

Immigration Detention and Alternatives to Detention in the Asia-Pacific Region

Annex: Country Profiles

HONG KONG SAR, CHINA



United Nations
Network on Migration

Working Better Together

HONG KONG SAR, CHINA

Basic Demographics

Hong Kong Special Administrative Region, China is considered a country of destination for migrant workers, refugees, and people seeking asylum. Hong Kong SAR hosts more than 340,000 domestic workers from the Philippines, Indonesia, Thailand, Sri Lanka and Nepal, and relies heavily on their labour.¹ Hong Kong SAR allows those seeking international protection (in Hong Kong SAR's context, this includes torture survivors and people seeking asylum) in their territory to make a non-refoulement claim through the Unified Screening Mechanism (USM). According to statistics on non-refoulement claims provided by the Immigration Department of Hong Kong SAR, approximately 38,500 claims were made between 2005 and 2021.²

As of 31 December 2021, there were 741 outstanding non-refoulement claimants, of which 45 were children. Between the commencement of the 'enhanced administrative mechanism' in late 2009 until December 2021, determinations have been made in 25,208 torture/non-refoulement claims, among which 281 were substantiated. The substantiation rate remains at about 1%. There were 741 outstanding non-refoulement claims at the end of 2021 in which 61% of claimants came from two countries, namely Indonesia and Vietnam. Among 281 substantiated claims between 2009 and 2021, Yemeni, Pakistani, Rwandan, Somali and Sri Lankan accounted for half of the cases.³

In 2019, the immigration authorities apprehended 859 migrants with irregular status in Hong Kong SAR. Almost 60% of this population were Vietnamese.⁴

Who is at Risk of Immigration Detention?

As set forth in Hong Kong SAR's Immigration Ordinance, immigration authorities can detain anyone who has breached, or is suspected to have breached, immigration laws. This can include people seeking asylum, and any other migrants with irregular status. Hong Kong SAR has not ratified the 1951 Refugee Convention, and therefore the government maintains the position that those seeking asylum are "illegal immigrants."⁵ While the government's 2018 Action Plan on Trafficking in Persons provides for immunity from prosecution for trafficking survivors,⁶ they may still be detained for immigration offences committed during the trafficking process if not officially recognised as trafficking survivors. Only three out of 6,912 screened individuals were recognised as trafficking survivors in 2020.⁷

Failure to produce proof of identity, presenting false information or forged travel documents, unlawful entry into Hong Kong SAR, overstaying an entry permit, breach of conditions of stay, and

¹ Centre for Strategic & International Studies, [Who is responsible for Hong Kong's Invisible Migrant Workers?](#), 2017

² Immigration Department, [Facts and Statistics: Enforcement](#), 2021

³ Ibid

⁴ Ibid

⁵ [Fourth Report of the Hong Kong Special Administrative Region of the People's Republic of China under the International Covenant on Economic, Social and Cultural Rights](#), Feb 2020

⁶ [Action Plan to Tackle Trafficking in Persons and to Enhance Protection of Foreign Domestic Helpers in Hong Kong](#), Mar 2018

⁷ US Department of State, [Trafficking in Persons Report: Hong Kong](#), 2021

unauthorised employment are considered criminal offences under the Immigration Ordinance and those found guilty of these offences could serve a criminal sentence in the prison.⁸ The Immigration Department can detain a person in an immigration detention facility for various reasons, including to facilitate a deportation order, to establish a person's identity or the basis of their non-refoulement claim, and in cases where the immigration authorities have reason to believe that the person will not comply with bail conditions.⁹

Who is Detained in Practice?

Refugees, people seeking asylum and migrant workers are vulnerable to detention as they are more likely to breach immigration laws due to their precarious social and economic situations. People seeking asylum in particular are more vulnerable to be detained as the law does not allow them to lodge their non-refoulement claims until they overstay their visa;¹⁰ this is in turn an immigration offence, for which they are subjected to removal.¹¹ Migrant children are detained at Tuen Mun Children and Juvenile Home (TMCJH) run by the Social Welfare Department.¹² There were three migrant children detained at TMCJH at the end of 2020.¹³ While the Immigration Department's Detention Policy specifies categories of people in vulnerable situations who should not be detained,¹⁴ it is unclear to what extent this is implemented in practice. Details related to the vulnerability screening process or tools are not publicly available.

Immigration Detention Infrastructure

Hong Kong SAR has three main immigration detention facilities, namely, Castle Peak Bay Immigration Centre (CIC), Ma Tau Kok Detention Centre (MTKDC) and Tai Tam Gap Correctional Institution (TTGCI). TTGCI is only a recent addition to this list as it was recommissioned as an immigration detention facility from May 2021, though it is still operated by the Correctional Services Department under the Prison Rules as opposed to relevant legislation for the treatment of people detained for migration-related reasons.¹⁵ TTGCI is also the city's first "smart prison", with a number of human rights concerns raised in the treatment of detained persons since its opening.¹⁶ CIC and TTGCI are typically used for holding people in long-term detention, or people issued with removal or deportation orders while the MTKDC is often used for short term transfers. Additionally, there are several other types of facilities that are used to detain people for migration-related purposes in Hong Kong SAR. This includes over 100 locations at prisons, police stations, detention rooms at the ports of entry and other border control points as well as some custodial wards of hospitals.¹⁷

⁸ Immigration Detention in Hong Kong, [Immigration Detention in Hong Kong: Know Your Rights](#), Sept 2021

⁹ Ibid

¹⁰ Immigration Ordinance, Section 37W(1)

¹¹ Justice Centre Hong Kong, [Parallel report to the Committee on the Elimination of Discrimination against Women](#), Feb 2021

¹² [Immigration \(Place of Detention\) Order](#) (Cap. 115, section 35(1)), Schedule 2

¹³ Immigration Detention in Hong Kong, [Data Visualisation: How many minors are held at TMCJH?](#)

¹⁴ Immigration Department, [Policy on Exercise of Detention Powers Conferred by Section 32 of the Immigration Ordinance \(Cap. 115\)](#), Oct 2008

¹⁵ Civic Right, [Detention Policy as of August 2021](#)

¹⁶ Hong Kong Free Press, [The never-ending sentence of Vo Van Hung, the Vietnamese refugee stuck behind bars in Hong Kong](#), Sept 2021

¹⁷ Immigration Detention in Hong Kong, [where can immigration detainees be held?](#)

Once a removal or deportation order is issued to an individual, they can be detained on an on-going basis either at CIC or TTGCI. A person who has applied for protection from refoulement through the USM and is awaiting a decision can also be detained with no given time limit on detention.¹⁸ Amendments in 2021 to the Immigration Ordinance have made it easier for immigration authorities to detain people seeking asylum for a lengthy period of time,¹⁹ as the amended Immigration Ordinance adds various administrative factors as justifiable grounds for detention.²⁰ Detention decisions are subjected to regular review by two security agencies, the Security Bureau and the Immigration Department.²¹ However, judicial review of detention is not required.

Latest data shows that there were 271 detained persons in CIC as of July 2021, 43 at MTKDC as of December 2020, and 67 at TTGC as of September 2021.²² The number of people detained for migration-related reasons in other types of facility is unknown. Government-appointed Justices of the Peace visit CIC and MTKDC regularly to monitor conditions, and detained persons can file complaints with them. However, it is not guaranteed that the complaint will be kept confidential.²³ Between 2013 and 2020, Justices of the Peace have made approximately 20 visits to CIC and four visits to MTKDC each year.²⁴

While statistics related to immigration detention are partially available in the Immigration Department's annual reports, the government does not otherwise regularly and proactively make immigration detention statistics publicly available. Often data related to persons in immigration detention are only obtainable through official information requests.²⁵ The annual report is typically published one to two years after the said year, which adds to the difficulty of obtaining up-to-date immigration detention statistics.²⁶

Alternatives to Immigration Detention

The Immigration Department's Detention Policy ("Policy on Exercise of Detention Powers Conferred by Section 32 of the Immigration Ordinance (Cap. 115)") which has been in place since October 2008 provides for the non-detention of certain persons in vulnerable situations. This includes pregnant woman with no clear prospect of imminent removal, a person under the age of 18, an elderly person requiring close supervision or medical care, a person with a serious medical or mental-health condition, a person who is physically disabled requiring constant nursing care, or where there is satisfactory evidence that a person has been tortured.²⁷ However, the Immigration

¹⁸ Chopra, Amador and Fung, [Immigration Detention in Hong Kong: A Preliminary Analysis](#), Sept 2021

¹⁹ The Diplomat, [Bio-tracked, Mistreated, Hog-tied: Immigration Detention in East Asia in 2021](#), Dec 2021

²⁰ Immigration (amendment) Ordinance 2021, Part 2 Section 16

²¹ Immigration Department, [Policy on Exercise of Detention Powers Conferred by Section 32 of the Immigration Ordinance \(Cap. 115\)](#), Oct 2008

²² Immigration Detention in Hong Kong, [Data Visualisation Section 1: Immigration Detention Numbers and Demographics](#)

²³ Immigration Detention in Hong Kong, [Immigration Detention in Hong Kong: Know Your Rights](#), Sept 2021

²⁴ Justices of Peace, [Annual reports on Justices of the Peace Visits](#)

²⁵ Communication with research project team of "Immigration Detention and Vulnerable Migrants in Hong Kong" at the Faculty of Law, The Chinese University of Hong Kong, Mar 2022

²⁶ As of Mar 2022, the latest annual report available is the 2019 annual report. See [here](#).

²⁷ Immigration Department, [Policy on Exercise of Detention Powers Conferred by Section 32 of the Immigration Ordinance \(Cap. 115\)](#), Oct 2008

Department may still detain anyone in these categories as there is not a strong screening mechanism in place.²⁸

Hong Kong SAR's Immigration Ordinance Section 36 ("Recognisance as alternative to detention") specifically provides for ATD. It states that those detained under relevant sections within the Ordinance can be released by entering into recognisance. Conditions of a recognisance could include regular reporting, sureties, bond or designated residence. When determining whether to detain someone or release them on recognisance, police and immigration officials consider a range of factors, including whether: (1) releasing that person would create a public safety risk, (2) they are likely to abscond, (3) they have a close connection to or fixed place of residence in Hong Kong, and (4) their identity has been satisfactorily established. For a person due to be removed from Hong Kong, the authorities would additionally consider (5) whether removal can be carried out within a reasonable length of time. Most detained persons released on recognisance are non-refoulement claimants, however there are cases of recognisance being approved for migrants with irregular status other than non-refoulement claimants.²⁹ There are no publicly available data on the number of recognisance holders.

The USM itself does not prevent all instances of immigration detention; while non-refoulement applicants can still be detained as overstayers under the Immigration Ordinance upon application.³⁰ They can also be released on recognisance and referred to an ATD programme funded by the government and implemented by an NGO, the International Social Service Hong Kong (ISS-HK).

Access to Rights and Services

Non-refoulement claimants are provided with case management and humanitarian assistance from the government-funded programme implemented by ISS-HK, including housing, transport allowance and food.³¹ However, non-refoulement claimants have no right to work in Hong Kong SAR and the level of assistance is reportedly inadequate for protection claimants to enjoy an adequate standard of living. For example, the stipend given to non-refoulement claimants under the humanitarian assistance programme is very restrictive as it is mostly provided directly to the service providers or as a form of voucher and the amount has not increased for years.³² In February 2022, amidst the fifth wave of Covid-19 outbreak, ISS-HK adjusted its relevant service delivery and moved most service provision online.³³ Such changes, coupled with panic buying/stockpiling at supermarkets, left refugees and non-refoulement claimants in dire humanitarian situations.³⁴

²⁸ Immigration Detention in Hong Kong, [Immigration Detention in Hong Kong: Know Your Rights](#), Sept 2021

²⁹ This is noted in various government press releases though the government does not release relevant statistics. See, for example, [the reply of the Secretary for Security in this press release related to non-refoulement claims](#)

³⁰ Immigration Detention in Hong Kong, [Immigration Detention in Hong Kong: Know Your Rights](#), Sept 2021

³¹ International Social Service Hong Kong, [Administering and Delivery of Assistance for Non-Refoulement Claimants](#)

³² Hong Kong Free Press, [Driven by desperation: Without the right to work, refugees in Hong Kong face impossible choices](#), Feb 2022

³³ International Social Service Hong Kong, [Special Notice - Operation of NRC Service in February 2022](#), Feb 2022

³⁴ See Reuters, [Hong Kong refugees struggle to find food on empty supermarket shelves](#), Mar 2022 and France24, [Hong Kong refugees face 'dire' food crisis in Covid outbreak: survey](#), Mar 2022

There is no specific law or policy providing for access to healthcare for non-refoulement claimants, but they can apply for medical waivers through the Social Welfare Department (SWD). For emergency treatment, post-application for the medical waiver is possible whereas for non-emergency medical treatment the waiver needs to be obtained at SWD prior to the hospital appointment.³⁵

The claimants also have access to free legal representation from a panel of duty lawyers, as well as interpretation and translation assistance. However legal representation becomes discretionary from the appellate stage, and it is then the duty lawyer's decision to continue the representation.³⁶

The children of non-refoulement claimants can apply for admission to primary or secondary schools in Hong Kong SAR. It is in the Education Bureau's discretion to accept or reject the application.³⁷

Developments during COVID-19

There has been no release of people from immigration detention due to COVID-19 in Hong Kong SAR. No moratorium on detention was observed. COVID-19 spikes in Hong Kong SAR have increased isolation for persons in immigration detention as detention visits by family and friends were suspended on multiple occasions and as recently as February 2022.³⁸

The Government announced in May 2021 that COVID-19 vaccinations would be provided to non-refoulement claimants and refugees recognised by UNHCR Hong Kong SAR.³⁹

³⁵ Health in Action. [Health Information for people seeking asylum and Refugees](#), 2014

³⁶ Li, Shaffer and Nam, [Hong Kong's Unified Screening Mechanism: form over substance](#), Jul 2021

³⁷ International Social Service Hong Kong, [Administering and Delivery of Assistance for Non-Refoulement Claimants](#)

³⁸ Immigration Department, [Further Suspension of Social Visits to Castle Peak Bay Immigration Centre and Ma Tau Kok Detention Centre of Immigration Department in Light of Epidemic Development](#), 11 Feb 2020; Hong Kong Immigration Department, [Suspension of Official and Social Visits at Ma Tau Kok Detention Centre of Immigration Department](#), 28 Feb 2022

³⁹ HKSAR Government, [Press release on Vaccination Programme to cover eligible non-Hong Kong residents in phases](#), May 2021

JAPAN



United Nations
Network on Migration

Working Better Together

JAPAN

Basic Demographics

As of end 2020, there were approximately 25,800 refugees, people seeking asylum and stateless people in Japan.⁴⁵ Only around 5.4% of this population held refugee or humanitarian protection status.⁴⁶ Refugees and people seeking asylum came from more than 60 countries, with Turkey, Myanmar, Nepal and Cambodia accounting for the largest numbers.⁴⁷

As of January 2022, there were an estimated 66,759 migrants with irregular status residing in Japan.⁴⁸ Approximately 60% of this population were male and the rest were female. The majority of migrants with irregular status originate from South Korea, Thailand, China, Vietnam and the Philippines.⁴⁹

Who is at Risk of Immigration Detention?

As set forth in Japan's Immigration Control and Refugee Recognition Act (ICRRA),⁵⁰ If an immigration control officer has reasonable grounds to believe that a foreign national satisfies any of the grounds for deportation, including lack of valid passport and permission for landing, the officer can order the detention of the foreign national with a written detention order (Article 39). Further, foreign nationals issued with deportation orders can be subject to detention until their deportation becomes possible (Article 52(6)). There is no legal provision that prohibits the immigration detention of children; however, the immigration authority appears to refrain from detaining children in practice.

Who is Detained in Practice?

While the law allows the immigration officers to make detention decisions at their discretion, the Immigration Services Agency (ISA) in practice applies the principle of "Zenken-Shuyo Shugi" ("detention of all violators," i.e., detention as a default measure).⁵¹ This means all foreigners facing deportation can be detained in practice, with provisional release being an exceptional measure.

Japan is one of the few Asian countries that has ratified the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. However, people seeking asylum are often detained at points of entry as well as during refugee status determination (RSD) procedures. If a foreigner requests asylum at a port of entry, they may be detained at "landing prevention/departure waiting" facilities⁵² in the vicinity of the port of entry while waiting for Landing Permission for Temporary Refuge to be

⁴⁵ UNHCR, [UNHCR Japan Factsheet](#), Jun 2021

⁴⁶ Ibid

⁴⁷ Immigration Services Agency of Japan, [2020 Refugee Statistics](#), Mar 2021 [Japanese]

⁴⁸ Immigration Services Agency of Japan, [Foreign nationals who overstayed their authorised periods of stay in Japan](#), Jan 2022 [Japanese]

⁴⁹ Ibid

⁵⁰ [Unofficial English translation](#) is made available by the Japan Cabinet Secretariat

⁵¹ Tokyo Bar Association released [a statement expressing concerns over Japan's mandatory detention policy](#) in 2020 [Japanese]

⁵² These facilities are referred as "Departure Preparation Facility" in the law

granted.⁵³ People seeking asylum are also detained in the immigration detention centres. In June 2019, among 1,253 individuals detained in immigration detention centres across Japan, 434 were people in the RSD procedure.⁵⁴

Although children legally can be subjected to administrative detention, they are generally not detained in practice, but their parents can be detained regardless. Children who are separated from their parents or guardians are typically referred to child welfare facilities. However, there are reported cases of young children being held with their mothers in a detention facility.⁵⁵ The number of children in detention has been extremely low in recent years; in 2019, 2017 and 2015, there was a record of only one child⁵⁶ being detained in immigration detention facilities in each year.⁵⁷

Immigration Detention Infrastructure

As of 2022, there are 17 immigration detention facilities in Japan,⁵⁸ out of which two are long-term immigration detention centres.⁵⁹ In addition to these detention facilities, there are “departure preparation” facilities in airports. The period of detention is limited to a maximum of 60 days under a detention order (ICRRA Article 41). However, once a deportation order is issued, this time limit no longer applies, and the person can be detained until the deportation becomes possible (ICRRA Article 52-5). This has been the main cause of indefinite and long-term detention in Japan.⁶⁰

There were 141 people remaining in immigration detention facilities as of September 2021.⁶¹ This number is a result of continued provisional release of detained persons as a part of COVID-19 prevention measures in detention facilities. Prior to the COVID-19 pandemic, in June 2019, there were 1,253 detained persons across six major immigration detention facilities in Japan, out of which 679 (54%) were detained for more than six months. The majority of long-term persons in detention were male (88% or 599). There was one child detained in the East Japan Immigration Centre in that month and 12 detained persons over the age of 60. A total of 434 persons in detention were in the process of seeking asylum or have applied for asylum while in detention. In terms of nationality, Iranian and Sri Lankan nationals accounted for the largest numbers in detention, at 86 and 77 respectively.⁶²

⁵³ Global Detention Project, [Japan Immigration Detention Profile](#), Mar 2013

⁵⁴ Immigration Services Agency of Japan, [Statistics on immigration detainees detained for more than 6 months](#), Nov 2019 [Japanese]

⁵⁵ Ushiku-no-Kai, [NGO Submission on Japan’s Arbitrary Immigration Detention](#) to the UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, Mar 2019

⁵⁶ Note that the legal age of a child in Japan has been lowered to 18 from April 2022; previously it was 20.

⁵⁷ Immigration Services Agency of Japan, [Statistics on immigration detainees detained for more than 6 months](#), Nov 2019 [Japanese]

⁵⁸ [According to ISA](#), there are 4 airport district immigration services offices and 11 regional immigration services bureaus. These offices have detention facilities of varying size. In addition to this, there are two facilities officially named ‘immigration centre’ – East Japan Immigration Centre and Omura Immigration Centre.

⁵⁹ Ushiku-no-Kai, [NGO Submission on Japan’s Arbitrary Immigration Detention](#) to the UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, Mar 2019

⁶⁰ Ibid

⁶¹ Immigration Services Agency of Japan, [Statistics on immigration detainees from 2016 to 2021](#), Sept 2021 [Japanese]

⁶² Immigration Services Agency of Japan, [Statistics on immigration detainees detained for more than 6 months](#), Nov 2019 [Japanese]

Alternatives to Detention

ICRRA provides four alternative measures that can be applied in lieu of detention.

1. People seeking asylum who are granted Landing Permission for Temporary Refuge at the port of entry are allowed to reside in the community with some restrictions.⁶³
2. When a foreign national without a status of residence applies for refugee status, the Minister of Justice may issue a Permission for Provisional Stay with restrictions and an obligation to comply with summons.⁶⁴ The restrictions can be imposed on a place of residence, area of movement and any designated activities. Provisional stay permits are typically given to children and their mothers while fathers are often still detained.⁶⁵
3. Those who are already in detention can apply for provisional release, in accordance with Article 54 of ICRRA. The decision for granting provisional release is made by the director of the immigration detention facility or a supervising immigration inspector. The detained person is required to pay a surety not exceeding three million yen and provide a letter of guarantee submitted by a person other than the detained person.
4. Finally, those who have agreed to a prompt voluntary return to their home country and have been issued with a Departure Order instead of a Deportation Order, will not be detained.⁶⁶

Other than what ICRRA provides, the Ministry of Justice refers a limited number of people seeking asylum to an ATD programme run by Forum for Refugees Japan (FRJ), a network of NGOs supporting refugees and people seeking asylum. FRJ entered into a Memorandum of Understanding with the Ministry of Justice and the Japan Federation of Bar Associations (JFBA) in 2012 to pilot an ATD programme for people seeking asylum entering Japan via designated airports. Under this programme, the Ministry of Justice can refer people seeking asylum, who are likely to be subjected to one of the alternative measures, to FRJ instead of sending them to detention facilities. FRJ then provides emergency shelter, identifies suitable accommodation, provides case management support, and facilitates further referral for legal assistance and other services. People seeking asylum already in detention facilities can also be referred to FRJ if they have sought asylum at the airport and have been given permission for provisional release by the Ministry of Justice.

This pilot ATD programme has shown that early intervention with case management support makes a significantly positive difference to participants' wellbeing, addresses their specific needs, and supports them to productively engage in asylum and migration processes. This has in turn led to better compliance and improved and timely case resolution.⁶⁷ This programme ended its pilot period in 2014 and has since been formally implemented. However, the funding needs for the programme were never met by the government and the number of cases referred by the Ministry of Justice over the years has remained minimal. Only 42 people entered this programme between 2011 and 2020.⁶⁸ The referral criteria used by the Ministry of Justice when referring an individual

⁶³ Immigration Control and Refugee Recognition Act, Article 18-2

⁶⁴ Ibid, Article 61

⁶⁵ Ushiku-no-Kai, [NGO Submission on Japan's Arbitrary Immigration Detention](#) to the UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, Mar 2019

⁶⁶ Immigration Control and Refugee Recognition Act, Article 24

⁶⁷ Forum for Refugees Japan, Ministry of Justice and Japan Federal Bar Association, [Joint Report of the Alternative to Detention Pilot Project for Foreign Nationals Seeking Asylum at Airport in Japan](#), Mar 2015 [Japanese]

⁶⁸ Forum for Refugees Japan, [Progress Report of the Alternative to Detention Project for Foreign Nationals Seeking Asylum at Airport in Japan](#), Dec 2019 [Japanese]

to the programme is also reportedly very restrictive; it appears that the immigration authorities would most likely refer people seeking asylum to the ATD programme, who would be released regardless. This would mean that the availability of the ATD option does not work as a leverage in considering the release of a person seeking asylum.

Access to Rights and Services

A limited number of people seeking asylum have access to basic rights and services through NGOs working to support refugees arriving in Japan. For those who enter the ATD programme, FRJ identifies initial accommodation and appoints a case manager. FRJ also provides assistance such as psychological counselling and secures access to financial support, education and medical care. The JFBA provides legal assistance to some people seeking asylum.⁶⁹

Those who are granted provisional release but have no access to an NGO and other types of support are left in extremely difficult living conditions. They are unable to secure basic means of living, with no access to healthcare and housing support and are at risk of destitution. People seeking asylum who are destitute may receive financial support from the government during the asylum process, but the number of recipients has been limited⁷⁰ due to the strict criteria⁷¹ and budget constraints.

As for legal representation, while JFBA and Japan Legal Support Centre provide legal assistance to some people seeking asylum as well as to migrants with irregular status,⁷² there is no other government-funded legal assistance available for migrants with irregular status and access to a pro bono lawyer is extremely limited. Due to the limited availability of bilingual lawyers, detained persons also face language barriers to access to legal services.⁷³

Developments during COVID-19

Starting in early 2020, following the release by the Ministry of Justice of an official guideline to address the risk of COVID-19 outbreaks in immigration detention, the Immigration Services Agency has been encouraged to release detained people via provisional release.⁷⁴ At the end of 2019, there were 1,054 people detained in immigration detention facilities; this number decreased to 346 by the end of December 2020, and to 141 by September 2021.⁷⁵ 3,013 people detained in immigration detention were granted provisional release in 2020. This was more than a 300% increase from 2019.⁷⁶ People released were not, however, provided with any assistance to enable them to reside

⁶⁹ UNHCR, [Global Strategy Beyond Detention 2014-2019: Option for governments on open reception and alternatives to detention](#), published in 2015 then revised in 2020

⁷⁰ Japan Association for Refugees, [Refugees in Japan](#)

⁷¹ Criteria for eligibility can be found at Refugee Assistance Headquarters, [Assistance for Applicants for Recognition of Refugee Status](#), Jul 2020

⁷² Japan Federation of Bar Associations, [Duties of the Japan Legal Support Center and the JFBA](#); also see [Japan Legal Support Centre Brochure](#), Dec 2019

⁷³ Ushiku-no-Kai, [NGO Submission on Japan's Arbitrary Immigration Detention](#) to the UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, Mar 2019

⁷⁴ Nippon.com, [Japan to Promote Provisional Release for Foreign Detainees](#), May 2020

⁷⁵ Immigration Services Agency of Japan, [Statistics on immigration detainees from 2016 to 2021](#), Sept 2021 [Japanese]

⁷⁶ Immigration Services Agency of Japan, [2021 Immigration Control and Residency Management](#), April 2022, pg. 63

safely and securely in the community. No financial support was provided while those on provisional release have no right to work.⁷⁷

The Japanese government has made the COVID-19 vaccine available for everyone residing in Japan, regardless of their legal status. In April 2021, in coordination with the Ministry of Health, Labour and Welfare, the Immigration Services Agency issued an administrative guideline to all detention centres to facilitate the provision of COVID-19 vaccines to detained persons.⁷⁸ The Immigration Services Agency also released a flyer to support foreign residents' access to the vaccination, stating that those under deportation orders are also eligible for vaccination.⁷⁹

⁷⁷ Solidarity Network with Migrants Japan, [困窮する移民・難民に医療を - 解説記事①「食べられない・家賃払えない・病院に行けない「最貧困」の仮放免者」](#), Oct 2021 [Japanese]

⁷⁸ Ministry of Health, Labour and Welfare, [Notice on administration of COVID-19 vaccination in immigration detention centres](#), Apr 2021 [Japanese]

⁷⁹ Immigration Services Agency of Japan, [Information on FRESC Multilingual COVID-19 Vaccination Support](#)

REPUBLIC OF KOREA



United Nations
Network on Migration

Working Better Together

REPUBLIC OF KOREA

Basic Demographics

There were 3,595 refugees (including humanitarian status holders) and 11,374 people seeking asylum in the Republic of Korea as of February 2022.⁸⁰ This number does not include North Korean defectors. South Korea received approximately 74,000 asylum applications between 1994 and February 2022. Among 42,330 applications that have completed refugee status determination, 2.8% or 1,180 have been granted refugee status, 5.7% or 2,415 with humanitarian status, while 91.5% have been rejected.⁸¹ The largest numbers of people seeking asylum came from Russia, Kazakhstan, China, Malaysia and India between 2017 to 2020, while those recognised as refugees were from Myanmar, Pakistan, Bangladesh, Ethiopia and the Democratic Republic of the Congo during the same period.⁸² The majority of humanitarian status holders were from Syria and Yemen.⁸³

According to the Ministry of Justice, there were 391,387 migrants with irregular status residing in South Korea as of February 2022.⁸⁴ In 2020, more than 70% of the irregular population came from three countries, namely Thailand, Vietnam and China.⁸⁵ As of August 2020, there were 8,466 children with irregular status, though this number does not capture a number of children born in South Korea from parents who are migrants with irregular status as they are not included in the immigration statistics.⁸⁶

Who is at Risk of Immigration Detention?

As set forth in the Immigration Act, all non-citizens who violate conditions of entry, stay and exit can be subjected to deportation in South Korea; anyone who is suspected of violating these conditions can be detained.⁸⁷ This can include people seeking asylum, migrants with irregular status, trafficking survivors, as well as children.

The Refugee Act also provides grounds for the use of detention as Article 20 allows immigration officers to detain people seeking asylum for up to 10 days, for the purpose of identity verification. Article 6(2) also allows authorities to order asylum applicants at ports of entry to wait for up to seven days for their application referral result within a designated location in the airport.

There are no specific provisions under the Immigration Act nor Refugee Act that prohibit the detention of children or any other people in vulnerable situations.

⁸⁰ Ministry of Justice, [Feb 2022 Monthly Report: data on immigration service](#) [Korean]

⁸¹ Ibid

⁸² Statistics KOREA, [Data on refugees](#), last updated Jul 2021 [Korean]

⁸³ UNHCR, [UNHCR Factsheet Republic of Korea](#), Oct 2021

⁸⁴ Ministry of Justice, [Feb 2022 Monthly Report: data on immigration service](#) [Korean]

⁸⁵ KOSIS, [Current Statistics on the number of migrants with irregular status by countries](#), last updated Oct 2021 [Korean]

⁸⁶ KBS, [\[취재후\] '투명인간'도 아닌데...'숨죽이며 살다가 강제추방' 언제까지](#), Oct 2020 [Korean]

⁸⁷ Immigration Act, Articles 46 and 51

Who is Detained in Practice?

The Republic of Korea has ratified the 1951 Convention relating to the Status of Refugees and its 1967 Protocol and is the first Asian country with a stand-alone refugee law. Despite this, people seeking asylum arriving in South Korea are often detained. Those who express the intention to apply for asylum at ports of entry can be held at the transit zone of airports while waiting to hear if their case is eligible to be referred to a formal Refugee Status Determination (RSD) procedure.⁸⁸ A large number of applications receive non-referral decisions at this stage and applicants are then detained in the deportation waiting room. Between 2017 and 2020, there were 948 applications at ports of entry, and 635 applicants (i.e., 67% of total applications) had received non-referral decisions.⁸⁹ There have also been a number of media reports of people seeking asylum, including families with children and pregnant women, being forced to stay in transit zones without being referred to the RSD procedure. There are no comprehensive statistics released by Ministry of Justice on the number of people seeking asylum staying or de-facto detained in the transit areas of airports, but according to the Korean Bar Association, there were 74 people staying in the transit zone of Incheon International Airport in January 2019.⁹⁰

There have been cases of people seeking asylum in the RSD process who were denied the issuance of a visa and instead received a departure order.⁹¹ This is the case if the person seeking asylum has overstayed their visa, stayed in Korea for a prolonged period of time before applying for refugee status, or if they re-applied for refugee status without a change in circumstances. The departure order can be deferred until the final RSD decision is made, however if the Ministry of Justice deems that such person seeking asylum is in gross violation of immigration laws – i.e., being undocumented for a prolonged period – it detains the person seeking asylum and keeps her/him in detention while processing the RSD claims.⁹²

There are also some reports that a number of humanitarian status holders and recognised refugees are given deportation orders despite their protected status following completion of their criminal sentences, and therefore detained for a prolonged period of time while disputing their deportation orders.⁹³

⁸⁸ Global Detention Project, Immigration Detention in the Republic of Korea: Penalising People in Need of Protection, Feb 2020

⁸⁹ Ministry of Foreign Affairs, Unpublished draft of the Country Report for UN Committee on the Elimination of Racial Discrimination 20 – 22nd session, Jan 2022 [Korean]

⁹⁰ Sisain, 공항 살이 287일, 마침내 ‘난민’ 인정받은 루렌도 가족, Oct 2021 [Korean]

⁹¹ There have been a number of legal proceedings appealing against denial of visa for people seeking asylum. See, for example, 2020KuDan71041 (Seoul Administrative Court, 9 Sep 2021) that found that denial of visa to the plaintiff who filed their refugee application within two months before expiry of visa was illegal; 2019Nu65780 (Seoul High Court, 4 Jun 2020) that found the same for refugee application after 30 days of stay; 2020Nu10162 (Suwon High Court, 19 Aug 2020) that found the same for refugee application after expiry of visa; and 2019KuDan64429 (Seoul Administrative Court, 10 Sep 2020) that found that the MOJ should have fully considered whether the subsequent application was based on change in circumstances before denying the applicant a visa.

⁹² See, for example, Korea Refugee Rights Network’s Opinion on the MoJ’s Proposal on Amendment of the Refugee Act, Jan 2021 [Korean]

⁹³ See, for example, a media report in April 2022 on the recent court decision that cancelled the detention order, on procedural grounds, of a humanitarian status holder who has been detained for more than a year [Korean]

Although the Justice Ministry's internal policy is not to detain children in principle and defer their deportation order, children are still detained in practice; between 2016 and 2020, 308 children of ages 14 to 18 were detained at the immigration detention centres.⁹⁴ Children can also end up in immigration detention as a result of their parents being detained: where children are over 14 years of age, parents subject to deportation orders can 'elect' to have their children with them in detention where there is no one to take care of the child outside of detention. Similarly, parents with children under the age of three can 'elect' for their children to be in detention with them, even if there is a person able to provide care outside of detention.⁹⁵

Most migrants with irregular status in detention are those who entered South Korea initially with a valid visa, or on a visa exemption, and then overstayed. When they are apprehended by the authorities, they are detained for the purposes of deportation. Between 2016 and 2017, while a minority of people were detained for over seven months for reasons relating to unresolved labour disputes or for seeking asylum, 89% were detained for less than two weeks.⁹⁶ The average length of stay at the immigration centres was 16.9 days in 2020 and 9.6 days in 2019.⁹⁷

Human trafficking survivors are also frequently detained and deported. Despite existing government policy not to detain trafficking survivors, they are often not properly screened due to a lack of understanding over the different forms of trafficking that can take place and are instead penalised for unlawful acts by traffickers. This is particularly the case for sex trafficking survivors.⁹⁸

Immigration Detention Infrastructure

There are three dedicated immigration detention centres ("*oe-gug-in bo-ho-so*" or Foreigner Protection Facility) in South Korea.⁹⁹ However the Immigration Bureau utilises other types of facilities to detain non-citizens subject to deportation, including detention cells ("*bo-ho-sil*") at 16 immigration offices across the country as well as transit facilities within the international airports. Detention cells are smaller in size and used for temporarily holding foreigners without valid documents for investigation prior to transferring them to one of the three dedicated detention centres in the country.¹⁰⁰

A person who is detained pending an investigation and decision on whether they can be subject to deportation can only be detained for a maximum of 20 days.¹⁰¹ However there is no maximum limit to the length of detention for those under deportation orders; the Immigration Act (Article 63) states that those under deportation orders who cannot immediately be deported can be detained in any detention facility *until the deportation is possible*.¹⁰² The same Article also stipulates that after three months of initial detention, a detention approval has to be obtained from the Minister of Justice

⁹⁴ Ministry of Foreign Affairs, Unpublished draft of the Country Report for UN Committee on the Elimination of Racial Discrimination 20 – 22nd session, Jan 2022 [Korean]

⁹⁵ Regulations on the Protection of Foreigner, Article 4

⁹⁶ Ibid

⁹⁷ Ministry of Justice, Responses to the Constitutional Court of Korea on 2020 Hunga1 case, April 2021 [Korean]

⁹⁸ US Department of State, [Trafficking in Persons Report: South Korea, 2021](#)

⁹⁹ Ministry of Justice, [List of institutions under the Immigration Bureau](#) [Korean]

¹⁰⁰ Gamdong, [Immigration Detention Manual for Foreigners](#), 2017 [Korean]

¹⁰¹ According to the Immigration Act Article 52, the deportation decision should be made within 10 days, however it can be extended once, by up to 10 days.

¹⁰² Immigration Act, Article 63(1)

every three months thereafter. If the immigration authority fails to obtain this approval, the detained person should immediately be released.¹⁰³ Despite this, Article 63(1) remains a legal ground for indefinite detention of migrants with irregular status, and in some cases for people seeking asylum, humanitarian status holders and recognised refugees. The constitutionality of this clause is being debated at the constitutional court as of December 2021.¹⁰⁴

The Ministry of Justice does not make immigration detention statistics publicly available but only provides partial information when requested under the Official Information Disclosure Act.

Alternatives to Detention

The Immigration Act, Article 63 stipulates that where it becomes clearly impossible to repatriate a person subject to a deportation order, the Regional Immigration Service can release the person under certain conditions. Article 65 states that a person can be granted temporary release either at the request of a guarantor or a legal guardian of the detained person or at the discretion of the head of the Regional Immigration Service. Conditions for release vary, including a surety in an amount less than two million KRW and a restriction of residence. Between 2018 and 2021, only 393 (i.e., approximately 0.5%) out of 78,993 migrants with detention orders were granted temporary release.¹⁰⁵ Those under temporary release are not given a visa and not permitted to work.

The Ministry of Justice announced on 1 November 2021, in response to the widely publicised incident at an immigration detention facility where a detained person whose wrists and ankles were bound in solitary confinement,¹⁰⁶ that it will initiate a series of legislative and policy changes to improve the immigration detention regime. This includes reduction in the use of detention orders, proactive use of temporary release, establishing a legal limit to the length of detention as well as a plan to establish an alternative detention facility which would allow freedom of movement within the facility, aiming to shift the focus of such a facility from detainment to protection.¹⁰⁷

People seeking asylum with rejected applications who have exhausted their options to appeal are in principle subject to deportation and detention orders. However, people seeking asylum who have not been granted refugee status can still be granted permission to remain in the country on humanitarian grounds.¹⁰⁸ Once humanitarian status is granted, they are protected from detention and deportation.

The Ministerial policy of the Ministry of Justice provides protection against detention and deportation for undocumented children who are residing in South Korea and attending school. In the past, this policy did not grant legal status to the children, nor provided a pathway to legalisation; instead, it only functioned as a temporary suspension of the deportation order. This meant that the children were still subjected to detention and deportation when they no longer attended school or

¹⁰³ Ibid, Article 63(2) and 63(3)

¹⁰⁴ Legal Times, [\[헌법\] "강제퇴거자 무기한 보호 가능한 출입국관리법 63조 1항 위헌 소지"](#), Feb 2021.

[Korean]

¹⁰⁵ The Ministry of Justice, Responses to the Constitutional Court of Korea on 2020Hunga1 case, Apr 2021.

[Korean]

¹⁰⁶ France 24, [Surveillance footage reveals shocking treatment of migrant in South Korean detention](#), May 2021

¹⁰⁷ Ministry of Justice, [Press release](#), Nov 2021 [Korean]

¹⁰⁸ Ministry of Justice, [Handbook: Refugee Status Determination Procedures in Korea](#), 2015

after they graduated, regardless of how long they resided in South Korea.¹⁰⁹ However a newly enforced policy, effective from 1 February 2022 until March 2025, grants permission to stay (a D-4 or G-1 visa for a temporary stay with opportunities to transfer to other longer term visas and naturalisation) to undocumented children who are either currently in school or have graduated from school.¹¹⁰ Their parents are also provided with a temporary permission to stay and are able to seek employment for the purpose of supporting their children until their children reach the adulthood.¹¹¹

Trafficking survivors as well as foreign survivors of sexual and gender-based violence and child abuse are exempted from immigration penalties for remaining in the country beyond the permitted period of stay and are issued with a G-1 visa.¹¹² The periods of stay are only extended until the legal proceedings are completed and in rare cases where the Ministry of Justice deems it necessary.¹¹³

The Korean Immigration Service has been running an on-and-off voluntary departure programme for migrants with irregular status since 2004.¹¹⁴ This programme is typically time-bound and targets migrant workers who have overstayed their visa or have violated the terms of their stay. By submitting a voluntary departure declaration either in person at a local immigration office or online, they are exempted from a deportation order (which legally subjects them to detention), but instead are given 15-30 days to voluntarily depart the country. The latest example of this type of scheme was particular to the COVID-19 context as the voluntary departure programme between October to December 2021 allowed migrants with irregular status to voluntarily declare their status and depart without immigration penalties if they have completed their COVID-19 vaccination.¹¹⁵

In 2021 and 2022, the Korean government implemented measures to allow temporary stay for Myanmar, Afghanistan, and Ukraine nationals in South Korea, until the situation in their respective countries stabilise (“measures for humanitarian special stay”). Such measures allowed nationals of these three countries to remain in South Korea by either extending the stay permit of those who otherwise have no ground to extend their stay, or by deferring departure orders for existing overstayers.¹¹⁶ However, concerns have been raised over the continued detention of those already detained at the time of the announcement of the measure, and the lack of work rights for those who are in an irregular status.¹¹⁷

Access to Rights and Services

The Refugee Act includes a number of provisions on the rights and services that refugees and people seeking asylum are entitled to. Articles 30 through 38 stipulate that recognised refugees are entitled to the same level of social security, education and livelihood support as South Korean

¹⁰⁹ South Korean NGO Coalition, [Republic of Korea NGO Alternative Report to the UN Committee on the Elimination of Racial Discrimination](#), Nov 2019

¹¹⁰ Ministry of Justice, [Press release](#), Jan 2022[Korean]

¹¹¹ Ibid

¹¹² Prevention of Human Trafficking Act, Article 43 and Immigration Act, Articles 25(3) and 25(4)

¹¹³ Immigration Act, Articles 25(3) and 25(4)

¹¹⁴ Korean Immigration Service, [Management of irregular foreigners](#) [Korean]

¹¹⁵ Ministry of Justice, [Press release](#), Nov 2021 [Korean]

¹¹⁶ Ministry of Justice, Press Releases on Measure for Humanitarian Special Stay for [Myanmar](#), [Afghanistan](#) and [Ukraine](#), 2021 [Korean]

¹¹⁷ Edaily, [법무부, 아프간인 특별 체류 결정...인권단체 "임시방편 아닌 명확한 입장 밝혀야"](#) Aug 2021 [Korean]

citizens. Article 43 states that refugee applicants and their underaged family members are entitled to receive the same level of primary and secondary education as citizens.

Humanitarian status holders are granted a G-1 visa and are entitled to a lower level of social benefits and protection compared to recognised refugees. For example, the Refugee Act does not provide humanitarian status holders with the right to family reunification; therefore, they are not allowed to bring family members to South Korea. They are also not able to obtain Korean citizenship no matter how long they have lived in South Korea and cannot benefit from social welfare schemes available for citizens. They are also not eligible for basic welfare services, such as childcare allowance, or subsidies for housing.¹¹⁸

Refugees, humanitarian status holders and refugee applicants are legally eligible to seek employment.¹¹⁹ Recognised refugees are given F-2 Resident visas which automatically grants them permission to seek employment. Humanitarian status holders and people seeking asylum can apply for a permission to work but they must first find an employer who is willing to hire them before applying for the permission. In addition, people seeking asylum must wait six months from the date of their refugee application submission to apply for this permission.¹²⁰ Notwithstanding the legal ability to obtain a work permit, in practice the ability of people seeking asylum and humanitarian status holders to find work is limited. Employers and regional immigration offices sometimes lack understanding of the respective visa type that the humanitarian status holders and people seeking asylum hold as this particular visa type is typically reserved for temporary stayers who do not have the right to obtain a work permit; this leads to the practical difficulty in accessing the work permit.¹²¹

People seeking asylum in the process of RSD have legal rights to interpretation and translation during their RSD interviews as well as right to legal assistance.¹²² However, the National Human Rights Commission of Korea has reported the lack of adequate interpretation services for refugee applicants.¹²³ Access to these services is particularly limited when it comes to the regional immigration offices that are outside of Seoul.

While children with irregular status cannot benefit from the national health insurance scheme, they are eligible for free national vaccinations.¹²⁴ If a child with irregular status is under the age of two, the government provides direct subsidies to the childcare centre to cover the cost of their childcare.¹²⁵ Access to healthcare for migrants in an irregular status is in general extremely limited.

¹¹⁸ National Human Rights Commission, [Report on Monitoring of Human Rights Guidelines for Migrants, 2018](#) [Korean]

¹¹⁹ Ministry of Justice, [Handbook: Refugee Status Determination Procedures in Korea](#), 2015

¹²⁰ Ibid

¹²¹ National Human Rights Commission of Korea, [Living as a humanitarian status holder in Korea: Monitoring Report of Migrant Rights Guidelines 2019](#), Dec 2019 [Korean]

¹²² Refugee Act, Article 12, 14 and 15

¹²³ National Human Rights Commission of Korea, [Information to the UN Human Rights Committee for the adoption of the List of Issues Prior to Reporting in relation to the consideration of the Fifth Periodic Report by the Government of Republic of Korea](#), May 2019

¹²⁴ Ministry of Foreign Affairs, [National Report submitted to Universal Periodic Review 28th session](#), 2017

¹²⁵ Ibid

Developments during COVID-19

At the outset of the pandemic, Korea suspended immigration enforcement raids and provided all migrants, regardless of their legal status, free testing and treatment for COVID-19. Korean health authorities also have actively advertised that migrants with irregular status will not be reported to immigration authorities when they are in contact with health workers. Migrants with irregular status are often afraid of going to public hospitals and clinics as they fear that their status may be exposed despite the existing firewall between the immigration and health authorities.¹²⁶ On the other hand, visits to immigration detention centres were banned and the mobility of detained persons was also restricted.¹²⁷

The number of people in immigration detention during COVID-19 has reportedly increased in South Korea due to the travel restrictions and lack of available flights which has in turn delayed the deportation of migrants with irregular status in detention.¹²⁸ Civil society groups advocated for the government to release people from detention who cannot immediately return to their home country.¹²⁹ However, this did not happen until February 2022 when the Ministry of Justice ordered the temporary release of some persons from immigration detention to mitigate a spike in COVID-19 positive cases in an immigration detention centre.¹³⁰ This move has been criticised by civil society organisations, as people were released without any further protection mechanisms or support in the community. Individuals released under this temporary release scheme do not have rights to work and have little livelihood options.¹³¹

In 2021, the Korean government has actively encouraged migrants with irregular status to receive the COVID-19 vaccination and has provided vaccination information to migrant communities in six different languages through both online and offline platforms. The Ministry of Justice reported that as of November 2021, 74.6% of migrants with irregular status have been fully vaccinated.¹³²

¹²⁶ Republic of Korea Policy Briefing, 불법체류자 단속 유예·검사 지원...“사각지대에 포용적 방역대책”, May 2020 [Korean]

¹²⁷ Global Detention Project, COVID-19 Updates: Republic of Korea, Apr 2020

¹²⁸ Kyunghyang Shinmun, 코로나로 외국인보호소 수용률 2배 증가...장기화에 수용자들 이중고, Apr 2021 [Korean]

¹²⁹ Korea Refugee Rights Network, Joint Statement on Measures to Prevent COVID-19 Outbreak in Immigration Detention Centres, Mar 2020 [Korean]

¹³⁰ Hankyoreh, [단독] 화성외국인보호소 확진자 급증하자...무작정 “나가라”, Feb 2022 [Korean]

¹³¹ Ibid

¹³² Ministry of Justice, Press release, Nov 2021 [Korean]

INDONESIA



United Nations
Network on Migration

Working Better Together

INDONESIA

Basic Demographics

As of January 2022, there were 13,219 persons registered with UNHCR, comprising 9,957 refugees and 3,262 people seeking asylum from 50 countries; of these some 3,512 children were registered with UNHCR, including 3,414 children in families, 70 children who are unaccompanied by a parent or other adult relative, and 28 children who are separated from their parents but living with an adult caregiver.¹³³ They come primarily from Afghanistan, as well as from Somalia, Myanmar, Iraq, Sudan, Yemen, Sri Lanka and Iran.¹³⁴

Indonesia is also primarily a country of origin for migrant workers. Migrants with irregular status are not believed to be a significant population in Indonesia; there does not appear to be any publicly available data on their numbers.

Who is at Risk of Immigration Detention?

Under Indonesia's Law. No. 6 2011 on Immigration, all persons entering and remaining in Indonesia without valid travel documents and a visa commit an offence punishable with a maximum of five years prison and a fine of RP500 million.¹³⁵ Detention is then permissible until deportation can be carried out. Where a person cannot be deported, they can be detained for up to a maximum of 10 years without judicial review.¹³⁶ All persons who violate immigration laws can be subject to immigration detention.¹³⁷

With the issuance of 2018 'Circular Note of the Directorate General of Immigration, Ministry of Law and Human Rights on Restoring the Function of Immigration Detention Centres' (the 2018 DGI Circular Note),¹³⁸ people seeking asylum and refugees are exempted from immigration detention despite having irregularly entered the country.¹³⁹

¹³³ UNHCR Indonesia, [Monthly Statistical Report](#), Jan 2022

¹³⁴ Ibid

¹³⁵ Law. No. 6 2011 on Immigration, Articles 9, 83 and 119

¹³⁶ Ibid, Article 85

¹³⁷ Ibid, Articles 86 and 87

¹³⁸ Directorate General of Immigration (DGI) Circular on Restoring the Function of Immigration Detention Centres, 30 July 2018. See also Permanent Mission of the Republic of Indonesia to the United Nations, WTO, and Other International Organisations in Geneva, [Questionnaire of The Special Rapporteur on The Human Rights of Migrants: Ending Immigration Detention of Children and Seeking Adequate Reception and Care for Them](#), 21 Apr 2020

¹³⁹ Presently, while there are rarely refugees and people seeking asylum in immigration detention in Indonesia, their detention is still permitted under law and policy, including under the Immigration Law No. 6 2011 on Immigration, DGI Regulation No. IMI-0352.GR.02.07 on The Handling Illegal Migrant Claiming to be Asylum Seeker or Refugee 2016, and the Presidential Regulation No. 125 of 2016 on the Treatment of Refugees and Asylum Seekers in Indonesia. Instead, the laws provide that persons who are pregnant, have disabilities, or who are children, or the elderly can, with the approval of the Ministry of Law and Human Rights, be placed outside of detention/shelters.

Who is Detained in Practice?

Notwithstanding the provisions of Law. No. 6 2011 on Immigration, Indonesia has effectively ceased the immigration detention of refugees and people seeking asylum. With the issuance of the 2018 DGI Circular Note, refugees and people seeking asylum are exempted from immigration detention, despite their irregular status in the country. At the same time, Australian government funding in Indonesia has been reduced, leading to shifts in the country's approaches to refugees and people seeking asylum.¹⁴⁰

However, immigration authorities have occasionally conducted inspections to check for infractions of laws, local regulations, and accommodation centre rules, in turn leading to stress and uncertainty for refugees and people seeking asylum.¹⁴¹ These unclear laws/regulations/rules include, for example, curfews and prohibitions on riding motorbikes, and have had the effect of causing some refugees, particularly women, to contain themselves within shelters.¹⁴² They have also occasionally resulted in short-term detention from a few days to a few weeks, and sometimes longer.¹⁴³ Refugees can also be detained for working (which is prohibited under Indonesian law); immigration officials raid places of work, typically after receiving reports from locals, because of concerns over tensions between refugees and local communities.¹⁴⁴ As at the end of October 2021, there were 12 men registered with UNHCR in immigration detention in Indonesia.¹⁴⁵

Law. No. 6 2011 on Immigration provides that trafficking survivors are not subject to administrative measures but may be placed in immigration detention centres or elsewhere, and are to get "special treatment" that is different to general detention.¹⁴⁶

Immigration Detention Infrastructure

There are 13 immigration detention centres in Indonesia, with a maximum capacity of 1,700.¹⁴⁷ There is limited publicly available information on current conditions in immigration detention centres. However, the mass release of refugees and people seeking asylum from detention due to the 2018 DGI Circular has reportedly helped to address issues relating to overcrowding and led to improved conditions for remaining persons detained.

A number of people seeking asylum have also been detained at Jakarta International Airport's international zone. Unlike Rohingya who have arrived by boat to Indonesia (see Alternatives to Immigration Detention below), people seeking asylum who arrive by air are not explicitly provided for in Presidential Regulation No. 125 Year 2016,¹⁴⁸ and have been at greater risk of detention and denial of access to territory. People seeking asylum and detained at the airport have been provided

¹⁴⁰ Missbach, A., Substituting Immigration Detention Centres with 'Open Prisons' in Indonesia: Alternatives to Detention as the Continuum of Unfreedom, Citizenship Studies, 2020, p. 2

¹⁴¹ Mixed Migration Centre (MMC), A Transit Country No More: Refugees and Asylum Seekers in Indonesia, MMC Research Report, May 2021, p. 27

¹⁴² Ibid

¹⁴³ Ibid

¹⁴⁴ Ibid

¹⁴⁵ UNHCR Indonesia, Monthly Statistical Report, January 2022

¹⁴⁶ Law. No. 6 2011 on Immigration, Article 87

¹⁴⁷ Missbach A., Substituting Immigration Detention Centres with 'Open Prisons' in Indonesia: Alternatives to Detention as the Continuum of Unfreedom, Citizenship Studies, 2020

¹⁴⁸ Presidential Regulation No. 125 Year 2016, Articles 6 -13

with emergency resettlement through UNHCR or have been permitted to fly to third countries as a compromise. However, since the end of 2021, there have been two cases of people seeking asylum being refouled to their countries of origin.

Alternatives to Immigration Detention

Indonesian laws and policies provide for ATD in the form of shelters, monitoring, supervision, and regular reporting to immigration authorities. The Head of the Immigration office is obliged to monitor and register refugees and people seeking asylum living in their area of responsibility.¹⁴⁹ Although the law requires refugees to regularly report to the nearest immigration detention centre, this is not enforced in practice.¹⁵⁰

Shelters consist of several housing options provided by the IOM, UNHCR, or local government and include purpose-built new accommodation, repurposed former hotels and student dormitories. IOM runs more than 80 community shelters in 8 locations in Indonesia; in addition to housing, the eldest two people in any family receive cash support in the amount of IDR 1,250,000 each per month; other family members receive IDR 500,000 each.¹⁵¹ IOM-run ATD are only available to refugees who arrived before March 2018, and who had been in immigration detention before – they had to be referred to IOM by the Indonesian migration authorities.

ATD in Indonesia, particularly housing options run by IOM, have faced criticisms for their restrictions on liberty. All foreign persons, including refugees and people seeking asylum, must sign a declaration in which they agree to comply with Indonesian laws and report regularly to authorities.¹⁵² The IOM community housing and support provided to refugees also has been a source of tension and resentment among host communities.¹⁵³ As a condition to their release from detention, refugees living in IOM-run shelters in cities outside the greater Jakarta area are subject to more restrictions imposed by local authorities than refugees living independently among the local population.¹⁵⁴

There is no formal guardianship system in Indonesia for refugee and asylum-seeking children, however IOM and UNHCR have established an informal guardianship/kinship mechanism through which adult refugees from the same community provide protection until other legal guardianship processes are determined, based on the child's best interests. Children who are with their families live in either IOM housing, in temporary government shelters, or independently in the community with some support from UNHCR and/or NGOs. Unaccompanied and separated children live in either IOM housing, or in group homes run by UNHCR and its implementing partners, or they live independently in the community. Conditions in shelters for unaccompanied and separated children are reportedly not ideal for children, who receive insufficient psychosocial support; there are reports of children suffering from nightmares and insomnia and conducting self-harming practices and

¹⁴⁹ Article 5 of the DGI Regulation 2016 No. IMI-0352.GR.02.07 on Handling Illegal Migrants whom Declare Themselves as Asylum Seekers or Refugees

¹⁵⁰ Ibid

¹⁵¹ MMC, A Transit Country No More: Refugees and Asylum Seekers in Indonesia, MMC Research Report, May 2021, p. 24

¹⁵² Missbach A., Substituting Immigration Detention Centres with 'Open Prisons' in Indonesia: Alternatives to Detention as the Continuum of Unfreedom, Citizenship Studies, 2020

¹⁵³ MMC, A Transit Country No More: Refugees and Asylum Seekers in Indonesia, MMC Research Report, May 2021, p. 30

¹⁵⁴ Ibid, p. 27

attempting suicide. While there are attempts to find foster carers for unaccompanied children, this has been a challenge and many children remain in the shelters for years until they age out.¹⁵⁵

In Aceh province, the local government and community have welcomed Rohingya children, women and men arriving by boat. In June 2020, Acehnese rescued 99 Rohingya at sea, invoking their customary law of the sea. A local task force was set up to manage emergency response, in coordination with UNHCR, IOM and Indonesian organisations providing funding and materials.¹⁵⁶ Since then, further groups of Rohingya have arrived in Aceh; while there is currently no official Standard Operating Procedures (SOP) outlining the procedure for arrivals, they are generally moved to a temporary site in Aceh, where they receive support from IOM, UNHCR, Geutanyoe Foundation, JRS Indonesia, and other organisations, in coordination with local government, until the national government advises which of the eight refugee-hosting cities they will be transferred to for sustainable accommodation and support.

Access to Rights and Services

Under the Presidential Regulation No. 125 of 2016 on the Treatment of Refugees and Asylum Seekers in Indonesia, the government has delegated responsibility for managing refugees to local governments. However, there is no centrally allocated budget to support local government officials to respond to refugees in their area, nor any directive from Jakarta to allow local governments to use their budgets in this way.¹⁵⁷ At the same time, refugees and people seeking asylum do not have the right to work in Indonesia and must therefore depend on the assistance provided by international organisations and civil society organisations.

Refugees can access treatment at the community health clinics known as *Puskesmas* or at government hospitals, even though Indonesian law does not explicitly guarantee the right to health care for refugees. NGOs also provide healthcare services, such as the hospital in Bogor and clinic in South Jakarta run by Dompot Dhuafa. IOM provides more comprehensive health care coverage support, with primary care provided through *Puskesmas* and referral to secondary and tertiary care as required. UNHCR also provides support to cover refugee medical treatment for primary, secondary and tertiary health care costs.

However, even with this support, barriers remain in terms of cost and refugees report that they do not seek medical care when they fall ill, due to prohibitive costs. Language barriers and a lack of translators also pose challenges. Refugees under IOM's care cannot get coverage for family members who are not under IOM care. Women surveyed by the Mixed Migration Centre were reportedly also less likely to seek medical care than men.¹⁵⁸ Both IOM and UNHCR provide mental health counselling for refugees, however demand outstrips availability, leading to waiting lists and curtailed treatment.¹⁵⁹

¹⁵⁵ Save the Children, Forgotten Futures: The Lives of Refugee Children in Urban Areas of Indonesia and Thailand, 2018

¹⁵⁶ MMC, A Transit Country No More: Refugees and Asylum Seekers in Indonesia, MMC Research Report, May 2021, p. 22

¹⁵⁷ *Ibid*, p. 21

¹⁵⁸ *Ibid*

¹⁵⁹ *Ibid*

Access to education for refugee and asylum-seeking children has improved following the 2019 circular issued by the Education Ministry. However, some local governments still refuse to grant access.¹⁶⁰ Access to high schools is still limited. Both UNHCR and IOM help refugee children to enter Indonesian schools by providing Bahasa Indonesia lessons and covering costs of uniforms, books and transport. UNHCR through its implementing partners Catholic Relief Services, Human Initiative and Dompot Dhuafa runs preparatory classes to support and coach refugee children and parents to complete the Indonesian government's registration requirements, and to build the foundational knowledge and skills necessary to transition to a formal school environment. IOM also offers a school readiness programme and support with school subjects. Learning centres such as Roshand (Bright) Learning Centre, Hope Learning Centre, HELP for Refugee, and Cipayung Refugee Education Centre are refugee-run, independently of UNHCR and IOM. Some parents prefer to send their children to these learning centres because they operate in English, which is perceived to be more useful for resettlement.¹⁶¹

The right to legal counsel is guaranteed in Indonesia's legal framework. It applies to everyone regardless of their status of citizenship. Therefore, person seeking asylum and refugee are entitled to legal counsel, either from a paid lawyer or a free legal service if they cannot afford it.¹⁶² There is a State legal aid service provided through the Ministry of Law and Human Rights, criminal law enforcement agency, or the Supreme Court.¹⁶³ Refugees can also approach the Bar Council or contact the Legal Aid branches in their area.¹⁶⁴ UNHCR facilitates this access through capacity buildings for, and partnerships with, different legal aid branches, and may support the administrative costs of such services upon request.

Developments during COVID-19

Refugee children and their families were able to access government-reimbursed COVID-19 treatment up to April 2021 through a Ministry of Health Circular. This Circular was later retracted through a revised decree on 21 May 2021,¹⁶⁵ although some refugees continue to access free COVID-19 treatment based on the hospitals' discretion. *Ad hoc* access to COVID-19 vaccinations were provided by some local governments from June 2021, which was then formally extended to nation-wide access through a September 2021 Ministry of Health Circular.¹⁶⁶ As of February 2022, more than 7,400 refugees (62% of the total population of refugees eligible for vaccination, including children 6 and above in some areas) have received, at least, a first dose of vaccination in coordination with the government and private sectors. A number of refugees have also received booster vaccines. Additionally, in 2021, to address increasing living costs during the pandemic, UNHCR has provided a COVID-19 allowance for all refugees living independently nationwide.

¹⁶⁰ Ibid, p.31

¹⁶¹ Ibid, p.30

¹⁶² SUAKA, Know Your Rights. A Handbook for Refugees and Asylum Seekers, 2018

¹⁶³ Ibid

¹⁶⁴ Ibid

¹⁶⁵ Ministry of Health Decree No. HK.01.07/MENKES/4718/2021

¹⁶⁶ Ministry of Health Decision No HK.01.07/MENKES/6424/2021 on Technical Instructions on Vaccination Implementation to tackle CoronaVirus Disease 2019 (COVID-19)

MALAYSIA



United Nations
Network on Migration

Working Better Together

MALAYSIA

Basic Demographics

As of end January 2022, there were some 181,510 refugees and people seeking asylum registered with UNHCR in Malaysia: some 67% are men, 33% are women, with some 45,650 children below the age of 18.¹⁶⁷ Refugees and people seeking asylum originate mostly from Myanmar (comprising of the Rohingya, Chin, Kachin, Arakan Muslims, Shan, Mon, Karen, and other ethnic groups from conflict-affected areas or fleeing persecution in Myanmar), as well as Pakistan, Yemen, Syria, Somalia, Afghanistan, Sri Lanka, Iraq, and Palestine. The total number of undocumented foreign workers is estimated to be 1.23 million to 1.46 million.¹⁶⁸ Major countries of origin of foreign workers are Bangladesh, Indonesia, India, Nepal, the Philippines, Pakistan, Viet Nam, and Myanmar.¹⁶⁹ Many if not most, undocumented migrant workers in Malaysia originally had a legal status but became undocumented due to extremely narrow and rigid conditions for maintaining legal status.¹⁷⁰ Malaysia is a country of origin, transit and destination.

Who is at Risk of Immigration Detention?

Refugees, people seeking asylum and undocumented migrant workers, as well as anyone who unlawfully enters or remains in Malaysia, contrary to Malaysia's Immigration Act 1959/63 is at risk of immigration detention.¹⁷¹ The penalties are severe - any person found guilty can be fined an amount not exceeding 10,000 RM and/or imprisoned for a term not exceeding five years, and is also subject to whipping of not more than six strokes.¹⁷² Malaysia's immigration laws do not distinguish between children and adults, and with the exception of recognised trafficking survivors, do not exempt people in vulnerable situations from these penalties.

There is currently no maximum period of detention,¹⁷³ and extremely limited administrative or judicial channels which a person can use to challenge their detention under the Immigration Act.¹⁷⁴

¹⁶⁷ UNHCR Malaysia, [Figures at a Glance in Malaysia](#). UNHCR conducts registration of persons of concern in Malaysia. However, the Malaysian government also administers the [TRIS](#) (Tracking Refugees Information System) a government registration scheme to collect personal and biometric information of UNHCR card holders. UNHCR cardholders pay a fee to register with TRIS and are issued a special identity card called "MyRC" though this does not offer any legal rights or protection.

¹⁶⁸ Yi, Soonhwa; Simler, Kenneth; Loh, Wei San; Tan Wei, Kershia, [Who is Keeping Score? Estimating the Number of Foreign Workers in Malaysia](#), World Bank Group, Global Knowledge & Research Hub in Malaysia, April 2020, p. ix

¹⁶⁹ *Ibid*, p. 43

¹⁷⁰ Nah, A. M., [Globalisation, Sovereignty and Immigration Control: The Hierarchy of Rights for Migrant Workers in Malaysia](#), *Asian Journal of Social Science*, 2012, 40(4), 486-508; Joseph Trawicki Anderson, [Managing Labour Migration in Malaysia: Foreign Workers and the Challenges of 'Control' Beyond Liberal Democracies](#), *Third World Quarterly*, 2021, 42:1, 86-104

¹⁷¹ Immigration Act 1959/63, Section 6

¹⁷² *Ibid*, Section 6(3). The courts in Malaysia have held that whipping is not mandatory, for example *Tun Naing Oo v PP* [2009] 6 CLJ 490, which states the sentence of whipping is reserved only for crimes involving violence and brutality, and it is inhumane and serves no purpose to impose a sentence of whipping upon a person seeking asylum or refugee.

¹⁷³ Immigration Act 1959/63, Section 34(1)

¹⁷⁴ Sections 59 of the Immigration Act 1959/63 specifically restricts the ability of an individual to be heard by the Minister or Director General in respect of any matter under the Immigration Act, with section 59A

Who is Detained in Practice?

There is no prohibition on the use of immigration detention for any groups.

Pursuant to government policy,¹⁷⁵ refugees and people seeking asylum holding UNHCR documentation have some degree of protection against arrest and detention, though this is not consistently applied. Trafficking survivors granted an Interim Protection Order are not detained but may reside at protection homes/trafficking shelters run by the government or NGOs, where, after assessment, they may be allowed to move freely or seek employment. In practice however, female survivors of sex trafficking are less likely to be granted permission to leave the shelters; additionally, those allowed to leave the shelters usually had to be chaperoned, resulting in the shelter residents feeling as though they were being detained.¹⁷⁶ There are no Standard Operating Procedures (SOPs) to proactively identify trafficking survivors during immigration enforcement raids, or among vulnerable populations who authorities come into contact with. Instead, law enforcement officers rely on trafficking survivors to “self-identify” after immigration raids, rather than proactively identifying survivors using standardised procedures or survivor-centred screening methods - therefore trafficking survivors continue to be penalised for immigration violations, and have been arrested, detained and deported.¹⁷⁷ Moreover, suspected trafficking survivors are granted ‘interim protection orders’ while their status is being investigated; if not recognised as a trafficking survivor, the protection order is revoked and they are sent to immigration detention.¹⁷⁸ Due to poor screening mechanisms when individuals enter detention centres, there is no confirmed and reliable data on the number of refugees, people seeking asylum, or survivors of trafficking on immigration detention.

For migrants in an irregular situation, the Malaysian government has also utilised a series of policy and programme initiatives, in the form of regularisation (known as ‘recalibration’) programmes. These have had varying impacts with reports of many migrant workers being unable to access the schemes due to bureaucratic challenges or prohibitive costs.¹⁷⁹ The latest ‘recalibration programme’ commenced in December 2020 and has been extended to 30 June 2022, with 192,281 migrants in an irregular situation registered to return home voluntarily under the programme as of December 2021.¹⁸⁰ Under this latest programme, migrants were required to pay a RM 500 compound fine and possess valid travel documents.

restricting judicial review on any acts or decisions except those relating to compliance with a procedural requirement.

¹⁷⁵ Pursuant to a 2005 Attorney General’s Chambers Circular stipulating that people seeking asylum and refugees registered with UNHCR should not be prosecuted on account of their immigration status (this does not however, include persons who have yet to be registered with UNHCR). Neither this document, nor National Security Council Directive 23 (also relating to refugees and people seeking asylum with UNHCR documentation) are publicly available.

¹⁷⁶ US Department of State, Office to Monitor and Combat Trafficking in Persons, [2021 Trafficking in Persons Report: Malaysia](#)

¹⁷⁷ Ibid

¹⁷⁸ Global Shepherds Team, Conference Report: 1st National Virtual Conference on Care and Protection of Victims of Trafficking, 25-26 Nov 2021

¹⁷⁹ Joseph Trawicki Anderson, [Managing Labour Migration in Malaysia: Foreign Workers and the Challenges of ‘Control’ Beyond Liberal Democracies](#), Third World Quarterly, 2021, 42:1, 86-104

¹⁸⁰ Bernama, [‘Undocumented Migrants Recalibration Scheme Extended to June 30’](#), 23 Dec 2021

In March 2022 the Malaysian Immigration Department issued an internal document that allows for the release from immigration detention of individuals who hold a UNHCR refugee card issued by Malaysia. A limited number of such individuals have been released in 2022. Persons who hold UNHCR cards from another country, such as those issued by UNHCR Bangladesh or Indonesia are not included in this release programme, nor are individuals who would like to seek refugee registration but have not yet been issued a card.

Immigration Detention Infrastructure

Malaysia has a vast immigration detention infrastructure, comprising immigration detention centres as well as a number of temporary detention facilities.¹⁸¹ As of 21 November 2021, there were 1,549 children in detention, accounting for 8% out of a total of 19,143 persons detained in immigration detention centres nationwide.¹⁸² Disaggregated data on the numbers of children, women and men in Malaysia's immigration detention centres is lacking.

Conditions in detention are reported to be extremely poor, with severe overcrowding and inadequate nutrition, sanitation, hygiene and medical care.¹⁸³ Deaths in immigration detention have been widely reported: there were 208 reported deaths from 2018 to February 2022, with the main causes of death being septic shock, tuberculosis, severe pneumonia, lung infection, heart complications, dengue, diabetes, breathing difficulties, organ failure, as well as 25 deaths due to COVID-19.¹⁸⁴ Detained persons have reported that medical screening is lacking, and skin diseases, tuberculosis and malaria are common.¹⁸⁵ There are no specific protections for children, women, or others with heightened vulnerabilities in immigration detention centres. Children are regularly separated from family members.¹⁸⁶ While the Malaysian Human Rights Commission (SUHAKAM) has the legal mandate to monitor immigration detention facilities, it cannot conduct unannounced visits. UNHCR has historically been able to register persons of concern in immigration detention, however their access has been denied since August 2019.¹⁸⁷

Alternatives to Immigration Detention

Section 55 of the Immigration Act gives the Minister of Home Affairs discretionary power to exempt any person or class of person from the application of the Act. This has rarely been exercised in practice. Section 27(1)(ii) of the Immigration Act provides the Director General of Immigration with

¹⁸¹ See Immigration Department of Malaysia, [List of Immigration Depots and Temporary Detention Centres](#); International Committee of the Red Cross, [COVID-19 Assistance to Malaysian Prisons & Detention Centres](#), 3 Apr 2020

¹⁸² Kamar Khas (Special Chamber), Malaysia Parliamentary Debates, 14th Parliament, Fourth-Term, Second Meeting, 8 Dec 2021

¹⁸³ Human Rights Commission of Malaysia (SUHAKAM), [Annual Report 2016](#), 2017, p.3; SUHAKAM, [Annual Report 2019](#), 2018, p. 44-48

¹⁸⁴ Martin Carvalho, Fatimah Zainal and Ashley Tang, ['208 Deaths Reported at Immigration Depots since 2018, says Deputy Home Minister'](#), The Star, 17 Mar 2022

¹⁸⁵ Malaysiakini, [151 Deaths in Immigration Depots since 2016; 306 Children still Detained](#), 29 Dec 2019

¹⁸⁶ End Child Detention Network Malaysia, Civil Society Submission on Ending Immigration Detention of Children and Seeking Adequate Reception and Care for Them, May 2020; Global Detention Project, [Submission to the Universal Periodic Review of the Human Rights Council Malaysia, 31st Session](#), November 2018, Mar 2018

¹⁸⁷ Malay Mail, [Malaysia Denying UN Access to Detained Asylum Seekers, says Agency](#), 11 Nov 2020

discretionary powers to release a person from immigration detention, however this is again rarely used in practice.

SUKA Society, a Malaysian child rights NGO, implements an ATD programme for unaccompanied and separated children at risk of immigration detention. Established in 2015, the Community Placement and Case Management (CPCM) Programme runs independently of government and uses a holistic case management approach centred around child well-being, safety, permanency, and case resolution. Children are placed in safe and stable housing, in kinship/informal foster care among families from their communities. SUKA offers a continuum of services to support children in their programme to achieve a durable solution or case resolution (resettlement to a third country, independent living for those who become adults or returning home when it is safe to do so).¹⁸⁸ The SUKA CPCM programme was independently evaluated in 2019 and was shown to have significantly improved the overall well-being of children in the programme, while costing 90% less than immigration detention.¹⁸⁹

In April 2021, following years of collaborative work with civil society organisations (led by SUKA Society, Yayasan Chowkit (YCK) and the International Detention Coalition), SUHAKAM (the national human rights commission) and other stakeholders, the Malaysian Cabinet approved a small-scale ATD pilot for the release of unaccompanied and separated children from immigration detention centres into the care of the Ministry of Women, Family and Community Development (MWFCD) and the Social Welfare Ministry.¹⁹⁰ The ATD pilot officially commenced in February 2022,¹⁹¹ with standard operating procedures finalised by the relevant implementing government agencies (MWFCD, the Immigration Department and the Ministry of Home Affairs being the lead agencies) and participating civil society organisations (currently SUKA Society and YCK). It is envisaged that MWFCD will work with SUKA Society and YCK to ensure case management and shelter support for children released, with a focus in Phase 1 of the pilot on the safe return of children to their countries of origin, where it is in their best interests. As of March 2022, no children have been released from immigration detention into the ATD pilot.

Access to Rights and Services

Refugees, people seeking asylum, and migrants face limitations in being able to access **affordable and safe healthcare**. They must pay foreigner rates at hospitals, which are significantly higher – for example, as of March 2022, for general outpatient treatment (not emergency services or specialist outpatient treatment), non-citizens are charged RM 40 whereas this is free for Malaysians.¹⁹² In 2006, the Ministry of Health issued a Circular stating that UNHCR recognised refugees can obtain

¹⁸⁸ SUKA Society, Community Placement and Case Management (CPCM) Programme Manual for Unaccompanied and Separated Children (UASC)

¹⁸⁹ Lighthouse Partnerships, External Evaluation: SUKA Society Community Placement and Case Management Program

¹⁹⁰ On 11 November 2021, the Malaysian Ministry of Home Affairs confirmed through a written parliamentary statement that “The ATD pilot project proposed for implementation in Malaysia is an alternative care for unaccompanied and separated children at immigration depots where the child will receive protection and support services through family-based care to meet the basic needs of children”. See Kamar Khas (Special Chamber), Malaysia Parliamentary Debates, 14th Parliament, Fourth-Term, Second Meeting, 8 Dec 2021

¹⁹¹ Ming Teo, “A Step in the Right Direction for the Rights of Children under Detention”, The Star Malaysia, 2 Mar 2022

¹⁹² See for example, Kuala Lumpur Hospital, Hospital Charges

a 50% discount on foreigner fees for healthcare services at government hospitals.¹⁹³ In 2018, this discount was extended to all Persons of Concern holding UNHCR documentation,¹⁹⁴ but does not apply to persons who have not yet been able to register with UNHCR. Further, even with this discount, the cost of healthcare services is prohibitively high, particularly as rates were increased exponentially in 2016.¹⁹⁵

In 2001, the Ministry of Health issued a circular directing all government healthcare workers to report undocumented people seeking treatment at government healthcare facilities.¹⁹⁶ As a result of this circular, migrants with irregular status and people seeking asylum who have not yet registered with UNHCR have been arrested and taken from hospitals to immigration detention centres, including women who have been detained immediately after childbirth.¹⁹⁷ Some promising health practises include: circulars on rights of foreign persons to life-saving medical treatment upon assessment, irrespective of the ability to pay for admission deposit or treatment;¹⁹⁸ and free of charge diagnosis and medical interventions against infectious diseases, regardless of immigration status.¹⁹⁹

Refugees and people seeking asylum have no access to legal work; as a result, many work in the informal sector. However, in previous years, Malaysia has conferred work rights on a select and small number of refugees (e.g., Syrians under the Syrian Migrants Temporary Placement Programme, see 'Detention Framework' section). In March 2017, the Malaysian government initiated a small-scale pilot project to allow Rohingya refugees to work legally, in the plantation and manufacturing sectors.

Trafficking survivors granted protection orders have a right to apply for work visas, however many identified survivors have preferred to return immediately to their home countries – many are discouraged by inadequate protection services from the Malaysian government.²⁰⁰

Many children from refugee, asylum-seeking, stateless and irregular migrant communities have no access to the formal education system, as government schools do not generally accept non-Malaysian or undocumented children. They are enrolled in a parallel system of alternative learning centres (ALCs) that are managed by NGOs or community organisations.

¹⁹³ Ministry of Health, [Circulate Letter No. 1 of 2006 – Medical Treatment Charges for Refugees Legally Registered with the United Nations High Commissioner for Refugee Affairs](#)

¹⁹⁴ Ministry of Health, [Guidelines for the Implementation of the Fees \(Medical\) \(Cost of Services\) Order 2014, Circular 2/2019](#)

¹⁹⁵ Ministry of Health, [Guidelines on Fee collection for Foreigners, 2014.](#)

¹⁹⁶ Ministry of Health, [Guidelines on Reporting Illegal Immigrants seeking Treatment at Government Hospitals and Clinics, Circular 10/2001.](#)

¹⁹⁷ Loganathan T, Chan ZX, de Smalen AW, Pocock NS, [Migrant Women's Access to Sexual and Reproductive Health Services in Malaysia: A Qualitative Study.](#) International Journal of Environmental Research and Public Health. 2020; 17(15):5376.

¹⁹⁸ Ministry of Health, [Guidelines on Deposit and Fee Collection for Foreigners, Circular 2/2015.](#)

¹⁹⁹ Ministry of Health, [Guidelines on Fee exemptions for Foreigners with Infectious Diseases, Circular 6/2015](#); Ministry of Health, [Exemption Guidelines for Infection Diseases among Foreigners, Circular No. 2/2016](#)

²⁰⁰ US Department of State, Office to Monitor and Combat Trafficking in Persons, [2021 Trafficking in Persons Report: Malaysia](#)

Although the Federal Constitution of Malaysia provides for the right to legal representation, many individuals still face significant challenges in seeking legal representation for migration-related matters. Persons arrested need to request for representation which is generally rare as they are not given the information or support to do so. The National Legal Aid Foundation only provides legal aid to non-Malaysians facing criminal charges, however children registered with UNHCR have at times been able to access legal aid for immigration offences. Legal representation for non-Malaysians facing immigration charges will need to be secured through private lawyers. The Immigration Act also does not provide for an automatic right to seek asylum, contact embassies, or other family members. Refugees, people seeking asylum and migrants also report significant challenges in accessing interpretation during court proceedings.²⁰¹

Developments during COVID-19

All foreigners residing in the country, including students, refugees, and migrants with irregular status have been eligible for free COVID-19 vaccines. Foreigners who were suspected or found to be positive for COVID-19, or who were close contacts of COVID-19 positive persons were exempt from paying outpatient fees (registration, examination, treatment, and hospital fees) at government facilities.²⁰²

In May 2020 the Home Ministry announced that the Immigration Department would use a strict lockdown to locate and arrest migrants with irregular status.²⁰³ In May and June 2020, the government then initiated large scale immigration raids, resulting in people seeking asylum and migrants being arrested and detained, including women, children and their families.²⁰⁴ Immigration raids were conducted in areas where the Enhanced Movement Control Orders (EMCO) were in place.²⁰⁵

The immigration raids/arrests during the pandemic led to a growing number of persons in immigration detention centres– the lack of social distancing, coupled with poor conditions in detention meant that it was very difficult to prevent COVID-19 outbreaks in the detention centres. In September 2021, the government reported that there had been 11 COVID-19 deaths in immigration detention since the pandemic began.²⁰⁶ Immigration detention centres were also closed to all outside visitors.

²⁰¹ Information provided by Asylum Access Malaysia, Mar 2022

²⁰² Malaysian Ministry of Health, [Daily status update on COVID-19 \(press statement\)](#), 11 June 2020,

²⁰³ Ray Sherman and Nisha David, [Malaysia: Mass Arrests of Undocumented Migrants to Ensure they get COVID-19 Jabs](#), 3 Jun 2021

²⁰⁴ Human Rights Watch, Malaysia: [Raids on Migrants Hinder Vaccine Access: Policies Undermine Government's Calls for Global Vaccine Equity](#), 30 Jun 2017

²⁰⁵ EMCO areas are places where residents were subjected to stricter movement and monitoring controls because large clusters of COVID-19 had been detected in the area – they were placed under heavy armed police and military control, with barbed wires erected to prevent people from leaving).

²⁰⁶ Code Blue, [Hamzah: 0.13% COVID-19 Death Rate in Immigration Detention](#), 20 Sept 2021

PHILIPPINES



United Nations
Network on Migration

Working Better Together

PHILIPPINES

Basic Demographics

As of 31 December 2021, there were 817 refugees in the Philippines and 612 people seeking asylum.²⁰⁷ The majority of these refugees were nationals of Syria, Pakistan and Iran, whereas people seeking asylum were mostly from Yemen, Cameroon and Sudan; approximately 75.5% of these persons were male, 23.5% female, and 11.8% were under the age of 18.²⁰⁸

There are no publicly available data on the number of migrants with irregular status in the Philippines. The Bureau of Immigration does release data on the number of foreign nationals arrested and deported from the Philippines: in 2021, it was reported that 158 foreigners were arrested for violating Philippine immigration laws, with the majority being Chinese nationals; this was compared to 510 arrested foreign nationals in 2020.²⁰⁹ At the same time, a total of 3,142 “undesirable” foreigners were deported from January to November 2021.²¹⁰ The Philippines is predominantly a migrant-sending country, and the government has developed a number of institutions, laws and policies that support and enhance protection for overseas Filipino workers and their families.

Who is at Risk of Immigration Detention?

The Philippines is one of the few countries in the region, and the only country in ASEAN with a comprehensive legal protection framework for refugees and stateless persons. The Philippines acceded to the 1951 Refugee Convention and the 1967 protocol, as well as the 1954 Statelessness Convention and the 1961 Convention on the Reduction of Statelessness. A State-led Refugee and Stateless Status Determination (RSSD) procedure is currently being implemented, pursuant to the Department of Justice Department Circular No. 58 series of 2012.²¹¹ Circular No. 58 provides for non-detention on account of being a stateless person, refugee, or even an asylum applicant. In 2017, an Inter-Agency Agreement on the Protection of Asylum Seekers, Refugees and Stateless Persons in the Philippines was concluded to streamline the provision of services to these groups in the country. This was strengthened through the President’s recent signing of Executive Order No. 163, series of 2022,²¹² institutionalising access to protection services for refugees, stateless persons and people seeking asylum.

However, Philippine law enables the arrest and detention of migrants suspected to have irregular status; detention can be for a “sufficient length of time” to enable authorities to determine if the person can legally remain in the country (e.g., if they apply for asylum).²¹³ Migrants working without

²⁰⁷ Information is based on the unpublished POC Registry of the Department of Justice as of end December 2021.

²⁰⁸ Ibid

²⁰⁹ Ferdinand Patinio, ‘[Chinese Nationals Top Immigration Law Violators in 2021](#)’, Philippine News Agency, 24 Jan 2022

²¹⁰ Zacarian Sarao, ‘[BI Departs Over 3,000 Illegal Aliens in 2020](#)’, Inquirer.Net, 29 Dec 2021

²¹¹ Department of Justice, Establishing the Refugee and Stateless Status Determination Procedure, Department Circular No. 058

²¹² President of the Philippines Executive Order No. 163, Institutionalising Access to Protection Services for Refugees, Stateless Persons and Asylum Seekers, 28 Feb 2022

²¹³ Philippines Immigration Act No. 613 of 1940, Sections 6 and 25

a valid permit, or overstaying their visas are also liable for detention. Moreover, populations at risk of statelessness such as the Sama Bajaus and the Persons of Indonesian Descent (PID) who reside in the borders in Mindanao, southern Philippines are also prone to detention as most of them lack documents to prove their legal identity.

Who is Detained in Practice?

As the Bureau of Immigration does not release data regarding persons in detention, it is difficult to understand the extent to which immigration detention occurs within the country. However pursuant to section 3 of the Department of Justice Circular 58 series of 2012, refugees, people seeking asylum or stateless persons are generally not detained on account of their status.²¹⁴ Further, children are generally not detained in practice.

Immigration Detention Infrastructure

There is one designated immigration detention centre in the Philippines, the Bureau of Immigration Warden's Facility. Although the number of detained persons is not publicly released, it has been reported that in September 2020 there were 315 non-citizens detained at the facility, despite the official capacity being 140.²¹⁵

There is a distinct lack of reports from NGOs regarding the immigration detention centre suggesting that access to the facility is limited. However, there are reports that there is overcrowding, the food quality is poor, and there is a lack of access to medical care in this facility.²¹⁶

Alternatives to Immigration Detention

There are several provisions in law that enable the use of ATD in the Philippines.

Section 13 of the Department of Justice Department Order No. 94, series of 1998 allows for detained people seeking asylum to be released and for any deportation proceedings to be suspended during their refugee status application process.²¹⁷ This is likewise echoed in Section 7 of the Department of Justice Circular 58 series of 2012.²¹⁸

²¹⁴ Commission on Human Rights of the Philippines, Submission on Deprivation of Liberty of Women and Girls, 26 Oct 2018

²¹⁵ Ferdinand Patinio, BI Deports 129 Foreigners to Decongest Detention Facility, Philippine News Agency, 17 Sept 2020; Global Detention Project, Philippines: Detention Centres

²¹⁶ Human Rights Without Frontiers (HRWF) and Forum for Religious Freedom (FOREF), Jaroslav Dobes and Barbora Plaskova: Two forgotten Czech citizens in the Immigration Detention Center in the Philippines, Submission to the Universal Periodic Review of the Philippines, Sept 2016

²¹⁷ Department of Justice, Establishing a Procedure for Processing Applications for the Grant of Refugee Status, Department Order 94, 4 Mar 1998

²¹⁸ Department of Justice, Establishing the Refugee and Stateless Status Determination Procedure, Department Circular No. 058

Human trafficking legislation allows authorities to provide shelter to trafficking survivors,²¹⁹ although in practice services for survivors remain inadequate.²²⁰ UNHCR and IOM, in cooperation with the Department of Justice and the Inter-Agency Council against Trafficking, are currently drafting 'National Guidelines to Facilitate the Identification, Referral and Protection of Victims of Trafficking in Persons within the Asylum and Statelessness Context in the Philippines'.

Undocumented and separated children are generally not detained by Filipino authorities and instead referred to the Department of Social Welfare and Development who legally assume the role of guardian and are responsible for providing housing, healthcare, and other support services.²²¹ The Refugees and Stateless Persons Protection Unit (RSPPU) ensures that unaccompanied and separated children are referred to appropriate government agencies and/or organisations for their care and welfare. Aside from the access to legal aid, representation and counselling are provided to persons of concern regardless of age under the Memorandum of Understanding between UNHCR and the Philippine Public Attorney's Office (see further 'Access to Rights and Services below'). Coordination mechanisms established among the Department of Social Welfare and Development, local social welfare officers and other relevant government agencies likewise safeguard the protection of children. While this is primarily intended for children in conflict with the law, the policy and practice of the Public Attorney's Office is to extend the application of this provision to all children in detention. Children are placed in alternative childcare facilities run by the Department of Social Welfare and Development; however, the current capacity of government facilities is a challenge; partnerships with facilities managed by faith-based and civil society organisations are being explored to address capacity constraints.

Lastly, there is a mechanism by which foreign nationals who overstay their visas can seek approval from the Bureau of Immigration to leave the country immediately and defer any penalties. If successful, the Bureau of Immigration will issue a Black List Order, providing the foreign national with a grace period to leave the country without paying penalties and without being subject to immigration detention. The foreign national will only be able to return to the Philippines if approval is given by the Department of Justice, and the foreign national pays any outstanding financial penalties.²²²

Access to Rights and Services

Under current regulations, refugees and stateless persons are exempt from work permit requirements²²³ and people seeking asylum can obtain special work permits. However, there are some constraints: the 1987 Constitution of the Republic of the Philippines limits the ability for foreign nationals to work in the country, as "the practice of all professions in the Philippines shall

²¹⁹ This provides that: "Following receipt of the notice, any proceeding for the deportation or exclusion of the Applicant and/or his or her dependents shall be suspended. If the Applicant and/or his or her dependents is/are in detention, the Secretary, subject to the conditions that he or she may impose, may direct the Commissioner to order his or her and/or their release." Rules and Regulations Implementing Republic Act No. 9208, Otherwise Known as the "Anti-Trafficking in Persons Act of 2003", Section 46

²²⁰ US Department of State, [2021 Trafficking in Persons Report: Philippines](#)

²²¹ Corlett, D., with Mitchell. G., Van Hove, J., Bowring. L., Wright, K., [Captured Children](#), International Detention Coalition, 2012

²²² Philippine Immigration Act 1940, Section 43; Department of Justice, Bureau of Immigration, Operations Order No. SBM-2015-010, Processing of Requests for Removal of Indigent Aliens

²²³ Department Order 186-17 Revised Rules for the Issuance of Employment Permits to Foreign Nationals, 16 Nov 2017

be limited to Filipino citizens.” Advocacy continues to be pursued to facilitate the access of refugees and other persons of concern to the practice of profession, which, at this point, is allowed on an ad hoc basis depending on the requirements of the concerned professional board. Nevertheless, the Professional Regulation Commission (PRC), which has authority over the regulation and supervision of professionals (except lawyers) in the Philippines, has committed that the agency will endeavour to develop guidelines for the practice of their professions considering their specific circumstances of persons of concern.

Refugees, stateless persons, and asylum and stateless applicants have access to free or subsidised public health care. Private healthcare is available, though they must bear the costs themselves.²²⁴

An MOU between UNHCR and the Philippine Public Attorney’s Office was signed in 2013 to provide free legal assistance, counselling and representation for refugees, stateless persons, and people seeking asylum, at all stages of administrative, judicial, and quasi-judicial proceedings.²²⁵ Representation by the Public Attorney’s Office may start as early as the application process.

Refugees, people seeking asylum and stateless persons can take up residence anywhere in the country. Meanwhile, refugees and stateless persons can travel abroad with International Civil Aviation Organisation-compliant convention travel documents issued by the Department of Foreign Affairs.

Trafficked persons are entitled to counselling, medical or psychological services, livelihood and skills training, educational assistance (for trafficked children), as well as free legal support.²²⁶

Developments during COVID-19

In a bid to decrease overcrowding at the Warden’s Facility, the Philippine Bureau of Immigration in April 2020 announced that it would begin to decongest.²²⁷ The Bureau’s decision was to “speed up the resolution of deportation cases” for those in the detention centre.²²⁸ The Bureau of Immigration also announced that it would consider releasing detained persons on bail, or release on recognisance.²²⁹ This was seen in practice when two pregnant women were released on bail, and another returned in May 2020.²³⁰

²²⁴ See PhilHealth, [PhilHealth Signs Inter-Agency Agreement for the Protection of Persons of Concern in PHL](#), 19 Apr 2018

²²⁵ UNHCR, [Universal Periodic Review: 3rd Cycle, 27th Session: The Philippines](#), Sept 2016

²²⁶ The Revised Rules and Regulations Implementing the Anti-Trafficking in Persons Act of 2003, as amended by the Expanded Anti-Trafficking in Persons Act of 2012. Article IV, section 98 provides that trafficked persons who are foreign nationals are entitled to appropriate protection, assistance and services, as well as continued legal status in the Philippines while legal proceedings are ongoing. Article V provides for free legal services for trafficked persons.

²²⁷ Bureau of Immigration, [‘Press Release: BI to Decongest Alien Detention Center during COVID-19 Outbreak’](#), 22 Apr 2020

²²⁸ Ibid

²²⁹ Ibid

²³⁰ Bureau of Immigration, [‘Press Release: 159 Employees, Inmates at BI Detention Center Test Negative for COVID’](#), 14 May 2020

In March 2020, foreign nationals who overstayed their visas and were unable to renew or extend their visas due to strict quarantine and movement restrictions were given a 6-month grace period to file their applications for renewal/extension.²³¹ In September 2021, the Bureau of Immigration temporarily suspended Orders to Leave for foreign nationals who overstayed their visas. They were still required to pay penalties for overstay but were not required to leave the country.²³²

²³¹ Bureau of Immigration, Operations Order No. JHM-2021-002, Granting of 6 Months Grace Period From Expiry of Visa to File Extension/Renewal or Amendment of Visa Applications, 7 Jul 2021

²³² Bureau of Immigration, Operations Order No. JHM-2021-005, Temporary Suspension of the Order to Leave Under Immigration Memorandum Circular No. SBM-2013-003 During COVID-19 Pandemic, 7 Sept 2021

SINGAPORE



United Nations
Network on Migration

Working Better Together

SINGAPORE

Basic Demographics

Migrant workers in Singapore originate predominantly from Malaysia, Indonesia, India, Bangladesh, Philippines, China and Myanmar. They are generally documented workers holding government-issued work permits; undocumented workers are rare in Singapore.²³³

There is no data available publicly on the number of people seeking asylum in Singapore. As of 30 July 2020, there was one refugee and one person seeking asylum whose cases were active with UNHCR.²³⁴

Who is at Risk of Immigration Detention?

Any person who is defined as a “prohibited person” under Singapore’s Immigration Act 1959, including persons who are not in possession of valid travel documents or enter Singapore unlawfully.²³⁵ Singapore does not have any domestic legislation for the protection of refugees, people seeking asylum or stateless persons. While UNHCR may, on a case-by-case basis, conduct registration and refugee status determination remotely for people seeking asylum in Singapore and explore durable solutions, refugees and people seeking asylum who have been registered with UNHCR do not have any legal status in Singapore. As such, if they are in violation of the Immigration Act, they may be prosecuted and detained for immigration offences. Unlawful entry or presence in Singapore are met with heavy punishments, including fines, imprisonment and caning for men aged under 50.²³⁶ Where an individual has overstayed their visa, pass or work permit for less than 90 days, they are liable on conviction, to a fine not exceeding \$4,000 SGD or to imprisonment for a term not exceeding 6 months, or to both.²³⁷ In practice, overstayers are usually fined or in lieu of a fine, required to serve between three to 14 days in prison.²³⁸ Where they have overstayed for more than 90 days, mandatory imprisonment and caning is imposed.²³⁹

Who is Detained in Practice?

Persons at risk of detention and who are detained in practice in Singapore are usually overstayers, such as those who legally entered the country on a tourist or work visa and stayed after their visas expired. Migrant workers can also become “overstayers” or undocumented if they are dismissed by their employers and are ineligible for a Special Pass (see ‘Alternatives to Detention’ below), as their

²³³ Transient Workers Count Too, [Response to Joint Questionnaire of Special Procedures](#), 10 Jun 2020

²³⁴ UNHCR, [Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights’ Compilation Report: Singapore, Universal Period Review, 3rd Cycle, 38th Session](#)

²³⁵ Singapore Immigration Act 1959, Sections 8, 27, 31, 34 and 35. These provide immigration authorities with the discretion to detain.

²³⁶ Sangeetha Yogendran, Singapore’s Mixed Response to COVID-19: Migrant Workers Sidelined, in Chew, V., Phillips, M. & Yamada Park, M. (eds) 2020. [COVID-19 Impacts on Immigration Detention: Global Responses](#), IDC and HADRI/Western Sydney University

²³⁷ Immigration Act 1959, Section 15(3)

²³⁸ Information provided by Transient Workers Count Too, Mar 2022.

²³⁹ Immigration Act 1959, Section 15

work permits are tied to their employers, who must consent should they wish to change jobs.²⁴⁰ A total of 473 migrants with irregular status and overstayers were arrested in Singapore in 2020, and a total of 932 in 2019.²⁴¹

Given the size of Singapore, overstayers generally come into contact with law enforcement officers relatively quickly; immigration checks and raids are conducted regularly, with the median overstay duration being approximately two months.²⁴² Once detected, overstayers tend to be held in remand for one to two days and immediately brought to court where they are tried for violating the Immigration Act.

Additionally, people who enter the country unlawfully, in violation of Singapore's Immigration Act 1959, are also at risk of detention and deportation. This includes people seeking asylum, who are not normally released while having their claims examined by UNHCR.

Immigration Detention Infrastructure

As of December 2021, there are 54 'Immigration Depots', some of which include prisons.²⁴³ However, information provided by migrant rights groups indicates that overstayers who are arrested and detained are most frequently brought to the ICA building at Kallang Road. There is little information on conditions in these immigration detention facilities. Limited reports indicate that detained persons are provided with three meals a day and recreational activities, and that facilities were clean and generally satisfactory.²⁴⁴ There is also a lack of publicly available data on the numbers of persons held in immigration detention.

The Immigration Act provides for overstayers to be detained until their departure or removal becomes feasible.²⁴⁵ There are extremely limited channels which a person can use to challenge their detention under the Immigration Act.²⁴⁶

²⁴⁰ Work Permit holders are generally barred from re-employment unless they exit Singapore first; only construction workers have a limited 19-day window in which they can transfer employers towards the end of their visa, outside of which their current employer's written consent is needed. See Humanitarian Organisation for Migration Economics (H.O.M.E), [COVID-10 Impact Report 2020](#), Dec 2020; John Geddie, Aradhana Aravindan, [Spate of Suicides Among Migrant Workers in Singapore Raises Concern](#), p. 10, 5 Aug 2020

²⁴¹ Immigration & Checkpoints Authority Singapore, [Annual Statistics 2020](#), 8 Feb 2021

²⁴² As reported by the Singaporean Home Affairs Minister in the September 2019 session of Parliament, see [Transient Workers Count Too, 'Overstayers' Median Period of Evading Arrest only Two Months](#), 3 Oct 2019

²⁴³ Immigration Depots are listed in the [Immigration \(Immigration Depots\) \(No. 2\) Notification 2018](#)

²⁴⁴ Global Detention Project, [Submission to the Universal Periodic Review- Singapore: Issues Related to Immigration Detention and the Rights of Migrant Workers](#), 38th Session of the UPR Working Group, Apr/May 2021

²⁴⁵ Immigration Act 1959, Section 34

²⁴⁶ Section 39 of the Immigration Act 1959 specifically excludes judicial review on detention decisions unless there are procedural irregularities. There are avenues for individuals to appeal removal orders under Section 33 of the Immigration Act 1959.

Alternatives to Immigration Detention

Where an individual becomes undocumented or is at risk of becoming undocumented, they may apply for a Special Pass to temporarily legalise their stay in Singapore.²⁴⁷ This is only issued to individuals who have a valid reason (under Singaporean law) to remain in Singapore.²⁴⁸ Special Passes are issued by the Ministry of Manpower (MOM) or the Immigration & Checkpoints Authority (ICA).²⁴⁹ The processing time for issuance or renewal of a Special Pass can take just several minutes, and validity of the pass is usually for 14-30 days.²⁵⁰ Renewal can be automatic if the reasons for granting the Special Pass remain valid. There have also been reports from migrant rights groups that ICA staff at the airport will issue Special Passes to migrant workers whose employers seek to forcibly return them, in an attempt to frustrate the worker's right to lodge salary or injury claims. Special Passes are therefore seen as a migration governance tool, to ensure that migrants do not become or remain undocumented, therefore preventing the need for immigration detention.

Special Passes are distinguished from Form 18 Special Passes; holders of Special Passes are automatically transferred to a Form 18 Special Pass when a departure flight is arranged for the holder. This is to prevent employers from forcibly repatriating migrant workers who have lodged claims against them, as well as to prevent workers who are required to stay in Singapore from absconding (e.g., if they are facing criminal charges).

Holders of the Special Pass do not have work rights (with exceptions). They may be able to seek new employment once the reasons for the issuance of the Special Pass have ceased (e.g., a labour dispute case has concluded). However, in practice, migrants usually require the support of NGOs to do so, as the process for obtaining a new work permit is challenging to navigate alone.²⁵¹

In addition to the Special Pass, the Immigration Controller has the discretion to release any person from an immigration depot on such terms and conditions as they see fit.²⁵² It is unclear to what extent this discretion is used in practice.

Access to Rights and Services

Low-wage migrant workers are legally entitled to healthcare that is provided by their employers and supported by mandatory private medical insurance and private work injury compensation. However,

²⁴⁷ Work permit cards have a unique QR code that can be scanned using the SGWorkPass App. This provides information on whether the Work Permit is valid, and what the expiry date is. Workers know that if their Work Permit is expired or prematurely cancelled, they should seek assistance from an NGO or go to the Ministry of Manpower to apply for a Special Pass (if they satisfy the criteria), or a Form 18 Special Pass (if they wish to return home). Special Pass Cards, however, do not have this QR code and must be reissued every time a Special Pass is renewed.

²⁴⁸ This includes persons who: filed a salary or work injury claim but are awaiting resolution of their claim; used the allowable transfer period to seek a new job; have a pending court case; need to stay in Singapore for medical treatment; are required by police to assist with an investigation; and are awaiting a flight to return home (a Form 18 Special Pass). Information provided by Transient Workers Count Too, Mar 2022

²⁴⁹ Immigration & Checkpoints Authority: [Special Pass Card](#)

²⁵⁰ Information provided by Transient Workers Count Too, Mar 2022

²⁵¹ Migrant Forum in Asia, [Afraid of the Light: Unmasking the Discourse on Irregular Migration and Its Implications for Migration Governance in ASEAN](#), August 2019; Information provided by Transient Workers Count Too, Mar 2022.

²⁵² Immigration Act, S. 27(2) and s.31(1).

barriers exist in accessing healthcare, including migrant workers' poor knowledge of their healthcare coverage and financial barriers (e.g., having to bear the costs of outpatient care).²⁵³ For persons who are in Singapore in an irregular situation, access to healthcare is very challenging due to the fear of arrest and detention.

Access to legal aid and legal representation is reportedly very poor for migrants who are arrested and detained for violating the Immigration Act.

Developments during COVID-19

Migrant workers in Singapore have suffered disproportionately from COVID-19. More than 300,000 low-wage migrant workers live in migrant dormitories in Singapore; these have been criticised as being crowded and unsanitary, with up to 20 people sharing a room and communal bathrooms.²⁵⁴ After a spike in cases within migrant worker dormitories in April 2020, the Singaporean government implemented measures to control the virus, including locking down all dormitories, separating infected clusters from non-infected clusters, enforcing social distancing within dormitories, and carrying out COVID-19 testing in dormitories.²⁵⁵

As Singapore eased restrictions for the fully vaccinated, low-wage migrant workers continued to face restrictions; they were only permitted to leave their dormitory compounds to go to work, and were required to apply for an exit pass if they wished to visit recreation centres set up for them near their dormitories.²⁵⁶ Despite more than 98% of workers in dormitories being fully vaccinated, it was only in March 2022 that differentiated COVID-19 safety measures for migrant workers in dormitories were eased. However, only 15,000 vaccinated migrant workers will be allowed to visit the community on weekdays, and up to 30,000 on weekends and public holidays, for up to eight hours per visit (an increase from the previous quota of 3,000 and 6,000 persons respectively).²⁵⁷ The continued separation from society and movement restrictions have had severe physical and mental health impacts for the migrant workers, with reports of attempted suicides, self-harm or deaths.²⁵⁸

In addition to the high rates of vaccination among migrant workers in dormitories, the government also provided free testing and treatment for migrant workers. All expiring work visas for migrant workers were extended, and Special Passes issued and extended for migrants unable to return home due to border closures.

²⁵³ Rajaraman, Natarajan et al., '[Exclusion of Migrant Workers from National UHC Systems-Perspectives from HealthServe, a Non-profit Organisation in Singapore](#)', *Asian Bioeth Rev.*, 2020; 12(3): 363-374

²⁵⁴ Global Detention Project, [Submission to the Universal Periodic Review- Singapore: Issues Related to Immigration Detention and the Rights of Migrant Workers](#), 38th Session of the UPR Working Group, Apr/May 2021; Human Rights Watch, [World Report 2021: Singapore](#)

²⁵⁵ Ibid

²⁵⁶ Adam Hancock, '[Singapore Migrant Workers Labour under COVID Curbs](#)', *AlJazeera*, 30 Jan 2022

²⁵⁷ Hariz Baharudin, '[COVID-19 Rules, Community Visit Limits to be Eased for Migrant Workers in Dorms](#)', *The Straits Times*, 11 Mar 2022

²⁵⁸ HOME, [COVID-10 Impact Report 2020](#), Dec 2020;; John Geddie, Aradhana Aravindan, [Spate of Suicides Among Migrant Workers in Singapore Raises Concern](#), 5 Aug 2020

THAILAND



United Nations
Network on Migration

Working Better Together

THAILAND

Basic Demographics

There are an estimated one to 2.5 million migrants with irregular migration status, with the vast majority from Cambodia, the Lao People's Democratic Republic (Lao PDR) and Myanmar.²⁵⁹

As of December 2021, there were 91,408 Myanmar and 5,155 urban refugees and asylum-seekers registered with UNHCR Thailand.²⁶⁰ The urban refugees and people seeking asylum come mostly from Pakistan, Vietnam, Cambodia, Palestine, Syria, Somalia, Iraq, China, Iran and Afghanistan.²⁶¹

Who is at Risk of Immigration Detention?

Anyone who has no valid passport or visa, including refugees, people seeking asylum and migrants in an irregular situation can be at risk of arrest and immigration detention.²⁶² The penalties for irregular entry and stay in Thailand are imprisonment not exceeding two years, or a fine not exceeding THB 20,000.²⁶³ Once the sentence is served, migrants will be transferred to immigration detention centres for deportation; here, there is no maximum time limit on their detention.²⁶⁴ Previously, Sections 17 and 54 of the Immigration Act have been used to exempt and enable individuals and groups of people to remain in Thailand (see 'Promising Developments during COVID-19' below).

Who is Detained in Practice?

Despite a significant reduction in the rate of detention amongst refugees and people seeking asylum in recent years, they continue to be detained in practice. Thailand has made commendable progress towards ending child immigration detention, nonetheless some children continue to be arrested and detained particularly as the MOU-ATD (see 'Alternatives to Immigration Detention' below) provides a framework for the release of children from immigration detention but does not prohibit their detention. Migrants with irregular status, including children from neighbouring countries in particular, have been at risk of prolonged detention during the COVID-19 pandemic as borders have been closed.

²⁵⁹ McAuliffe, M. and A. Triandafyllidou (eds.), [World Migration Report 2022](#), 2021, International Organisation for Migration (IOM); IOM, [Asia-Pacific Migration Data Report 2020](#), 30 Aug 2021

²⁶⁰ UNHCR, [Thailand Fact Sheet](#), 31 December 2021

²⁶¹ UNHCR, [Refugee Data Finder](#), 2020

²⁶² Immigration Act of Thailand, B.E. 2552 (1979), Section 12

²⁶³ Ibid, Section 81

²⁶⁴ Ibid, Section 20. This provides time limitations on immigration detention, for an initial period of 48 hours, with further extensions as necessary up to a maximum of 7 days following which court approval is required for further detention up to 12 days at a time. This relates to persons detained under Section 19 of the Immigration Act, who have not yet entered Thailand officially, or if a person is arrested and their status is being investigated. However, under Section 54 of the Immigration Act, there are no time limits specified on the detention of persons to be deported and in practice, such persons are at risk of arbitrary and indefinite detention.

Although the Anti-Trafficking in Persons Act 2008 states that trafficking survivors should not be placed in detention but instead in government shelters,²⁶⁵ challenges with identification processes mean that persons with irregular status not properly identified as trafficking survivors can be arrested, detained and deported back to their country of origin by immigration police.²⁶⁶ Rohingya survivors of trafficking are, in general, either detained indefinitely in immigration detention centres, or held in closed government shelters, including Welfare Protection Centres for Victims of Trafficking in Persons and Shelters for Children and Families.

Immigration Detention Infrastructure

As of 2020, there were 22 detention centres where persons held for immigration offences are detained.²⁶⁷ Apart from immigration detention centres, there is also the Detention Centre for Mothers and Children in Bang Khen, operated by the Immigration Bureau which has been categorised as an alternative to detention. However, civil society has criticised this categorisation, due to the deprivation of liberty and lack of movement experienced by women and children in the centre, indicating the centre is essentially another form of detention.²⁶⁸

Refugees from Myanmar who leave the camps along the Thai-Myanmar border become at risk of arrest and deportation. Non-Thai survivors of trafficking who are undocumented are required to stay at closed shelters run by the Ministry of Social Development and Human Security (MSDHS) for the duration of court proceedings. They may only leave under specific circumstances, including for work outside of the shelters, though this is determined on a case-by-case basis and is not consistently implemented, particularly for the Rohingya. It is common procedure for adult women trafficking survivors to be held in trafficking shelters until they can be returned or resettled.²⁶⁹

There are no publicly available disaggregated data on the total number of people in immigration detention in Thailand. As of August 2021, there were 198 refugees and people seeking asylum in immigration detention, including 140 Rohingya.²⁷⁰ More than 50 Uyghurs have been detained since 2015.²⁷¹ According to the Thai police, more than 42,400 migrants had been arrested for entering the country irregularly in 2021.²⁷² No independent monitoring currently takes place; there are several organisations that can access limited areas within immigration detention facilities, including IOM, UNHCR, ICRC and JRS Foundation, although this access has been limited since the start of the pandemic due to the heightened risks of COVID-19 transmission in the facilities. Conditions are reportedly extremely poor, with overcrowding, lack of adequate health services, poor sanitation and inadequate food and water.²⁷³

²⁶⁵ Anti-Trafficking in Persons Act B.E. 2551 (2008), Section 29

²⁶⁶ Winrock International, [Review of Models of Care for Trafficking Survivors in Thailand](#), 2019

²⁶⁷ Fortify Rights, [Thailand: Release Detained Refugees and Migrants, Prevent Further Detentions Amid COVID-19 Pandemic](#), 1 May 2020

²⁶⁸ See for example, the Coalition for the Rights of Refugees and Stateless Persons (CRSP), [Submission to the Special Rapporteur on the Human Rights of Migrants: Ending Immigration Detention of Children and Seeking Adequate Reception and Care for Them](#)

²⁶⁹ Winrock International, [Review of Models of Care for Trafficking Survivors in Thailand](#), 2019

²⁷⁰ US Department of State, [2021 Country Reports on Human Rights Practices: Thailand](#)

²⁷¹ Ibid

²⁷² Bangkok Post, [42,000 Illegal Migrants Caught This Year](#), 22 Dec 2021

²⁷³ Human Rights Committee, International Covenant on Civil and Political Rights: [Concluding Observations on the Second Periodic Report of Thailand](#), UN Doc. CCPR/C/THA/CO/2, 25 Apr 2017

Alternatives to Immigration Detention

Thailand has seen significant progress in recent years towards strengthening ATD in law, policy and practice, particularly in relation to children and families. There are several ATD mechanisms in place:

ATD-MOU for Children

Some **children and mothers in immigration detention** are also able to access ATD. On January 21, 2019, representatives of seven Thai Government agencies signed the *Memorandum of Understanding on the Determination of Measures and Approaches Alternatives to Detention of Children in Immigration Detention Centres* (the MOU-ATD),²⁷⁴ with Standard Operating Procedures (SOPs) to implement the MOU-ATD following in July 2020. The general principles of the MOU-ATD and SOPs²⁷⁵ include the requirement that children are not detained, unless there is an “absolute necessity,” and that detention be used as a measure of last resort and for the shortest time possible. The best interests of the child must inform decision-making, and the child’s opinion must be taken into consideration. The MOU-ATD and SOPs also prioritise family-based care, with shelters as a measure of last resort and for the shortest time possible.

The SOPs also require the establishment of a Multi-Disciplinary Working Group (MWG), composed of Immigration officials, competent officers under the Child Protection Act of 2003, and representatives from UNHCR, UNICEF and IOM.²⁷⁶ The MWG (which has not met as of March 2022) is required to consider ATD and develop an individual care plan for each child, and coordinate with relevant service providers to implement the care plan.²⁷⁷ Registered NGOs work in partnership with the Department of Children and Youth at the Ministry of Social Development and Human Security (MSDHS) to support screening and assessment processes.²⁷⁸ Children and their mothers released under the MOU-ATD are supported by two NGOs, Host International Thailand and Step Ahead, who assist in reporting requirements and providing case management support in the community. Rohingya children, however, are treated differently, and are not assigned a caseworker - instead a focal point from the Department of Children and Youth is designated to support the transfer of Rohingya children from immigration detention to the respective shelters. Individual care plans are not developed for each Rohingya child, but instead, a caseworker in each shelter is assigned to care for a group of Rohingya children accommodated in the shelters.

There are several key gaps with the MOU-ATD. Firstly, it does not prevent the arrest of children; rather, its provisions come into effect once a child has been arrested and detained. Secondly,

²⁷⁴ Signed by the Royal Thai Police, the Ministry of Social Development and Human Security, the Ministry of Foreign Affairs, Ministry of Interior, Ministry of Public Health, Ministry of Education, and Ministry of Labour

²⁷⁵ Thai Government, [Thailand’s Response to the Questionnaire of the Special Rapporteur on the Human Rights of Migrants, Ending Immigration Detention of Children and Seeking Adequate Reception and Care for Them](#)

²⁷⁶ Children who fall within UNHCR’s mandate are assessed through a joint interview between the Department of Youth (including staff members from the central and provincial offices of the Ministry of Social Development and Human Security) and UNHCR.

²⁷⁷ Thai Government, [Thailand’s Response to the Questionnaire of the Special Rapporteur on the Human Rights of Migrants, Ending Immigration Detention of Children and Seeking Adequate Reception and Care for Them](#)

²⁷⁸ Ibid

mothers are still required to be bailed out under extremely high bail costs, as noted below. Thirdly, in contrast to mothers, fathers are not typically considered for release for bail in conjunction with the MOU-ATD, resulting in family separation. This in turn aggravates levels of vulnerability and negatively impacts the psychosocial well-being of mothers and their children and adds pressure on mothers who find themselves as single heads of the household. Fourthly, children who are released under the MOU-ATD and who turn 18 are at risk of re-detention.²⁷⁹ Lastly, migrant children from Cambodia, Lao PDR and Myanmar are not referred to the MOU-ATD as they are deported under the MOUs that have been signed between Thailand and neighbouring countries. During this time, they will remain in detention or are referred to Detention Centre for Mothers and Children in Bang Khen or other shelters for women and children until they can be deported. Prior to the pandemic, the stay in the shelter would be relatively short, however during COVID-19 and border closures, there have been reports of migrant children and families staying for one to two months, or longer. Lastly, the MOU-ATD is not consistently implemented for Rohingya children, as described above.

Bail and Reporting

Thailand's Immigration Act provides for the possibility of bond, security and reporting to "competent authorities," as an ATD.²⁸⁰ In practice, bail and guarantors are used as the most frequent ATD for adult refugees, people seeking asylum, and those who have medical concerns or significant vulnerabilities— however, access to bail is limited, and in practice mainly available to detained persons in immigration detention in Bangkok, rather than in detention centres in provincial areas. Bail fees are THB 50,000 per adult, though NGOs, refugees and people seeking asylum have reported numerous instances of immigration authorities demanding bribes in connection with requests for bail.²⁸¹ Bail is usually raised by civil society, refugee communities and private donors through fundraising initiatives, as people who seek bail often cannot afford these high costs (particularly as they have no legal right to work). Civil society also is required to act as guarantors before release is granted.²⁸² Onerous, frequent reporting is often also required for people on bail.²⁸³

National Screening Mechanism

The Thai government is in the process of developing a National Screening Mechanism (NSM), through which a system would be developed to provide Protected Person Status for those unable to return to their country of origin for protection reasons.²⁸⁴ Although the NSM was due to be implemented on 22 June 2020, as of March 2022, the SOPs for the NSM are still pending the cabinet approval. It is a positive step that the Thai government is seeking to strengthen its screening processes, but many details remain unclear, including what protections those granted Protected Person status will be able to access, and whether they will be protected from arbitrary detention. It is also unclear whether groups who are currently under the responsibility of the National Security

²⁷⁹ CRSP, [Submission to the Special Rapporteur on the Human Rights of Migrants: Ending Immigration Detention of Children and Seeking Adequate Reception and Care for Them](#)

²⁸⁰ Immigration Act of Thailand, B.E. 2552 (1979), Section 19

²⁸¹ US Department of State, [2021 Country Reports on Human Rights Practices: Thailand](#)

²⁸² CRSP, [Submission to the Special Rapporteur on the Human Rights of Migrants: Ending Immigration Detention of Children and Seeking Adequate Reception and Care for Them](#)

²⁸³ Refugee Rights Network in Thailand (RRN), [Joint Submission Universal Periodic Review of Thailand, Thailand Cycle 3, 39th Sessions](#)

²⁸⁴ The Council of State, Memorandum of the Council of State on the Draft of Regulation of the Office of the Prime Minister on the Screening of Aliens who Enter into the Kingdom and are Unable to Return to the Country of Origin B.E.2562 (2019). On 25 December 2019, the government enacted the 'Regulation of the Office of the Prime Minister on the Screening of Aliens who Enter into the Kingdom and are Unable to Return to the Country of Origin BE 2562, 25 Dec 2019

Council will be excluded from the NSM, for example, people fleeing conflict in Myanmar, as well as Rohingya, Uyghurs, and North Koreans.²⁸⁵

National Referral Mechanism

In addition to the NSM, the Thai government has made progress with the development of a National Referral Mechanism for Victims of Trafficking in Thailand (NRM), which is designed to function as Thailand's framework for the screening, identification, and referral of trafficking survivors, in coordination with relevant authorities such as the MSDHS, Royal Thai Police, Immigration officials, and the Ministry of Labour. The NRM focuses on both Thai and non-Thai nationals – including those undocumented and who are trafficking survivors. A strategic document was developed to provide guidance to the NRM, its structure and operationalization. In December 2021, the Division of Anti-Trafficking in Persons established the National Steering Committee of the NRM to further guide the development process. Despite this progress, the NRM is not yet developed and will require further consultations and approval from the Thai Cabinet, including support for its operationalization. Furthermore, civil society has criticised the functioning of the NRM as there are very limited numbers of non-Thai trafficking survivors identified, arguably due to the cost implications of assistance involved as government-identified trafficking survivors are entitled to shelter and general protection support packages. Generally, the Government tends to privilege a criminal justice approach to trafficking.

Nationality Verification for Migrant Workers

Recognising a need to promote regular labour migration pathways with Cambodia, Laos, Myanmar and Vietnam, the legal framework on employment and management has been strengthened in recent years. The Thai government established the One Stop Service (OSS) and the Management Centre for Migrant Workers (MCMW) as a mechanism to regularise undocumented migrant workers. The role of both authorities is to record personal data, coordinate with the health sector for health examinations, and work with the Ministry of Interior (MOI) to issue legitimate residence permits and cooperate with the Ministry of Labour (MOL) to issue work permits. All these functions are known as the nationality verification (NV). During the period from 2016 to 2018, a total of 1,827,096 migrant workers came forward and completed their regularisation process.²⁸⁶ The process however, has been prolonged as it involves several agencies under different Ministries working under tight timelines, and limited staff and space due to the COVID-19 restrictions. Many migrant workers are speculated to have fallen out of the process due to limited understanding of the procedures with different agencies operating under different timelines, higher costs of registration resulting from primarily health check, COVID-19 tests and in-country visa extension, as well as failing to find new employers within the specified timeframe.

Access to Rights and Services

Refugees, people seeking asylum and undocumented workers (unless they access the NV), have no legal right to work in Thailand. In theory, the Anti-Trafficking Persons Act of 2008 (ATPA) provides that trafficking survivors can stay and work in Thailand for up to two years after the completion of legal proceedings against their traffickers. Obtaining the necessary work permit to

²⁸⁵ Refugee Rights Network in Thailand (RRN), [Joint Submission Universal Periodic Review of Thailand, Thailand Cycle 3, 39th Sessions](#)

²⁸⁶ TRIANGLE in ASEAN, [Quarterly Briefing Note: Thailand \(October - December 2021\)](#)

work outside of a shelter remains challenging for non-Thai trafficking survivors, particularly women.²⁸⁷

Undocumented migrant workers who successfully undergo NV and obtain a work permit can access the Health Insurance Card Scheme (HICS), regulated by the Division of Health Economics and Health Security at the Thai Ministry of Public Health (MOPH).²⁸⁸ The HICS covers migrant workers in the informal sector from Cambodia, Laos, Myanmar and Vietnam. It provides comprehensive medical benefits at registered public hospitals, with the applicant needing to pay an annual premium, including health check expenses, for about USD 64. Therefore, the NV serves as a legalisation process with the health insurance card as a form of incentive. Despite this, barriers remain with migrants with irregular status reporting physical, cultural and legal barriers to health care, including language barriers, and fear of detention and deportation.²⁸⁹ Refugees and people seeking asylum are not able to access free public health care; they do not benefit from the social security schemes for migrants. There are however several NGOs and civil society organisations that provide such support.

While the Thai government provides some free legal aid services, such programmes do not cover irregular immigration and detention cases; instead, migrants, people seeking asylum and refugees depend heavily on civil society organisations for legal assistance.²⁹⁰ Art 14(3) ICCPR, Section 13 of the Thai Criminal Procedure Code stipulates that an accused person has the right to an interpreter during the investigation and court process. However, Thai NGOs have noted that people seeking asylum and refugees still depend on civil society organisations to arrange for interpreter services in court proceedings. MSDHS provides translation services though these are only provided to those at government-run shelters.

Under the 1999 Education for all Policy and 2005 Cabinet Resolution on Education for Unregistered Persons, every child is entitled to 15 years of free education, regardless of their legal status or nationality. However, many migrant, refugee and asylum-seeking children face challenges in accessing formal education due to language barriers and costs associated with schooling, as well as a fear of arrest and detention for being undocumented.²⁹¹ In practice, access is limited by some local schools not permitting enrolment of non-Thai children. NGOs and faith-based organisations also offer classes, but these are not accredited. In May 2018, the Equitable Education Fund (EEF) was established, which aims to address inequities in education, and support the education of disadvantaged children, including migrant children in Thailand, as well as teachers and schools.²⁹²

Developments during COVID-19

Between August 2020 and September 2021, the Thai Cabinet approved measures to extend work permits for migrant workers from Myanmar, Cambodia and Laos whose work permits were expiring,

²⁸⁷ Winrock International, [Review of Models of Care for Trafficking Survivors in Thailand](#), 2019

²⁸⁸ International Organisation for Migration (IOM), [Thailand Social Protection Diagnostic Review: Social Protection for Migrant Workers and their Families in Thailand](#), 2021

²⁸⁹ Chelsea Tao, Natalie Haleem, Amika Shah, Samrawit Lemma, [Reaching Undocumented Migrants in the Midst of COVID-19](#), Reach Alliance

²⁹⁰ Refugee Rights Network in Thailand (RRN), [Joint Submission Universal Periodic Review of Thailand](#), Thailand Cycle 3, 39th Sessions

²⁹¹ UNHCR, [Thailand Factsheet](#), 30 September 2021

²⁹² UNICEF, [Education Knows No Border: A Collection of Good Practices and Lessons Learned on Migrant Education in Thailand](#), 2019

but were unable to return home due to travel restrictions. Work permits were extended in the first instance until 31 March 2022, and the Thai Cabinet on 15 March 2022, recently updated this to extend work permits for another two years until March 2024, subject to the validity of the migrant workers' travel documents.²⁹³ However, NGOs also reported that the fees associated with renewing work permits, as well as other barriers in applying were likely to have deterred some workers from applying for the permits.

The Thai Cabinet also resolved on 28 September 2021 that it would allow undocumented migrant workers from Cambodia, Laos and Myanmar to regularise their status and work in the country legally for two years to curb the spread of COVID-19; migrants would be required to register online, and also be registered by an employer in order to receive a work permit until February 2023. Migrant workers first must undergo health checks at a cost of about THB 7,200.²⁹⁴

Migrants in an irregular status as well as refugees and people seeking asylum, including those in detention, have also been able to access free COVID-19 vaccines, as well as obtain medical treatment for COVID-19 in public hospitals.

There have been reports of a high number of releases from immigration detention during COVID-19, in an attempt to decongest the immigration detention centres. While immigration arrests continued during the pandemic, various stakeholders have observed that the rate of arrests has slowed considerably.²⁹⁵ At the same time, immigration authorities also relaxed restrictions on bail in 2021 after multiple outbreaks of COVID-19 in immigration detention centres.²⁹⁶

²⁹³ Thai PBS World, [Cabinet Approves Two-Year Extension for Legal Workers from Neighbouring Countries](#), 15 Mar 2020

²⁹⁴ Ministry of Labour, [Confirmation of the Cabinet Approval on Management of the Work of Foreigners of Three Nationalities \(Cambodia, Laos and Myanmar\) to Support the Control and Prevention of the Spread of the Coronavirus Disease 2019](#), 23 Sept 2021 [Thai]; Ministry of Labour, [Migrant Workers of Three Nationalities under Exemption Criteria Following Cabinet's Resolution Can Register Online Starting Today](#), 16 Jan 2021

²⁹⁵ US Department of State, [2021 Country Reports on Human Rights Practices: Thailand](#)

²⁹⁶ Ibid

BANGLADESH



United Nations
Network on Migration

Working Better Together

BANGLADESH

Basic Demographics

Bangladesh is a sending and receiving country for refugees and people seeking asylum. UNHCR data suggests that the vast majority of people seeking asylum in Bangladesh are Rohingya.²⁹⁷ As of February 2022, there were 923,179 Rohingya refugees in Bangladesh.²⁹⁸

Bangladesh is also primarily a country of origin for migrant workers.²⁹⁹ Migrants with irregular status, other than people seeking asylum, are not a significant population in the country and there are no official statistics available for this population.

Who is at Risk of Immigration Detention?

All 'foreigners' are subject to the 1946 Foreigners Act, including refugees, people seeking asylum, and stateless persons.³⁰⁰ Section 3(1) states that the government of Bangladesh may regulate or restrict the entry of all foreigners,³⁰¹ thus putting all non-citizens at risk of immigration detention and deportation. In Bangladesh, immigration violations are treated as criminal offences, therefore unpermitted entry/stay of non-citizens can be punished by imprisonment. As per section 14 of the 1946 Foreigners Act, immigration violations can be penalised with a maximum of five years of imprisonment and a fine. The treatment of detained persons is governed by the provisions under the Prisoners Act 1900, the Prisons Act 1894, Jail Code 1894, the Code of Criminal Procedure 1898, and the Special Act for Women Incarcerated in Prisons 2006.

However, the Children Act 1974 specifically provides that no child below the age of 9 years can be arrested under any circumstances.

Rohingya and other groups of people seeking asylum within Bangladesh are classified as "illegal" migrants as per the Foreigners Act (1946).³⁰² The Government of Bangladesh is not a signatory to the 1951 Refugee Convention or its 1967 Protocol, nor is there national legislation on asylum. The government does not recognise Rohingya as refugees but rather "forcibly displaced Myanmar nationals."

Who is Detained in Practice?

Detention of migrant workers for migration-related reasons appears to be rare and is not well documented as there is no detention centre set up solely for migrants with irregular status in Bangladesh.³⁰³ Those apprehended for breaching the immigration regulations will go through the criminal justice system and will be held at jails and prisons. However foreign nationals in the Bangladeshi prison system account for only 0.6% of the total carceral population.³⁰⁴ The

²⁹⁷ UNHCR, [Refugee Data Finder: Bangladesh](#), 2021.

²⁹⁸ UNHCR, [Operational Data Portal: Refugee Situations](#), 2022.

²⁹⁹ IOM, [World Migration Report 2020](#)

³⁰⁰ 1946 Foreigners Act, Article 3(1)

³⁰¹ Ibid

³⁰² 1946 Foreigners Act, Article 3(1)

³⁰³ Information provided by a civil society organisation in Bangladesh, Mar 2022

³⁰⁴ As of March 2021, [World Prison Brief: Bangladesh](#)

Department of Prisons does not make statistics disaggregated by types of offence available to the public so there is no known information regarding the number of foreign nationals imprisoned for migration-related offences.

There are 33 refugee camps hosting over 923,000 Rohingya refugees across Cox's Bazar.³⁰⁵ In addition, since 2020, the Bangladesh government has relocated approximately 20,000 Rohingya refugees to Bhasan Char, a remote island. Refugees located in both mainland camps and the Bhasan Char Island face severe restrictions of movement. Mainland camps are surrounded by barbed-wire fences and checkpoints built by the government in 2020 and 2021. Refugees relocated to the island cannot leave without the permission of Bangladesh authorities.³⁰⁶

Immigration Detention Infrastructure

There is no detention centre set up solely for people with irregular status in Bangladesh.³⁰⁷ However Bhasan Char Island and the camp settlements in Cox's Bazar apply significant restrictions on the movement of Rohingya refugees at these locations.³⁰⁸

Detention of Rohingya refugees by law enforcement authorities can also take place in various circumstances and locations/facilities including at Dhaka International Airport, Bandarban, Rangamati, Comilla and Narayanganj. At the Dhaka International Airport, at times Rohingya refugees may be detained briefly either while trying to leave Bangladesh with documents that may be considered false or inadequate or upon arrival to Dhaka from third countries.³⁰⁹

Alternatives to Immigration Detention

Laws and policies in Bangladesh do not specifically refer to ATD as there is no separate immigration detention regime distinguished from the penal system. The 1946 Foreigners Act provides alternative measures to imprisonment that can be read as a form of ATD. This includes restrictions on the place of residence and use of bond with or without sureties.³¹⁰ In addition, Section 3(3) leaves the authorities a wide margin of discretion to make supplementary provisions. However, for the application of these provisions of the Foreigners Act, the law requires that the government communicates such an Order to the relevant authorities by Administrative Instructions/Orders. Since the August 2017 movement of refugees into Bangladesh, the Act has rarely been used for refugees and people seeking asylum.

The 2012 Prevention and Suppression of Human Trafficking Act prescribes that trafficking survivors shall not be subject to conviction or punishment under the Act or any other existing law.³¹¹ Therefore, trafficking survivors are legally exempted from any immigration penalties, however the authorities reportedly arrested and detained migrants who were survivors of sex trafficking for violating their visas due to inconsistent implementation of the trafficking victim screening mechanism.³¹²

³⁰⁵ Information provided by UNHCR

³⁰⁶ Fortify Rights, [Bangladesh: End Restrictions and Protect Rohingya Refugees](#), Dec 2021

³⁰⁷ Information provided by a civil society organisation in Bangladesh, Mar 2022

³⁰⁸ Fortify Rights, [Bangladesh: End Restrictions and Protect Rohingya Refugees](#), Dec 2021

³⁰⁹ Information provided by UNHCR

³¹⁰ 1946 Foreigners Act, Section 3, Subsection 2(e), 2(f) and 2(g)

³¹¹ 2012 Prevention and Suppression of Human Trafficking Act, Section 37

³¹² US Department of State [Trafficking in Persons Report: Bangladesh](#), 2021

Access to Rights and Services

There is no law that regulates the administration of refugee affairs in Bangladesh or that guarantees the rights of refugees. The absence of a national legal and administrative framework for refugees and people seeking asylum leaves them exposed to serious protection risks.³¹³ Rohingya in Bangladesh are required to live in refugee camps.³¹⁴ Children within the refugee camps are banned from enrolling in local schools outside of the refugee camps but have access to informal education provided by humanitarian agencies within the camps. Since December 2021, under the approval of the Bangladeshi government, the pilot educational programme using the Myanmar national curriculum has been rolled out for a limited number of Rohingya children in camps. The pilot is expected to gradually expand its scope over the next few years.³¹⁵

Rohingya refugees do not have the legal right to work within Bangladesh.³¹⁶ The government, in general, does not provide any legal assistance or interpretation services for refugees. Exceptionally, the District Legal Aid Office (DLAO) in Cox's Bazar provides ad-hoc legal aid to Rohingya refugees detained at Cox's Bazar prison when the request for legal aid is received via prison authorities.³¹⁷ Otherwise, UNHCR and its partners provide legal support, interpretation services and case management support to Rohingya refugees in Bangladesh.

Developments during COVID-19

The restriction on movement has become more severe for refugees since the COVID-19 pandemic as strict lockdown measures were imposed across the refugee camps.³¹⁸ The government reportedly lifted COVID-19 related movement restrictions in and out of camps as well as between camps, however COVID-19 safety measures remain in place.³¹⁹

UNHCR reported in December 2021 that the COVID-19 vaccination campaign is ongoing in refugee camps and over 300,000 refugees received their first dose of the vaccine while 33,386 have received their second dose. There have been 3,308 COVID-19 positive cases and 34 deaths in the camps since March 2020.³²⁰

³¹³ UNHCR, [UNHCR Global Appeal 2008-2009, Bangladesh](#)

³¹⁴ Human Rights Watch, [“Are We Not Human?” : Denial of Education for Rohingya Refugee Children in Bangladesh](#), 2019

³¹⁵ Information provided by UNHCR

³¹⁶ Centre for Global Development, [Few Rights and Little Progress: The Rohingya in Bangladesh](#) | Center for Global Development, 2021

³¹⁷ Information provided by UNHCR

³¹⁸ Fortify Rights, [Bangladesh: End Restrictions and Protect Rohingya Refugees](#), Dec 2021

³¹⁹ Information provided by UNHCR

³²⁰ UNHCR, [Bangladesh Operational Update](#), Dec 2021

INDIA



United Nations
Network on Migration

Working Better Together

INDIA

Basic Demographics

India has a long history of receiving a significant number of refugees and people seeking asylum from countries within the region and continues to host almost 170,000 Sri Lankan and Tibetan refugees registered directly with the government, in addition to approximately 44,000 other refugees, mostly from Myanmar and Afghanistan, registered with UNHCR India.³²¹ As of 2019, Sri Lankan refugees are largely in 107 camps and in the community across Tamil Nadu, a southern state of India, while the majority of Tibetan refugees have settled in communities across the country.³²²

India is also home to millions of migrant workers, the majority coming from Bangladesh, Nepal and Sri Lanka. They work primarily in informal sectors such as construction and domestic work and are often vulnerable to labour exploitation due to their precarious status.³²³ There are a significant number of trafficking survivors in India, mainly Nepalese and Bangladeshi women and girls in commercial sex.³²⁴

Who is at Risk of Immigration Detention?

Three key national laws that govern the management of foreigners in Indian territory are the Foreigners Act of 1946, the Registration of Foreigners Act of 1939, and the Passport (Entry into India) Act of 1920. These laws provide the Central government with unfettered powers to make rules to penalise the entry and stay of foreigners without valid documents. Therefore, any non-citizen without documentation can be charged, convicted, and detained under Indian law. This can include people seeking asylum and refugees, migrants with irregular status, as well as children. Despite the Indian Penal Code stipulating that “nothing is an offence which is done by a child under seven years of age,”³²⁵ children reportedly can still be placed in jails and prisons with their incarcerated parents.

Who is Detained in Practice?

As of 2016, approximately 1% of people seeking asylum who enter India without valid travel documents were detained in border areas by border guards when they were apprehended before pursuing their asylum applications with either UNHCR or the Ministry of Home Affairs.³²⁶ For refugees in particular, Section 3(2)(e) of the Foreigners Act 1946 has been used to restrict their freedom. This provides for various means of restricting mobility, including residence requirements and furnishing proof of identity – however, this provision has been narrowly interpreted to restrict their freedom of movement within a cell in a detention centre.³²⁷

³²¹ UNHCR, UNHCR Factsheet, Sept 2021

³²² Ministry of Home Affairs, [Annual Report 2019-2020](#)

³²³ IOM, [World Migration Report 2020](#), p.77

³²⁴ US State Department, [Trafficking in Persons Report: India, 2020](#)

³²⁵ Indian Penal Code, Section 82

³²⁶ UNHCR, [UNHCR Submission on India: UPR 27th Session](#), Aug 2016

³²⁷ Information provided by a civil society organisation in India, Feb 2022

In 2017, an executive order was issued by the government, directing all enforcement authorities across the country to detect, detain, and deport refugees from the Rakhine State of Myanmar.³²⁸ Also, between 2018 and 2019, the government implemented the National Register for Citizenship (NRC) policy in the State of Assam³²⁹ which aims to document legal citizens of India and identify, detain and deport “illegal migrants.”³³⁰ In 2019, the government released the final list of the NRC, which excluded nearly two million people living in Assam state.³³¹ Those excluded from the NRC are at risk of immigration detention, although the NRC exercise is not yet final and there is a right of appeal for those excluded.³³²

Migrant workers from neighbouring countries continue to be detained in jails and prisons for violating immigration regulations,³³³ though the total number of migrants in custody across India is unknown.

Trafficking survivors are often confined in shelters for prolonged periods of time, which could amount to de-facto detention, as neither deportation nor repatriation of foreign trafficking survivors takes place within a short time frame due to bureaucratic barriers.³³⁴ This is despite the Central government order in May 2012 stating that persons apprehended who have been discovered to be survivors of trafficking should not be prosecuted under provisions of the Foreigners Act and where a charge sheet has been filed, it must be withdrawn.³³⁵ There are reports of Bangladeshi trafficking survivors staying in shelters in India for up to six years waiting for a repatriation order³³⁶ despite the existence of Rescue, Recovery, Repatriation and Re-Integration (RRRI) Task Force between the governments of India and Bangladesh, a joint platform that facilitates rescue and repatriation of trafficking survivors.³³⁷ This is due to the lengthy and complex approval system and lack of understanding of relevant actors on RRRI Standard Operating Procedures.

³²⁸ Ministry of Home Affairs, Order on identification of illegal migrants and monitoring thereof - regarding, 2017

³²⁹ Government of Assam, Office of the State Coordinator of National Registration (NRC)

³³⁰ Shanker, R., India: Impact of COVID-19 on Immigration Detention, in Chew, V., Phillips, M. & Yamada Park, M. (eds) 2020. COVID-19 Impacts on Immigration Detention: Global Responses, IDC and HADRI/Western Sydney University

³³¹ Washington Post, In a corner of India 2 million risk becoming stateless after release of final citizenship list, Aug 2019

³³² Ibid, for reporting on Assam government building new detention centres. See BBC, Assam NRC What next for 1.9 million stateless Indians?, Aug 2019 and The Wire, Detention, Criminalisation, statelessness: The Aftermath of Assam’s NRC, Sept 2019 for reports of people being detained as a result of NRC; The Economic Times, Assam Chief Minister Sarma says government wants old NRC reviewed, new one to be made, Mar 2022

³³³ See for example Indian Express, Migrant workers in Kerala end up in jails and mental hospitals, May 2017; and Firstpost, Invisibilised and incarcerated: Once migrants in search for better futures, Bangladeshi women now languish in jail-India News, Jul 2019

³³⁴ US State Department, Trafficking in Persons Report: India, 2021

³³⁵ Ministry of Home Affairs, Office Memorandum, May 2012

³³⁶ US State Department, Trafficking in Persons Report: Bangladesh, 2021

³³⁷ Bangladesh Ministry of Home Affairs, Bangladesh Country Report 2018 Combating Human Trafficking, 2018

Immigration Detention Infrastructure

In India, detention for migration-related reasons can be both custodial³³⁸ and administrative,³³⁹ as immigration violations are treated as criminal offences. Often people are kept in correctional facilities to ensure that they appear for trial while administrative detention is used as a measure to confine migrants with irregular status prior to their removal.³⁴⁰ The custodial authorities for administrative detention are the Foreigners Regional Registration Offices (FRRO) under the Ministry of Home Affairs. However, the state governments and Union Territories Administrations also set up and run their own holding centres. Prisons and jails are also under the authority of the state governments. Treatment of prisoners and management of correctional facilities are guided by the 2016 Model Prison Manual.³⁴¹ The government issued the Model Detention Centre/Holding Centre/Camp Manual in 2019 which contains the rights that should be made available to persons in administrative detention nationwide.³⁴² The Manual is not publicly available but some of its provisions can be found in court judgements.³⁴³

There are no available data on the number of foreign nationals imprisoned for migration-related offences as the Ministry of Home Affairs does not make statistics disaggregated by types of offence committed by foreign nationals available to the public. As of December 2020, foreign nationals in the Indian prison system accounted for only 1% of the total carceral population.³⁴⁴

Statistics related to populations in immigration detention are also unavailable as these numbers are not centrally maintained by the Ministry of Home Affairs but are managed directly by state governments who oversee detention centres in their states.³⁴⁵

There are multiple laws, both Central and State, to regulate conditions of administrative detention and the period of detention prescribed under each differs, however, in practice there is often no time limit for the length of administrative detention in India.³⁴⁶ It is reported that while migrants with irregular status are detained in holding centres for the purpose of removal, it is often difficult to carry out deportation or repatriation in a short timeframe. As a result, people can be subject to administrative detention for an indefinite period of time.

India has also established a Foreigners' Tribunal, a quasi-judicial body in Assam³⁴⁷ which aims to determine matters pertaining to citizenship in order to identify foreigners. As of February 2022, the

³³⁸ Foreigners Act, Section 3(2); Registration of Foreigners Act, Section 5; Passport Act, Section 3(3)

³³⁹ See Model Detention Centre/Holding Centre/Camp Manual Chapter 4, para 4.6 referenced in [Suo Motu Writ Petition No.1 of 2019 in the High Court of Bombay at Goa](#), p. 17. This states that on completion of their sentence, the Jail authorities concerned may hand over the foreign national to the authority in charge of the detention centre.

³⁴⁰ Shanker, R., India: Impact of COVID-19 on Immigration Detention, in Chew, V., Phillips, M. & Yamada Park, M. (eds) 2020. [COVID-19 Impacts on Immigration Detention: Global Responses](#), IDC and HADRI/Western Sydney University

³⁴¹ Ministry of Home Affairs, [Union Home Minister approves New Prison Manual 2016](#), Jan 2016

³⁴² The Print, [Modi govt sets norms for 'model' detention camps to ensure dignity of 'illegal foreigners'](#), Jul 2019

³⁴³ See for example, [Suo Motu Writ Petition No.1 of 2019 in the High Court of Bombay at Goa](#). The judgement refers to the Manual from page 17 to 23.

³⁴⁴ As of Dec 2020, [World Prison Brief: Bangladesh](#)

³⁴⁵ Ministry of Home Affairs, [Written submission to the parliamentary questions to the Ministry](#), July 2019

³⁴⁶ Information provided by a civil society organisation in India, Feb 2022

³⁴⁷ Established under the Foreigners (Tribunal) Order, 1964

state of Assam has more than 100 Foreigners' Tribunals.³⁴⁸ When an individual residing in Assam is considered a suspected foreigner, they are requested to appear before the Foreigners' Tribunal and present documents that can prove they were born in India and are descendants of persons who entered India before 24 March 1971.³⁴⁹ Those who fail to prove their Indian citizenship can subsequently face detention and deportation.³⁵⁰

Alternatives to Immigration Detention

Indian law does not specifically mention ATD, but the Foreigners Act of 1946 provides that foreigners can enter into a bond with or without sureties.³⁵¹ Those charged under the Act can also be released on bail. A broad reading of Section 3(2)(e) of the Act prescribing residence requirements, reporting requirements and other conditions could also be considered ATDs. In practice this section has been more often narrowly interpreted, particularly for refugees, and has been used to restrict their freedom of movement within a cell in a detention centre rather than being interpreted as conditions while residing in the community.³⁵² Further, the benefit of judicial oversight and the bail opportunity prescribed under the Foreigners Act are only applicable for those in criminal detention and do not extend to persons in administrative detention.³⁵³

India, despite not being a state party to the 1951 Refugee Convention or its 1967 Protocol, allows UNHCR to conduct Refugee Status Determination (RSD) for people seeking asylum from non-neighbouring countries and Myanmar. People seeking asylum from neighbouring countries that directly share borders with India can approach the Ministry of Home Affairs (MHA) directly, though there is no clear policy guideline regarding RSD.³⁵⁴ Those refugees registered with UNHCR receive a UNHCR card that in principle serves as an ID card for refugees. MHA-registered refugees also receive a similar form of ID. These ID documents from the two agencies function as a form of ATD as they allow refugees to live in the community legally and provide access to public services.³⁵⁵ However in reality, the UNHCR card fails to provide complete protection from arrest and detention as such status is not well recognised by state authorities, in contrast to the ID document issued directly by MHA.³⁵⁶

Tamil refugees from Sri Lanka are largely in designated refugee camps set up by the government. These camps are mostly open camps, meaning that those in the camps have the freedom to move in and out and pursue various educational and employment opportunities. The camp residents can leave during the day, go to work in the city, and return at night. They may also be allowed to live outside of the camps subject to reporting their presence to the local police station every month.

In 2015, the government allowed religious minorities from Afghanistan, Bangladesh and Pakistan who entered India before 31 December 2014 to apply for a Long Term Visa (LTV).³⁵⁷ This change

³⁴⁸ India Today, [1.43 lakh declared as foreigners by tribunals in Assam, govt tells Rajya Sabha](#), Feb 2022

³⁴⁹ The Wire, [What 787 Cases in the Gauhati HC Tell Us About How 'Suspected Foreigner' Cases Are Decided](#), Mar 2020

³⁵⁰ India Today, [1.43 lakh declared as foreigners by tribunals in Assam, govt tells Rajya Sabha](#), Feb 2022

³⁵¹ Foreigners Act 1946, Clause 3(2)(f)

³⁵² Information provided by a civil society organisation in India, Feb 2022

³⁵³ Ibid

³⁵⁴ Shanker and Vijayaraghavan, [Refugee Recognition Challenges in India](#), 2020

³⁵⁵ Ibid

³⁵⁶ Ibid

³⁵⁷ Ministry of Home Affairs, [Long Term Visas](#), 2015, Section 5

in LTV policy provides a pathway to legalise certain groups of migrants with irregular status in the country.³⁵⁸ Once granted with a LTV, migrants are entitled to seek employment or study in any academic institution in India. However, the issuance of the LTV is reportedly arbitrary and restricted.³⁵⁹

Most recently, the Indian government adopted the Citizenship Amendment Act (CAA) 2019, which paved the way for religious minority groups from Afghanistan, Bangladesh and Pakistan who entered India before 2015 to fast-track Indian citizenship. The CAA provides expedited pathways to attain a legal identity for some religious minorities from three countries, but it does not provide similar pathways for other groups; this exclusion of certain groups has been widely criticised.³⁶⁰ The CAA is currently being contested for its constitutionality at the Supreme Court with a decision pending.³⁶¹

Access to Rights and Services

In India, refugees and people seeking asylum have access to public health, education and legal aid however in reality, there are practical barriers to access these services due to the language barriers and lack of awareness of how to navigate the system.³⁶² Another concern relates to approaching state authorities as refugees and people seeking asylum fear risk of arrest and detention. Migrants with irregular status do not have access to public services in general.

Tibetan refugees who are directly registered with MHA are allowed to work in India. They are either self-employed or assisted by an agricultural and handcrafts employment support scheme run by State governments.³⁶³ Other groups of refugees do not seem to enjoy this employment support and some refugees work in the informal labour market.

Children of migrants with irregular status, people seeking asylum, and refugees have access to birth registration and are entitled to free and compulsory primary education in India. The Right of Children to (Free and Compulsory) Education (RTE) Act 2009, stipulates that it is an obligation of the government to ensure that all children residing in India between the age of six to 14 have access to free elementary and secondary level education.³⁶⁴ Theoretically, this law has made it possible for all children with irregular status to access government schools on par with Indian citizens. However, in practice the implementation of RTE is inconsistent between the States and migrant children still experience difficulties accessing education.³⁶⁵

Migrants, people seeking asylum, and refugees who are survivors of sexual and gender-based violence (SGBV) are not prohibited from seeking protection from relevant authorities, as relevant

³⁵⁸ The Economic Times, [India to allow minorities from Pakistan, Bangladesh to stay without papers](#), Sept 2015

³⁵⁹ Shanker and Vijayaraghavan, [Refugee Recognition Challenges in India](#), 2020, p. 26

³⁶⁰ There has been widespread public criticism of the exclusion of Muslim minorities in particular, as this is perceived as a violation of India's secular constitution. See Migration Policy Institute, [A Proxy War on Minorities? India Crafts Citizenship and Refugee Policies through the Lens of Religion](#), Apr 2020

³⁶¹ India Supreme Court Observer, [Status Citizenship Amendment Act](#)

³⁶² UNHCR, [UNHCR Submission on India: UPR 27th Session](#), Aug 2016

³⁶³ Ministry of Home Affairs, [Annual Report 2019-2020](#), p. 253

³⁶⁴ Ministry of Education, [Press release on Right to Education of children of migration workers](#), Jun 2019

³⁶⁵ The Times of India, [Always on the move: The troubling landscape of the right to education for migrant children in India](#), Apr 2021

laws stipulate that they will apply to all those within the territory of India. While there is no specific law or policy to provide SGBV support to them, they are not excluded from national SGBV prevention and response mechanisms.³⁶⁶ Civil society members have also made an effort to support SGBV survivors; responding to the increasing SGBV cases during COVID-19 in particular, Talika Network, a network of NGOs, community leaders and volunteers formed in 2021, has released an app called Talika App that provides information for available services and support for SGBV survivors.³⁶⁷

Developments during COVID-19

Following the COVID-19 outbreak, there have been reports of sporadic releases of people from places of detention in India as a way to urgently resolve overcrowding and reduce the risk of COVID-19 spread in isolated and congested detention facilities. For example, in April 2020, the Supreme Court of India called for the release of migrants with irregular status in Assam state and relaxed the conditions for their release.³⁶⁸ Unfortunately, this did not lead to systematic release of people across the country nor a moratorium on arrest and detention of migrants with irregular status. Authorities continued to arrest and detain individuals with irregular status in 2021. In early March 2021, an estimated 170 Rohingya refugees were arrested and subsequently detained in a holding centre. Despite several of them holding UNHCR cards, they were informed that they would be deported to Myanmar.³⁶⁹ There have also been reports of denial of bail and overcrowding of prisons during COVID-19. The Supreme Court of India refused to extend bail for those on release in March 2021.³⁷⁰

In May 2021, the Ministry of Health and Family Welfare released the Standard Operating Procedures on COVID-19 Vaccination of Persons Without Prescribed Identity Cards³⁷¹ to facilitate the vaccination of those not having one of the seven prescribed identity cards in their possession, including migrants with irregular status. UNHCR consequently released multiple communications within the community encouraging people seeking asylum and refugees to get vaccinated. Following this directive, various State governments also opened up vaccination sites for refugees, including the Government of the National Capital Territory of Delhi³⁷² and the Government of Mizoram.³⁷³ As of September 2021, it was reported that 31,165 people seeking asylum and refugees have been vaccinated.³⁷⁴

³⁶⁶ UNHCR, [UNHCR Submission on India: UPR 27th Session](#), Aug 2016

³⁶⁷ Migration and Asylum Project, [Talika Network](#)

³⁶⁸ India Today, [SC orders release of 'illegal foreigners' in Assam detained for 2 years to avoid overcrowding](#), Apr 2020

³⁶⁹ The Guardian, [India detains Rohingya refugees and threatens to deport them to Myanmar](#), Mar 2021

³⁷⁰ Bar and Bench, [A crisis in the making: from de-congestion to re-congestion in prisons](#), Mar 2021

³⁷¹ Ministry of Health and Family Welfare, [SOPs on COVID-19 Vaccination of Persons without prescribed Identity Cards through CoWIN](#), May 2021

³⁷² Hindustan Times, [Delhi govt sets up special vaccination centre for refugees in Tilak Nagar](#), Jun 2021

³⁷³ The Indian Express, [Mizoram extends Covid-19 vaccination to Myanmar refugees](#), Nov 2021

³⁷⁴ UNHCR, [UNHCR Factsheet: India](#), Sept 2021

MALDIVES



United Nations
Network on Migration

Working Better Together

MALDIVES

Basic Demographics

The Maldives relies heavily on migrants to sustain its economy. In 2019, there were more than 63,000 migrants with irregular status in the Maldives, primarily from Bangladesh and India. Migrants work mainly in the construction and service sectors. The Maldives is also a destination country for human trafficking.³⁷⁵

There is no known information regarding the number of people seeking asylum and their situation in the Maldives. UNHCR does not have a physical presence in the country, but its India country office covers the Maldives. In 2019, it reported that there is no regular information sharing platform established between the agency and the Maldives authorities.³⁷⁶

Who is at Risk of Immigration Detention?

All non-Maldivian citizens without permission to enter, or whose entry permits have expired or been revoked can be subjected to detention and deportation. The Maldives Immigration Act 2007 (Article 29(a)) states that immigration authorities have the power to detain non-nationals who are denied entry at a place where the immigration officer “deems fit.” Immigration authorities can also detain migrants with irregular status who are already residing in the Maldives; under Article 21(d), immigration authorities can “arrange an accommodation” for a foreign national whose entry permit has been revoked but is unable to depart immediately.

There is no national legal or policy framework for people seeking asylum and refugees in the Maldives. This means that anyone seeking asylum in the country theoretically can be considered to have irregular status and is subjected to the same regulations under immigration laws.

Who is Detained in Practice?

Migrants who are detained in the Maldives are typically migrants with irregular status who are awaiting deportation or repatriation. It is reportedly common for migrant workers to be detained due to their own employers reporting them to the immigration authorities for deportation when the migrant workers lodge employment-related claims, especially regarding unpaid wages, to the relevant authorities.³⁷⁷ Some migrants may go through the criminal justice system if there are sufficient grounds to charge them with a criminal offence, however when this is not the case, they may simply receive a deportation order. Trafficking survivors have reportedly been detained for migration-related offences, despite the provisions of the Anti-trafficking Act 2013. This is due to the lack of an effective trafficking victim identification mechanism.³⁷⁸

Though the relevant regulation seems to limit the length of detention to 15 days for the purpose of removal,³⁷⁹ there are reports of migrant workers being held in immigration detention centres for

³⁷⁵ UNHCR, UNHCR Submission for the Universal Periodic Review – Maldives – UPR 36th Session, Oct 2019

³⁷⁶ Ibid

³⁷⁷ Information provided by Public Interest Law Centre Maldives, Apr 2022

³⁷⁸ US Department of State, Maldives 2020 Human Rights Report, 2021, p. 24-25

³⁷⁹ The Edition, Detention Centre for Illegal Immigrants Opens, Apr 2019

weeks or sometimes years prior to deportation.³⁸⁰ Migrants in immigration detention do not have the means to challenge the legality of their detention as there is no judicial review of immigration detention.³⁸¹

Immigration Detention Infrastructure

There are two immigration detention facilities in the Maldives, namely, Malé Immigration Detention Centre and Hulhamale Detention Centre. Malé Immigration Detention Centre is managed by the Department of Immigration and Emigration and was the only detention centre in the country until 2019. The Hulhamale Detention Centre was opened in 2019 and this facility is managed by the Maldives Correctional Services.³⁸² However some persons detained for migration-related reasons were also held in correctional facilities³⁸³ as well as in an unregistered facility of a State-owned company. Such informality of detention facilities was highlighted as a major concern by the UN Working Group on Arbitrary Detention in their December 2021 visit to the Maldives.³⁸⁴

The size of the immigration detention population in the Maldives is unknown. The number of individuals who were denied entry and detained at the border entry points between 2014 and 2016 was 1,807 in total.³⁸⁵ This figure does not include those arrested and detained in the country; therefore, the number of people in immigration detention is likely much higher than the presented figure.

Alternatives to Immigration Detention

The Maldives Immigration Act 2007 does not provide for ATD. However, it appears that a migrant who is arrested and going through the criminal justice system may be eligible for conditional release while their case is awaiting court resolution if they are able to provide a local guarantor.³⁸⁶

The Ministry of Economic Development has been implementing a regularisation scheme for migrant workers with irregular status in the Maldives³⁸⁷ which may protect them from immigration detention and deportation. There is no publicly available information regarding the details of the process, however the regularisation programme allows migrants to change their employers in case the employer is responsible for the irregular status.³⁸⁸ Under the scheme, migrant workers can legally stay in the country for a certain period of time while looking for a new employer. In 2018, it was reported that only few migrants were able to benefit from this scheme due to the lack of awareness, insufficient guidance and migrants' distrust of authorities.³⁸⁹ More recently, the UN

³⁸⁰ US Department of State, Maldives 2020 Human Rights Report, 2021, p. 12

³⁸¹ OHCHR, Working Group on Arbitrary Detention: Preliminary Findings from its visit to Maldives (29 Nov to 9 Dec 2021), Dec 2021

³⁸² The Edition, Detention Centre for Illegal Immigrants Opens, Apr 2019

³⁸³ US Department of State, Maldives 2020 Human Rights Report, 2021, p.3

³⁸⁴ OHCHR, Working Group on Arbitrary Detention: Preliminary Findings from its visit to Maldives (29 Nov to 9 Dec 2021), Dec 2021

³⁸⁵ Maldives Immigration Annual Report 2015 and 16, referenced in IOM, Migration in Maldives: A Country Profile, 2018. Original source is not available publicly.

³⁸⁶ US Department of State, Maldives 2020 Human Rights Report, 2021, p. 12

³⁸⁷ UN Human Rights Council, Visit to Maldives : Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Nils Melzer, 2020

³⁸⁸ IOM, Migration in Maldives: A Country Profile, 2018, p.65

³⁸⁹ Ibid

Special Rapporteur on Torture positively noted the on-going regularisation initiative by the government for migrant workers after his visit to the Maldives in November 2019.³⁹⁰

The Maldives enacted the Anti-Human Trafficking Act in 2013, which provides a legal basis for non-detention of trafficking survivors³⁹¹ as well as protection measures. Under this Act, trafficking survivors can obtain a legal permit to stay and work in the Maldives while waiting for their case to be resolved. Two trafficking survivors were granted this permit in 2020. Standard Operating Procedures on victim identification, shelter operations, and referral to victim services were drafted to operationalise the Anti-Human Trafficking Act, however they are yet to be formally adopted.³⁹²

Access to Rights and Services

It is unclear to what extent the migrant workers have access to rights and public services when they are of irregular status or when they are registered under the regularisation programme mentioned above. In principle, it is the employer's responsibility to provide basic health insurance to migrant workers,³⁹³ however those in the regularisation programme do not have an employer. Migrants with irregular status do not have access to legal assistance and legal proceedings and communications are all conducted in Dhivehi without interpretation support.³⁹⁴

According to the 2013 Anti-Human Trafficking Act, trafficking survivors can be identified and registered by the human trafficking department of the Maldives Police Service. The Act details the various services and supports that trafficking survivors are entitled to. This includes access to healthcare and counselling services, accommodation, an interpreter, and information on how to obtain legal assistance.³⁹⁵ The Act also states that the Ministry is responsible for appointing a legal guardian for unaccompanied children.³⁹⁶

Despite legal provisions enabling access to rights and services for trafficking survivors, they are not always able to access these in practice due to insufficient victim identification mechanisms and resource constraints. A shelter for trafficking survivors was built in 2020-21 but is not yet operational.³⁹⁷

Developments during COVID-19

The Maldives released some people from prisons and jails to reduce the risk of COVID-19 however it is unclear if those released to the community included persons detained for migration-related reasons.³⁹⁸

³⁹⁰ UN Human Rights Council, Visit to Maldives : Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Nils Melzer, 2020

³⁹¹ Anti-Human Trafficking Act 2013, Article 33(c)

³⁹² US Department of State, Trafficking in Person Report: Maldives, 2021

³⁹³ IOM, Migration in Maldives: A Country Profile, 2018, p. 168

³⁹⁴ OHCHR, Working Group on Arbitrary Detention: Preliminary Findings from its visit to Maldives (29 Nov to 9 Dec 2021), Dec 2021

³⁹⁵ Anti-Human Trafficking Act 2013, Article 34 and 35

³⁹⁶ Anti-Human Trafficking Act 2013, Article 52

³⁹⁷ US Department of State, Trafficking in Person Report: Maldives, 2021

³⁹⁸ OHCHR, Maldives country input to the joint questionnaire on COVID-19 and Human Rights, Mar 2021

According to the Ministry of Foreign Affairs, the government deported Bangladeshi migrants with irregular status in April 2020.³⁹⁹ Large scale repatriation of migrants with irregular status continued in 2020,⁴⁰⁰ however it is not clear if the return of migrants was on a voluntary basis. The number of people in immigration detention has reportedly increased in 2021, possibly due to repatriations taking place as those who were returned were first detained.

Migrant workers, particularly those working at construction sites, who have lost their jobs or were unpaid during COVID-19 have reportedly become irregular as they have not been able to officially change employer as per the law. This has made them susceptible to arrest and detention.⁴⁰¹

In February 2021, the government of Maldives rolled out a COVID-19 vaccination programme that allows migrants with irregular status to receive vaccination free of charge and without discrimination.⁴⁰²

³⁹⁹ The Edition, [68 undocumented Bangladeshi workers repatriated: Foreign Ministry](#), Apr 2020

⁴⁰⁰ The Edition, [State repatriates 200 additional expatriates](#), Sept 2020

⁴⁰¹ Information provided by Public Interest Law Centre Maldives, Apr 2022

⁴⁰² United Nations, [Statement by the UN Resident Coordinator for the Republic of Maldives, Catherine Haswell, on government efforts in ensuring vaccine equity](#), Mar 2021

PAKISTAN



United Nations
Network on Migration

Working Better Together

PAKISTAN

Basic Demographics

Over the years, Pakistan has hosted large numbers of voluntary and forced migrants from Afghanistan. Today, over 1.4 million registered Afghan refugees live in Pakistan, alongside some 840,000 Afghan Citizen Cardholders (ACC), as well as approximately 500,000 Afghans in an irregular status.⁴⁰³ There are also a small number of non-Afghan refugees and people seeking asylum in Pakistan, originating from countries such as Somalia, Iraq, Palestine and Iran.⁴⁰⁴

While the movement of Afghans to Pakistan has mostly been as a result of war and instability, migration that has been circular and seasonal has also taken place between the two countries. Large numbers of Afghan migrants have historically travelled for economic reasons, as well as to seek healthcare in Pakistan.⁴⁰⁵ There are also large numbers of labour migrants from China, working in railways, construction, copper mining and energy sectors. There are an estimated one to two million Bangladeshi migrants who primarily live in Karachi.⁴⁰⁶

Pakistan is considered to be a sending, transit and destination country.⁴⁰⁷

Who is at Risk of Immigration Detention?

The regulation of entry, movement and removal of non-citizens in Pakistan is largely governed by the Registration of Foreigners Act 1930, the Foreigners Act 1946 (amended 2016), and the Registration of Foreigners Rules 1966.

The 1946 Foreigners Act grants the Federal Government with powers to make further provisions to prohibit, regulate and restrict the presence of non-citizens, particularly as it relates to entry, stay, and exit.⁴⁰⁸ The Registration of Foreigners Rules 1966 provides for the registration of non-citizens before the competent authorities, procedures for registration, as well as exemptions for certain classes of foreigners.⁴⁰⁹

The penalty for knowingly entering Pakistan irregularly is imprisonment for up to 10 years, and a fine of up to 10,000 Rupees.⁴¹⁰ Migrants accused of irregular entry cannot be released on bail if there are “reasonable grounds for believing that [they have] been guilty of such an offence.”⁴¹¹ Where migrants have been convicted and sentenced to imprisonment, they are also not to be released once having served their sentence. Instead, they are to be detained for a period not exceeding three months to facilitate their deportation.⁴¹² There have been reports however, that in

⁴⁰³ [UNHCR - Pakistan Country Fact Sheet](#), Jan 2022

⁴⁰⁴ [UNHCR - Pakistan Country Fact Sheet](#), Jan 2022

⁴⁰⁵ IOM, [Pakistan: Migration Snapshot](#), Aug 2019

⁴⁰⁶ See for example. Sanaa Alimia, [Who Counts as a Refugee](#), HIMAL South Asian, 14 Jun 2014

⁴⁰⁷ Khalil Hashimi, [Inter-governmental Conference to adopt Global Compact for Migration, Marrakech Morocco-10-11-December 2018](#), Ministry of Foreign Affairs, 11 Dec 2018, p.2-3,

⁴⁰⁸ Foreigners Act 1946, Section 3

⁴⁰⁹ Foreigners Registration Rules 1966, Sections 3 to 8)

⁴¹⁰ Foreigners Act 1946, Section 14

⁴¹¹ Ibid, Section 14 (A)(2)

⁴¹² Ibid, Section 4c

practice this three-month period is not adhered to; foreigners imprisoned for illegal entry reportedly remain in prison long after they complete their sentences, because they cannot afford to pay for their fare home or have not had their nationalities confirmed, and not been provided with access to their diplomatic or consular authority.⁴¹³

Migrants who are irregularly in Pakistan whose cases are still pending, or who are undergoing sentences of imprisonment may be permitted by the courts to be deported from Pakistan upon the consent or order of the government, though this is applicable only to non-citizens who are not required in connection with any other case.⁴¹⁴

Who is Detained in Practice?

Afghan Proof of Registration (PoR) and Afghan Citizenship Card (ACC) holders can legally reside on a temporary basis in Pakistan. Afghan refugees registered with UNHCR also have a temporary legal status, though this is not always respected (see further below). However, Afghans who have neither PoR, ACC or UNHCR registration are treated as migrants with irregular status and are liable to arrest, detention and deportation under the Foreigners Act.

The Pakistan government does not regularly publish data on the number of foreign prisoners across the country. A study conducted by the National Counter Terrorism Authority in 2018 reported that there were 1,117 foreign prisoners.⁴¹⁵ In 2020, a study of the foreign prison population in Sindh province by the Committee for the Welfare of Prisoners-Legal Aid Office (CWP-LAO)⁴¹⁶ found 289 foreign prisoners, with the largest represented nationality being Indians (215 persons) followed by Bangladeshis (41) and Afghans (22). Of the 289 foreign prisoners, 274 had been convicted of irregular border crossing offences.

The CWP-LAO reported the vast majority of irregular border crossing offences were attributable to Indian fishermen who inadvertently cross territorial waters while fishing; they are charged with a criminal offence and detained in prison until their cases are concluded.⁴¹⁷ Other irregular border crossing offences were attributable to Afghans and Bangladeshi persons.

There are reports that Pakistan authorities regularly harass, arrest and detain Afghan refugees; UNHCR reported in January to August 2020 that there were 370 arrests and detentions of refugees.⁴¹⁸ Since the attack by the Taliban on the Army Public School in Peshawar on 16 December 2014, Pakistani police have carried out raids on Afghan settlements, threatened, harassed, detained and beaten Afghan men, extorted bribes and destroyed their homes.⁴¹⁹

⁴¹³ International Crisis Group, [Reforming Pakistan's Prison System](#), Asia Report No. 212 - 12 Oct 2011; Committee for the Welfare of Prisoners-Legal Aid Office; [The Plight of Foreign Prisoners in Sindh: A Fact Sheet](#), 2020

⁴¹⁴ Foreigners Act 1946, Section 14 (B)

⁴¹⁵ NACTA, ICRC and CODE Pak, [Addressing Overcrowding in Prisons by Reducing Pre-Conviction Detention in Pakistan](#), 2018

⁴¹⁶ Committee for the Welfare of Prisoners-Legal Aid Office; [The Plight of Foreign Prisoners in Sindh: A Fact Sheet](#), 2020

⁴¹⁷ Ibid

⁴¹⁸ US Department of State: [2020 Country Reports on Human Rights Practices](#): Pakistan, 30 March 2021

⁴¹⁹ Ibid

Immigration Detention Infrastructure

Persons arrested for immigration offences are detained in prisons managed by the governments of the provinces that they operate in. The National Commission for Human Rights (NCHR) has access to these detention facilities for monitoring purposes.⁴²⁰ Prison conditions are reportedly very poor, with severe overcrowding.⁴²¹

Alternatives to Immigration Detention

Afghans in Pakistan have been able to legalise their migration status in several ways:

- In 2007, Pakistan, Afghanistan and UNHCR signed a tripartite agreement; under this, Afghan refugees were able to register and obtain a Proof of Registration (PoR) Card that would identify them as Afghan refugees. PoR card holders can remain temporarily in Pakistan and they enjoy freedom of movement.
- In 2017, the Pakistani government launched a further, six-month programme to register undocumented Afghans through the new Afghan Citizenship Card (ACC). This was open to all self-declared Afghans, though PoR card holders and single males under 18 were excluded. ACC card holders can also reside temporarily in Pakistan and have freedom of movement but have far less benefits than PoR card holders (see below).
- Many Afghans in Pakistan do not hold an ACC or a PoR, but some are registered with UNHCR. Through this, they can legally stay on a temporary basis in Pakistan though this is not always understood or respected by security forces.⁴²²

In April 2021, the government with the support of UNHCR initiated a ‘documentation renewal and information verification exercise (DRIVE)’ to register Afghans and issue them with ID cards; this updated the data of some 1.4 million Afghan refugees and represented the first large-scale effort to verify the status of Afghans in Pakistan in the last decade. Refugees are given “smart identity cards” that will be valid until 30 June 2023; according to UNHCR, these cards contain biometric data, are technologically compatible with systems used in Pakistan to authenticate the identities of nationals and will give Afghan refugees “faster and safer access to health and education facilities, and to banking services.”⁴²³

Access to Rights and Services

One-third of registered Afghan refugees live across 54 refugee villages, while the remaining two-thirds live in host communities in rural and urban areas and seek access to basic services in these communities.⁴²⁴

⁴²⁰ Any jail or detention centre that is found to be vulnerable to human right violations may be visited by the NCHR, in accordance with Article 9(C) of the National Commission for Human Rights Act 2021

⁴²¹ See for example ICRC, [Overcrowding: Pakistan Prisons Holding 57% More Inmates than Capacity](#), 15 May 2018; Amnesty International, [Pakistan: Overcrowding in Pakistan’s Prisons is a Ticking Time Bomb](#), 31 Dec 2020

⁴²² Australian Government, Department of Foreign Affairs and Trade, [DFAT Country Information Report: Pakistan](#), 25 January 2022

⁴²³ UNHCR, [Pakistan Concludes ‘Drive’ to Issue Smartcards to Registered Afghan Refugees](#), 4 January 2022

⁴²⁴ US Department of State: [2020 Country Reports on Human Rights Practices: Pakistan](#), 30 March 2021

Afghan PoR holders have access to public health and education; they can rent property, open bank accounts, register births and can also attend universities though spaces are limited, and they often lack the means to do so.⁴²⁵ Afghan PoR holders cannot legally work, but many do so in the informal economy. Afghan ACC holders on the other hand, do not have access to public health services or public education. They also cannot legally work but many do so in the informal economy.

Afghans registered with UNHCR can theoretically access health services and education, rent property and register births but in practice this requires UNHCR intervention and is unattainable for many.⁴²⁶

The Afghan constitution provides for the free and compulsory education for all children between the ages of five and 16, regardless of their nationality. In practice however, access to schools is determined by the school principal and is dependent on available spaces. Most Afghans attend private Afghan schools or schools sponsored by the international community; for older girls, especially girls in refugee villages, access to education remains a challenge.⁴²⁷

UNHCR provides refugees with free legal assistance through its advice and Legal Aid Centres operating in each of the four provinces.⁴²⁸ The Advice and Legal Aid Centre (ALAC) was opened in Peshawar to provide refugees with free legal advice, counselling, and legal representation.⁴²⁹ ALAC also assists refugees with international protection applications.⁴³⁰

Developments during COVID-19

To mitigate the risk of COVID-19 spreading through the prison population in Pakistan, which includes non-citizens who were detained and imprisoned under the 1946 Foreigners Act, most provincial governments implemented measures to decrease the number of people in prisons.⁴³¹ In March 2020; the Punjab and Sindh governments announced that they would be releasing 20,000 and 4,000 prisoners respectively, and the Khyber-Pakhtunkhwa government announced that prisoners would be released 60 days early.⁴³² Also in March 2020, the Punjab government had begun bail applications for release for prisoners imprisoned for petty crimes and those aged 60 years and older.⁴³³ However, no government support was given to those released.

⁴²⁵ Australian Government, Department of Foreign Affairs and Trade, [DFAT Country Information Report: Pakistan](#), 25 January 2022

⁴²⁶ Australian Government, Department of Foreign Affairs and Trade, [DFAT Country Information Report: Pakistan](#), 25 January 2022

⁴²⁷ US Department of State: [2020 Country Reports on Human Rights Practices: Pakistan](#), 30 Mar 2021

⁴²⁸ UNHCR, [Pakistan: Summary of Legal Assistance and Aid Programme](#), Jan 2020

⁴²⁹ Jack Redden, [UN Human Rights Agency Chief Visits Legal Aid Centre for Refugees](#), 26 Feb 2003

⁴³⁰ Ibid

⁴³¹ See for example, Global Detention Project, [Pakistan: COVID-19 Updates](#), 8 Apr 2020

⁴³² Ibid

⁴³³ Ibid

TURKEY



United Nations
Network on Migration

Working Better Together

TURKEY

Basic Demographics

As an important country of origin, transit and destination, Turkey has one of the world's largest migrant populations.⁴³⁴ Turkey is also the world's largest refugee hosting country, and at the end of 2021 there were over 3.7 million Syrians under Temporary Protection and over 330,000 international protection status holders and people seeking asylum of other nationalities.⁴³⁵ In 2021 alone, 29,256 people applied for international protection in Turkey.⁴³⁶ 75% of these international protection applicants were Afghans, followed by Iraqi (17%), Iranian (3.5%), and 4.5% were nationals of other states. In 2021, there were 162,996 migrants with irregular status apprehended in Turkey.⁴³⁷ However, the actual number of migrants with irregular status residing in Turkey is likely much higher than the apprehended number reported by the government, is likely to include more than one million unregistered Syrians.

Who is at Risk of Immigration Detention?

Law No. 6458 on Foreigners and International Protection (LFIP), which came into force in 2014 and which was most recently amended in 2019, is the main law governing immigration detention in Turkey.

By and large, any foreign nationals subject to a removal decision can be subject to administrative detention. Typically, foreign nationals apprehended by authorities for irregular entry, irregular presence or attempted irregular exit, or for other reasons listed in Article 54 of LFIP as grounds justifying removal, will be subject to administrative detention.

Article 57, which sets out the use of administrative detention for removal purposes, stipulates that the non-citizens for whom a removal decision has been issued can be detained pending deportation when:⁴³⁸

- There is a risk of them absconding or disappearing;
- They have breached the rules of entry into and exit from to Turkey;
- They have used false or fabricated documents;
- They have not left Turkey after the expiry of the period granted to them to leave, without an acceptable excuse;
- They pose a threat to public order, public security or public health.

Administrative detention can be used for those seeking international protection also. According to Article 68 of the LFIP, detention of international protection applicants shall be “an exceptional action” and applicants may only be subject to administrative detention for the following reasons:

- For the purpose of determining their identity or nationality in case there is serious doubt as to the accuracy of the information provided by the applicant;

⁴³⁴ IOM, [Migration in Turkey](#), Jan 2022

⁴³⁵ UNHCR, [UNHCR Turkey Operational Update November-December 2021](#), Dec 2021

⁴³⁶ Turkish Presidency of Migration Management, [Statistics - International Protection](#), Dec 2021

⁴³⁷ Turkish Presidency of Migration Management, [Statistics - Irregular Migration](#), Mar 2022

⁴³⁸ Law No. 6458 on Foreigners and International Protection, Article 57(2)

- For the purpose of being withheld from entering Turkey in breach of terms and conditions of entry at the border;
- When it would not be possible to identify the elements of the grounds for their application without detention;
- When the person poses a serious public order or public security threat.

Article 58 states that foreign nationals who are subject to a detention order pending the enforcement of a removal decision shall be detained in facilities designated as “removal centres.” The continued necessity of the detention should be reviewed by authorities and reaffirmed on a monthly basis.⁴³⁹

According to the law, stateless people shall not be subject to deportation and therefore should not be at risk of detention.⁴⁴⁰ Unaccompanied asylum-seeking children under 16 years of age also should not be detained and should instead be placed in suitable accommodation facilities by the Ministry for Family and Social Policies, either in the care of their adult relatives or a foster family.⁴⁴¹ Non-citizen unaccompanied children over 16 and families with children may be detained, but they must be accommodated in separate areas.⁴⁴²

Who is Detained in Practice?

It has been reported that people seeking asylum have been arbitrarily detained at the detention facilities at airports, although Turkish officials state that people seeking asylum in these facilities are free to leave Turkey at any time.⁴⁴³

The law provides that the detention of the asylum applicants should be an “exceptional action.”⁴⁴⁴ However in practice, when a foreign national is apprehended by authorities and expresses a request to apply for international protection, they will first be subject to a removal decision and administrative detention. If the individual then continues to express a request to apply for international protection, and where this request is duly processed and the international protection application is registered, s/he can be released though this is not guaranteed.⁴⁴⁵

There are reports that unaccompanied children often declare that they are over 18 in order to remain with the group they travelled with. This can lead to their detention.⁴⁴⁶ Identification of a child is reportedly an issue; when a detained child or their legal representative files a petition to be identified as a child, they are referred for “bone testing” – which in almost all cases results in them not being determined to be a child.⁴⁴⁷

⁴³⁹ Ibid, Article 57(5)

⁴⁴⁰ Ibid, Article 50 and 51

⁴⁴¹ Ibid, Article 66(1)(b)

⁴⁴² Ibid, Article 59

⁴⁴³ Global Detention Project, [Country report - immigration detention in turkey: trapped at the crossroad between Asia and Europe](#), 2021

⁴⁴⁴ Law No. 6458 on Foreigners and International Protection, Article 68(2)

⁴⁴⁵ Information provided by a civil society organisation in Turkey, Apr 2022

⁴⁴⁶ European Council on Refugees and Exiles, [Detention of vulnerable applicants: Turkey](#), Jan 2022

⁴⁴⁷ Information provided by a civil society organisation in Turkey, Apr 2022

Moreover, unaccompanied children are reportedly kept in removal centres at the borders.⁴⁴⁸ During a 2016 visit to the Pehlivan köy Removal Centre on the part of Ambassador Tomáš Boček, Special Representative of the Secretary General (SRSG) on Migration and Refugees, the SRSG was told by the Turkish authorities that at the time of his visit there were no children in the centre. However, the SRSG visited rooms at random and stated that he had witnessed children in rooms within the removal centre. This suggests a discrepancy between reports provided by the authorities and the reality within detention facilities.⁴⁴⁹

Immigration Detention Infrastructure

Turkey, as of October 2021, operates 25 removal centres with a total capacity of 15,908.⁴⁵⁰ These removal centres are operated by the Presidency of Migration Management (PMM), a civilian agency under the Ministry of the Interior, formerly known as the Directorate General of Migration Management (DGMM). Statistics related to the detention population are not publicly available.

Turkey also manages detention facilities at airports such as Istanbul Airport, Istanbul Sabiha Gökçen Airport, Ankara Esenboğa Airport, and the Izmir Adnan Menderes Airport, for non-nationals who have been refused entry into the country.⁴⁵¹ Police stations are also utilised for short-term detention of non-citizens prior to transportation to removal centres, although they may not be detained for longer than 48 hours.⁴⁵²

When it comes to removal procedures, administrative detention has a six-month time limit in Turkey, however authorities have the discretion to extend it for up to another six months where they consider additional time is required for the completion of the on-going removal proceedings.⁴⁵³

Alternatives to Immigration Detention

New amendments to the LFIP adopted by Law No. 7196 in December 2019 included changes to Article 57 governing pre-removal detention and created the newly added Article 57(A). This for the first time introduced the concept of “Alternatives to Detention” into Turkish law and provided a legislative basis for the implementation of a selection of alternative measures on foreign nationals subject to removal decisions who could otherwise be subject to pre-removal detention. Seven specific alternatives are included in the law:⁴⁵⁴

1. residence at a specific address
2. working on a voluntary basis in public benefit services
3. reporting duties
4. family based return
5. return counselling
6. financial guarantees

⁴⁴⁸ Ibid

⁴⁴⁹ Council of Europe, [Report of the fact-finding mission to Turkey by Ambassador Tomáš Boček, Special Representative of the Secretary General on migration and refugees, 30 May – 4 June 2016](#), Aug 2016

⁴⁵⁰ Ministry of Interior, [Removal Centres](#)

⁴⁵¹ Council of Europe, [Report of the fact-finding mission to Turkey by Ambassador Tomáš Boček, Special Representative of the Secretary General on migration and refugees, 30 May – 4 June 2016](#), Aug 2016

⁴⁵² Ibid

⁴⁵³ Law No. 6458 on Foreigners and International Protection, Article 57

⁴⁵⁴ Ibid, Article 57(a)

7. electronic monitoring

These alternative measures cannot be applied to a person for longer than 24 months, and non-compliance may be grounds for detention at a removal centre.⁴⁵⁵

The lack of an implementation regulation to accompany this new law has meant that at the time of writing, these measures have not been formally implemented in practice; however, during 2020, there was an increase in the use of reporting duties and residence at a specific address.⁴⁵⁶ These two alternative measures were in fact already being used on discretionary basis in the period before the 2019 legislative amendment. With the amendment in place, they can now be used more widely and with the benefit of written communication of the measure to the persons concerned. However, due to the continued absence of the awaited implementing regulation, it remains unclear in what circumstances and per which criteria ATD referral decisions are by the authorities.

The Turkish government has worked in collaboration with IOM and UNHCR on several initiatives surrounding ATD. These have centred on strengthening the ATD framework and supporting Turkey's compliance with international and European standards.⁴⁵⁷

Access to Rights and Services

Article 89 of the LFIP stipulates that applicants or “conditional” refugees can apply for a work permit, although this can only be applied for at least six months after their application for international protection has been lodged.

A person who has been granted refugee status within Turkey is granted access to employment and the opportunity to run their own business.⁴⁵⁸ This access is not impeded by any other migration laws that may prohibit or limit access to the workforce for migrants.⁴⁵⁹ Article 89 also states that applicants, those who have been granted international protection, and their family have access to primary and secondary education.⁴⁶⁰

Those who have been granted international protection and their families are also granted access to healthcare. Article 89 LFIP stipulates that persons who do not have health insurance and are not

⁴⁵⁵ Ibid

⁴⁵⁶ European Council on Refugees and Exiles, [Alternatives to detention](#), last updated Jan 2022

⁴⁵⁷ In 2020, IOM initiated a consultation project with the Turkish government on ATD, entitled “*Supporting Directorate General of Migration Management (DGMM) to Develop Alternatives to Immigration Detention (ATDs) System in Turkey*” and funded by the Embassy of the Kingdom of the Netherland, see IOM, [Turkey's First Standalone Project on Alternatives to Immigration Detention was Finalized](#), 2021. In May 2021, another larger-scale EU-funded technical assistance project in support of the Turkish government co-led by IOM and UNHCR Turkey was launched. The project is entitled “*Supporting Removal Centres' Capacities and Fostering Alternatives to Detention*”. The project focuses on improving compliance with international and European standards by strengthening access to rights and services in removal centres, enhancing procedural safeguards and fostering alternatives to detention in line with latest legislative amendments

⁴⁵⁸ Law No. 6458 on Foreigners and International Protection, Article 87

⁴⁵⁹ Ibid

⁴⁶⁰ Ibid, Article 89

in a financial position to afford health insurance will have access to healthcare,⁴⁶¹ as set out in the Social Security and Universal Medical Insurance Law.⁴⁶²

Article 70 LFIP gives people seeking asylum access to translation and interpretation services during their asylum application, registration, and interview.⁴⁶³ However, in practice these services have been found to be insufficient due to a lack of interpreters and a low quality of interpretation provided, as well as concerns about whether the translated documents are kept confidential.⁴⁶⁴

During the asylum application and interview process, applicants are expected to pay for their own legal services.⁴⁶⁵ Where they cannot afford their own legal fees, legal aid may be requested from the courts.⁴⁶⁶ However, in practice most people seeking asylum are unable to access free legal assistance during their initial claim and many struggle to access free legal assistance on appeal.⁴⁶⁷ Several NGOs also provide free legal assistance to people seeking asylum, refugees and migrants.

Unaccompanied children should, as per the Turkish Civil Code, be assigned a guardian (“vesayet”).⁴⁶⁸

Developments during COVID-19

In early 2020, the COVID-19 pandemic led to a substantive reduction in the use of immigration detention. With few exceptions, the vast majority of detained persons were released from removal centres across the country; this was because travel restrictions made returns impossible.⁴⁶⁹ As referred to earlier, there was an increase in the use of the alternative measures of reporting duties and residence at a specific address during 2020, even though no guidance was given for how to implement these measures.⁴⁷⁰

While arrest and detention began increasing from 2021 and removal centres have resumed full capacity operations, authorities reportedly continue to use the mentioned two alternatives in selected cases.⁴⁷¹

⁴⁶¹ Ibid

⁴⁶² Social Insurance and General Health Insurance Act No. 5510 of 31 May 2006

⁴⁶³ Law No. 6458 on Foreigners and International Protection, Article 70

⁴⁶⁴ Asylum Information Database, [Country Report: Turkey](#), May 2021

⁴⁶⁵ Ibid

⁴⁶⁶ UNHCR, [Turkey: Legal aid](#)

⁴⁶⁷ Asylum Information Database, [Country Report: Turkey](#), May 2021

⁴⁶⁸ Ibid

⁴⁶⁹ Ibid

⁴⁷⁰ Ibid

⁴⁷¹ Information provided by a civil society organisation in Turkey, Apr 2022

AZERBAIJAN



United Nations
Network on Migration

Working Better Together

AZERBAIJAN

Basic Demographics

Azerbaijan is a country of origin, transit and destination. At the end of 2020, there were some 1,582 refugees, 48 people seeking asylum, and 3,585 stateless persons in Azerbaijan.⁴⁷² The country is a common destination for refugees from nearby regions, such as Afghanistan, Chechnya, Iran and Pakistan. Often, they continue from Azerbaijan to other countries, for example the Russian Federation or the European Union, sometimes using Russia as a transit route to the EU.⁴⁷³

In terms of migrants with irregular status, in 2016 more than 26,000 cases of irregular stay were recorded, of which 70% of these persons received orders to leave the country within 48 hours, 21% were forced to return and the remaining 9% were cases of legalisation of residence; the main countries of origin were the Russian Federation, Turkey and Georgia.⁴⁷⁴ As these figures relate to migrants who come to, and bring themselves to, the notice of the authorities, it is likely that the numbers of migrants with irregular status are much higher.

Who is at Risk of Immigration Detention?

Azerbaijan's Migration Code 2013 provides for two categories of detention: 'forced detention' and 'voluntary detention'. Article 80 provides that forced detention can be used for any foreigner or stateless person who is required to leave the country, but who either does not leave, or if there are sufficient grounds to presume that they would evade departure. There are time limits on the use of forced detention: court approval is required to extend an initial period of 24 hours of detention and there are subsequent time limits on court-approved detention orders up to a maximum of six months.⁴⁷⁵ Persons subject to forced detention are also provided with the legal right to challenge the legality and validity of their detention.⁴⁷⁶

In the case of 'voluntary detention', foreigners can apply to be voluntarily placed in a detention facility when they apply for asylum, for up to a maximum of three months.⁴⁷⁷ Refugees can also apply for voluntary detention where they require accommodation until they secure employment or residence, for up to a maximum of three months.⁴⁷⁸ Voluntary detention is also applicable to people due for deportation who do not have a place of residence in the country, or funds to meet their minimum needs.⁴⁷⁹

Although termed "voluntary," there is evidence to suggest that this remains a form of detention, although less restrictive. The Migration Code (Article 88.0.1) states that a person voluntarily placed in an immigration detention centre has the right "to leave the Centre and return there." However the

⁴⁷² UNHCR [Azerbaijan Fact Sheet](#) Sept 2021

⁴⁷³ Williams, Lucy and Serhan Aktoprak, [Migration between Russia and the European Union: Policy Implications from a Small-Scale Study of Irregular Migrants](#), IOM, 2010

⁴⁷⁴ International Centre for Migration Policy Development (ICMPD), [Baseline Study on Migration in Azerbaijan](#), Apr 2018

⁴⁷⁵ Migration Code 2013, Article 82.2.3

⁴⁷⁶ Ibid, Article 87.1.13

⁴⁷⁷ Ibid, Articles 82.1.1

⁴⁷⁸ Ibid, Articles 82.1.2

⁴⁷⁹ Ibid, Articles 82.1.3 and 82.3

Guidelines on Managing Detention Centres for Irregular Migrants under the State Migration Service of the Republic of Azerbaijan indicate quite severe restrictions on liberty.⁴⁸⁰ For example, para 3.7 provides for a “daily 3 (three)-hour walk in a designated outdoor area of the Centre’s courtyard.” Para 3.11 states that records shall be made in the logbook on the basis of permits presented by every foreigner placed voluntarily who enters and exits the centre through the checkpoint located at entrance to the centre. There is no indication on what grounds a migrant may obtain that ‘permit’ to exit the centre. This indicates that ‘voluntary detention’ is a form of controlled stay, with significant restrictions on freedom of movement - this even though placement in these detention centres is at the request of the individual. People seeking asylum and refugees do not have the option to stay at other places such as State or community-run shelters.

The Migration Code also provides that children, both unaccompanied and accompanied, can be detained. Article 84.3 provides for children to be detained separately from adults, while Article 84.4 states that boys under 12 can be detained with their mothers.

Who is Detained in Practice?

Migrants with irregular status who either fail to leave the country within the time limits prescribed and/or who are deemed to be at risk of absconding, are subject to forced detention. Migrants with irregular status who are without the means to leave the country or meet their minimum needs can elect for ‘voluntary detention’.⁴⁸¹

People seeking asylum who are forcibly detained are those facing extradition or cases involving allegations of threats to national security. In practice, only people seeking asylum in situations of vulnerability can access ‘voluntary detention,’ and those who are recognised as refugees can apply for a three-month extension to remain in the immigration detention centre. Most people seeking asylum choose to live outside the detention centres, as they are far from the cities.⁴⁸²

Children and families are detained but only in the voluntary accommodation section of the detention centre. There are no reports of children and families being subjected to forced detention in 2020 and 2021. Unaccompanied children are not detained in the immigration detention centres.

A total of 5,011 foreigners and stateless persons were reportedly detained between 2013-2018 and the first half of 2019; of these 4,491 were in ‘voluntary detention’ and 720 in ‘forced detention’.⁴⁸³

Immigration Detention Infrastructure

There are three immigration detention centres in Azerbaijan, run by the State Migration Service: (i) Baku City Detention Centre, with a capacity for 150 persons in voluntary detention, and 10 in forced detention; (ii) Yevlakh City Detention Centre, with a capacity for 120 persons in voluntary detention, and 16 in forced detention; and (iii) Nakhichevan City Detention Centre, with a capacity for 19 persons in voluntary detention, and one in forced detention.⁴⁸⁴ Nakhichevan City Detention Centre is in a remote area that can only be accessed by aeroplane. There is insufficient independent data

⁴⁸⁰ Azerbaijan, [Decree No. 047 of 2012, Guidelines on Managing Detention Centers for Irregular Migrants under the State Migration Service of the Republic of Azerbaijan](#), 17 Sept 2012

⁴⁸¹ Assisted Voluntary Return (AVR) in the Republic of Azerbaijan - Gaps and Needs Assessment, 2018, IOM.

⁴⁸² Information provided by UNHCR, Nov 2021

⁴⁸³ [Government of Azerbaijan 3rd periodic report to the Committee on Migrant Workers – April 2020](#)

⁴⁸⁴ Global Detention Project, [Azerbaijan Country Report](#)

on conditions in these immigration detention facilities. Recent reports indicate that the Baku City Detention Centre was recently renovated to improve conditions, and the detention centre has child-friendly rooms where toys and books are available.

Alternatives to Detention

Azerbaijan's legal or policy framework does not make explicit reference to ATD.

However, as noted above, the legal and policy framework permits people seeking asylum to remain in the community if they have adequate resources to meet their minimum needs and the minimum needs of their family members. Migrants with irregular status can also remain in the community if they have adequate resources for accommodation and subsistence and if they are not considered to be at risk of absconding.

People seeking asylum in Azerbaijan are entitled to receive a document that certifies their status and protects them from deportation. Since 2019, this document is usually issued within 24 hours, and is valid for the duration of the Government's consideration of their asylum application, including judicial appeals.

The Migration Code (Article 45.0.9) also provides that full-time education in secondary school and institutions of higher education and technical schools are grounds for the issuance of a temporary residence permit to foreigners and stateless persons. However, the UN Committee on Migrant Workers has noted its concern that despite this provision in the Migration Code and the assurances by the government of firewalls between the Ministry of Education and the State Migration Service, parents with an irregular migration status do not send their children to school for fear of detection, detention and removal by the authorities.⁴⁸⁵ The Committee also noted concerns over the lack of information about the enrolment rates of children of migrant workers in an irregular situation.⁴⁸⁶

Access to Rights and Services

Refugees and people seeking asylum have the legal right to work in Azerbaijan and are exempt from the requirement to obtain a work permit pursuant to Article 64.0.15 of the Migration Code. This right to work is enjoyed in practice.

Non-nationals and stateless persons (including refugees and people seeking asylum) can access medical care free of charge in public health-care institutions. However, the UN Committee on Migrant Workers has expressed concern over the lack of information on access to medical care for migrant workers in an irregular situation.⁴⁸⁷

Although the Migration Code provides for a right to free legal advice and assistance (Article 86.0.11), free legal aid is not provided by the Stat; instead, UNHCR and NGOs provide and fund legal assistance to people seeking asylum. The right to free interpretation is contained in the Migration Code (Articles 94.2, 79.7 and 90.6.3) and is exercised in practice.

⁴⁸⁵ Government of Azerbaijan 3rd periodic report to the Committee on Migrant Workers – April 2020, para 47 (b)

⁴⁸⁶ Ibid, para 47 (c)

⁴⁸⁷ Ibid, para 43

Developments during COVID-19

During COVID-19, forced immigration detention and deportations were temporarily suspended from the date of the application of the special quarantine regime on 24 March 2020. This included suspension of detention and deportations for persons refused refugee status or migrants whose employment contracts were not extended and whose residence permits had lapsed. Temporary stay permits were automatically extended without the need for administrative procedures or documentation.⁴⁸⁸

⁴⁸⁸ Government of Azerbaijan's [Report for the GCM Regional Review](#)

GEORGIA



United Nations
Network on Migration

Working Better Together

GEORGIA

Basic Demographics

In recent years, the migration profile of Georgia has changed from being a country primarily of origin and transit, to also being a country of destination for migrants.⁴⁸⁹ In 2019, 42,386 migrants entered Georgia, with the largest number of migrants coming from Russia, followed by Iran, Azerbaijan and Turkey.⁴⁹⁰ However this number is not disaggregated by the types of migration and does not include migrants with irregular status whose number is unknown.⁴⁹¹

As of December 2019, Georgia was hosting 504 refugees, 593 people in refugee-like situations, 1126 people seeking asylum, 559 stateless persons and 856 humanitarian status holders.⁴⁹² Of the people seeking asylum in Georgia, the majority are nationals of Iran, Egypt, India, Russia, and Turkey.⁴⁹³ Georgia also has a large population of internally displaced persons; as of December 2019, this stood at 286,216 people.⁴⁹⁴

Who is at Risk of Immigration Detention?

Conditions for the use of immigration detention are set out in the Law of Georgia on the Legal Status of Aliens and Stateless Persons, 2014 ('the Aliens Act'). Chapter 11, Article 64 states that non-nationals may be detained for the purpose of removal, in temporary holding facilities or temporary accommodation centres until such time as a decision has been made on whether they will be removed.⁴⁹⁵

Non-citizens without a valid visa may be detained for the following reasons:⁴⁹⁶

- it is not possible to identify the person;
 - there is a risk that the person will be non-compliant;
 - the person has not met the conditions placed upon their alternative to detention;
 - the person is a risk to the state/public or themselves; required to enforce a removal order;
- or,
- it is necessary to ensure the person attends their court hearing.

These reasons are further enforced in the 2018 Law on International Protection which also adds that detained people seeking asylum must be detained separately from people who have been detained as a result of other crimes.⁴⁹⁷

⁴⁸⁹ International Centre for Migration Policy Development, [The State of Migration in Georgia](#), 2015

⁴⁹⁰ IOM, [Immigrant Integration Policy and Practice in Georgia](#), Sept 2021

⁴⁹¹ Although there are no data on the number of migrants with irregular status, IOM has reported assisting 119 migrants from India, Uzbekistan, Iran, Bangladesh and Pakistan to voluntarily return to their home countries in 2021, see IOM, [IOM Georgia in 2021: Year in Review](#), Dec 2021

⁴⁹² UNHCR, [UNHCR Submission for the Universal Periodic Review - Georgia - UPR 37th Session](#), 2020

⁴⁹³ Public Defender of Georgia, [On the Situation of Protection of Human Rights and Freedoms in Georgia](#), 2019

⁴⁹⁴ UNHCR, [UNHCR Submission for the Universal Periodic Review - Georgia - UPR 37th Session](#), 2020

⁴⁹⁵ Law of Georgia on the Legal Status of Aliens and Stateless Persons 2014, Article 64(1)

⁴⁹⁶ Ibid, Article 64(2)

⁴⁹⁷ Law on International Protection 2018, Article 9(4)

The Aliens Act also limits the time that a person suspected of immigration crimes can be detained. Persons may be detained for up to 48 hours at a temporary holding centre before they are brought before a court where a decision on their transfer to a temporary accommodation centre will be made.⁴⁹⁸ Once placed at the temporary accommodation centre, an individual can be held for a period of not exceeding three months.⁴⁹⁹ However, a court may permit an extension of this decision for an additional six months. If the non-citizen has not been deported by the end of this timeframe, they must be released.⁵⁰⁰

The Aliens Act does not expressly prohibit the immigration detention of children but stipulates that the detention of unaccompanied minors should only occur “in extreme cases and for as short a period of time as possible, bearing their best interests in mind.”⁵⁰¹ Instead, children should be referred to the child protection authorities and appointed a guardian/caregiver.⁵⁰²

Who is Detained in Practice?

As of 2018, there were 18 non-citizens detained in Georgia’s sole immigration detention centre.⁵⁰³ Of these 18 detained persons none of them were people seeking asylum; 16 were men and two were women. No children were detained at this time. The average time for detention of these persons was between 1.5 and two months.⁵⁰⁴ In June 2021, there were reportedly only three remaining people detained in the immigration detention centre due to the releases that had taken place due to the COVID-19 pandemic.

Immigration Detention Infrastructure

The Migration Department of the Ministry of Internal Affairs manages the Temporary Accommodation Centre in Tbilisi, which is the only immigration detention facility in Georgia.⁵⁰⁵ This facility is divided into three parts: 1) for adult men (capacity of 45), 2) for adult women (capacity of 45), and 3) for families with children (capacity of six).⁵⁰⁶

The conditions of this facility were described by a Council of Europe delegation as being very good, and the activities offered were adequate. Those detained were also given relevant legal information and translation/interpretation services were available. However, many of those detained were not well-informed of their rights.⁵⁰⁷

⁴⁹⁸ Law of Georgia on the Legal Status of Aliens and Stateless Persons 2014, Article 64(3)

⁴⁹⁹ Ibid, Article 64(5)

⁵⁰⁰ Ibid

⁵⁰¹ Ibid, Article 64(6)

⁵⁰² Council of Europe, Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 21 September 2018, 2019

⁵⁰³ Ibid

⁵⁰⁴ Ibid

⁵⁰⁵ Ibid

⁵⁰⁶ Ibid

⁵⁰⁷ Ibid

Alternatives to Immigration Detention

Article 65 of the Aliens Act explicitly provides for ATD, enabling a court to determine whether to place a non-citizen in alternative measures, rather than an temporary accommodation centre.⁵⁰⁸ The maximum timeframe for an alternative measure is three months, and these alternatives include regular reporting to a police station (no more than twice a week), a citizen of Georgia acting as guarantor for the non-citizen, or a bank guarantee of at least GEL 1000 or a certificate of regular income, and bail with the maximum amount being GEL 2000.⁵⁰⁹

The Public Defender of Georgia has expressed concerns that alternative measures are not applied sufficiently in practice, as a result of the Migration Department failing to apply to the courts to suggest the use of an alternative. Of 87 non-citizens detained in 2018, for instance, only four benefited from alternative measures; in 2019, 88 non-citizens were detained, and alternatives were applied in just one case.⁵¹⁰

However, more recently, Georgia has stepped up in their efforts to utilise ATD; in June 2021, the government officials from the Migration Department of the Ministry of Internal Affairs participated in an ATD training that was hosted by International Detention Coalition and IOM Georgia.⁵¹¹

Access to Rights and Services

The Law on International Protection: Chapter VII - Rights and Obligations of Asylum Seekers, Refugee or Humanitarian Status Holders, and Persons under Temporary Protection, allows people seeking asylum access to work, healthcare, and free legal aid during their asylum application, as well as access to free interpretation services.⁵¹²

In particular, Chapter VII (Article 56(m)) states that people seeking asylum are granted the right to work either as employed by another person or by owning their own business. Chapter VII (Article 56(j)) grants people seeking asylum equal access to healthcare as citizens of Georgia. Chapter VII (Article 56(c-e)) grants people seeking asylum access to free interpreters (of the same gender) during their interviews and asylum procedure, and free legal assistance during their asylum application.

The extent to which non-citizens can enjoy these rights in practice is unclear, however UNHCR has expressed concern regarding the non-issuance of identification cards for people seeking asylum as this can jeopardise their access to the rights laid down in law.⁵¹³

⁵⁰⁸ Law of Georgia on the Legal Status of Aliens and Stateless Persons 2014, Chapter XI, Article 64. Note that ATD are referred to as “alternative measures to the accommodation of aliens at a temporary placement centre.”

⁵⁰⁹ Ibid

⁵¹⁰ Public Defender of Georgia, [On the Situation of Protection of Human Rights and Freedoms in Georgia](#), 2019

⁵¹¹ IOM, [Officials of the Migration Department of the Ministry of Internal Affairs study alternative measures to migrant detention](#), Jun 2021; IDC, [Training Georgia's Migration Department on Engagement-based ATD](#), Sept 2021

⁵¹² Law on International Protection 2018, Article 56(m),(j),(e)

⁵¹³ UNHCR, [UNHCR Submission for the Universal Periodic Review - Georgia - UPR 37th Session](#), 2020

Developments during COVID-19

Between 21 March and 22 May 2020, during a national state of emergency, a moratorium was placed on new immigration detention, alongside temporary suspension of deportation.⁵¹⁴ The state also declared that persons who were legally residing in Georgia on 14 March 2020 (shortly after the pandemic was declared), but subsequently were remaining in the country in an irregular status due to being unable to leave, would be considered to hold legal status until such time as flights were resumed.⁵¹⁵ Once flight restrictions were lifted, these measures ended.⁵¹⁶ However as a result of the moratorium and the release, there were reportedly only three remaining people detained in the country's only detention centre in June 2021.

⁵¹⁴ Global Detention Project, Georgia Immigration Detention Data Profile, 2020

⁵¹⁵ Ibid

⁵¹⁶ Ibid

KAZAKHSTAN



United Nations
Network on Migration

Working Better Together

KAZAKHSTAN

Basic Demographics

Kazakhstan is a country of origin, transit and destination. In 2019, Kazakhstan hosted 3,705,556 international migrants with 83% originating from countries from the Commonwealth of Independent States (CIS) while 17% came from non-CIS countries such as China, Turkey, and South Korea.⁵¹⁷ There are a large number of migrants in an irregular situation in Kazakhstan: according to the Ministry of Internal Affairs, officially registered migrant workers accounted for less than 10% of the total number of working migrants from CIS countries in Kazakhstan.⁵¹⁸ Kazakhstan has seen a growing demand in recent years for highly skilled labour in agriculture and construction, as well as unskilled labour in agriculture and construction.⁵¹⁹

As of December 2021, there were 354 refugees in Kazakhstan (327 Afghans, 14 Syrians, 13 others), 319 people seeking asylum (287 Afghans, 12 Syrians, 20 others), and a total stateless population of 7,831 (6,778 stateless persons registered by the Government and 1,053 persons with undetermined nationality registered by UNHCR partners).⁵²⁰

Who is at Risk of Immigration Detention?

People at risk of immigration detention in Kazakhstan are those who are liable for administrative expulsion, who have breached migration laws, and people who have “illegally crossed the border.”⁵²¹

Detention for the purposes of administrative expulsion is provided for in several laws. The Law of the Republic of Kazakhstan on Migration of Population⁵²² enables the detention of persons with irregular status in “special institutions of the internal affairs bodies,” to effect their removal from the Republic of Kazakhstan, [...] for a period of no more than thirty days.⁵²³ The Decree on Legal Status of Foreign Citizens in the Republic of Kazakhstan provides grounds for the removal of foreign citizens,⁵²⁴ and detention is allowed for the period necessary to effect removal.

Article 517 of the Code of the Republic of Kazakhstan “On Administrative Infractions” 2014 states that a foreigner or stateless person who does not leave the country after the expiry of their period of legal stay can be fined if the overstay is up to 10 days. After 10 days, they may be subject to a

⁵¹⁷ Vatican Migrant & Refugees Section, [Migration Profile: Kazakhstan](#)

⁵¹⁸ International Federation of Human Rights (FIDH), [Migrant Workers in Kazakhstan, No Status, No Rights](#). Sept 2016

⁵¹⁹ Vatican Migrant & Refugees Section, [Migration Profile: Kazakhstan](#)

⁵²⁰ UNHCR [Fact Sheet: Kazakhstan](#), Dec 2021

⁵²¹ The Criminal Code of 2014, Article 392, provides for punishment by fine or one year’s imprisonment followed by deportation, for someone who intentionally enters Kazakhstan through “illegal crossing”. This is apparently quite rare, as most people arrive in Kazakhstan with visas.

⁵²² The Law of the Republic of Kazakhstan on Migration of Population, Article 60

⁵²³ Code of the Republic of Kazakhstan “On Administrative Infractions” 2014, Article 50.

⁵²⁴ Decree of the President Republic of Kazakhstan having the force of law No. 2337 of 19.06. 1995 “On legal status of foreign citizens in the Republic of Kazakhstan”. Grounds for deportation include if their actions contradict national security or public order, if necessary for the protection of health and morality, or if they have violated legislation on the legal status of foreign citizens.

fine or administrative expulsion. Persons who violate their visa conditions or do not hold valid work permits are liable to be fined or detained for up to 10 days, or subject to administrative expulsion.

Who is Detained in Practice?

In practice, immigration detention is used for people who are due for administrative expulsion, and people who have “illegally crossed the border.”

In general, children (unaccompanied or children in families) are not detained in immigration detention facilities. However, in practice, unaccompanied children are placed in “Minors/Child Adaptation Centres.”⁵²⁵ Minor/Child Adaptation Centres are reportedly semi-closed institutions, where there are restrictions on freedom of movement, and which could amount to an alternative form of detention. According to the NGOs which monitor temporary detention facilities, some children who do not disclose their age and who do not have documents, can be placed in an adult reception centre. Once identified as a child, they would be sent to a Minor/Child Adaptation Centre.

Data on the numbers of people in immigration detention are not published regularly, nor disaggregated. In 2020, 20,500 violators of the migration law were identified in the Republic of Kazakhstan and 1,800 foreign nationals were deported from the country.⁵²⁶

Immigration Detention Infrastructure

There are four “special reception centres,” in Almaty, Nur-Sultan, Pavlodar and Atyrau. A special receiving centre is a special institution of the internal affairs bodies intended for the reception and detention of persons who have been subjected to administrative arrest, and for foreigners, and stateless persons subject to forced expulsion.⁵²⁷

Conditions in the detention centres are reportedly poor, with reports of overcrowding, poor protection against the elements, and no bedding.⁵²⁸

Kazakhstan has ratified the Optional Protocol to the Convention against Torture (OPCAT) and has established a National Preventive Mechanism.

Alternatives to Immigration Detention

Kazakhstan law provides that the following groups cannot be subject to administrative detention: pregnant women, women with children under the age of 14, children under the age of 18, persons

⁵²⁵ Order of the Minister of Education and Science of the Republic of Kazakhstan, 30 Oct 2018, No. 595, Appendix 8

⁵²⁶ The National Security Committee of the Republic of Kazakhstan, [Irregular Migration: Border Guard Service of the National Security Committee Keeps Alert](#) [Kazak]

⁵²⁷ The Law of the Republic of Kazakhstan dated 30 March 1999 No. 353-I On the Procedure and Conditions for Detention of Persons in Special Institutions, Special Rooms Providing Temporary Isolation from Societies

⁵²⁸ FIDH, [Invisible and exploited in Kazakhstan: The Plight of Kyrgyz Migrant Workers and Members of their Families](#), June 2018

with disabilities, women over the age of 58, men over the age of 63, and men who are alone with their children under the age of 14.⁵²⁹

People seeking asylum and refugees are not detained, pursuant to the 2009 Law on Refugees.⁵³⁰ Applications for asylum are submitted to the Office for the Coordination of Employment and Social Programs⁵³¹ who then register people seeking asylum and issue them with a certificate, providing them with the right to stay in the country while their claims are being assessed. Decisions must be made within a maximum of one year from the date of registration of the asylum application; people conferred refugee status are issued with a certificate for at least one year, and if circumstances in the country of origin are unchanged, refugee status can be extended for further one-year periods and repeated indefinitely as needed. Refugees have the right to stay and have freedom of movement within the country.

The 2009 Law on Refugees also gives people seeking asylum the right to apply for refugee status through consular bodies of the Republic of Kazakhstan. The Law on Refugees states that if a person seeking asylum has not yet arrived in Kazakhstan, they may submit an asylum claim in writing, in person or through an authorised representative to the diplomatic representation or consular agency of the Republic of Kazakhstan. The diplomatic representation or consular agency of the Republic of Kazakhstan then remits the refugee claim to the authorised body through diplomatic channels. Although it is not clear whether this is used in practice, the inclusion of this right in the Law on Refugees can help to protect people seeking asylum from holding irregular status.

In October 2020, the Ministry of Internal Affairs launched a country-wide identification and documentation campaign to map and address statelessness. Within the first year, more than 6,000 people of undetermined nationality were registered, of which close to 5,000 were provided with documentation: 3,400 received Kazakhstan citizenship while 1,600 obtained stateless certificates.⁵³²

In 2019 Kazakhstan amended its Code on Marriage and Family to ensure that all children born in the country are registered at birth and issued birth certificates, regardless of the legal status of their parents.

⁵²⁹ Code of the Republic of Kazakhstan "On Administrative Infractions" 2014, Article 50. The [Supreme Court of Kazakhstan](#) has also determined that administrative detention is to be used by the courts in exceptional cases and another type of administrative penalty must be imposed on persons to whom administrative detention cannot be applied

⁵³⁰ The Law of the Republic of Kazakhstan on Refugees 2014, Articles 8 and 10

⁵³¹ By the Law of the Republic of Kazakhstan dated December 30, 2021 No. 95-VII "On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on the introduction of a new regulatory policy in the field of entrepreneurship and the redistribution of Certain functions of the internal Affairs bodies of the Republic of Kazakhstan", the functions of the authorised body on refugees were transferred from the internal affairs bodies to local executive bodies (Department of Employment and Social Programs). The Ministry of Labour and Social Protection of Population of the Republic of Kazakhstan, represented by the Committee of Labour, Social Protection and Migration, is the responsible body implementing state policy in the field of migration.

⁵³² UNHCR, [Statelessness in Kazakhstan: Analysis of National Legislation](#), Dec 2021

Access to Services

According to Kazakhstan's 'Code on Public health and the Health System', migrants with legal status can access free medical care, only in the case of infectious diseases which represent a danger to public health. Migrants who are nationals of CIS countries can access free medical assistance in the case of an emergency, regardless of their migration status. Otherwise, migrant workers only can access paid healthcare. While the EEU framework provides for Kyrgyz migrants and their family members with legal status to access healthcare on an equal footing and under the same conditions as Kazakh citizens, in practice, most Kyrgyz migrants do not have employment contracts and are only entitled to emergency assistance as a result of being nationals of a CIS country.⁵³³

For migrants in an irregular status, there are financial barriers in accessing healthcare, as well as the fear of arrest due to their irregular status.⁵³⁴ There are also practical barriers: Kazakhstan has a system of registration to manage access to social services under which all individuals are allocated an individual identification number (IIN); many migrants in an irregular situation do not have an IIN and while the number is not necessarily a prerequisite to receiving healthcare, in practice some hospitals can refuse to provide free healthcare if migrants do not have an IIN.⁵³⁵ Kazakhstan also has a system of compulsory social health insurance, accessible only to foreigners and stateless persons permanently residing in Kazakhstan. Insurance payments must be made in accordance with the Law on Compulsory Social Health Insurance,⁵³⁶ and in order to make contributions, an individual is required to have an IIN.

The 2009 Law on Refugees⁵³⁷ provides that people seeking asylum and refugees have the right to health services. However, pursuant to amendments introduced in 2021 to the 'Code on Population Health and Healthcare System' and the 'Law on Compulsory Social Health Insurance', people seeking asylum and refugees, as temporary residing foreigners, are not included within the compulsory health insurance system. Refugees only have the right to receive a "minimum" volume of medical care (which mainly includes ambulance, primary health care, chronic diseases, among others). This right was further decreased for people seeking asylum, who have the right to receive a guaranteed volume of free medical care only for diseases that pose a danger to others. All other medical services, including medical consultations and diagnostics, provided by the State within the framework of the health insurance scheme, are only accessible on a paid basis for non-participants, which most refugees and people seeking asylum are not able to afford.

In February 2014, the Law on Special Social Services was amended such that foreign survivors of trafficking are entitled to state-funded special social services including health care, as well as social, psychological, educational, employment, cultural, economic, and legal support.⁵³⁸

⁵³³ International Federation of Human Rights (FIDH), Migrant Workers in Kazakhstan, No Status, No Rights, Sept 2016

⁵³⁴ Ibid

⁵³⁵ Ibid

⁵³⁶ No. 405-V 3PK of 2015 (Compulsory Social Health Insurance Law 2015

⁵³⁷ The Law of the Republic of Kazakhstan on Refugees 2014, Articles 8 and 9

⁵³⁸ IOM, Migration Governance Snapshot: the Republic of Kazakhstan, May 2018

According to the Kazakh Constitution,⁵³⁹ migrants are guaranteed access to preschool, and primary and secondary education in public institutions. In September 2010, the Ministry of Education and Science issued an order “On the Rules for Education of Foreigners and Stateless Persons in the Republic of Kazakhstan” which upholds the right to education of migrant children. Further, the main law governing the provision of education is the Education Law 2007. This Law is based on the principle of equal rights of *all* to obtain a quality education; accessibility of education of all levels for the population; and continuity of the process of education. However, children of seasonal and cross-border migrant workers, and all those who are in, or whose parents are in an irregular situation are excluded. Where parents lack proper documents, children may not be registered locally, which can result in them either not being allowed to be enrolled in school, or not receiving diplomas upon completion.⁵⁴⁰ Further, school principals often will not accept migrant children because they do not have an IIN number, even though this is not required by law.

Articles 8 and 9 of the 2009 Law on Refugees state that people seeking asylum and refugees have the right to freedom of employment and entrepreneurship in accordance with the legislation of the Republic of Kazakhstan. Similarly, the Labour Code and relevant by-laws provide for the right to employment for refugees registered with the Government. However, the temporary nature of the status provided to refugees (up to one year) tends to preclude refugees from finding steady employment in practice, as employers are reluctant to hire refugees due to lack of certainty about the extension of their refugee status. As a result, most refugees in Kazakhstan work in the informal economy. This is even more acute for people seeking asylum, whose certificates have a validity period of three months.

Although Kazakhstani legislation provides for the provision of free legal aid in criminal and administrative proceedings, in practice, NGOs provide legal assistance to migrant workers. Article 8 of the 2009 Law on Refugees gives people seeking asylum access to free interpretation/translation services; this right is exercised in practice though there are challenges in exercising interpretation in all geographical areas where people seeking asylum might need this assistance.

Developments during COVID-19

In May 2020, the government adopted a resolution that would allow through to 5 January 2021, the exit, without administrative penalties, of non-citizens with expired or expiring identification documents or permits (visas, registration cards, work or residence permits); this was subsequently extended to June 2021.⁵⁴¹

In June 2020 the government introduced a moratorium on new detention orders related to violations of migration legislation, and temporarily ceased deportation proceedings. The government announced that, over the period of emergency, documents that have expired or expired within a specified period are recognized as valid. The period of authorised stay for foreigners was

⁵³⁹ Constitution of the Republic of Kazakhstan, Article 30

⁵⁴⁰ Maastricht University Graduate School of Governance, Mapping of Kazakhstan’s National System’s Capacity to Respond to the Needs of Children affected by Migration, with Focus on Unaccompanied and Separated Children, 2020

⁵⁴¹ Eurasian Economic Commission, [Temporary Measures in the Field of Migration Provide an Opportunity for Citizens of Member States to Stay in the Territories of the EAEU Member States](#) [Kazak]

extended. As of November 2020, following these measures, the legal status of 146, 970 foreigners were regulated, and 149, 217 foreigners freely left Kazakhstan.⁵⁴²

Refugees and people seeking asylum in Kazakhstan have been offered COVID-19 vaccination.

⁵⁴² Government of Kazakhstan, [Overview of the National Progress of Implementation of the Global Compact on Safe, Orderly and Regular Migration](#)

TAJIKISTAN



United Nations
Network on Migration

Working Better Together

TAJIKISTAN

Basic Demographics

As a ratified party to the 1951 Refugee Convention and its 1967 Protocol, Tajikistan has a domestic legal framework for asylum and has been hosting refugees and people seeking asylum from neighbouring countries. The vast majority of refugees in Tajikistan are from Afghanistan.⁵⁴³ Tajikistan also is a home to a large number of stateless people, the majority of whom are former citizens of the Soviet Union.⁵⁴⁴

As of February 2022, a total of 18,679 UNHCR persons of concern, including refugees, people seeking asylum, and stateless persons were residing in Tajikistan.⁵⁴⁵ This includes 7,929 refugees, 2,697 new arrivals seeking asylum but not yet registered with the government, 3,027 people seeking asylum and 5,026 stateless persons (of which 834 are officially registered with the government as stateless persons).⁵⁴⁶

Tajikistan is primarily a sending country for migrants. Migrants with irregular status are not a significant population in the country.

Who is at Risk of Immigration Detention?

The 1998 Criminal Code of Tajikistan penalises the crossing of the state border without valid travel documents.⁵⁴⁷ This means any non-citizen entering the country without a permit is subjected to arrest and detention. However, the same law specifically notes that the sanction does not apply to those crossing the border to apply for asylum.

The 2014 Law of the Republic of Tajikistan on Refugees states that persons who enter Tajikistan without a permit but who claim asylum can be detained at the border entry points. The National Security Body of the Republic of Tajikistan must inform relevant departments of the internal affairs body within 72 hours of detaining people seeking asylum as well as complying with the principle of non-refoulement.⁵⁴⁸

The definition of a refugee presented in the 1951 Refugee Convention is reflected in Tajikistan's legal definition of refugee.⁵⁴⁹ However, contrary to international refugee law, the Government of Tajikistan has implemented into domestic law a basis for refusal of granting asylum and/or refugee status to persons who, prior to arrival to Tajikistan, transited through any of the following states: Republic of Uzbekistan, Republic of Kyrgyzstan, Republic of Kazakhstan, Russian Federation, Republic of Belarus, Turkmenistan, People's Republic of China, Islamic State of Afghanistan, Islamic

⁵⁴³ UNHCR, [UNHCR Factsheet: Tajikistan](#), Jun 2021

⁵⁴⁴ UNHCR, [Tajikistan Operational Context](#)

⁵⁴⁵ Information provided by UNHCR

⁵⁴⁶ Information provided by UNHCR

⁵⁴⁷ Criminal Code of Tajikistan 1998, Article 335

⁵⁴⁸ Law of the Republic of Tajikistan on Refugees 2014, Article 5

⁵⁴⁹ Ibid, Article 2

Republic of Iran, and Islamic Republic of Pakistan.⁵⁵⁰ As this list includes all states that border Tajikistan, this could be interpreted as non-compliance with the principle of non-refoulement.⁵⁵¹

Who is Detained in Practice?

The detention of people seeking asylum is reportedly very rare in Tajikistan.⁵⁵² Persons who enter Tajikistan without valid documents but state that they are seeking asylum are exempt from the punishments stipulated for irregular entry/stay in the state, as per Article 6(4) of the 2014 Refugee Law.⁵⁵³ Tajik authorities do not release statistics on the number of non-nationals held in detention facilities.

Tajikistan is part of the 2002 Chisinau Agreement on the Return of Minor Children to Their Country of Origin and keeps unaccompanied migrant children in residential childcare institutions before returning the children to their home country. Civil society organisations have expressed concern about the 2002 Chisinau Agreement, particularly its reliance on placing children in “specialised institutions,” which it defines as “institutions that provide temporary detention and placement for minors who have committed offences or are left without care, in accordance with national legislation.”⁵⁵⁴

Immigration Detention Infrastructure

There are no detention facilities or camps specifically for people seeking asylum, refugees or migrants with irregular status in Tajikistan.⁵⁵⁵ However, this may change in the coming years following the reports in September 2021 that the European Union Interior Ministers had discussed the idea of building immigration detention facilities in a number of Central Asian countries, including Tajikistan, in an attempt to decrease the number of people seeking political asylum within the EU.⁵⁵⁶ Also in September 2021, the EU drafted a proposal for countries neighbouring Afghanistan to open these immigration detention facilities, with the EU proposing to pay 600 million EUR for the upkeep of the facilities.⁵⁵⁷

Currently the juvenile reception centre in Dushanbe detains migrant children. This centre, while not being specifically called a detention centre, is run by the Juvenile Delinquency Prevention Service under the Ministry of Internal Affairs and has windows with iron bars and the staff members wear a police uniform.⁵⁵⁸

⁵⁵⁰ [The Government of The Republic of Tajikistan, Resolution No.323 of 2000](#)

⁵⁵¹ Danish Refugee Council, [Gap Analysis Report: A Review of Tajikistan's Asylum Law and Practice](#), 2012

⁵⁵² Ibid

⁵⁵³ Migrants&Refugees, [Country Profile - Tajikistan](#), Dec 2020

⁵⁵⁴ Anti-Discrimination Centre, [Migrant Children in CIS Countries: Lack of Adequate Legal Norms Regulating Cooperation Between the Countries Involved](#), 2018

⁵⁵⁵ Danish Refugee Council, [Gap Analysis Report: A Review of Tajikistan's Asylum Law and Practice](#), 2012

⁵⁵⁶ Schengen Visa Info, [EU Plans to Build Detention Camps Across Central Asia to Deal With Increased Number Of Afghan Refugees](#), Sept 2021

⁵⁵⁷ Ibid

⁵⁵⁸ Anti-Discrimination Centre, [Migrant Children in CIS Countries: Lack of Adequate Legal Norms Regulating Cooperation Between the Countries Involved](#), 2018

Alternatives to Immigration Detention

Tajikistan does not appear to use detention extensively in practice and the law of Tajikistan does not specifically provide for ATD. The 2014 Law on Refugees states that people seeking asylum and their family members whose asylum cases are under consideration have the right to reside in the community which can be interpreted as alternative living arrangements. The place of residence can include temporary accommodation determined by the internal affairs body or with the family of a Tajik citizen or the family of a foreign citizen or stateless person permanently residing in Tajikistan.⁵⁵⁹

The Amnesty Law, which came into effect on 7 January 2020, allows non-citizens who have entered Tajikistan before the end of 2016 and who are living in the country with irregular status to regularise their stay and obtain a residence permit. After three years of holding a residence permit, it is also possible to apply for Tajik citizenship under this new law. The Tajik government estimates that around 20,000 people, the majority from the stateless population in Tajikistan, would be able to obtain legal status under the Law. By obtaining a legal status, the stateless persons will no longer be subjected to immigration penalties, which include fines and imprisonment.⁵⁶⁰

Access to Rights and Services

Refugees and people seeking asylum have access to education, work and health services as specified in the 2014 Law on Refugees.⁵⁶¹ However the government continues to enforce a regulation banning them from residing in major urban cities including the capital city of Dushanbe; in practice, this restricts their access to employment, healthcare and education.⁵⁶² The healthcare system within the country is very poor and most specialised healthcare assistance is available only in Dushanbe. Access to these health services is hindered by the restriction on the place of residence for refugees and people seeking asylum.⁵⁶³

There is no free legal assistance and interpretation service provided by the government for refugees and people seeking asylum. UNHCR supports refugees and people seeking asylum who are facing legal issues through their local legal assistance partner,⁵⁶⁴ and a local NGO is reportedly providing free legal advice and assistance if needed. Interviews of people seeking asylum are conducted in Tajik language which is understood by Afghan Dari speakers. However, written statements of the interview, which the people seeking asylum are requested to sign, are written in Tajik Cyrillic alphabet.⁵⁶⁵

There is no publicly available information on if and to what extent migrants have irregular status have access to rights and services.

⁵⁵⁹ Law of the Republic of Tajikistan on Refugees 2014, Article 10

⁵⁶⁰ UNHCR, [UNHCR welcomes Tajikistan's new law tackling statelessness](#), Jan 2020

⁵⁶¹ See Article 10 for people seeking asylum and article 12 for recognised refugees

⁵⁶² US Department of State, [Tajikistan 2020 Human Rights Report](#), 2021

⁵⁶³ UNHCR, [Lives in limbo: A review of the implementation of UNHCR's urban refugee policy in Tajikistan](#), May 2011

⁵⁶⁴ US Department of State, [Tajikistan 2020 Human Rights Report](#), 2021

⁵⁶⁵ Danish Refugee Council, [Gap Analysis Report: A Review of Tajikistan's Asylum Law and Practice](#), 2012

Developments during COVID-19

Reports on Tajikistan's treatment of migrants during the Covid-19 pandemic have focused on the repatriation of Tajik citizens from other countries as Tajikistan is primarily a sending country for migrants. No other information is publicly available.

AUSTRALIA



United Nations
Network on Migration

Working Better Together

AUSTRALIA

Basic Demographics

As of February 2022, there were an estimated 107,784⁵⁶⁶ people seeking asylum and ‘complementary protection’⁵⁶⁷ in Australia. The main countries of origin of people lodging protection visas in Australia are China, Malaysia, Vanuatu, India, Tonga, Thailand and Vietnam,⁵⁶⁸ while persons who had arrived by boat prior to 2014 originated primarily from Iran, Afghanistan, Sri Lanka, Pakistan, Iraq, Sudan, and Somalia.⁵⁶⁹

As of 30 June 2021, there are an estimated 73,100 migrants with irregular status in Australia.⁵⁷⁰

Who is at Risk of Immigration Detention?

Australia operates one of the harshest immigration detention regimes in the world. Under Australian law, all non-citizens who are in Australia without a valid visa are required to be detained.⁵⁷¹ This means that people who arrive without a valid visa, or who arrive with a visa that subsequently expires or is cancelled, will be subject to mandatory immigration detention.⁵⁷² Temporary or permanent visas can be cancelled on the basis of a person’s ‘character’, resulting in the mandatory detention of that person before they are removed from Australia. This places people

⁵⁶⁶ This estimated number comprises, as of 28 February 2022: (i) **94,358** people seeking international protection in Australia who arrived in the country with a valid visa (generally by plane), consisting of 28,820 people awaiting a permanent protection visa (subclass 866) decision either before or after merits review, as well as an additional 65,538 people who have had their claims rejected either before or after merits review and who are likely to be at judicial review, seeking ministerial intervention, or in some kind of holding pattern where they cannot return home, but have been found not to be refugees; (ii) **12,042** people seeking international protection who arrived by boat before 2014 and who are part of the so-called ‘IMA Legacy Caseload’, consisting of 2,409 persons whose claims are being determined or reviewed, as well as a further 9,633 persons who had their claims twice rejected, but may be at judicial review or Ministerial intervention stages; (iii) approximately **1,384** people still living under Australia’s offshore processing regime. Data sources for this information can be found at the Australian Department of Home Affairs’ (DHA) website: [Visa Statistics for the Humanitarian Program](#), as well as data provided from the Refugee Council of Australia (RCA), [Closure of Park Hotel Detention Welcome But More Refugees Need Freedom](#), 7 Apr 2022

⁵⁶⁷ Complementary protection is protection for persons who do not meet the definition of a refugee in the Migration Act 1957, but for whom there are substantial grounds for believing that there is a real risk they will suffer ‘significant harm’ if returned to their home country. See DHA, [Refugee and Humanitarian Program: Australia’s Protection Obligations](#), 21 Aug 2020

⁵⁶⁸ DHA, [Visa Statistics: Monthly Update: Onshore Protection \(Subclass 866\) Visa Processing](#), Feb 2022

⁵⁶⁹ DHA, [IMA Legacy Caseload: Report on Processing Status and Outcomes](#), Feb 2022

⁵⁷⁰ The Australian government uses the term “Unlawful Non-Citizen”, defined in the Migration Act as a non-citizen who is in the migration zone who is not a lawful non-citizen, meaning that they do not hold a visa that is in effect. For more information see DHA, [The Administration of the Immigration and Citizenship Programs](#), Feb 2022. In 2017, according to data released by the Australian government, more than 64,000 people had overstayed work and tourist visas, with as many as 12,000 residing in Australia for more than 20 years, the majority from Malaysia and China. See Tom McIlroy, [More than 64,000 people overstaying visas in Australia](#), Sydney Morning Herald, 18 Jul 2017

⁵⁷¹ Migration Act 1958, Section 189

⁵⁷² Ibid

from refugee backgrounds at risk of indefinite or prolonged detention as they cannot return to their countries of origin.⁵⁷³

There are no time limits on the use of immigration detention; persons in detention must remain there until they are granted a visa, or they leave the country.⁵⁷⁴ Children are also at risk of indefinite immigration detention. While legislation provides that children should only be detained as a last resort,⁵⁷⁵ the determination of whether detention is a last resort is a decision of the government alone.

Who is Detained in Practice?

According to the Australian Department of Home Affairs, as of 31 December 2021, there were a total of 1,489 people in immigration detention, comprising 1,423 men, less than 65 women, and less than five children.⁵⁷⁶ Of these 1,489 people, 289 were detained upon arrival in Australia either by boat or plane, and 1,220 had been detained as a result of overstaying their visa or breaching conditions of their visa.⁵⁷⁷ The government has gradually phased out the detention of children in Australia's onshore detention facilities; in the past, thousands of children were detained but in recent years, the number of detained children has significantly decreased. However, children and their families have been released from immigration detention into the community with increasingly limited support, often into situations of significant vulnerability.

Since August 2012, Australia has detained 4,183 people seeking asylum in offshore immigration detention centres in Nauru, Manus Island and other parts of Papua New Guinea (PNG).⁵⁷⁸ Transfers of people seeking asylum ceased in 2014 and as of 31 December 2021, there were 105 people living in the community in PNG, and 114 on Nauru.⁵⁷⁹

As of 28 February 2022, 998 people (401 from Nauru, 426 from PNG and 171 from Australia) have been resettled in the United States, pursuant to a 2016 bilateral agreement between Australia and the United States for up to 1,250 refugees under Australia's offshore regional processing arrangements.⁵⁸⁰ In March 2022, the Australian and New Zealand governments announced that up to 450 refugees from Nauru or who are "temporarily in Australia under regional processing arrangements" will be resettled in New Zealand over the next three years, at the rate of 150 refugees per year.⁵⁸¹ This resettlement arrangement was agreed more than nine years ago, but not taken up by the Australian government until March 2022.

⁵⁷³ Ibid, Section 501 (change introduced in December 2014)

⁵⁷⁴ Ibid, Section 196

⁵⁷⁵ Ibid, Section 4AA

⁵⁷⁶ DHA, [Immigration Detention and Community Statistics Summary](#), 31 Dec 2021.

⁵⁷⁷ Ibid

⁵⁷⁸ Australian Human Rights Commission (AHRC), [Third Country Processing of Refugees and Asylum Seekers, Australia's Third UPR](#), 2021

⁵⁷⁹ RCOA, [Offshore Processing Statistics](#), 4 Mar 2022

⁵⁸⁰ DHA, [Regional Processing and Resettlement](#), 29 Mar 2022

⁵⁸¹ UNHCR, [UNHCR News Comment on the Australia-New Zealand Refugee Deal](#), 24 Mar 2022

As of 2021, the average length of detention was nearly 700 days, with at least 50 people having been detained for more than eight years.⁵⁸²

Immigration Detention Infrastructure

The Australian government categorises its onshore detention centres as either Immigration Detention Centres, Immigration Transit Accommodation (ITA), or Alternative Places of Detention (APODs).⁵⁸³ As of January 2022, there were seven immigration detention facilities in Australia, six of which were on the Australian mainland, and one on Christmas Island (which was shut in 2018, but subsequently in 2019).⁵⁸⁴ There are also a number of APODs in each state, including hospitals, aged-care facilities, mental health inpatient facilities, as well as hotel and apartment style accommodation.⁵⁸⁵

Australia re-established “offshore processing” in 2012, detaining people seeking asylum who arrived by boat in Australia at detention centres in the Pacific Island nations of Nauru and PNG. However, in 2014, transfers of people seeking asylum to Nauru and PNG ceased, when Australia shifted the focus of its border enforcement strategy towards maritime interception and pushbacks. In 2021, the government announced that all processing activities in PNG would be permanently closed though “offshore processing” in Nauru has been maintained. Refugees and people seeking asylum remain in the community in PNG and Nauru in a precarious situation. Conditions in these offshore detention centres were widely denounced, including by UN human rights bodies, as cruel, inhumane and degrading.⁵⁸⁶

In February 2019, the 1958 Migration Act was amended through the Migration Amendment (Urgent Medical Treatment) Bill (known as the “Medevac Bill”). This enabled refugees and people seeking asylum who were detained offshore to be brought to the mainland for medical treatment; this was ultimately repealed in December 2019. People brought the mainland were still considered to be detained, with the majority placed in APODs, including hotels guarded by private security guards.⁵⁸⁷ Medevac refugees and people seeking asylum have been progressively released from detention, though approximately 30 remain in detention as of March 2022.⁵⁸⁸

⁵⁸² Senate Standing Committee on Legal and Constitutional Affairs, [Home Affairs Portfolio: Australia Border Force – Program 3.5: Onshore Compliance and Detention: SE21-323 – Immigration Detention – No of Years Held in Detention](#); 25 Oct 2021

⁵⁸³ RCOA, [Offshore Processing Statistics](#)

⁵⁸⁴ Global Detention Project (GDP), [Immigration Detention in Australia: Turning Arbitrary Detention into a Global Brand](#), 22 Feb 2022

⁵⁸⁵ DHA, [Immigration Detention and Community Statistics Summary](#), 31 Dec 2021.

⁵⁸⁶ See for example, Madeline Gleeson and Natasha Yacoub, [Policy Brief 11: Cruel, Costly and Ineffective: The Failure of Offshore Processing in Australia](#), Kaldor Centre for International Refugee Law (Kaldor Centre), Aug 2021. Various UN bodies including the UN Human Rights Committee and the Special Rapporteur on the Human Rights of Migrants have criticised Australia’s immigration detention policies, see UNHCR, [United Nations Observations: Australia’s Transfer Arrangements with Nauru and Papua New Guinea \(2012-present\)](#)

⁵⁸⁷ Global Detention Project (GDP), [Immigration Detention in Australia: Turning Arbitrary Detention into a Global Brand](#), 22 Feb 2022

⁵⁸⁸ Eden Gillespie, [More Refugees Released from Detention in Move ‘Absolutely Due’ to Election](#), The Guardian, 4 Apr 2022

Alternatives to Immigration Detention

There are two main ways in which people otherwise subject to mandatory immigration detention can be released into the community; 'community detention' and Bridging Visas. These are possible through the exercise of personal discretion by the Minister for Immigration; the exercise of this discretion cannot be delegated and is non-compellable.

'Community detention', is a form of directed residence and is mostly used for families, unaccompanied children and other people in vulnerable situations. People in community detention cannot work, are subject to curfews and other supervision and reporting arrangements and have access to the Status Resolution Support Services programme (see below).

Bridging Visas grant the holder the ability to live in the community until their immigration status has been resolved. Bridging Visa conditions can vary, with some providing the right to work and study, and to access government-funded medical care or in some cases, access to the Status Resolution Support Services programme (see below).

Access to Rights and Services

The Status Resolution Support Services (SRSS) programme is funded by the Australian Department of Home Affairs but managed and implemented by private and NGO contractors. The SRSS programme provides temporary, needs-based financial support, access to transitional housing, and case management support.⁵⁸⁹ Financial support is valued at 89% of Australia's lowest welfare payment rate, placing recipients below the poverty line.⁵⁹⁰

People seeking asylum on the SRSS programme are sorted into bands depending on the amount of support that is needed, with persons in vulnerable situations placed in the higher bands, and this determines the level of casework support given.⁵⁹¹ Although an important source of support previously, there has been a drastic reduction in access to the SRSS programme and the availability of support under the programme; this has led to people living in the community in situations of destitution and significant vulnerability.

Between February 2018 and March 2021, the number of people seeking international protection in Australia with access to SRSS fell from 13,259 to 2,774 alongside reductions in Federal Budget allocations for support to people seeking international protection in Australia.⁵⁹² This trend continued through the pandemic.

The right to healthcare and the right to work are not universally provided for in the Migration Act 1958. To access public health services, migrants must have a valid temporary visa or a Ministerial Order,⁵⁹³ and the right to work depends on the visa that a person has.⁵⁹⁴

⁵⁸⁹ DHA, [Status Resolution Service](#), 6 Jul 2021

⁵⁹⁰ Jesuit Refugee Service Australia, [Access to a Safety Net for All People Seeking Asylum in Australia](#), Jun 2021

⁵⁹¹ DHA, [Status Resolution Service](#), 6 Jul 2021

⁵⁹² RCOA, [How Cuts to Support for People Seeking Asylum Will Affect People, States and Local Communities](#), 26 Jan 2019. See also Refugee Council of Australia, [Status Resolution Support Services \(SRSS\)](#), 20 Nov 2021

⁵⁹³ Australian Government, [Services Australia: Health care and Medicare](#)

⁵⁹⁴ Migration Act 1958, Section 41

The right to free legal aid is also not provided for people seeking asylum in Australia. In 2014 the Australian government withdrew funding to those who had previously provided legal assistance for people seeking asylum.⁵⁹⁵ However, the Australian government does fund a free interpretation service.

Developments during COVID-19

The immigration detention population in Australia increased by nearly 12% in the six months since the COVID-19 pandemic was declared in March 2020.⁵⁹⁶

There were a number of releases from immigration detention during this time, although it is unclear whether these were for reasons related to the pandemic. In January 2021, a group of 65 people seeking asylum were released from APODs, many of whom had been detained for several years in Melbourne hotels.⁵⁹⁷ They were initially detained offshore before being brought to mainland Australia for urgent medical treatment.⁵⁹⁸ The Home Affairs Department stated that people released were granted “final departure bridging visas” which allowed them to live in the community rather than detention before they will be either resettled in the US, voluntarily repatriated, or returned to offshore detention.⁵⁹⁹ However, they have not been provided with any income assistance such as SRSS and many were in situations of destitution, relying on support from civil society.

In July 2021 Australian authorities stated that the COVID-19 vaccine would be available for all persons in immigration detention.⁶⁰⁰ However, reports indicate that the rate of vaccination has been much lower than for the general population.⁶⁰¹

⁵⁹⁵ Kaldor Centre, [Do People Seeking Asylum Receive Legal Assistance?](#), 4 May 2020

⁵⁹⁶ AHRC, [Management of COVID-19 Risks in Immigration Detention](#), Jun 2021

⁵⁹⁷ Global Detention Project (GDP), [Immigration Detention in Australia: Turning Arbitrary Detention into a Global Brand](#), 22 Feb 2022

⁵⁹⁸ Ibid

⁵⁹⁹ Ibid

⁶⁰⁰ Ibid

⁶⁰¹ Senate Standing Committee on Legal and Constitutional Affairs - Supplementary Budget Estimates, [Program 3.5: Onshore Compliance and Detention, SE21-280 – Onshore Detention – COVID Vaccination Full or Partial](#), 25 Oct 2021

NEW ZEALAND



United Nations
Network on Migration

Working Better Together

NEW ZEALAND

Basic Demographics

During 2021, 248 people claimed asylum within New Zealand, originating mostly from India, China, Sri Lanka, Myanmar, South Africa and Thailand.⁶⁰² This represents a significant decrease in people seeking asylum from previous years due in large part to COVID-19 related border closures, with refugee recognition rates also decreasing both in total number and the percentage of claims approved in 2021.⁶⁰³

The Ministry of Business, Innovation and Employment has estimated that as of December 2017, there were between 13,422 and 14,367 migrants with irregular status in New Zealand, with most having held visitor visas. Migrants with irregular status came predominantly from Tonga (2498), Samoa (1549), China (1529), India (1310), Malaysia (790), Great Britain (589), with smaller numbers from Fiji, Tuvalu, South Korea and Thailand.⁶⁰⁴ Approximately 1,013 were children, while 11,578 were between the ages of 18-64.⁶⁰⁵

Who is at Risk of Immigration Detention?

Anyone who is (a) denied entry into the country at an airport and awaiting deportation (b) not carrying proper identification documents (c) suspected of constituting a threat or risk to security; or (d) has breached residence and reporting requirements, is at risk of immigration detention.⁶⁰⁶

Once a person's visa has expired and they have overstayed, immigration policies do not provide a clear pathway for them to gain residence, placing them at risk of detention and deportation. They can, however, attempt to (a) apply for a visa as a special case (granted at the 'absolute discretion' of Immigration New Zealand)⁶⁰⁷ or (b) appeal to the Immigration and Protection Tribunal on humanitarian grounds. Foreign nationals who have false or fraudulent visas, or who have had their refugee status cancelled, or who are deemed a threat to security are also liable for detention and deportation.⁶⁰⁸ Initially, people suspected of violating immigration laws can be held (usually in a police station) for 96 hours without judicial review. After this time, immigration officers must apply

⁶⁰² New Zealand Immigration Office (NZ Immigration), [Refugee and Protection Statistics Pack Current to December 2021](#)

⁶⁰³ On average, New Zealand has received 395 asylum claims each year, with an average of 178 people who sought asylum being granted refugee status, see Ferns, M., Stephens, M., Sama, B. N., Maurice, T., Perinpanayagam, U., Stocker, F., Malihi, Z., & Marlowe, J., [Safe Start. Fair Future. Refugee Equality](#), Centre for Asia Pacific Refugee Studies and Asylum Seeker Support Trust, 2022. For more detailed statistics, refer to New Zealand Immigration Office (NZ Immigration), [Refugee and Protection Statistics Pack Current to December 2021](#)

⁶⁰⁴ Ministry of Business, Innovation & Employment, [Response of the Ministry of Business, Innovation and Employment to the Committee's Additional Questions Regarding the Petition of Makahokovalu Pailate for the Pacific Leadership Forum](#), 19 Oct 2021

⁶⁰⁵ Report of the Petitions Committee, [Petition of Makahokovalu Pailate for Pacific Leadership Forum: Provide Pathways for Overstayers to Gain Permanent Residency in NZ on Compassion](#), Mar 2022

⁶⁰⁶ Immigration Act 2009, Section 309-310

⁶⁰⁷ Ibid, Section 61. See also Community Law, [Applying for a Visa as a Special Case \("Section 61 Visas"\)](#)

⁶⁰⁸ Ibid, Sections 154-163

for a “warrant of commitment” which must be extended by a judge every 28 days; there is however, no maximum time limit on detention.⁶⁰⁹

Recognised refugees or protected persons are, except on national security, public order or safety grounds, exempt from these provisions, however people seeking asylum can be detained for future deportation while their asylum claims are being assessed. Once an allegation of trafficking is received, trafficking survivors are formally ‘certified’ by New Zealand police, enabling them to apply for a special visa category for trafficking survivors. Apart from this, specialist or vulnerability screening is not carried out as part of a determination as to whether detention should be used.

In 2013, New Zealand’s immigration laws were revised such that members of a mass arrival group, i.e., 30 or more people, can be detained for up to six months if an immigration officer successfully obtains a warrant from a District Court Judge.⁶¹⁰ A warrant may be deemed necessary: (i) to effectively manage the mass arrival group; or (ii) to manage any threat or risk to security or to the public arising from, or that may arise from, one or more members of the mass arrival group; or (iii) to uphold the integrity or efficiency of the immigration system; or (iv) to avoid disrupting the efficient functioning of the District Court. New Zealand has never had any mass arrivals.

People seeking asylum arriving at the border who are not part of a “mass arrival group” can initially be held in police custody pending a risk assessment and court hearing. After the hearing, they are either detained at a prison if identity or security concerns are raised or conditionally released under ‘community detention’ to an approved address in their community or placed in the Mangere Refugee Resettlement Centre. In July 2021, the government commissioned an independent review into the use of detention for people seeking asylum.⁶¹¹

Who is Detained in Practice?

New Zealand does not publish data on how many people are in immigration detention and there is limited information on who is detained in practice.

It is reported that most people seeking asylum in New Zealand are not detained at any stage. However, given laws still permit the detention of people seeking asylum, they remain at risk. New Zealand authorities detained an approximate 86 people seeking asylum between 2015 and 2020.⁶¹²

The law allows for children to be detained but there is no evidence to suggest they are in practice. The Department of Immigration Operational Manual states the detention of children should be a last resort.⁶¹³ Similarly, the New Zealand government states during their draft to the UN Committee Against Torture that “the provisions relating to mass arrivals (set out in Immigration Amendment Act 2013) have never been applied.”⁶¹⁴

⁶⁰⁹ Ibid, Sections 316 and 317

⁶¹⁰ Immigration Amendment Act 2013, Section 317A

⁶¹¹ Amnesty International, [New Zealand’s Treatment of Asylum Seekers under Ministerial Spotlight](#), 22 Jul 2021

⁶¹² Amnesty International, [Please Take Me to a Safe Place: The Imprisonment of Asylum Seekers in Aotearoa New Zealand](#), 2021, p. 5

⁶¹³ New Zealand Immigration, Operations Manual, Article 16.2.15(vii)

⁶¹⁴ New Zealand Government, [New Zealand’s Seventh Periodic Report under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#), 2019

Immigration Detention Infrastructure

New Zealand does not have a dedicated facility for immigration detention. Instead, people seeking asylum and migrants with irregular status who are liable for deportation are detained at police stations and prisons. The prisons used for detention facilities are largely run by the Department of Corrections. These prisons (Waikeria Prison, Arohata Prison for Women, and Mt. Eden Corrections Facility) do not offer specific facilities for detained migrants with irregular status.⁶¹⁵ In 2009, the Parliament passed the Corrections (Contract Management of Prisons) Amendment Act, which allows private companies to manage prisons and detention centres in New Zealand. In 2010, the private security firm Serco was awarded a contract to operate the Mt. Eden Corrections Facility, which is used to hold non-nationals in administrative detention; this, however, was not renewed in 2015 following allegations of security and safety breaches; Serco, however, continues to operate Auckland South Correctional Facility.⁶¹⁶

Independent monitoring is conducted by the Ombudsman, who makes recommendations for improvements to conditions of detention and the treatment of detained persons. NGOs have access to visit people seeking asylum confined in prisons.⁶¹⁷

Alternatives to Immigration Detention

ATD are written into New Zealand's Immigration Act 2009 (Section 315). This includes conditional release, which is provided at the discretion of the immigration officer. People on conditional release are placed in 'community detention', where they have to meet certain conditions while their claims are assessed, e.g. required residence requirements, providing a guarantor, and attending interviews/required hearings with immigration authorities and/or reporting at specific locations at specific time intervals.⁶¹⁸ They can stay with family or community members or at a hostel - such as the one run by the Asylum Seeker Support Trust (ASST) since 2006, which hosts people seeking asylum, as well as a smaller number of persons whose claims for refugee status have been rejected, but for whom the principle of non-refoulement still applies.

It is, however, up to the absolute discretion of the immigration officer as to whether to place a person in 'community detention', as well as to end any agreements made on residence and reporting requirements.⁶¹⁹ Non-nationals can be arrested and detained if they violate any of the residence and reporting requirements. ATD are not applicable for 'mass arrivals'.

People seeking asylum under 'community detention' can be directed to reside at the Mangere Refugee Resettlement Centre. The centre is primarily intended to provide temporary accommodation for orientating refugees resettled to New Zealand. It is, however, also used by the New Zealand authorities as a form of 'open detention' for people seeking asylum who are officially classified as 'detainees'. While they can leave the centre, they must obtain permission to leave and they are given a time by which they must return and must sign in and out of the centre; they are usually permitted to leave only during the day, but are sometimes allowed to stay overnight

⁶¹⁵ UN Human Rights Council, [Report of the Working Group on Arbitrary Detention: Mission to New Zealand](#), 6 Jul 2015, UN Doc A/HRC/30/36/Add.2, para 71

⁶¹⁶ [New Zealand Parliament Urgent Debates](#), Sitting date: 09 December 2015. Volume:710;Page:8698; NZ Herald, [Serco's Contract to Run Mt. Eden Prison Not Renewed](#), 9 December 2015

⁶¹⁷ Global Detention Project, [New Zealand Immigration Detention Profile](#), Jun 2016

⁶¹⁸ Immigration Act 2009, Section 315

⁶¹⁹ Ibid

elsewhere, particularly on weekends.⁶²⁰ Any breach of the centre's rules may be punishable by transfer to prison, though this is reportedly rare. Immigration New Zealand manages the centre, with the help of NGOs such as Refugees as Survivors New Zealand and the New Zealand Red Cross. The centre is designed to accommodate both adults and children, and it has a separate one-block section used specifically for women and children. Children are only accommodated with adults if they are with family members, and it is in their best interests.

Access to Rights and Services

Persons with irregular migration status are largely excluded from government-funded services and social welfare entitlements, as access to these are dependent on possession of a valid visa. While they have some access to medical services such as immunisations for children and treatment for certain notifiable illnesses such as tuberculosis and HIV, they must otherwise pay international rates for healthcare and have very limited access to publicly funded medications, maternity and dental services.⁶²¹

People seeking asylum are responsible for applying for and maintaining a valid visa once Immigration New Zealand sends them an acknowledgement of their lodged claim or they receive a notice of appeal from the Ministry of Justice. In practice, most people seeking asylum are granted work visas however a sizable minority are left without any form of temporary visa for all or a substantial part of the asylum process.⁶²² This in turn has a significant impact on their entitlement to access government-funded services and social welfare entitlements, including emergency benefits and social housing.⁶²³ People seeking asylum in 'community detention' are not eligible for work visas, but may receive an allowance of NZD\$225 per week from Immigration New Zealand.⁶²⁴ People seeking asylum that are granted a work visa are required to renew these visas until they have been approved for permanent residency, after which they will have the automatic right to work.⁶²⁵

People seeking asylum should be informed of the right to legal assistance.⁶²⁶ They have access to free legal aid and free interpretation services, although there are challenges in practice in accessing quality and government-funded counsel and interpreters.⁶²⁷ However, people seeking asylum and migrants with irregular status applying for visas, including work visas, must do so at their own cost.

⁶²⁰ Information provided by Asylum Seekers Support Trust New Zealand, Mar 2022

⁶²¹ Nguyen, H.T. and Kenkel, D, 'Hidden Gems - Lived Experiences of Tuvaluan Hope Seekers and their Families in Aotearoa in New Zealand', 2021

⁶²² Ferns, M., Stephens, M., Sama, B. N., Maurice, T., Perinpanayagam, U., Stocker, F., Malihi, Z., & Marlowe, J., Safe Start. Fair Future. Refugee Equality, Centre for Asia Pacific Refugee Studies and Asylum Seeker Support Trust, 2022

⁶²³ Ibid. Most people seeking asylum are entitled to welfare support, in the form of emergency benefits but additional support can be challenging to secure. Even where entitlements are clear at a policy level, there are significant challenges in accessing benefits in practice.

⁶²⁴ Ibid

⁶²⁵ NZ Human Rights Commission (NZHRC), Discussion paper: Treating asylum seekers with dignity and respect. The economic, social and cultural rights of those seeking protection in New Zealand, 2017

⁶²⁶ New Zealand Government, Ministry of Business, Innovation & Employment, Claiming Refugee and Protection Status in New Zealand, March 2021

⁶²⁷ UN Human Rights Council, Report of the Working Group on Arbitrary Detention: Mission to New Zealand, 6 Jul 2015, UN Doc A/HRC/30/36/Add.2, para 76

All children between the age of six and 16 must attend school in New Zealand, regardless of their immigration status. Asylum-seeking children will generally be issued a student visa. There are, however, practical challenges in attending school, including costs (such as transport and uniform fees), English language competency and lack of interpreters at schools, lack of understanding of the refugee experience and cultural differences.⁶²⁸

Developments during COVID-19

During the COVID-19 pandemic, the New Zealand government released all but one of the people seeking asylum in the Mount Eden Prison facility to the hostel run by ASST; all new arrivals of people seeking asylum who would have been subject to detention were also sent to the hostel.⁶²⁹

The government also provided free public healthcare screening, vaccines, and treatment for COVID-19 to everyone in New Zealand regardless of their immigration status including migrants liable for deportation; a firewall was established between health and immigration services.⁶³⁰ In 2021, a special one-off residence visa was granted to everyone who was in New Zealand on a work visa and serving the country during the COVID pandemic.⁶³¹

⁶²⁸ NZHRC, [Discussion paper: Treating asylum seekers with dignity and respect. The economic, social and cultural rights of those seeking protection in New Zealand](#), 2017

⁶²⁹ Information provided by the Asylum Seeker Support Trust, New Zealand, Mar 2022

⁶³⁰ Report of the Petitions Committee, [Petition of Makahokovalu Pailate for Pacific Leadership Forum: Provide Pathways for Overstayers to Gain Permanent Residency in NZ on Compassion](#), Mar 2022

⁶³¹ Hon Kris Fafoi, [One-Off Residence Pathway Provides Certainty to Migrants and Business](#), 30 Sept 2021