the unique needs and challenges of individuals and their context, including vulnerability, protection and risk factors.
Case resolution	A final outcome of a person's immigration status including permission to remain in the territory, departure to the country of origin or country of habitual residence, or departure to a third country.
Child	A person below the age of eighteen years.
Community	The wider society of the country. Community-based alternatives use government and/or civil-society support to place and manage persons outside of detention amongst the civilian population. The term is not used to reference specific types of community, such as ethnic or location-based communities.
Deportation	The act of a State to remove a person from its territory after the person has been refused admission or has forfeited or never obtained permission to remain on the territory. A person may be deported to his or her country of origin, habitual residence, or a third country. In this report, the term 'deportation' is used synonymously with 'forced removal' and 'expulsion', unless otherwise indicated. It is noted that these terms may have different usages and meanings under different national and international laws.
Deprivation of liberty	Any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority. Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), Art. 4(2)
Detention	See 'Immigration detention'
Guardian	The legally recognised relationship between a designated competent adult and a child or disadvantaged person in order to assure and safeguard the protection of her or his rights. A guardian has a range of powers, rights and duties, including exercising rights on behalf of the child and protecting the best interests of the child.
Immigration detention	The deprivation of liberty for migration-related reasons.
Independent departure	Compliance with the obligation to depart a country within a specified time period and without

Term	Definition
	government escort, whether to the migrant's country of origin, country of habitual residence, or a third country. (c.f. voluntary departure).
IOM	International Organization for Migration
Irregular migrant	A migrant who does not fulfil, or no longer fulfils, the conditions of entry, stay or residence within a State.
Migrant	A person who is outside of a State of which he or she is a citizen, national or habitual resident. Persons are migrants regardless of whether their migration is temporary, lawful, regular, irregular, forced, for protection, for economic reasons, or for any other reason.
Refugee	A person who fulfils the definition of a "refugee" in the 1951 Convention and 1967 Protocol relating to the Status of Refugees or any regional refugee instrument. The recognition of refugee status is a declaratory act and the rights of refugees are invoked before their status is formally recognised by a decision-maker. For this reason, in this report, unless specifically indicated to the contrary and particularly where a distinction is necessary in relation to case resolution, the term "refugee" includes reference to asylum seekers.
Separated child	A child 'separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.' Committee on the Rights of the Child, General Comment No.6 (2005), Treatment of Unaccompanied and Separated Children Outside their Country of Origin.
Stateless person	A person who is not considered as a national by any State under the operation of its law. Article 1 of the 1954 Convention relating to the Status of Stateless Persons. In this Handbook, the term "stateless person" also includes reference to persons at risk of statelessness.
Trafficked person	A trafficked person is defined as a person who has been recruited, transported, transferred, harboured or received by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. UN General Assembly, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, 15 November 2000.
Unaccompanied child	A child who has been 'separated from both parents and other relatives' and is 'not being cared for by an adult who, by law or custom, is responsible for doing so.' Committee on the Rights of the Child, General Comment No.6 (2005), Treatment of Unaccompanied and Separated Children Outside their Country of Origin.
UNHCR	Office of the United Nations High Commissioner for Refugees
Voluntary departure	The decision of a person to depart the country entirely voluntarily, whether to his or her country of origin, country of habitual residence or a third country. Voluntary departure may take place even when legal avenues to pursue residency in that country remain available. (c.f. independent departure)

¹ The member NGOs, each comprising 10 – 300 individuals, drew information from relevant staff members working on or with knowledge of, immigration detention and/or community support

² Sampson et al, 2015. “There are alternatives: A handbook for preventing unnecessary immigration detention” (Revised edition). Melbourne: IDC. Available at <http://idcoalition.org/publication/there-are-alternatives-revised-edition/>

³ The IDC continues to act as the Chair of the Global Inter-Agency Working Group (IAWG) to End Child Immigration Detention. See http://endchilddetention.org/wp-content/uploads/2016/09/IAWG_Advocacy-Brochure_Aug-2016_FINAL-web.pdf

⁴ See section five for a discussion of detention places

⁵ The principle limitation on the use of detention in international human rights law is the right to liberty of person, found in Article 3 of the Universal Declaration of Human Rights (UDHR), Article 9 of the International Covenant on Civil and Political Rights (ICCPR), and Article 6 the African Charter of Human and Peoples’ Rights (African Charter). For a more information on legal instruments relating to immigration detention, see International Detention Coalition, “Legal framework and standards relating to the detention of refugees, asylum seekers and migrants”, 2011, International Detention Coalition and MHub, (forthcoming) “North Africa Legal Frameworks” [on file with authors].

⁶ Tanzania: 3 years. Kenya: administrative and awaiting deportation - 6 months to 1 year. South Africa: administrative - 48 hours, deportation - 120 days. Zambia: administrative – 14 days, deportation – up to 90 days.

⁷ Libyan law allows for indefinite detention for the purpose of deportation [Law 19 of 2010 on illegal immigration]. However, for administrative detention, imprisonment should not exceed 3 years [section 6 in law 19 of 2010]. Egyptian law does not have a time limit for administrative detention or detention for purpose of deportation.

⁸ Zambian member data, 2015. For administration: 14 days [section 18(1) of Immigration Act]; for pre, during and post- trial: 48 hours [section 18(1) of Immigration Act]; for sanction: 24 months [section 56(1) of Immigration Act]; for deportation: up to 30 or 90 days depending on court order [section 38 of Immigration Act].

⁹ For a more thorough analysis, see: ICJ Practitioner’s Guide No. 6 (revised 2015)

¹⁰ According to Libyan, Egyptian, Kenyan, Tanzanian, and South African member data, 2015

¹¹ Regional Mixed Migration Secretariat (RMMS). Kenya Country Profile, 2016. Accessed August 08 2016, <http://reliefweb.int/sites/reliefweb.int/files/resources/Kenyaupdate.pdf>

¹² Raids during the government program Operation Fiela were framed as a crime-combatting measure but with a noticeably adverse impact on foreign nationals (See: *Hatendi and Others v. Minister of Home Affairs*, High Court of South Africa, Gauteng, Pretoria, 2015). Furthermore, the South African Police Service (“SAPS”) has raided shelters, such as the Central Methodist Mission Shelter in Johannesburg, to arrest foreign nationals under immigration charges [under section 13(7) of the South African Police Act]. South African member data, 2015.

¹³ See section 3.2. for more information on the legal aspects of case management

¹⁴ Reports also show that once deported, migrants may be re-arrested and detained in the countries they are returned to – their transit and/or origin countries. See Regional Mixed Migration Secretariat (RMMS), “Behind Bars: The Detention of

Migrants in and from the East & Horn of Africa”, February 2015, accessed August 07 2016, http://www.regionalmms.org/images/ResearchInitiatives/Behind_Bars_the_detention_of_migrants_in_and_from_the_East__Horn_of_Africa_2.pdf; Lucy Kiama and Dennis Likule, “Detention in Kenya: risks for refugees and asylum seekers”, *Forced Migration Review*, September, 2013, accessed July 15 2016, <http://www.fmreview.org/detention/kiama-likule.html>

¹⁵ South Africa, Kenya, Tanzania, and Libya

¹⁶ South African member data, 2015

¹⁷ Libyan member data, 2015; Conversation with Zambian border detention staff, 2015

¹⁸ Irregular entry into Tanzania is considered a crime under Article 31(1) of the Immigration Act 1995 which provides that “any person who (i) unlawfully enters or is unlawfully present within Tanzania in contravention of the provision of this Act shall be guilty of an offence.”

¹⁹ Asylum Access Tanzania, “Immigration Detention in Tanzania: A Prison Survey Report”, 2013, Accessed 28 November 2016 <https://asylumaccess.org/wp-content/uploads/2014/08/Immigration-Detention-in-Tanzania-A-Prison-Survey-Report.pdf> and IOM, “Health Vulnerabilities Study of Mixed Migration Flows from the East and Horn of Africa and the Great Lakes Region to Southern Africa”, 2013, accessed 28 November 2016

https://publications.iom.int/system/files/pdf/migration_health_study_finalweb.pdf?language=en

²⁰ Egyptian and Libyan member data, 2015

²¹ Member Workshop December 2016; Mattia Roaldo, “After Warsaw: A 3-point plan to manage migration through Libya”, *European Council on Foreign Relations*, July 12, 2016, accessed July 15, 2016, http://www.ecfr.eu/article/commentary_after_warsaw_a_3_point_plan_to_manage_migration_through_7072; Amnesty International, “EU risks fuelling horrific abuse of refugees and migrants in Libya”, June 14, 2016, accessed July 20 2016, <http://www.refworld.org/docid/575fa5e74.html>

²² See Melissa Phillips, “IS involvement in people smuggling is a red herring”, *IRIN*, August 5, 2016, accessed on August 10 2016, <http://www.irinnews.org/opinion/2016/08/05/involvement-people-smuggling-red-herring>, for a suggestion that EU governments should look at their own history of curtailing irregular migrations that has resulted in an increased use of immigration detention.

²³ Regional Mixed Migration Secretariat (RMMS), “Behind Bars: The Detention of Migrants in and from the East & Horn of Africa”, February 2015, accessed August 07 2016,

²⁴ Technical Migration Dialogue for Southern Africa Addressing Mixed Migration in Southern Africa: Linking Protection, Immigration, Border Management and Labour Migration, Gaborone, Botswana: 16-18 August 2016, accessed 2 February 2017, <https://ropretoria.iom.int/sites/default/files/Final%20MIDSA%202016%20Conclusions%20and%20Recommendations.pdf>

²⁵ Alternatives [to detention]. MIDSA Regional Action Plan, 2015, accessed 7 September 2016 <http://ropretoria.iom.int/sites/default/files/2015-01-16%20MIDSA%20Action%20Plan%20consolidated%20version.pdf>

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- ²⁶ UNHCR Senior Protection Advisor at IOM Children on the Move Conference in Zambia, August 2015: “We [the international community] can build reception/detention centres but we will not be able to fund them indefinitely so is it sustainable to do so? Will governments have the money to maintain and staff such centres? It seems a waste when you could be using migration money to invest in your communities; offering health and education services to citizens and non-detained migrants, refugees and asylum seekers alike.”
- ²⁷ See the IDC’s briefing paper, “Does Detention Deter?” 2015, accessed 15 September 2016, http://idcoalition.org/wp-content/uploads/2015/04/Briefing-Paper_Does-Detention-Deter_April-2015-A4_web.pdf
- ²⁸ Immigration and Deportation Act, No 18 of 2010 (Section 29)
- ²⁹ See Frouws for RMMS, “Out of sight, out of mind: Why South Sudanese refugees are not joining flows to Europe”, June 2016, accessed 29 November 2016, <http://www.regionalmms.org/index.php/research-publications/feature-articles/item/13-out-of-sight-out-of-mind-why-south-sudanese-refugees> For a description of the ‘favourable refugee environment in Uganda’, mentioned therein as a key reason for reduced onward movement see: Betts, A, et al., “Refugee Economies, Rethinking Popular Assumptions”, 2014, <https://www.rsc.ox.ac.uk/files/publications/other/refugee-economies-2014.pdf>
- ³⁰ Taylor, J E, et al., “Economic Impact of Refugees”, 2016, Accessed 29 November 2016 <http://www.pnas.org/content/113/27/7449.full>
- ³¹ See Sampson, R, et al., “There are alternatives”
- ³² “The right to liberty and a clear presumption against detention are established by adopting laws, policies, and practices that: establish a presumption of liberty; provide a mandate to apply alternatives in the first instance; only permit detention when alternatives cannot be applied; prohibit the detention of vulnerable groups.” Sampson, R., et al., “There are alternatives” p.VI
- ³³ “Minimum Standards include: respect for fundamental rights; meeting basic needs; legal status and documentation; legal advice and interpretation; fair and timely case resolution; regular review of placement decisions.” Sampson, R., et al., “There are alternatives” p.VI
- ³⁴ Kenya: Refugees Act 2006, Section 11 gives asylum seekers 30 days to register their presence in Kenya regardless of where and how they entered the country and should be provided with identification documentation; South Africa: Section 21(a)(a) of the Refugees Act states that once a person has stated their intention to apply for asylum, he or she must be issued a temporary asylum seeker permit, and may remain legally in South Africa pending the completion of the asylum determination and appeals process; Zambia: Refugee Control Act 1970 Section 6 on registration of refugees, provision of identity cards in Section 6 (2), and the “National Referral Mechanism” more generally. Bio-registration takes place in Zambia and South Africa.
- ³⁵ Kenyan and Zambian member data, 2015
- ³⁶ Zambia’s “National Action Plan” (NAP) and “National Referral Mechanism” (NRM) have been created by the Zambian government in collaboration with the IOM, UNHCR and United Nations Children’s Fund between 2013-14. See UNHCR, “Beyond Detention, National Action Plan”, November, 2016, accessed July 03 2016, <http://www.unhcr.org/566aa6429.pdf>
- ³⁷ Zambian member data, 2015
- ³⁸ Sampson, R, et al., “There are alternatives” 37.
- ³⁹ Mabuse Pule, Botswana’s Director of Immigration and Citizenship in online article, accessed 01 December 2016 <http://idcoalition.org/news/significant-regional-commitment-to-implement-alternatives-to-detention/>
- ⁴⁰ See p. 47 – 58 of “There are alternatives” for a more in depth discussion of case management
- ⁴¹ For further discussion of legal service provision to those in detention see section 4.1 below
- ⁴² e.g. in Egypt through UNHCR and legal partners such as St Andrews Refugee Service
- ⁴³ See “Benson’s story” in Zambia for an example of holistic case management: <https://europa.eu/eyd2015/en/european-union/stories/protecting-migrant-children-trafficking-and-exploitation-zambia-benson-story>
- ⁴⁴ No information from Tanzania.
- ⁴⁵ Zambian member data, 2015
- ⁴⁶ According to Article 30 of Law of Entry and Residence, if a deportation decision is difficult to enforce, the Director of Passports, Immigration and Nationality Administration can order an alien to reside at a specific place and periodically report to a police station until deported.
- ⁴⁷ South African member data, 2015
- ⁴⁸ Emergency housing is sometimes provided by UNHCR and partners (see PSTIC: <http://pstic-egypt.org>)
- ⁴⁹ NGOs, such as HAART and Heshima offer safe houses and integration help for (un/)accompanied youth and women with young children
- ⁵⁰ For example, a faith-based NGO in Nakonde is being materially supported by the UNHCR so that they can receive asylum-seekers in the community. UNHCR, “Beyond Detention, National Action Plan”, 2015, 2.
- ⁵¹ Kenyan member data, 2015
- ⁵² Egyptian member data, 2015
- ⁵³ Egyptian member data, 2015
- ⁵⁴ Danish Refugee Council, International Detention Coalition and Mixed Migration Working Group Libya, *Alternatives To Detention In Libya - Report on the 2nd workshop, 14-15 December 2016* Available via IDC website:
- ⁵⁵ Article 17 of Refugee Act (1998). This offence carries a fine and a three-year prison sentence.
- ⁵⁶ RMMS, “Behind Bars”, 72.
- ⁵⁷ Zambian member data, 2015
- ⁵⁸ IOM, “Ethiopian Child Migrants detained...”, accessed July 10, 2016, <https://www.iom.int/news/ethiopian-child-migrants-detained-zambia-return-home>
- ⁵⁹ Kenyan member data, 2015
- ⁶⁰ RMMS, “Behind Bars”, 72.

⁶¹ For more information on engaging governments on ATDs, see Grant Mitchell, “Engaging Governments on Alternatives to Immigration Detention” 2016, accessed August 09 2016 <https://www.globaldetentionproject.org/engaging-governments-alternatives-immigration-detention>

⁶² South Africa only grants South African Human Rights Commission (SAHRC) a mandate to monitor detention, there are no other mandated institutions in South Africa required to regularly monitor places of detention. Lawyers for Human Rights (LHR), “Monitoring Immigration Detention in South Africa”, 2012, accessed July 10 2016, http://www.lhr.org.za/sites/lhr.org.za/files/detention_report_2012.pdf. 29. Nor has South Africa ratified the Optional Protocol to the Convention Against Torture (OPCAT), which would allow for international organisations to enter places of detention for monitoring purposes.

⁶³ Egyptian, Libyan, Kenya, Tanzanian, South African, and Zambian member data, 2015

⁶⁴ According to 2015 member data, legal assistance in detention is sometimes provided in Egypt through UNHCR and legal partners such as St Andrews Refugee Service, in Kenya through Refugee Consortium of Kenya (RCK), in South Africa through Lawyers for Human Rights (LHR), in Libya through Ana Insan (I am human), in Tanzania through Asylum Access, and in Zambia through Action Africa Help

⁶⁵ Members cite migrants returning home through IOM’s AVRR program in Zambia (IOM, “Ethiopian Child Migrants Detained in Zambia Return Home”, June 28, 2016, accessed July 10 2016, <https://www.iom.int/news/ethiopian-child-migrants-detained-zambia-return-home>) and in Libya (Libyan member data, 2015). However, the AVRR program has had fewer beneficiaries in the past couple of years due to increasing insecurity in Libya (International Organisation for Migration (IOM), “Assisted Voluntary Return and Reintegration (AVRR), at a glance”, 2015, accessed July 10 2016, https://www.iom.int/sites/default/files/our_work/DMM/AVRR/AVRR-at-a-glance-2015.pdf. 26)

⁶⁶ Especially in Egypt, Libya, and South Africa. Also in Kenya and Tanzania.

⁶⁷ Tanzanian, South African, and Libyan member data, 2015

⁶⁸ South African, Egyptian, Zambian and Libyan member data, 2015

⁶⁹ See APT/IDC/UNHCR, “Monitoring Immigration Detention. Practical Manual” 2014, accessed July 05 2016, http://www.apr.ch/content/files_res/monitoring-immigration-detention_practical-manual.pdf and UNHCR and IDC, “Vulnerability Screening Tool” 2016, available at <http://idcoalition.org/publication/identifying-and-addressing-vulnerability-a-tool-for-asylum-and-migration-systems/>

⁷⁰ that is, police or border force with delegated state authority

⁷¹ as in South Africa

⁷² as in Libya

⁷³ See guides such as the UNHCR’s “Detention Guidelines. Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention”, 2012; the UN’s “Basic Principles for the Treatment of Prisoners” (BRTP) 1990, accessed on 08/09/16, <http://www.un.org/documents/ga/res/45/a45r111.htm>; the International Committee of the Red Cross (ICRC)’s “Geneva Convention Relative to the Treatment of Prisoners of War” (Third Geneva Convention), 1949, <http://www.refworld.org/docid/3ae6b36c8.html> the IOM’s “International Standards on Immigration Detention and Non-Custodial Measures”, 2011, accessed on 08/09/16, <http://www.ohchr.org/Documents/Issues/Detention/DraftBasicPrinciples/IOM3.pdf> ; or the “Core Humanitarian Standard and the Sphere Core Standards”, 2015 http://www.spherehandbook.org/~sh_resources/resources/Sphere_Core_Standards_and_CHS.pdf

⁷⁴ Bodies with monitoring mandates: Zambia: National Human Rights Commission (HRC). Libya: Department for Combatting Illegal Migration (DCIM). Tanzania: Commission for Human Rights and Good Governance (CHRAGG) is mandated to conduct monitoring. South Africa: South African Human Rights Commission (SAHRC) is the only body with a mandate to conduct monitoring of facilities. Egypt: Public Prosecution Office to conduct regular monitoring visits to facilities. Kenya: The Independent Policing Oversight Authority (IPOA) is mandated to provide for civilian oversight over Police work and hold them accountable (Pursuant to the Independent Policing Oversight Authority Act [Act No. 35 of 2011]).

⁷⁵ Section 6 (j) of the IPOA’s Act No. 35 of 2011.

⁷⁶ According to Zambian member data, 2015, visits are announced in advance and conducted by the Department for Homeland Affairs’ Commissioner for Refugees (COR), the UNHCR, Action Africa Help (AAH), Justice Forum and Child Justice Forum.

⁷⁷ UNHCR, NAP, 2015, p.2

⁷⁸ RMMS, “Behind Bars”, 59.

⁷⁹ Kenyan, Libyan, Tanzanian, South African, and Zambian member data, 2015

⁸⁰ All but Kenya. IDC member data, 2015

⁸¹ Zambian member data, 2015

⁸² Egyptian member data, 2015

⁸³ Egyptian, Kenyan, Libyan, Tanzanian, and South African member data, 2015; Roni Amit, “Understanding immigration detention and deportation in South Africa: A summary of law, practice and human rights violations at the Lindela Detention Centre”, ACMS, September 2015, accessed on August 02, 2016, <http://www.migration.org.za/uploads/docs/acms-issue-brief-11---understanding-immigration-detention.pdf>. 148.

⁸⁴ None of the six countries have ratified this Protocol. Two have signed it (South Africa and Zambia) whilst the other four have not (Libya, Egypt, Kenya, and Tanzania).

⁸⁵ South Africa and Libya

⁸⁶ Egypt, Kenya, Tanzania, South Africa, and Zambia.

⁸⁷ South Africa

⁸⁸ Kenya

⁸⁹ All six countries

⁹⁰ See section 7 for a more in depth discussion on children

⁹¹ South African member data, 2015

⁹² Zambian member data, 2015

- ⁹³ See UNHCR. "Detention Guidelines. Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention", 2012
- ⁹⁴ Reports of rape against male children in Libya. See Naik, Asmita, V. Marletta, J. Delaplace, F. Douillard, L. Rocheteau, D. Grech, and A. Ahmed. "Detained youth: the fate of young migrants, asylum-seekers and refugees in Libya today", 2015. 50
- ⁹⁵ See section 7 for an in-depth focus on children.
- ⁹⁶ Special Rapporteur on the human rights of migrants: "special arrangements should be sought to protect vulnerable groups. In these cases the harm inflicted by administrative detention seems...to be wholly disproportionate to the policy aim of immigration control" 2002, accessed July 10 2016, <http://www.refworld.org/pdfid/45377ac50.pdf>. 14; UNHCR and IDC, "Vulnerability Screening Tool" 2016, <http://idcoalition.org/publication/view/identifying-and-addressing-vulnerability-a-tool-for-asylum-and-migration-systems/>
- ⁹⁷ All countries except Libya are party to both the 1951 Convention and the 1967 Protocol.
- ⁹⁸ With the exception of individuals from Somaliland and Puntland. RMMS, Kenya Country Profile, 2016
- ⁹⁹ Zambian law: Section 14(1) of the Passport Act No. 22 of 2003 provides for issuance of passports to stateless persons.
- ¹⁰⁰ Zambian law: Section 24(1) Anti-Human trafficking Act. Kenyan law: Counter Trafficking in Persons Act 2010 (Section 2). Egyptian law: Articles 21, 22, and 24 of Egyptian Law No. 64/2010 Combating Human Trafficking. However, only in one occasion a Nigerian Victim of Trafficking was released from a police station in Cairo where she stayed for a couple of days to a shelter until the moment she returned to the Nigeria through AVRRC assistance. (Egyptian member data, 2015). Tanzania 2008 Anti-Trafficking in Persons Act, see also US State Department Anti-trafficking in Persons Reports for analysis of implementation efforts.
- ¹⁰¹ Egyptian member data, 2015
- ¹⁰² Egypt, Kenya, Libya, South Africa, and Tanzania
- ¹⁰³ Usalama Watch (March, 2014) "disproportionately impacted the Somali community" See RMMS, "Behind Bars", 61-2.
- ¹⁰⁴ "[in Libya] Almost all detainees are Sub-Saharan Africans, whereas the large populations of Syrians, Palestinians and Iraqis...are generally tolerated even without formal legal residence status" See Naik et al., "Detained Youth", 50; Amnesty, 2016 and Egyptian member data, 2015
- ¹⁰⁵ Refugee Act 1998 [Section 29(1)] stipulates that no asylum seeker may be held for a longer period than is "reasonable and justifiable and any detention exceeding 30 days must be reviewed immediately by a judge of the High Court". South African member data, 2015.
- ¹⁰⁶ Libyan member data, 2015
- ¹⁰⁷ Article. 33 (1) and (2), Geneva Convention Relating to the status of Refugees, 1951
- ¹⁰⁸ United States Department of State, 2015 Country Reports on Human Rights Practices - Egypt, 13 April 2016, available at: <http://www.refworld.org/docid/57161273c.html> accessed 02 December 2016
- ¹⁰⁹ Egyptian member data, 2015
- ¹¹⁰ Egypt: The Child Law 1996 states that it is forbidden to detain children under 15 years old [Article 119]
- ¹¹¹ South Africa: The Constitution states that every child has a right not to be detained, except as a measure of last resort [Article 28(1)(g)]; Kenya's Bill of Rights (within the 2010 Constitution) provides that every child has the right not to be detained, except as a measure of last resort [Article 53(1)(f)]
- ¹¹² South Africa: The Constitution states that a child's best interests are of paramount importance in every matter concerning the child [Section 28(2)]; Kenya: the Bill of Rights (within the 2010 Constitution) provides that a child's best interests are of paramount importance in every matter concerning the child [Article 53(2)]. This is reinforced in Article 4(2) and 4(3) of the Children Act, 2010; Tanzania's Child Act, 2009 provides that "*the best interest of a child shall be the primary consideration in all actions concerning a child whether undertaken by public or private social welfare institutions, courts or administrative bodies*" [Article 4(2)]. In all these countries, the definition of a child is not limited to citizens, and thus the protections apply to child migrants.
- ¹¹³ In Egypt, a child under 15 can be held in a "care centre" administered by the Ministry of Social Solidarity, for a maximum of one week and only a court order can extend the length of detention in a child care facility [Article 119 of the Child Act]. However, in the past couple of years Article 119 is being used less. Egyptian member data, 2015
- ¹¹⁴ Section 53 of the Juveniles Act in Zambia
- ¹¹⁵ In the new Tanzanian Constitution, children aged 7 years old or younger will be placed in a foster home (Tanzanian member data, 2015).
- ¹¹⁶ Kenya's Children Act (Amendment) Bill, 2014 includes an amendment to section 11 of the Children Act No 8 of 2001, which introduces a new subsection (2): "A child found in Kenya who is or appears to be, less than 8 years of age, and whose nationality and parents are not known, is presumed to be a citizens by birth".
- ¹¹⁷ Tanzanian member data, 2015
- ¹¹⁸ Tanzanian member data, 2015
- ¹¹⁹ Article 9(1) states that "Children charged with criminal offences have a right not to be separated from their parents"
- ¹²⁰ Zambian member data, 2015
- ¹²¹ No. 11 of 2008
- ¹²² IOM, "Ethiopian Child Migrants detained..." accessed July 10 2016, <https://www.iom.int/news/ethiopian-child-migrants-detained-zambia-return-home>; Zambian member data, 2015
- ¹²³ South African member data, 2015
- ¹²⁴ CRC "Report of the Day of General Discussion: The rights of all children in international migration" 2012, <http://www2.ohchr.org/english/bodies/crc/docs/discussion2012/ReportDGDChildrenAndMigration2012.pdf> both accessed 02 December 2016; Inter-Agency Working Group to End Child Immigration Detention (IAWG), "Ending Child Immigration Detention", 2016. Available at http://www.iawgendchilddetention.org/wp-content/uploads/2016/11/IAWG_Advocacy-Brochure_Aug-2016_FINAL-web.pdf; IDC, "Child Detention Fact Sheet", 2014, available at <http://idcoalition.org/fact-sheets/>;
- ¹²⁵ A child's best interests not to be detained extends to the entire family: IAWG, "Ending Child Immigration Detention", 2016,

¹²⁶ UN General Assembly, “Guidelines for the Alternative Care of Children: Resolution adopted by the General Assembly”, 24 February 2010, A/RES/64/142, available at: <http://www.refworld.org/docid/4c3acd162.html>, accessed 16 February 2017; UN High Commissioner for Refugees (UNHCR), “Child Protection Issue Brief : Alternative Care”, January 2014, available at: <http://www.refworld.org/docid/52f0e4f34.html>, accessed 16 February 2017.

For more information on the IDC’s position vis-à-vis child detention, see: IDC, “Captured Childhood”, 2012, available at <http://idcoalition.org/publication/view/captured-childhood/>

¹²⁷ See <http://www.gov.za/sites/www.gov.za/files/Guidelines%20for%20Consultation-Green%20Paper.pdf>

¹²⁸ Refugee Act 1998 Section 9 (3) – asylum seekers should not be detained for illegal entry