

GAINING GROUND

Annex: Country Profiles

May 2022

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This Annex compiles short country profiles for the 47 countries that were included in a research mapping carried out for IDC's briefing paper, '**Gaining ground: Promising Practice to Reduce and End Immigration Detention**', published in May 2022, and should be read in parallel to the paper. IDC undertook data collection across five regions (Africa, the Americas, Asia-Pacific, Europe and MENA) through desk research and outreach to IDC members and partners. Countries were selected based on a number of criteria, including:

- > Indications that there is existing or recent promising practice in working towards reducing and ending immigration detention and/or an increased use of alternatives to detention (ATD);
- > Presence of an IDC member or partner;
- > Availability of up-to-date information through our network of members, partners and contacts.

Each country profile provides a short overview of the immigration detention context, in addition to one or more examples of recent developments in law and/or policy related to efforts to reduce and end immigration detention. **The mapping and country profiles are not intended to be exhaustive, and instead IDC's aim is to provide practical examples of initiatives across the globe that can be highlighted as promising practice for moving away from the use of immigration detention as a tool of migration governance, towards supporting people on the move to resolve their cases in the community with their rights and dignity intact.**

For IDC, promising practice is not the same as good practice (and certainly does not suggest perfect practice). Nor are developments in terms of ATD implementation a reason to ignore other, more problematic elements in a country's approach to managing migration, and even in ATD themselves. As a result, along with each promising example provided, the country profiles also highlight some of the elements that remain of concern and which will need to be addressed. Further, the context-specific nature of ATD means that the examples highlighted here will not be relevant in every context; nor will they be universally "replicable." Across the world, immigration detention use varies greatly, and is dependent on specific political, historical, and migratory contexts. Moreover, different countries are at different stages in the process towards implementing ATD, and reducing use of detention as a tool of migration management. This makes it challenging to compare practice across countries, as what may be identified as a promising development in one country might already be common practice in another. It is also worth noting that, whilst the use of ATD is not relevant to countries that do not use immigration detention at all, their approaches can provide learning and inspiration for others.

Given the range of countries examined in this research, and the challenge of obtaining reliable information related to immigration detention, it is likely that this mapping has not captured all ongoing developments. Through our work with members and partners, IDC endeavours to collate promising practice on an ongoing basis and showcase new initiatives as they come to light. See our website for more information: <https://idcoalition.org/>

If you would like to contact IDC about any of the country profiles included in this annex and/or our briefing paper 'Gaining Ground,' including in order to provide additional information or clarifications, please contact us at info@idcoalition.org.

IDC would particularly like to express our gratitude to the individuals, organisations, and UN agencies who assisted us in gathering the information presented in these country profiles.

The countries included in this Annex are (ordered alphabetically):

4	Australia	37	India	70	Singapore
6	Belgium	39	Indonesia	72	South Africa
8	Brazil	41	Italy	74	South Korea
10	Bulgaria	43	Japan	76	Spain
12	Canada	45	Jordan	78	Sudan
14	Chile	47	Kazakhstan	80	Tajikistan
16	Colombia	49	Libya	82	Thailand
18	Costa Rica	51	Malawi	84	Trinidad and Tobago
20	Cyprus	53	Malaysia	87	Tunisia
22	Djibouti	55	Maldives	89	Turkey
24	Ecuador	57	Mexico	91	United Kingdom
26	Egypt	60	Morocco	94	Uruguay
28	Georgia	62	Namibia	96	United States of America
30	Greece	64	Philippines	99	Zambia
33	Guatemala	66	Poland	101	Zimbabwe
35	Hong Kong	68	Portugal		

AUSTRALIA

Detention overview

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, who are labelled as 'unlawful non-citizens,' are required to be detained. This means that people who arrive without a valid visa, or those who arrive with a visa that subsequently expires or is cancelled, will be subject to mandatory immigration detention.¹ Further, 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 from refugee backgrounds at risk of indefinite or prolonged detention as they cannot return to their countries of origin.²

There are no time limits on the use of immigration detention; people in detention must remain there until they are granted a visa or they leave the country.³ Children are also at risk of immigration detention, though their detention must only be used as a last resort.⁴

According to the Australian Department of Home Affairs, as of 31 December 2021 there were a total of 1,489 people in immigration detention.⁵ Of these 1,489 detained individuals, 289 arrived in Australia either by boat or plane and were detained on arrival, and 1,220 had been detained as a result of overstaying their visa or breaching conditions of their visa.⁶ Since August 2012, Australia has detained 4,183 people at offshore immigration detention centres in Nauru, Manus Island and other parts of Papua New Guinea (PNG), however the detention centre in Manus Island was formally closed in 2017.⁷ As of 31 December 2021, there were 105 people still in the community in PNG and 114 in Nauru.⁸

The Australian government categorises its onshore detention centres as either Immigration Detention Centres, Immigration Transit Accommodation (ITA), or Alternative Places of Detention (APODs).⁹ As of January 2022, there were 7 immigration detention facilities in Australia, 6 of which were on the Australian mainland, and one on Christmas Island (which had been shut in 2018, but subsequently re-opened in 2019).¹⁰ 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.¹¹

Developments in law and practice

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. As of 31 December 2021, there were less than five children in immigration detention in Australia.¹²

There are two main ways in which persons otherwise subject to mandatory immigration detention can be released into the community. These include 'community detention' and Bridging Visas, and are possible through the exercise of personal discretion by the Minister for Immigration. This exercise of personal 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 vulnerable groups. People in community detention cannot work, are subject to curfews, reporting arrangements and other supervision, and have access to the Status Resolution Support Services program (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 program (see below).

Key strengths and main challenges

The use of both Bridging Visas and Community Detention have **enabled thousands of children, families and other people in vulnerable situations to live in the community while their immigration cases are being resolved**. Although people in Community Detention are regarded as being detained in Australia, they have the opportunity to move around in the community and engage in activities.

However people on Bridging Visas and in Community Detention face **significant issues in accessing fundamental rights and services in the community**. As noted above, people in Community Detention as well as some on Bridging Visas can access the Status Resolution Support Services (SRSS) programme. This is funded by the Australian Department of Home Affairs but managed and implemented by private and NGO contractors. It provides temporary, needs-based **financial support, access to transitional housing, case management support and torture and trauma counselling**. Financial support is, however, valued at 89% of Australia's lowest welfare payment rate, placing recipients below the poverty line. More generally, 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 living in situations of destitution and significant vulnerability. Between February 2017 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. This trend continued through the COVID-19 pandemic when some people in detention were released into the community with no financial support and no access to COVID support packages. This **left many people in situations of destitution** with NGOs providing food and other basic support. Despite the steps Australia has taken towards ending the immigration detention of children, children and their families have also been **released from immigration detention into the community with increasingly limited support**.

The right to healthcare and the right to work are also 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,¹³ and the right to work depends on the visa that a person has.¹⁴

BELGIUM

Detention overview

Immigration Detention in Belgium is set out in the Law of December 1980 on Entry, Stay, Settlement and Removal of Foreign Nationals, which was formally implemented through Royal Decree in 1981.¹⁵ According to the 1980 Law, detention of non-citizens is allowed for the purposes of removal. The law specifies that detention can only be ordered where other, less coercive measures are not able to be effectively applied. Detention may also be used to prevent unlawful entry into Belgian territory.

People seeking asylum cannot be detained for the sole reason that they have sought protection, and – in line with EU law – may only be detained for the following reasons:

1. In order to determine or verify his or her identity or nationality;
2. In order to determine the elements on which the asylum application is based, which could not be obtained without detention, in particular where there is a risk of absconding;
3. When he or she is detained subject to a return procedure and it can be substantiated on the basis of objective criteria that he or she is making an asylum application for the sole purpose of delaying or frustrating the enforcement of return;
4. When protection or national security or public order so requires.

However, there have been some concerns raised that people seeking asylum who do not have travel documents are automatically detained.¹⁶ People seeking asylum can also be detained during the Dublin procedure. The Belgian government made a commitment in 2020 to end immigration detention of minors, however this has still not been enshrined in law.¹⁷

The maximum amount of time that somebody in return procedures can be detained in Belgium is five months, according to legislation, however national security and public order concerns allow for the extension of this and in practice people may be detained far longer. In March 2022, the Belgian government announced their plan to open three new detention centres for undocumented migrants, in addition to the six that are already in operation.¹⁸

Developments in law and practice

In Belgium, 'Plan Together' – a project of the Jesuit Refugee Service Belgium – is a rights-based ATD pilot based in the community providing independent, holistic case management to families with minor children who are at risk of detention. It enables children to stay in a familiar environment in their community while they and their parent(s) work towards case resolution with the assistance of two case managers who visit the families at their homes regularly.

The overall objective of the pilot is to contribute to a reduction in the use of detention in general and to end child detention for migration-related reasons. Case management is tailored to the individual needs of each family member and the best interest of the child. The programme is not time-bound, and focuses on building a relationship of trust, strengthening the families' resilience, and providing them with correct and clear information about their cases. It is geared towards exploring all options for a durable solution: legal stay in Belgium, in another EU Member State or voluntary return to their country of origin.¹⁹

A policy note published in November 2020 set out the intention of the Belgian government to “fully [implement]” its obligations under EU law to develop and effectively put in place non-custodial alternatives to detention, including exploring the feasibility of different types of alternatives.²⁰ Following

the implementation of this policy, in June 2021 the Belgian government established a new "Alternatives to Detention" department. The current focus of this department is to set up Individual Case Management Support (ICAM) for people in returns processes, with ICAM coaches to be located in regional offices across the country. The approach is intended to encourage engagement, independence and constructive cooperation through intensive guidance, provision of information, and finding durable solutions to people's migration cases. If regularisation is not a realistic option, people receive guidance around voluntary return with the aim being to avoid forced returns.²¹ However, concerns remain amongst civil society organisations regarding this approach (see below under challenges).

In addition to ICAM, the government committed in 2020 to fund a number of pilot projects to support migrants with irregular status to work towards durable solutions.²² This includes providing people with access to services as they work to regularise their status, which will serve to reduce their risk of immigration detention. To date, the government has supported the establishment of a civil society-led learning network and begun to pilot its approach with local authorities, including the city of Ghent.

Key strengths and main challenges

The 'Plan Together' pilot, though currently small in scale, has shown the **potential to be extremely effective in supporting people throughout their immigration cases**. There is evidence that families are better informed about migration processes, including their own legal situations, and are more able to engage with the resolution of their cases. The pilot has also **led to a positive dialogue between JRS Belgium and a range of stakeholders including legal professionals, local authorities, ombudspersons, and government representatives**.

Efforts on the part of the government to introduce pilot projects to find durable solutions for undocumented migrants show an openness on the part of the Belgian government to **engage with a diverse range of actors, in line with the "whole-of-society" approach promoted within the GCM**. Moreover, the movements on the part of the Belgian government towards case management represents **positive progress when it comes to engaging with the key elements of rights-based alternatives to detention**.

However, there still appears to be a focus on returns when it comes to the ICAM approach, **rather than seeking to find the best outcome for each individual's case** (whether this be regularisation, relocation, or voluntary return). Whilst the ICAM programme does recognise that regularisation may be one of the potential options open to non-citizens, **the emphasis is put on return counselling**. Moreover, the fact that "coaches" are government employees rather than independent actors may risk **harming perceptions of their independence** amongst people at risk of immigration detention and non-governmental actors, thus jeopardising their ability to establish trust-based relationships.

Finally, the November 2020 policy note **makes worrying reference to "alternatives to detention"** such as return houses, house arrest and electronic monitoring which IDC **classifies as *de facto* detention or an alternative form of detention** due to the extreme deprivation of liberty that they imply.

BRAZIL

Detention overview

Immigration detention in Brazil is extremely rare in practice. Since 2019, a new Migration Department oversees migration policy and enforcement, and a 2017 Immigration Law reaffirms that immigration detention should be considered only as a last resort. Exceptions to the last resort rule include when a foreign national has been accused of committing a crime, when they have presented false travel documents, or when the authorities have issued a final order of removal.²³ In these cases, immigration detention is limited to a maximum of 60 days. Brazil does not have dedicated detention centres and people are detained by the police (in contravention of article 123 of the Law). There are also reports of individuals being held at airports when they have been denied entry.

The 2017 law establishes a clear path to regularise immigration status by paying a fine, which may reach up to approximately \$1,900 USD. However, since August 2017 there is a procedure to assess economic hardship which may reduce these fees.²⁴ This provides a clear way towards receiving a legal stay, without detention. The law also states that a person arriving at the border without the necessary permission to enter the country should be granted "supervised liberty" until the Federal Police issues a final decision on their case. Those people who apply for asylum cannot be ordered to leave the country until they have received a decision on their claim. Where a removal order is issued, legal counsel is provided by a public defendant sponsored by the State. The Mercosur Agreement grants citizens of member states access to legal residency and employment in Brazil.

Developments in law and practice

Since 2016, the Government has been running programs to grant protection to Venezuelan nationals.²⁵ These include the introduction of a two-year renewable temporary resident permit that gives Venezuelans present in Brazil access to employment, health care and education. This permit facilitates access to services without having to undergo a more complex and burdensome asylum application and process. Since early 2020, Venezuelans have not had to undergo an individualised procedure to access international protection.

Despite having closed the borders to foreign nationals during the COVID-19 pandemic, Brazil did not restrict entry for Venezuelans based on humanitarian grounds. According to a 2021 report, there were over a quarter of a million Venezuelans in the country.²⁶ The vast majority had regular stay and were able to access employment. In April 2021, through 'Operation Welcome' (Operação Acolhida) over fifty thousand Venezuelans (mostly families) were assisted to voluntarily resettle in over six hundred cities across Brazil.²⁷ This resettlement included provision of materials, educational kits, and cultural orientation. Such relocations were coordinated by the federal government in partnership with local governments, the Regional Inter-Agency Coordination Platform (R4V), and civil society organisations. These measures were not interrupted by the COVID-19 pandemic.

Key strengths and main challenges

Via the Mercosur Agreement, **thousands of people have been granted residence permits in Brazil**. Brazil is home to the fourth largest population of displaced Venezuelan nationals, and currently presides over the 2018 Quito Process, which brings together fourteen countries to discuss **reception and protection of displaced Venezuelan people**.

Brazil's **focus on regularisation programmes is commendable**, as are the **attempts made to ensure that non-citizens are able to access services**. The country has allowed non-nationals to access a broad network of benefits, and has **made social assistance programmes more accessible to non-nationals**, including the 'Emergency Assistance' (Auxílio Emergência) initiative, a monthly USD \$223 grant to reduce the economic impact of the pandemic, and 'Bolsa Família', a monthly basic income benefit. Brazil also **extended the recognition of expired identification documents during the pandemic**.²⁸

There are still **many challenges related to access to employment, benefits, housing and education for non-nationals**, in particular those that have been relocated outside of main urban centres as part of Operation Welcome. There are also **concerns that some people have been transferred to new locations, but have not yet been able to leave the shelters**. Moreover, **the regularisation programmes put in place by the Brazilian government are not generally extended to non-Mercosur nationals**; as a key country of destination for migrants across the world, including from the African continent, **it is essential that Brazil offers the same benefits to other groups of migrants**.

BULGARIA

Detention overview

Use of immigration detention in Bulgaria is set out within the Law on Foreigners in the Republic of Bulgaria (LFRB). Under Article 44(6) of the LFRB, a third-country national who is subject to “administrative measures” may be detained, with the purpose of organising their compulsory escort to the border or their expulsion, in the following cases:

- 1) Where the individual obstructs the execution of the administrative order (i.e. removal);
- 2) Where the individual presents a risk of absconding).²⁹

Detention of people seeking asylum in Bulgaria is systematic and widespread, despite the fact that Article 45b(2) of the Law on Asylum and Refugees (LAR) states that an individual cannot be placed in detention solely because they have applied for asylum.³⁰ In accordance with the recast Reception Conditions Directive, the LAR provides for the detention of asylum seekers in the following cases:

- a) In order to establish or verify their identity or nationality;
- b) In order to establish the facts or circumstances on which the application for international protection is based, when this cannot be done in another way and there is a risk of absconding;
- c) When necessary for national security or public order;
- d) In order to establish the Member State responsible for examining an application for international protection and where there is a risk of absconding.³¹

Bulgaria also uses ‘short-term detention’ for security checks, profiling and identification. In practice, after this period of short-term detention expires migrants are then re-detained. There is an 18 month limit on pre-removal detention (an initial detention period of six months which can be extended for an additional 12 months). Bulgaria has two detention centres for migrants with irregular status, with a total capacity of 1,060 places.³²

Developments in law and practice

The LFRB was amended in 2017 to introduce the following alternative (“precautionary”) measures, which can be used instead of detention where there is a barrier to removal:

1. Surrender of travel documents;
2. Payment of bail;
3. Weekly reporting (already existing prior to the reform).
- 4.

These measures are rarely used in practice.³³ Moreover, there are no measures in place to ensure alternative care arrangements for unaccompanied children and families with children.

Since 2017, the Centre for Legal Aid - Voice in Bulgaria, a non-governmental organisation (NGO) based in Sofia, has been implementing an ATD pilot project that aims:

- 1) To promote the use of individualised alternatives to immigration detention as a mainstream recourse for government institutions, and to advocate for the inclusion of ATD into national migration policies and budgets, in order to reduce the use of immigration detention;
- 2) To further develop the case management model as a tool for the successful implementation of ATD, building on the holistic support provided by CLA-Voice in Bulgaria and building upon the evidence emerging from their pilot.³⁴

The pilot has worked with 103 people since 2017 who would otherwise have been detained or at risk of being detained. CLA-Voice in Bulgaria works according to the principles of holistic case management in order to help to stabilise people in the community and avoid (re)detention while they work to resolve their case. Along with the case management support provided to individuals, CLA-Voice in Bulgaria undertakes advocacy to promote the use of case management and to promote a positive and engagement-based approach to migration management, including through the introduction of legal pathways to regularisation.

Key strengths and main challenges

Whilst the introduction of a number of alternatives to detention to Bulgarian law in 2017 marked a **step forward**, the **limited use of these alternatives in practice is concerning**. Too often, the presumption of liberty required by EU and international law is reversed and non-citizens in an irregular situation are instead required to contest a "**presumption of detention**."³⁵

Through the implementation of their pilot, CLA-Voice in Bulgaria has regular contact with the Ministry of the Interior and there is a **willingness to collaborate on the part of the authorities**. Moreover, as a result of the pilot's success **they have been approved to work on a case management programme for people in vulnerable situations who are in return procedures, under national AMIF funding**, for the period October 2019 to October 2022. However, in order to ensure that this is sustainable, it is necessary that the Bulgarian authorities **integrate case management-based ATD into their ways of operating**, something that they have to date not been willing to formalise.

Bulgaria continues to **flout international law** in its response to migration management more generally, with widespread and frequent pushbacks reported at the country's borders.³⁶ In 2018, Bulgaria was one of several central and eastern EU countries that **refused to endorse the Global Compact for Safe, Orderly and Regular Migration** (GCM).

CANADA

Detention overview

In Canada, immigration detention is governed by the Immigration and Refugee Protection Act (IRPA) and its Regulations. Both foreign nationals and permanent residents are at risk of detention under IRPA provisions. The Canadian Border Services Agency (CBSA) is the authority responsible for making immigration-related arrests. IRPA gives CBSA authority to detain a non-national if they have reasonable grounds to believe that:

- > The person is "inadmissible" (under IRPA statutory grounds);
- > The person is a danger to the public;
- > The person in question is unlikely to appear for an examination, an admissibility hearing, removal from Canada, or another proceeding that could lead to a removal order being made;
- > The person's identity is questionable;
- > At entry, the person should be held for examination or due to security reasons; and/or
- > The person could be designated as an "irregular arrival."³⁷

According to Immigration and Refugee Board of Canada guidelines, detention "is exercised principally, but not exclusively, pending removal."³⁸ An individual can be detained while attempting to enter Canada or when already present in the country.

While children can be detained in Canada, IRPA stipulates this is a "last resort", taking into account the child's best interests. Despite this, children continue to be either detained or "housed" in a detention centre with their families – amounting to *de facto* detention.³⁹ There is no maximum period of time that people can be detained, and immigration detainees are therefore at risk of being detained indefinitely.⁴⁰

Canada operates three dedicated immigration holding centres (IHCs) in Laval, Quebec, Toronto, Ontario, and Surrey, British Columbia. People are also routinely held in provincial jails, including maximum-security facilities, alongside people with criminal charges and convictions, contrary to international law and standards. Following the onset of the COVID-19 pandemic, the proportion of detained migrants held in jails rather than IHC more than doubled.⁴¹

Between April 2016 and March 2021, Canada placed approximately 34,000 people in immigration detention. There was a significant decrease in the number of people detained during 2020-2021 down to 1,605 from 8,825 in the previous year. However, the average length of detention more than doubled.⁴²

Developments in law and practice

In 2016, the Canadian government announced the creation of a National Immigration Detention Framework (NIDF), with the stated intention to "[create] a better, fairer immigration detention system that supports the humane and dignified treatment of individuals while protecting public safety."⁴³ The NIDF – implemented from 2017 onwards – includes Alternatives to Detention as one of its key pillars.⁴⁴ From 2018, the CBSA began the roll-out of an expanded ATD programme which includes - in addition to already-existing ATD such as in-person reporting conditions, cash deposit or the establishment of a bondsperson - the following elements:

- > Community case management and supervision (CCMS). Following a "risk assessment", a CBSA officer or an Immigration and Refugee Board member may determine that a person's case can be dealt with in the community. They are thereby released from detention and provided with support from contracted third-party service providers (the Salvation Army, the John Howard Society,

and the Toronto Bail Program). CCMS may include referrals to health and mental health support, addiction counselling, employment and housing assistance, and support for families with children. It may also be combined with mandatory residency.

- > Voice reporting (VR). This involves biometric telephone reporting, whereby the person calls a specified number at regular intervals and their identity is authenticated by comparing their voice to a recorded sample. Location-based GPS data may also be used to identify the person's location.
- > Electronic monitoring (EM). Originally introduced as a two-year pilot in Toronto and Quebec, EM is limited to so-called "high-risk individuals" and monitors real-time location data transmitted from surveillance bracelets usually worn around a person's ankle.⁴⁵

In addition to the CBSA-run programme, there are also a number of community-based non-governmental organisations across Canada that provide holistic community-based services tailored to newcomers' needs, including housing, counselling and referrals to mental health support, referrals to legal services, language support and classes, medical support, employment search, and community orientation.

Key strengths and main challenges

The Canadian government's **decision to expand ATD programmes** with the stated aim of ensuring that people's cases can be dealt with in the community is a **promising step forward**. Whilst the reduction in the numbers of people being held in immigration detention in Canada is partly attributable to a drop in people arriving during the COVID-19 pandemic, it is also believed that **the introduction of expanded ATD has contributed to this drop**.⁴⁶ In particular, the CCMS approach provides people with most of the **support that they need to live in the community with rights and dignity**.⁴⁷

In addition to the evident advantages that releasing people from immigration detention has on their health and wellbeing, the expanded ATD programme has **significant cost-saving potential** and could save upwards of \$7M CAD.⁴⁸

However, **significant challenges remain**. Notably, the NIDF **relies on what have been called "mobile carceral technologies"** such as voice reporting and electronic monitoring is of concern.⁴⁹ Studies show that voice recognition systems have **low levels of accuracy** which – given the repercussions of any mistakes, including potential re-arrest – could lead to high levels of anxiety and uncertainty amongst participants in the ATD Voice Recognition programme.⁵⁰ Electronic monitoring, meanwhile, is an alternative form of detention, rather than an ATD, and some observers consider it to be *de facto* detention.⁵¹ The use of ankle bracelets causes considerable **physical and psychological distress and stigmatisation**. Moreover, the open-ended nature of the ATD programme means that people may be subjected to electronic monitoring for long periods of time.⁵² More generally, critics note that Canada's ATD programme was **designed in line with the criminal justice system model**, and this risks criminalising migrants and their communities.⁵³

The CBSA remains the **only major law enforcement agency in Canada with no independent civilian oversight**. It has jurisdiction to **detain vulnerable individuals, including refugee claimants, persons with mental health conditions, and children**.

CHILE

Detention overview

In 2018, the Chilean immigration authority was relaunched as the National Migration Service. Until recently, the grounds for immigration detention were established in the 1975 Immigration Law which allowed detention for up to fifteen days; extended periods of immigration detention were very rare.⁵⁴ A new Immigration Law, enacted in April 2021, limits immigration detention to 48 hours.⁵⁵ This is the period of time considered necessary to remove a person from the country and, in such cases, a non-citizen may be ordered to remain at a police immigration facility. In February 2022 the rules to implement the 2021 immigration law were published.⁵⁶

The 2021 Law states that authorities should consider house arrest, periodic reporting, and any other option before detention in a police facility.⁵⁷ This also applies when a person files an appeal related to their immigration case. Constitutional protections for detainees apply, as immigration detention is considered by the Government to be imprisonment. However, the Government is concerned about irregular entry to the territory and has been curtailing rights for those who entered in such a way, including by preventing them from accessing regularisation programs and thus putting them at risk of expulsion.⁵⁸

The Piñera administration abruptly withdrew from the GCM in late 2018, stating that it promoted irregular migration. Previously unfamiliar with large arrivals of people, Chile has seen public protests against the Government's handling of migration. In late 2021, the Inter-American Commission on Human Rights (IACHR) denounced xenophobic violence in Iquique, which was perpetrated against mostly migrant families from Venezuela.⁵⁹

Developments in law and practice

New regulations in Chile reiterate the push to use immigration detention only as a last resort. In 2021, the new National Immigration Service started an immigration regularisation programme that is fully available online. People are eligible for this programme as long as they entered the country before March 18 2020 via a legal entry point, and have no proceedings against them⁶⁰. This programme contributes to people avoiding removal. Since 2018, Chile has been working to digitalise its systems with an ambition to convert 100% of immigration processing into remote procedures. It is thought that this will increase accessibility in remote areas.

In 2018, a new type of visa was introduced in order to create access to regular stay with a work permit for thousands of people. This visa - called the 'democratic responsibility visa' - is valid for a year and can be renewed⁶¹. It was developed for Venezuelans who want to reside in Chile; people can apply from any part of the world by registering online and submitting a copy of a valid passport, a photograph, a medical certificate, marriage certificate (if applicable), family documents, and proof of income. The nearest consulate then provides further details regarding entry to the country. Within 30 days of arrival, the individual must register with the police and at the Civil and Identification Registry. Venezuelan nationals with this visa can also request enrollment in the National Health Fund ('FONASA' in Spanish) and, after a year, may apply for a permanent resident visa. By the end of 2020, there were almost half a million Venezuelan nationals living in Chile, and almost three quarters held a democratic responsibility visa.⁶²

Key strengths and main challenges

In Chile, migration management priorities are mainly focused on **avoiding poverty among arriving non-nationals, as well as reducing tensions with host communities**. In this sense, attempting to ensure access to basic rights and services is the priority. The **opportunities for regularisation, and expanded visa regimes**, are designed to facilitate such access. Despite changes in the political landscape, authorities have been **willing to include non-nationals in social security programmes, as long as they have a regular stay**. In Chile, there has been a shift towards 'promoting' entries via legal ports, in order to tackle human trafficking⁶³.

The 'promotion' of legal entries, however, comes **at the detriment of those who do not enter the country through a legal entry point**. Such individuals are unable to access regularisation programmes and can be subject to detention before removal, in line with the limitations set out in law. This risks **punishing people based on their entry to the country, and means that they are unable to claim their rights or access basic services**. According to a local expert, There are also **concerns around due process when people are subject to expedited removal procedures** without a hearing, especially at the border.

COLOMBIA

Detention overview

Grounds for immigration detention in Colombia are provided for within Decree 4.000 of 2004,⁶⁴ Decree 834 of 2013,⁶⁵ and Decree 1.067 of 2015.⁶⁶ Article 28 of the Colombian Constitution of 1991 provides for the right to liberty and protection against arbitrary detention and also guarantees that people who are detained must be brought before a competent judge within thirty-six hours.⁶⁷

Non-nationals may be detained for the following reasons:

- > To verify their identity;
- > To verify their immigration status;
- > When an administrative procedure is initiated against a foreigner and their appearance is necessary;
- > To effect removal.⁶⁸

Within 36 hours a decision on the administrative detention must be reached. If the authority cannot complete the removal, the person must be released at the regional migration post⁶⁹.

In Colombia, immigration violations are not considered to be criminal offences but are administrative in nature. Immigration detention has not been fully recognised as “detention” by the government, and constitutional protections are therefore not regularly applied to immigration detention.⁷⁰ Additionally, freedom of movement is not considered absolute for non-nationals. As of 2019, Colombia relied on 11 “Transitory Immigration Centres” (Salas Transitorias de Migración or STM), where non-nationals may be detained for up to 36 hours until a final decision on removal is reached and executed.⁷¹ Some cases have taken longer, however, and sometimes local police facilities are used to detain individuals. According to government data, 2,911 persons were processed in STM while awaiting their removal in 2018.⁷²

Children are not meant to be kept in a STM, but are instead referred to the Colombian Institute for Family Welfare (Instituto Colombiano de Bienestar Familiar - ICBF) which is the child protection authority in Colombia. Children are housed and supported by the ICBF until a family reunification procedure is completed or until they turn 18.⁷³ Whilst children may not be subject to immigration penalties, their guardians can be. Adults in vulnerable situations are not supposed to be held in detention for more than 12 hours, and they too should be referred to an institution to address their specific needs. Those who apply for asylum or appeal an expulsion order must be released immediately.⁷⁴

Colombia hosts close to two million displaced people from neighbouring Venezuela. In total, over five million Venezuelans have left their country, with around 30% of them living in Colombia.⁷⁵

Developments in law and practice

In 2016, a Special Permanence Permit (PEP in Spanish) was created to allow Venezuelan nationals to access medical services in Colombia. In March 2021, given that at least half of Venezuelan nationals still had irregular status in Colombia, a Temporary Protection Status (TPS) was developed for Venezuelans in Colombia. This operates as a regularisation programme and includes the right to work and access services.⁷⁶ For those with regular status, people seeking asylum and those who hold a ‘safe-conduct’ permit (and thus have requested a visa), this scheme grants them 10 years to apply and acquire a residence visa.⁷⁷ Venezuelan nationals in an irregular situation may also be eligible if they entered Colombia before 31 January 2021. The Status is also available for those who enter via a legal port of entry within two years

of its introduction.⁷⁸ According to the government, the introduction of the Temporary Protection Status is intended to counter:

- > Disruption in the labour market, since informality leads to a reduction in wages and unemployment among native communities;
- > Missed tax contributions, since informality is thought to lead to losses for the public purse;
- > Lack of data, which in turn impacts allocation of resources and programmes to facilitate integration in host communities.⁷⁹

The 10-year timeframe of the Status will give most Venezuelan people — both those with regular and irregular status — time to settle, comply with requirements, and apply for a regular residence visa. To access the TPS, biometric information must be provided to the registry office (RUMV in Spanish) via a smartphone app and in-person appointments. There are some worries about the cost of acquiring the TPS and also around subsequent socio-economic integration. The Statute's protection finishes when the person acquires a regular residence visa.

Key strengths and main challenges

The Temporary Protection Status introduced in 2021 has been hailed as an **"extraordinary example of humanity, commitment towards human rights, and pragmatism"** by the UN High Commissioner for refugees.⁸⁰ The scale of the initiative is particularly notable, and in January and February 2022 alone 500,000 Venezuelan refugees and migrants were issued with Temporary Protection Permits.⁸¹ This positions Colombia at the forefront of the **response to the Venezuelan crisis in the Americas**.

Key challenges remain, however. These include due process, given the **relatively unclear legal frameworks** surrounding the Status, including when it comes to appeals. Another challenge includes addressing **the situation of those who do not arrive via a legal entry point**, which is common given the strong social bonds across communities that reside along the 2000 kilometre border between Colombia and Venezuela. Finally, it is important to note that **only those fleeing Venezuela are eligible for Temporary Protection Status**. This means that people arriving from other parts of the world **fall outside the scope of current regularisation programmes**.

It is also important to note Colombia's **role as one of the champion countries in global efforts to end child immigration detention**. As mentioned above, **Colombia does not detain children for immigration related reasons**. Migrant and refugee children are integrated in national child protection programmes with unaccompanied minors being under the care of the ICBF.

COSTA RICA

Detention overview

Under the Costa Rican legal framework immigration detention is defined as an administrative restriction of liberty imposed to a foreigner, who has entered or remained in the country irregularly, in order to carry out the administrative procedure of rejection, removal, deportation or regularisation.⁸² Provisions relating to the use of immigration detention are found in the 2009 Migration Law (Ley General de Migración y Extranjería N 8764),⁸³ its subsequent 2011 Migration Control Regulation (Reglamento de Control Migratorio N 36769),⁸⁴ and Refugee Regulation (Reglamento de Personas Refugiadas N 36831),⁸⁵ which provide clarity on processes set out by the Migration Law.

According to legislation, the Migration Police⁸⁶ may detain an individual for up to 24 hours to verify their migratory status - this provision also applies to people seeking asylum s, regardless of legislation providing that no criminal or administrative sanctions should be imposed on them on the grounds of irregular entry or stay.⁸⁷ This initial detention can be extended by decision of the Directorate General of Migration in "special circumstances". If the irregular status is confirmed and no regularisation options are available, the Directorate General of Migration shall start deportation procedures.⁸⁸ Immigration detention for the purpose of deportation shall not exceed thirty days. However, this period can be extended in "exceptional circumstances".⁸⁹ Without maximum periods of detention established by law, these provisions create a system in which detention can last longer than six months.⁹⁰

By law, immigration detention is a measure of last resort to be used only when less coercive measures are considered inadequate for the individual case.⁹¹ Assessing the effective use of immigration detention as an exceptional measure is difficult as authorities do not provide detention-related statistics.⁹² According to information from organisations working on the ground in Costa Rica, resort to immigration detention is almost automatic.⁹³

In the case of children, both the Migration Control Regulation and the Refugee Regulation include a prohibition on immigration detention that extends to accompanied and unaccompanied minors. Children are immediately referred to the National Child Welfare Agency, in charge of finding adequate accommodation and providing care.⁹⁴

Developments in law and practice

Under article 211, the 2009 Migration Law lists four alternatives to immigration detention: regular reporting, bail, deposit of documents, and home detention. These alternative measures are only very rarely used⁹⁵ and, despite being legislated as a measure of last resort, detention is resorted to almost automatically. Additionally, accessing some of the alternative measures requires some form of documentation or a fixed residence, which many migrants in an irregular situation in Costa Rica lack.⁹⁶

Efforts have been placed in creating a policy framework to operationalise the prohibition on child immigration detention (see section above), including the roll out of several protocols with operational guidance for the Migratory Police and the National Child Welfare Agency on referral and child sensitive procedures.⁹⁷

In recent years, Costa Rica has made attempts to provide protection to the growing number of people in situations of irregularity transiting through its territory on their journey northbound in the Americas. In 2016, a migratory crisis that erupted in the region of Darien, an area between Panamá and Colombia,

brought to the fore the inability of the legal and policy frameworks to respond in a sustainable way to increased arrivals of people coming from Africa, Asia, and the Caribbean, particularly Haiti and Cuba, crossing through Panama and Costa Rica.⁹⁸ This crisis prompted the governments of Costa Rica and Panamá to sign a bilateral agreement known as “Operación Flujo Controlado” aiming at guaranteeing orderly, safe and regular migration for those in transit.⁹⁹ The agreement operates with the support of IOM, UNHCR and the ICRC.

In Panamá, a country with a system of mandatory immigration detention of migrants in a situation of irregularity¹⁰⁰, the “Operación Flujo Controlado” has prevented those benefiting from the program, from almost automatically ending up in immigration detention centres. Instead, they are sheltered in one of the four open Reception Centres (Estaciones de Recepción Migratoria)¹⁰¹, where people remain for a short period of time - approximately one week¹⁰² - receive medical attention, and are accompanied in their route to Costa Rica. Once in Costa Rica, the Migration Police allows a previously agreed number of people to cross the border, provide them with humanitarian assistance if needed, and accompanies them to the northern border, without resorting, at any stage, to immigration detention. According to civil society organisations on the ground and reports from IOM, migrants stay in the community or in open accommodation centres run by civil society while in transit.¹⁰³ The program was suspended during the Covid-19 pandemic as Costa Rica closed its borders from March 2020 until March 2021.¹⁰⁴

Key strengths and main challenges

Whilst Costa Rica's legal framework **provides for non-custodial alternatives to detention and regulates detention as a measure of last resort**, in practice, challenges related to a shortage of institutional capacity, training of staff, high rotation, general lack of knowledge and the limited number of resources dedicated to developing guidelines and procedures, create a system in which **immigration detention is resorted to almost automatically for adults**. This contrasts with the effective **operationalization of the prohibition on child immigration detention**. Efforts and resources have been placed in developing an **institutional infrastructure** to ensure coordination and collaboration among relevant State departments.

The “Operación Flujo Controlado” is a commendable example of **international cooperation to find creative solutions to migratory challenges prioritising the protection and safety of migrants in transit**. However, there are bottlenecks limiting the accessibility and reach of this program as the numbers of migrants exceeds by far the capacity of the programme. Additionally, its **reactivation after the Covid-19 pandemic is proving to be difficult** due to the lack of financial resources allocated, leaving many in situations of irregularity and vulnerability.¹⁰⁵

Costa Rica seems to understand **the importance of whole-of-society approaches and promotes collaboration and coordination with non-State actors**. International and civil society organisations have been fundamental to address some of the capacity and reach challenges.¹⁰⁶

CYPRUS

Detention overview

Detention of non-citizens in Cyprus is set out in the Aliens and Immigration Law and the Refugee Law. Provisions are set out in law for the detention of certain people seeking asylum (in line with the EU Reception Conditions Directive and Dublin III Regulation) and those who have been issued a return order (in line with the Returns Directive). According to the Aliens and Immigration Law, a “prohibited immigrant” apprehended in Cyprus is guilty of a criminal offence and subject to imprisonment and/or a fine. This risks criminalising migrants who are present in Cyprus without the necessary documentation.¹⁰⁷

Four (non-exhaustive) alternatives to detention are provided for in the Refugee Law:

- > Regular reporting to the authorities;
- > Deposit of a financial guarantee;
- > Obligation to stay at an assigned place, including a reception centre; and
- > Probation.¹⁰⁸

The Ministry of Interior may only detain non-citizens for reasons related to their immigration status based on an individualised assessment, and if no other less coercive alternatives are available. However, NGOs in Cyprus are not aware of a formal procedure to examine cases in this regard, or to identify less coercive alternatives that might be available.¹⁰⁹ Moreover, no alternatives to detention are specified within the Aliens and Immigration Law.¹¹⁰

Cyprus currently has one detention centre in operation (Mennoyia), with a capacity of 128 people. However, from spring 2020 onwards, there has been a rise in the numbers of people detained in police holding cells throughout Cyprus for prolonged periods of time. Currently, a new detention and pre-deportation centre is under development which is expected to have an 800 person capacity.¹¹¹ Non-citizens in return procedures may be detained for a maximum of 18 months; there is no maximum timeframe set out in legislation for the detention of people seeking asylum, however the Refugee Law does state that the period of detention should be as short as possible.

Non-governmental actors have expressed their concern in recent years regarding an increase in the use of detention, which is becoming the norm rather than the exception and thus risks being used arbitrarily.¹¹²

Developments in law and practice

Since 2017, the Cyprus Refugee Council (CyRC) has been implementing an Alternative to Detention pilot project, in line with the organisation’s objective to provide assistance and support to individuals in asylum and migration procedures. The main aim of the pilot is to reduce immigration detention, promote engagement based ATD, and contribute to the growing evidence and momentum on ATD at a national and regional level.¹¹³

In order to achieve this, CyRC provides individualised case management to people in detention and/or at risk of detention including people seeking asylum, those who have been refused asylum, people from third countries with irregular status, and those who are stateless or otherwise unable to be removed. Their case management is based on a holistic approach: encouraging trust, engagement and collaboration with the system, working towards case resolution, and aiming towards the reduced use of detention in Cyprus. It includes social counselling, mediation with the authorities, psychological support, legal advice, and referral to other organisations and services to address basic needs.

CyRC also uses an “advocacy through doing” approach, which includes advocating on behalf of individuals to highlight the benefits of engagement-based ATD. Through this project, CyRC aims to ensure that the conversation on ATD by state and non-state actors focuses on engagement-based models rather than the coercive-based approaches that are currently in effect.¹¹⁴

Key strengths and main challenges

The pilot ATD programme being implemented by CyRC has allowed for **increased engagement with a wide range of stakeholders in Cyprus**, including with the authorities. Indeed, in October 2020 **the Civil Registry and Migration Department (CRMD) appointed a staff member specifically tasked with examining the use of alternatives to detention**. This individual has positively engaged with CyRC consistently since their appointment, in order to increase the authorities' understanding of case management-based ATD and also to discuss individual cases. Through this collaboration, seven individuals have been released into the pilot project following either a court decision or a decision of the CRMD. **All seven individuals remained engaged with the Project team and the authorities**.¹¹⁵ In total, over the previous two years of the project, 85 people have received case management support.¹¹⁶

Concerns have emerged, however, around requests made on the part of the government for CyRC to combine their pilot with more enforcement-based elements such as 'spot checks' to people's accommodation. In response, CyRC submitted a short summary document to the authorities outlining the **holistic case management based approach**, as well as outlining the importance of **maintaining their independence from migration enforcement measures**.¹¹⁷

Despite signs of positive engagement on the part of the government, moreover, **alternatives to detention tend to be neglected as a consideration when detention orders are made in Cyprus**.¹¹⁸ Moreover, engagement with the CyRC pilot continues to be on an ad hoc basis and **no formal government support** has been forthcoming, despite the pilot's positive outcomes.

DJIBOUTI

Detention overview

Djibouti is a country of origin and transit for migration, as well as a country of destination for refugees and migrants.¹¹⁹ While the law prohibits arbitrary arrest and detention,¹²⁰ Djibouti still detains migrants and refugees on entry and stay of non-nationals through the Law No. 40/AN/19/8th L of January 21, 2019.¹²¹ Two immigration detention facilities are in operation in Djibouti,¹²² primarily detaining migrants found without documentation or those crossing to Yemen in an attempt to reduce migration to this country.¹²³

Additionally, Article 33/7 of Law No. 40/AN/19/8th L of January 21, 2019 provides certain guarantees to unaccompanied children and people in vulnerable situations, as it states that they "cannot be subject to detention and deportation" without an assessment of the child's vulnerability conducted by the Ministry of Justice.¹²⁴ However, detention of migrants and migrant children continues to take place in Djibouti, without access to individualised assessment regarding the necessity of detention.¹²⁵

According to IOM, Djibouti hosts 150,000 undocumented migrants,¹²⁶ in addition to 31,573 refugees, of whom 14,310 are children.¹²⁷ This large number of children are at risk of detention due to their inability to continue their journeys, leaving them stranded in Djibouti.¹²⁸ It is reported that children are primarily detained in special wings or sections within adult facilities.¹²⁹ In general however, both children and adults face the same poor, overcrowded conditions, with limited food and irregular meals, in addition to lack of access to proper sanitation, health and other services.¹³⁰ Furthermore, instances of abuse by law enforcement officials against those who are detained have been reported, including sexual abuse.¹³¹

Developments in law and practice

The international NGO Caritas has been operating a night shelter since 2019,¹³² providing accommodation to children otherwise living on the streets and who wish to return to their home countries to reunite with their families. Caritas also runs a day centre that provides services for children. The day centre hosts around 80 children each day and offers food and sanitary facilities, as well as child-friendly activities and services.¹³³ Additionally, in an attempt to reduce their risk of detention, Caritas works on providing long-term care for these children, including by supporting their reintegration within the community in Djibouti, or by matching them with families as a form of foster care.¹³⁴

As a form of alternative care, family-based and kinship care for unaccompanied children is organised on a case-by-case basis by UNICEF, civil society and community organisations. Unaccompanied children are placed with a family who has been pre-identified by Caritas, including migrant and Djiboutian families. Children may also be placed with their extended family. Placement includes a process of assessment and follow-up, with UNICEF providing a psychologist for the first year to support both the host family and the child. Additionally, the family is supported with food, healthcare and clothes, as well as a referral to school for the foster child, which is available for other children in the same family to access education as well.¹³⁵

Key strengths and main challenges

The number of migrant street children is increasing in Djibouti, and the Caritas day centre contributes to reducing their risk of immigration detention and abuse. However, challenges remain as the night shelter **only provides accommodation for those who are due to be repatriated, which excludes many other children.** Moreover, the **referral to foster care and other alternative care options is done on an ad hoc basis, and may not be sustainable for the long term** as the referral

system is not formalised and does not include the involvement of all relevant child protection actors. Additionally, families that host children are **not provided with financial aid but are instead supported through other means**; this may not guarantee their care for the child in the long term, as they may not have the capacity and resources to cover all of their expenses.

The arrangement of family-based and kinship care is a positive example of alternative care arrangements, in which authorities allow communities and civil society to make such arrangements and organise themselves without seeking approval. However, **challenges remain, as these children need to be protected from being detained again. This will involve ensuring authorities properly register them and grant them protection.**

ECUADOR

Detention overview

In January 2017, Ecuador adopted the Organic Law on Human Mobility¹³⁶ and, in 2018, a National Plan on Human Mobility.¹³⁷ This regulatory framework further operationalised the right to migrate, the right to seek asylum and the human rights of migrants as recognised by the 2008 Constitution.¹³⁸ Article 145 of the 2017 Law on Human Mobility set out a 30-day expedited procedure that allowed for cautionary measures - such as reporting requirements or monetary caution - to enforce deportation of irregular migrants, if regularisation was not possible, clarifying that cautionary enforcement measures should never entail any form of deprivation of liberty.¹³⁹

Regarding detention of children, the Ecuadorian legal framework explicitly integrates existing international human rights standards by establishing a prohibition on child immigration detention that extends to families in the case of accompanied children.¹⁴⁰

A direct consequence of Ecuador's legal shift towards non-detention was the immediate closure of all immigration detention facilities in 2017. Currently, in Ecuador there are no reported cases of individuals subject to deprivation of liberty for reasons related to migratory status. Furthermore, migrants residing in Ecuador, irrespective of their legal status, have the right to work, to access social and health services, and education, and have the right to legal defence while their regularisation procedure is ongoing.¹⁴¹

Developments in law and practice

Ecuador's approach to migration governance has gone through considerable changes in the last few years and has been praised as being "at the forefront of progressive migration policymaking".¹⁴² The National Plan on Human Mobility, launched in 2018, aims at promoting universal citizenship and free mobility, strengthening the protection of the human rights of migrants and people seeking asylum, generating conditions to promote orderly and safe migration, and defending the diversity, integration and coexistence of those in a situation of human mobility.¹⁴³ Since the adoption of the Law on Human Mobility in 2017, immigration detention has not been part of the migration governance framework (see above).

A key element of Ecuador's migration governance approach has been the roll-out of several regularisation schemes to give access to documentation, work permits, rights and services to migrants otherwise residing in Ecuador in an irregular situation. From 2017 to 2019, under the Law on Human Mobility¹⁴⁴, migrants from countries of the UNASUR treaty¹⁴⁵ - Argentina, Bolivia, Brasil, Chile, Colombia, Guyana, Paraguay, Perú, Surinam, Uruguay, and Venezuela - were able to apply for a residence permit without a visa requirement. 91,762 people regularised their migration status under this procedure. Unfortunately, Ecuador's decision to leave the UNASUR treaty in 2019 led to the suspension of this programme.¹⁴⁶

In July 2019, Ecuador introduced an amnesty programme for Venezuelans, which allowed access to regularisation for those who entered Ecuador between 28 August 2018 and 31 July 2019 by obtaining a temporary humanitarian visa.¹⁴⁷ It benefitted around a third of the Venezuelan nationals thought to be residing in an irregular situation in Ecuador. One important factor was the cost of the programme, which was \$50 USD and as a result was widely accessible.¹⁴⁸

In October 2018, the Ministry of Foreign Affairs and Human Mobility, the Ministry of Interior and the Ministry of Economic and Social Inclusion signed a Protocol¹⁴⁹ setting the basis for coordinated whole-of-government and whole-of-society action in guaranteeing the protection of the rights and the determination of the

best interest of the child, including by operationalizing the prohibition on child immigration detention (see above).

The 2018 Protocol, in combination with a 2019 Ministerial agreement providing further clarity on certain aspects of it¹⁵⁰, set out clear guidelines for screening and referral through improved coordination and collaboration among State and non-state actors in providing assistance, protection, and placement in the community to unaccompanied children and to children and their families.¹⁵¹ The Ministry of Interior conducts a preliminary interview in order to identify protection needs and to refer the children, and their family if accompanied, to the Ministry of Economic and Social Inclusion. If there is an asylum claim, the Ministry of Foreign Affairs and Human Mobility initiates the asylum procedure. Unaccompanied children are immediately referred to the Public Prosecutor's Office, in charge of determining protection needs and ensuring their integration in the national care system.¹⁵²

Key strengths and main challenges

Ecuador's migration governance framework is an **outstanding example of system change towards ending immigration detention for all**. Over the past five years Ecuador has been governing migration without resorting to detention. **Regularisation processes and schemes in Ecuador have been effectively used** to prevent irregularity and further strengthen the migration governance system by giving **access to rights, services, and education, and overall ensure social cohesion**. The limited time frame of the 2019 amnesty for Venezuelans has left many in irregularity, however. According to national actors, there are plans for a new regularisation programme for Venezuelans in Ecuador.¹⁵³

Ecuador's articulation of the protection of migrant children, which includes the **prohibition on child immigration detention, stands out as a global example of not only legal framework but also detailed policy, practice, and whole-of-government approach**. The Protocol developed to coordinate action and operationalise the protection of migrant children has been welcomed and praised globally as an inspiration for other governments.¹⁵⁴ However, challenges remain regarding agility in collaboration and communication between different departments. The care system also has limited capacity and institutionalisation is the rule with **no adequate alternative care options**¹⁵⁵ - among other actors, UNICEF is supporting the government to address this. In order to address gaps and integrate learnings over the past four years, Ecuador is currently reviewing and updating the Protocol and related tools.¹⁵⁶

There are concerns that the 2021 reform of the Law on Human Mobility might **reopen the door to some residual use of detention** in order to enforce expulsion decisions.¹⁵⁷ The reform does not restate the use of detention per se but has **removed the explicit reference to non-detention for adults**.¹⁵⁸

Ecuador has the potential to **build on the lessons learnt over the last year and keep strengthening the current system** to prevent potential shift towards some use of immigration detention. **Case management models from other countries could serve as examples to support compliance and timely resolution of migratory cases without immigration detention**.

EGYPT

Detention overview

The Law of Entry and Residence of Aliens in the Territories of the United Arab Republic and their Departure Therefrom (Law No. 89 of 1960, amended by law No. 88 of 2005) is the main law governing immigration detention, arrest, and deportation in Egypt.¹⁵⁹ The law sets out that immigration detention can be both a criminal and an administrative measure. It also stipulates that anyone entering or exiting Egypt irregularly (Article 2) or at unauthorised ports (Article 3) may be imprisoned for up to six months or fined and deported as a criminal penalty (Article 41).¹⁶⁰ The law further states non-citizens may be administratively detained awaiting deportation for grounds relating to unauthorised entry, stay, or exit. However, sources report that administrative detention is more commonly used by authorities.¹⁶¹

According to observers, people seeking asylum, refugees, and migrants can be arbitrarily arrested and detained when they first enter the country or while residing in urban cities.¹⁶² While registered refugees are often released after a few weeks due to advocacy efforts from UNHCR with the government, those unregistered remain at risk of extended periods of detention, as the law does not stipulate the duration of administrative detention.¹⁶³

Egypt does not have dedicated immigration detention facilities, yet decree number 659 of 1986 stipulates that certain prisons should be used for the temporary custody of non-nationals awaiting deportation. Therefore, authorities make widespread use of prisons, police stations, and military camps for immigration detention, in which they are held alongside those convicted of criminal offences.¹⁶⁴ There is a general overcrowding and lack of adequate food and health care in some facilities, while in others detained children are not allowed to be outside, stand in the sun or see their families.¹⁶⁵

Developments in law and practice

While ATD is not enshrined in the Egyptian legal system, there are several positive practices that can be identified, particularly with regards to the reduction of child immigration detention. UNICEF and The National Council for Childhood and Motherhood (NCCM) work in partnership at the national level to strengthen the national child protection system and ensure inclusive child protection.¹⁶⁶

In 2020, the NCCM adopted Standard Operating Procedures (SOPs) to protect and assist children seeking asylum and child refugees.¹⁶⁷ The SOPs refer these children into protection systems as an ATD.¹⁶⁸ In particular, they create a pathway into alternatives including case management and service provision, instead of detention. The SOPs include procedures for identification and referral, according to which law enforcement officers immediately refer children to child protection authorities. They specify that "The goal of identifying child asylum-seekers, refugees and victims of migrant smuggling and trafficking in persons is to rapidly rescue them, respond in a timely manner to the risks that surround/ might surround them, and provide them with immediate assistance and protection."¹⁶⁹ After referral, child protection authorities are responsible for assessing the child's situation within 24 hours, ensuring medical care and coordinating actions with specified organisations including registration and placement.

In addition to the NCCM, NGOs and UN agencies play a "significant role" in the provision of alternative care arrangements in Egypt,¹⁷⁰ particularly for the most vulnerable unaccompanied asylum-seeking children.¹⁷¹ This includes a well-established practice of community hosting supported by international organisations, civil society and community organisations. Refugee Service providers offer a range of programmes to assist unaccompanied refugee and asylum-seeking children in Egypt, including community hosting

programmes (CHP). The CHP matches children in vulnerable situations with hosts from their own communities. Refugee Service providers identify potential host families through community outreach activities, conduct assessments of hosts, and provide training and material support, for both short or longer-term arrangements. Case managers support children to address their needs while they are being hosted and follow up with house visits to monitor the wellbeing of the child and the host. In 2019, the organisation in charge of this programme supported 32 community hosts who were hosting a total of 53 unaccompanied children and youth from 4 nationalities.¹⁷²

Similarly, UNHCR also provides caregiver or sponsorship programmes for unaccompanied children, which incorporates unaccompanied children into families from the same nationality or tribe in exchange for financial aid to the family¹⁷³.

Key strengths and main challenges

The SOPs are **a step in the right direction towards the provision of alternatives to detention** in Egypt, however, sources indicate that challenges remain due to the **delays in clearance by authorities, especially on the implementation of ATD in border areas**. Additionally, while the referral and coordination between the various actors is existent in Egypt, it still requires strengthening and enhancement. Sources have mentioned the **gap in information sharing, which would help coordinate efforts for better services to refugees and migrants**.

While the community hosting initiatives are a way to **prevent the detention of refugees, they should be further supported and strengthened through consistent funding and government-backed initiatives** to ensure their long term provision and sustainability, as well as their expansion.

GEORGIA

Detention overview

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'. This provides that people who are non-citizens of Georgia can be detained in detention centres or 'temporary placement centres' for the purposes of their deportation, until such time as a decision has been made on whether they will be removed.¹⁷⁴ People who are non-nationals and who do not hold a valid visa can also be detained if:

- > 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;
- > It is required to enforce a removal order; and it is necessary to ensure the person attends their court hearing.¹⁷⁵

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.¹⁷⁶

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 in front of a court where a decision on their transfer to a temporary accommodation centre will be made.¹⁷⁷ Once placed at the temporary accommodation centre, an individual can be held for a period of no more than three months.¹⁷⁸ However, a court may allow for a prolongation of this decision for an additional six months. If the person has not been deported by the end of this time frame then they must be released.¹⁷⁹

The Aliens Act does not expressly prohibit detention of children, but according to the legislation 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."¹⁸⁰ Instead, the authorities should refer such children to the child protection authorities and appoint them with a guardian/caregiver.

The Migration Department of the Ministry of Internal Affairs manages the 'Temporary Accommodation Centre', based in Tbilisi, which is the only immigration detention facility in Georgia.¹⁸¹ As of 2018, there were 18 people detained there.¹⁸² The average length of detention of these people was between 1.5 and 2 months.¹⁸³

Developments in law and practice

ATD are explicitly provided in law.¹⁸⁴ The maximum period that a person can be placed in an alternative measure is three months, and these alternatives include: regular reporting at a police station (the frequency not to exceed twice a week); provision of a guarantor (who must be a citizen of Georgia), or a bank guarantee of at least GEL 1000, or a certificate of regular income; or bail, with the maximum bail amount being GEL 2000.¹⁸⁵

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.¹⁸⁶ The state also declared that persons who were legally residing within 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.¹⁸⁷ Once flight restrictions were lifted, these measures ended.¹⁸⁸ 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.

Key strengths and main challenges

Despite Georgia being a country of origin, transit and destination, **immigration detention is not used widely**, as is seen from the **limited immigration detention infrastructure and the low numbers of people detained**. The time limits prescribed by law on the use of immigration detention as well as the requirement for judicial approval when detention periods are extended are likely contributory factors. However, **concerns exist that immigration detention is being expanded in Georgia at the insistence of the EU**. Georgia's Temporary Accommodation Centre was opened following a condition set out in the EU-Georgia 'Action Plan on Visa Liberation' that Georgia provides "adequate infrastructure (including detention centres" to ensure "effective expulsion of illegally staying and/or transiting third country nationals."¹⁸⁹

Although ATD are prescribed in the Aliens Act, they appear to be significantly under-utilised.

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 4 benefited from alternative measures; in 2019, 88 non-citizens were detained and alternatives were applied in just one case.¹⁹⁰

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 ATD training that was hosted by International Detention Coalition and IOM Georgia.¹⁹¹

GREECE

Detention overview

In Greece, over recent years detention of migrants has effectively become the rule rather than a measure of last resort.

Greek law 4686/2020, which amended the International Protection Act (IPA), reversed the previous stipulation that immigration detention must only be applied on an exceptional basis, as a measure of last resort, and on the condition that alternatives to detention cannot be applied to the specific case. It establishes administrative detention as the rule for any third country national subject to return procedures "in order to prepare the return and carry out the removal process."¹⁹² According to this amendment, other less coercive measures are only applied where there is no risk of absconding and where the authorities do not believe the individual to be obstructing the removal process. This law also widened the scope for detention of people seeking asylum and lowered procedural guarantees for those who are detained. According to the IPA, people seeking asylum may be detained on a number of grounds, including:

- a) In order to determine or verify his or her identity or nationality of origin;
- b) In order to determine those elements on which the application for international protection is based which could not be obtained in the absence of detention, in particular when there is a risk of absconding of the applicant;
- c) When there is a risk of national security or public order;
- d) When there is a significant risk of absconding and in order to ensure the implementation of the transfer procedure in accordance with the Dublin Regulation;
- e) In order to decide on the applicant's right to enter the territory.

The IPA set the maximum time limits for the detention of people seeking asylum at an initial period of 50 days, extendable up to a maximum of 18 months. However, this does not include any detention period for the purpose of removal, so in reality individuals can be detained for up to 36 months (18 months while in the asylum procedure and 18 months for the purpose of removal). According to the IPA, people seeking asylum should not be detained for the sole reason of seeking international protection or having entered and/or stayed in the country irregularly. However, the IPA allows for the detention of people seeking asylum who have already applied for asylum while free. In addition, a person seeking asylum may remain in detention if they are already detained for the purpose of removal when an application for international protection is made.

As a result of legislative changes, in 2020 UNHCR expressed their concern regarding this system due to "the combination of reduced procedural safeguards with provisions related to the detention of people seeking asylum and to the detention of those under forced return procedures."¹⁹³

There are currently nine pre-removal detention centres in Greece, and a significant number of people are also detained in police stations.¹⁹⁴ Greece has been one of the European locations implementing the controversial "hotspot" approach, which involves keeping people in reception facilities located on islands. Initially envisaged as a mechanism to manage arrivals and facilitate relocation, the hotspot approach has been heavily criticised by civil society and NGOs for creating *de facto* detention spaces.¹⁹⁵

Developments in law and practice

Since 2019, HumanRights360 - a civil society organisation operating in Greece with the mission to "protect and empower the rights of all" with a special focus on the most disadvantaged and vulnerable populations - has been implementing a community-based ATD pilot in Greece. This is the first case management-based ATD being undertaken in the country, and through the pilot HumanRights360 has been constructively engaging with both municipal and national authorities to promote a shift away from detention as the default option. They are also working to highlight the importance of individualised assessments before imposing detention, and to ensure respect for current legal frameworks. By placing and supporting individuals and families in the community while they navigate the migration process, the pilot also aims to ensure that people are able to effectively engage with these processes as well as improve social cohesion.¹⁹⁶

Through their holistic approach to case management, HumanRights360 specifically targets migrants with irregular status and those at risk of becoming irregular. Case managers link people to legal, psychosocial, and other key support services, as well as helping to ensure that people's basic needs are met.

In 2020, the Greek authorities launched a National Tracing and Protection Mechanism for unaccompanied children.¹⁹⁷ The Mechanism provides children with material and psychosocial support, interpretation, safe accompaniment when outside the accommodation, support and information. They also receive specialised services and further support until they are transferred to long-term accommodation, based on a formal assessment of their needs, background and options available in Greece.

The Mechanism includes a 24/7 telephone hotline for identifying and tracing children in need, which is available in six languages and provides guidance to unaccompanied minors (UAMs), citizens, local and public authorities on steps and actions to be taken from the point of identification of a UAM until the child's timely inclusion in emergency accommodation. It is run by the Special Secretary for the Protection of Unaccompanied Minors with support from UNHCR experts. Arsis, METAdrasi and the Network for Children's Rights who oversee mobile field units, day centres, information desks and case management; IOM provides emergency accommodation.¹⁹⁸

Key strengths and main challenges

According to the Greek Council for Refugees, "**alternatives to detention are systematically neither examined nor applied in practice**" in Greece.¹⁹⁹ UNHCR, meanwhile, has stated that "there is **no consideration of alternative measures to detention**" and that there is an "inadequate individual assessment of the appropriateness of the measure of detention."²⁰⁰ This includes in cases where removal is not possible.²⁰¹

There has been no proactive engagement on the part of the Greek government with the pilot being implemented by HumanRights360, though there has been **some positive outreach made to the Athens police** and other authorities, with whom HumanRights360 has established and maintained close communication and collaboration regarding individual cases.²⁰²

Whilst the establishment of the National Tracing and Protection Mechanism is potentially positive, it is still unclear how effective it has been. Concerns exist that it **lacks capacity and is under-resourced**. Moreover, its introduction does not address the fact that Greece does not have a guardianship system in place which represents a key gap in the national child protection system.²⁰³

The overall situation in Greece when it comes to immigration detention remains incredibly concerning. **Arbitrary detention is widespread**, and despite an obligation in law for each detention decision to contain a factual and legal justification, in practice this is not the case. There are also huge gaps in access to rights and services.²⁰⁴ **People arriving in Greece continue to be subject to *de facto*, unlawful detention** - including in EU-funded closed camps.²⁰⁵

GUATEMALA

Detention overview

In Guatemala, provisions from the 2016 Migration Law (Código de Migración)²⁰⁶ and its 2019 Regulation (Reglamento General del Código de Migración)²⁰⁷ are the basis for a system in which, in practice, immigration detention is used systematically. The vagueness and lack of clarity in the legislation, allows for the use of detention to be discretionary, with no maximum time limit established, nor specific procedural guarantees or protection from arbitrary detention.²⁰⁸ The general clauses in the 1985 Guatemalan Constitution are the only safeguards applicable to those subject to deprivation of liberty for migration related purposes.²⁰⁹

Under a highly securitised approach, the Migration Law establishes that the National Police may detain individuals without valid documents at any of the migration posts/border reception centres upon entry for the purposes of rejection²¹⁰, or for the purpose of removal.²¹¹

Besides in the above provisions, the Guatemalan legal framework uses euphemistic language to refer to what in practice is administrative detention, using the terms "abrigo y cuidado temporal" (shelter and temporary care) instead. Provisions related to this are scattered in legal, regulatory and procedural documents. Title IV of the Migration Law Regulation provides the framework for the development of designated migratory centres (Centros de Atención Migratoria) meant to provide "shelter and temporary care" for migrants. More specifically, article 93 of the Regulation regulates the set up of a designated centre for migrants (Centro de Atención Migratoria Para Migrantes Extranjeros (CAMIEX), in which individuals are placed while their migratory status determination procedure is ongoing.²¹² Currently only one CAMIEX is operating in Guatemala. Located in the "Zona 5" of Guatemala City, it has been functioning as an immigration detention centre since 2007.

According to statistics published by the Guatemalan Institute of Migration (Instituto Guatemalteco de Migración), 1432 people were detained for migration-related purposes over 2021, and 1319 in 2020.²¹³ While the official number of migrants detained annually has been rising during the past few years, figures are comparatively low considering the migratory and political pressures faced by Guatemala.²¹⁴

During 2019, Guatemala's response to growing numbers of migrants crossing the border and seeking transit to the US, prompted by the political pressure from Mexico and the US, focused on push backs, violence at the border,²¹⁵ and massive expulsions to discourage entry, with detention numbers growing to over 5000 that year.²¹⁶

Regarding migrant children, the Migration Law provides that, as a general rule, unaccompanied children have the right not to be deprived of their liberty.²¹⁷

Developments in law and practice

The legal framework in Guatemala provides for non-deprivation of liberty of unaccompanied migrant children, as a general rule. Instead, children should be referred to a multidisciplinary care system for migrant children with specialised personnel.²¹⁸ The 2016 Migration Law provides for non-custodial and community-based alternatives to detention by stating that the Secretariat for Social Wellbeing (Secretaría de Bienestar Social) will implement programs for the protection of migrant children prioritising: a) foster care with a relative located within the country that can guarantee their safeguard; b) temporary foster care; or c) other forms of open accommodation, aimed at protecting children and the family. Exceptionally, and for the shortest possible time, children and adolescents may be housed under the modality of residential

shelter.²¹⁹

In December 2021, a specialised unit (Unidad Especializada de Atención y Protección de la Niñez Migrante) was set up, following provisions in the 2019 Regulation.²²⁰ This unit is tasked with ensuring adequate care and protection of migrant children by providing child-friendly case management, best interest determination, identification of needs, placement decisions, and ensuring coordination and collaboration between relevant governmental departments, particularly the National Child Protection Authority and the Secretariat for Social Wellbeing.²²¹

Over the past few years, Guatemala has seen an increase of Guatemalan Children being deported back from the United States of America and Mexico. This has prompted the government to prioritise the development of several programmes and protocols for unaccompanied Guatemalan children returning.²²² Two shelters, Casa Nuestras Raíces Quetzaltenango and Casa Nuestras Raíces Guatemala, provide accommodation and specialised assistance to Guatemalan children returned.²²³ Quédate, a programme running since 2016, aims at supporting children to further integrate into the community while accessing education, and the labour market.²²⁴

In 2017, the National Protocol for the Reception and Attention of Migrant Children was approved, setting a solid basis for gathering learnings and strengthening the care system for migrant children. The Protocol provides guidance on cooperation between government agencies, collaboration with non-State actors, consideration of multi-ethnicity factors in all programmes, and training on child-sensitive procedures, family reunification and reintegration for specialised case managers.²²⁵

Key strengths and main challenges

Despite the current legal framework setting the foundation for **a system in which immigration detention is used systematically**, numbers in detention are comparatively low (see section on detention framework). Considering changes into the Migratory Law and its Regulation, by **looking into examples of legal frameworks that provide for alternatives to detention** in countries with similar migration contexts, could be **a way for Guatemala to start reducing the use of immigration detention** and allocating resources into alternatives.

The **2017 National Protocol for the Reception and Attention of Migrant Children** and the programs for protection of unaccompanied Guatemalan children deported from Mexico and the US, have helped in **developing and strengthening a system that guarantees non-deprivation of liberty for unaccompanied migrant children**, as provided by the 2016 Migration Law. According to organisations on the ground, some unaccompanied children from other Central American countries have benefited from the infrastructure created for Guatemalan migrant children.²²⁶ However, **capacity in terms of resources, personnel, and placement options is limited** considering the number of unaccompanied migrant children in Guatemala, leaving many in extreme situations of vulnerability.²²⁷

With the right amount of financial and human resources allocated to expanding the care system for migrant children, Guatemala could **extend protection to all unaccompanied migrant children**. The **recently established specialised unit (Unidad Especializada de Atención y Protección de la Niñez Migrante) is a commendable step**. Also, some of the non-custodial alternatives listed in article 173 of the Migration Law could provide a good basis to look into adequate alternative care options and **move away from the currently institutionalised care system for unaccompanied migrant children**.²²⁸

HONG KONG

Detention overview

As set forth in Hong Kong's Immigration Ordinance, immigration authorities can detain any person who has breached or is suspected to have breached immigration laws. This can include people seeking asylum, migrant workers and any other individuals with irregular status. Hong Kong has not ratified the 1951 Refugee Convention, and therefore the government maintains the position that those seeking asylum are "illegal immigrants."²²⁹ The Immigration Department can detain a person in an immigration detention facility for a number of 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.²³⁰ While the government's 2018 Action Plan on Trafficking in Persons provides for immunity from prosecution for trafficking survivors,²³¹ they may still be detained for immigration offences committed during the trafficking process if they are not officially recognised as trafficking survivors. Only three out of 6,912 screened individuals were recognised as trafficking survivors in 2020.²³²

Failure to produce proof of identity, presenting false information or forged travel documents, unlawful entry into Hong Kong, overstaying an entry permit, breach of conditions of stay, and unauthorised employment are all considered criminal offences under the Immigration Ordinance, and those found guilty of these offences could serve a criminal sentence in prison.²³³

Refugees, people seeking asylum and migrant workers are vulnerable to detention as they are more likely to breach the immigration law due to their precarious social and economic situations. People seeking asylum in particular are more prone to be detained, as the law²³⁴ does not allow them to lodge their non-refoulement claims until they overstay their visa; this is an immigration offence, for which they are subject to removal.²³⁵

Hong Kong 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 also the city's first "smart prison," which has raised a number of human rights concerns regarding its treatment of detainees since it was opened.²³⁶ There are a number of other types of facilities used to detain people for immigration related purposes in Hong Kong. This includes over 100 locations at prisons, police stations, detention rooms at ports of entry and other border control points, as well as some custodial wards of hospitals.²³⁷ The latest data shows that there were 271 detainees in CIC as of July 2021, 43 at MTKDC as of December 2020, and 67 at TTGCI as of September 2021.²³⁸ The number of people detained for immigration related reasons in other types of facilities is unknown.

Developments in law and practice

Hong Kong allows those seeking international protection to make a non-refoulement claim through the Unified Screening Mechanism (USM). The Unified Screening Mechanism, which was launched in 2014, allows for the release of applicants and their referral to an ATD programme funded by the government and implemented by an NGO, the International Social Service Hong Kong (ISS-HK). Non-refoulement claimants who enter this programme are provided with case management support and humanitarian assistance, including housing, transport allowance and food.²³⁹

In February 2022, amidst the fifth wave of Covid-19 outbreak, ISS-HK adjusted its relevant service delivery and moved most service provision online.²⁴⁰ Such changes, coupled with panic buying/stockpiling at

supermarkets, left refugees and non-refoulement claimants in dire humanitarian situations.²⁴¹

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 people in vulnerable situations. This includes pregnant women with no clear prospect of imminent removal, young people under the age of 18, elderly people requiring close supervision or medical care, people with serious medical or mental-health conditions, people who are physically disabled and require constant nursing care, or where there is satisfactory evidence that the detainee has been tortured.²⁴²

Key strengths and main challenges

Hong Kong's Detention Policy is a **rare and promising example in the Asia Pacific region that explicitly provides for non-detention of specific groups on the grounds of vulnerability**. However, reportedly the **implementation of this policy is weak**, and the Immigration Department can still detain anyone in these vulnerable groups as there is no robust screening mechanism in place.²⁴³

Hong Kong's USM, meanwhile, has been **considered a notable example of a government-led refugee screening mechanism where the State in question is not a signatory of the Refugee Convention**.²⁴⁴ Their ATD programme, which is government-funded but NGO-led, is a **promising example of government and civil society collaboration in carrying out ATD**. However, the USM in itself does not prevent all instances of immigration detention and **non-refoulement applicants can still be detained upon application as overstayers under the Immigration Ordinance**. In addition, non-refoulement claimants have **no right to work in Hong Kong** and the level of assistance provided under the programme **reportedly does not provide protection claimants with an adequate standard of living** while waiting for the result of their non-refoulement claims.²⁴⁵ Nor is there a **specific law or policy providing for access to healthcare** for non-refoulement claimants. In reality, many non-refoulement claimants seek informal employment for livelihood which will then put them at risk of detention for violating immigration regulations.²⁴⁶

INDIA

Detention overview

Three key national laws govern the management of non-citizens present in India: 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 and do not recognise refugees as needing specific protection. Any non-citizen without documentation can be charged, convicted, and detained under Indian law. This can include people seeking asylum, refugees and trafficking survivors, 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”,²⁴⁷ some young children are still placed in jails and prisons with their family as their adult family members are tried. Detention for immigration-related reasons can be both custodial²⁴⁸ and administrative,²⁴⁹ as immigration violations are treated as criminal offences. Often immigration detainees are kept in correctional facilities to ensure that they appear for trial while administrative detention is used as a measure to hold irregular migrants prior to their removal.²⁵⁰

As of 2016, approximately 1% of people seeking asylum who entered 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.²⁵¹ For refugees, in particular, Section 3(2)(e) of the Foreigners Act, 1946 has been used as a means to restrict their freedom – the provision provides various means of restricting mobility including residence requirements and furnishing proof of identity – however, the same has been narrowly interpreted to restrict their freedom of movement within a cell in a detention centre.

In 2017, an executive order was issued by the government, directing all enforcement authorities across the country to detect, detain, and deport refugees from Rakhine State of Myanmar.²⁵² Between 2018 and 2019, the government implemented the National Register for Citizenship (NRC) policy in the State of Assam which aims to document legal citizens of India and identify, detain and deport so-called “illegal migrants”.²⁵³ In 2019, the government released the final list of the NRC, which excluded nearly 2 million people living in Assam state.²⁵⁴ Since then, there have been multiple media reports of the authorities setting up detention centres and people being detained as a result of being excluded from the NRC.²⁵⁵

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.²⁵⁶ This is despite the Central government order in May 2012, stating that where those apprehended are survivors of trafficking, they should not be prosecuted under provisions of the Foreigners Act and where a charge sheet has been filed, it must be withdrawn.²⁵⁷ There are reports of Bangladeshi trafficking survivors staying in shelters in India for up to six years waiting for the repatriation order²⁵⁸ despite the existence of a 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.²⁵⁹ This is due to the lengthy and complex approval system and lack of understanding of relevant actors on RRRI Standard Operating Procedures.

Indian law does not specifically mention alternatives to immigration detention but the Foreigners Act of 1946 provides that the foreigners could enter into a bond with or without sureties. 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. However, in practice this section has been more often narrowly interpreted, particularly for refugees, and has been

used to restrict their freedom of movement in detention rather than being interpreted as conditions while residing in the community. 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 administrative detainees.

Developments in law and practice

The government in 2015 made a decision to allow religious minorities from Afghanistan, Bangladesh and Pakistan who entered India before 31 December 2014 to apply for Long Term Visas (LTV).²⁶⁰ This change in LTV policy provides a pathway to regularisation for certain groups of people with irregular migration status staying in the country.²⁶¹ Once granted, they are entitled to seek employment or study in any academic institution in India.

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.²⁶² CAA is currently being contested for its constitutionality at the Supreme Court with a pending decision.²⁶³

Key strengths and main challenges

India has a long history of receiving a significant number of refugees and people seeking asylum coming from countries within the region, **without relying on immigration detention**. India 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.²⁶⁴ As of 2019, Sri Lankan refugees are largely hosted in 107 open 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.²⁶⁵

However **in recent years, India has taken some concerning steps**, including the National Register of Citizenship in the State of Assam which has exposed 1.9 million residents of Assam to a **risk of detention and deportation as well as continuing reports of detention and deportation of Rohingya refugees in India**, which is a clear violation of the non-refoulement principle.

Additionally, **migrant workers from neighbouring countries continue to be detained in jails and prisons for violating immigration regulations**,²⁶⁶ though the total number of migrant population in custody across India is unknown.

While the change in the LTV Policy for religious minorities from Afghanistan, Bangladesh and Pakistan **opened a door for a certain group of undocumented migrants and refugees to legalise their status** in India, **its issuance is reportedly arbitrary and restricted in practice**.²⁶⁷

INDONESIA

Detention overview

Under Indonesia's Law. No. 6 2011 on Immigration, all people entering and remaining in Indonesia without valid travel documents and a visa are committing an offence punishable with a maximum of 5 years prison and a fine of RP500 million.²⁶⁸ Detention is then permissible until deportation is carried out, and where a person cannot be deported, they can be detained for up to a maximum of 10 years without judicial review.²⁶⁹ All people who violate immigration laws can be subject to immigration detention, although refugees and asylum seekers have, since 2018, been largely exempt from immigration detention (see further below).

There are 13 immigration detention centres in Indonesia, with a maximum capacity of 1,700.²⁷⁰ As at the end of February 2022, there were 13 men registered with UNHCR in immigration detention in Indonesia, and no women or children.²⁷¹

Developments in law and practice

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.²⁷² Although the law requires refugees to regularly report to the nearest immigration detention centre, this is not enforced in practice.²⁷³ Shelters consist of a number of housing options provided by 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 9 locations in Indonesia. In addition to housing, families are also provided with cash support.²⁷⁴ 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.

Indonesia has effectively ceased the immigration detention of children. The numbers of refugees and people seeking asylum in immigration detention has also been very low, since the issuance of the 2018 Circular Note of the Directorate General of Immigration-Ministry of Law and Human Rights on Restoring the Function of Immigration Detention Centres.²⁷⁵ At the same time, Australian government funding in Indonesia was reduced, leading to shifts in the country's approaches to refugees and people seeking asylum.²⁷⁶

There is also 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.²⁷⁷

In response to the arrival of Rohingya refugees to Aceh, a local task force was set up to manage emergency response, in coordination with UNHCR, IOM and Indonesian organisations providing funding and materials.²⁷⁸ While there is currently no official 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 8 refugee-hosting cities they will be transferred to to receive sustainable accommodation and support.

Key strengths and main challenges

With the mass release of refugees and people seeking asylum from immigration detention in 2018 following the 2018 Circular Note (see above), **Indonesia has made significant progress towards ending the immigration detention of refugees and people seeking asylum.** However it is unclear if - and the extent to which - immigration detention is used for irregular migrants, including children, as this data is not publicly available.

Additionally, small numbers of refugees and people seeking asylum remain in detention. Immigration authorities have occasionally conducted **inspections on refugees and asylum seekers to check for infractions of laws, local regulations, and accommodation centre rules**, in turn leading to stress and uncertainty among these groups.²⁷⁹ This has also occasionally resulted in **short-term detention** from a few days to a few weeks, and sometimes longer.²⁸⁰ Refugees can be **detained for working**, which is prohibited under Indonesian law. There have also been cases of **people seeking asylum being detained at Jakarta airport's international zone.**

ATD in Indonesia, particularly housing options run by IOM, have faced a number of **criticisms for their restrictions on liberty and freedom of movement.** Refugees in ATD must sign a declaration in which they agree to comply with Indonesian laws and report regularly to authorities. IOM community housing and support provided to refugees has also been a source of tension and resentment among host communities.²⁸¹ As a condition of 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.**²⁸² When it comes to the shelters for unaccompanied and separated children, conditions are reportedly not ideal for children and insufficient support is provided.

ITALY

Detention overview

Italy is a major country of first arrival in Europe, and has a large immigration detention system. In 2020, over 4,000 people were detained in pre-removal detention centres (Centri di Permanenza per il Rimpatrio, CPRs).²⁸³

As far as pre-removal detention is concerned, detention of non-citizens is outlined within the Immigration Act, which was most recently amended in 2020. The Immigration Act provides for the use of pre-removal detention, under a number of grounds. With respect to people seeking asylum, whilst legislation does not allow for detention solely to examine their application, it can be carried out if:

- > The individual falls under the exclusion clause under Article 1F of the Geneva Refugee Convention;
- > The individual has lodged a subsequent application for international protection;
- > They are issued with an expulsion order on account of their constituting a danger to public order or state security, are suspected of being affiliated with a mafia-related organisation, have conducted or financed terrorist activities, have cooperated in selling or smuggling weapons, or have habitually conducted any form of criminal activity, including with the intention of committing acts of terrorism;
- > May represent a threat to public order or security;
- > Pose a risk of absconding; or
- > In order to determine or verify their identity or nationality.

Italy makes use of the 'hotspot' approach, whereby people can be detained for up to 30 days. This in itself risks violating the provision - laid out in law - that people seeking asylum cannot be detained for the sole purpose of examining their asylum application.²⁸⁴

Italy also criminalises irregular entry and stay, which is punished with a €5,000 - 10,000 fine and expulsion. In addition, the Immigration Act sets out a punishment of 1 year of imprisonment and a €2,000 fine for migrants who do not present their passport or residence permit to the authorities on request.

There are currently ten Pre-Removal Detention Centres (CPRs) and four hotspots operating in Italy, with a capacity of around 700 people.²⁸⁵ For the purposes of removal, non-citizens can be detained for 3 months extendable up to 4 months if the detainee is a national of a country with which Italy has signed any repatriation agreements, whilst people seeking asylum can be detained for a maximum of 12 months. Unaccompanied children cannot be detained by law, but children can be detained with their families in hotspots.

Alternatives to detention were introduced in the 2011 amendment to the Immigration Act, transposing the EU Returns Directive and setting out the following non-custodial measures:

- > Relinquishing passport or an equivalent document;
- > Obligation to reside at a previously identified location; and
- > Reporting obligations.

However, these measures may be applied only with respect to migrants who have their passport or other equivalent documentation, which makes them inaccessible for many people.

Developments in law and practice

In 2019, the Italian Coalition for Civil Liberties and Rights (CILD) and Progetto Diritti established a pilot Alternative to Detention project. The pilot provides holistic case management to migrants at risk of detention with the aim to promote the wellbeing and social inclusion of undocumented migrants. Beneficiaries include individuals from diverse backgrounds who face different types of barriers towards resolving their migration status. By linking practical implementation with advocacy and monitoring of immigration detention centres, the pilot benefits from the reach and diversity of expertise within CILD's civil society coalition and of Progetto Diritti's 30 years of case work experience. The pilot aims to support migrants to resolve their cases while strengthening national evidence and increasing ATD practice among civil society and community organisations in Italy.²⁸⁶

The evidence gathered through case management has been crucial in strengthening advocacy on ATD with both institutional and civil society stakeholders. The pilot project has established a wide network of allies, and to date almost three quarters of beneficiaries have resolved their cases.

The "Channels of Solidarity" initiative was launched in Turin in 2020 as a joint initiative led by the organisation Mosaico and a specialist legal team ("Kriol").²⁸⁷ It was intended to support vulnerable communities affected by the COVID-19 pandemic, and gradually evolved into an investigative pilot on alternatives to detention. The project works with people at risk of immigration detention in order to provide them with holistic support.

A particular strength of the programme is the close collaboration between Mosaico, a refugee-led organisation, and the legal team at Kriol. This has allowed for a multi-pronged strategy that ensures migrants in vulnerable situations have access to case management support and legal assistance, and allows the organisations to advocate with local and national authorities for a reduction in the use of immigration detention. Moreover, the commitment of Mosaico to ensuring a refugee-led approach has meant that migrants involved in the project are themselves active participants and leaders in its design and conception; this approach increases people's agency, independence and autonomy.

Key strengths and main challenges

Despite criticism that immigration detention in Italy is inhumane, ineffective and costly - and despite existing legislation that specifies detention as a measure of last resort that is only legitimate if return can be achieved - there is **no evidence that the national government is attempting to increase the use of alternative measures**, and indeed a number of sources suggest that cases are rarely examined on an individualised basis in order to establish whether detention is appropriate and/or whether an alternative can be used.²⁸⁸

Moreover, the Italian government has to date **failed to engage with efforts** - such as those outlined above - **to promote rights-based ATD based on the principles of case management and support in the community**. While ATD pilots have attracted attention from institutional stakeholders such as the Municipality of Milan, limited human and financial resources have prevented more concrete collaboration. Such pilots therefore remain small in scale and their sustainability is challenged due to a lack of government support. **Challenges in implementing the pilots are also linked to the outdated legislative framework in Italy**, which would need to be reformed in order to make the immigration system more coherent, as well as a discriminatory institutional environment, which represents an additional barrier towards case resolution for people from third countries.²⁸⁹

JAPAN

Detention overview

The Immigration Control and Refugee Recognition Act (ICRRA) provides that if an immigration control officer has reasonable grounds to believe that a foreign national falls under 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. ICRRA allows immigration officers to make detention decisions at their discretion. Regardless, the Immigration Services Agency (ISA) in practice applies the principle of “Zenken-Shuyo Shugi” (detention as a default measure, translates into “detention of all violators”). This means all foreigners facing deportation can be detained in practice with provisional release being an exceptional measure. 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 trends in Japan.

Minors, though legally subject to administrative detention, are generally not detained in practice; however, their parents can still be detained regardless. Children who are separated from their parents or guardians are typically referred to child welfare facilities.

Japan is one of few Asian countries that has ratified the 1951 Conventions relating to the Status of Refugees and 1967 Protocol relating to the Status of Refugees. However, asylum seekers are often detained at a port of entry as well as during refugee recognition procedures. If an individual requests asylum at a port of entry, they may be detained while waiting for a Landing Permission for Temporary Refuge.

Developments in law and practice

Forum for Refugees Japan (FRJ), a network of NGOs supporting refugees and people seeking asylum, entered into a Memorandum of Understanding with the Ministry of Justice and Japan Federal Bar Association 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 eligible for one of the alternative measures, to FRJ instead of sending them to detention facilities so that FRJ can provide emergency shelter, secure appropriate accommodation, provide case management support, and facilitate further referral for legal assistance and other services. People seeking asylum already in the detention facilities can also be referred to FRJ. The pilot stage of the programme ended in 2014 and has since been formally implemented.

In addition to this programme, the ICRRA provides for four alternative measures that can be applied in lieu of detention:

- > Asylum seekers who are granted Landing Permission for Temporary Refuge at the port of entry are allowed to reside in the community with some restrictions.
- > When a foreign national without a residence permit applies for refugee status, the Minister of Justice may issue a Permission for Provisional Stay with restrictions and an obligation to comply with summons. 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.
- > Those who are already in detention can apply for provisional release. The decision for granting provisional release is made by the director of the immigration detention facility or a supervising immigration inspector and the detainee is required to pay a surety not exceeding three million yen and provide a letter of guarantee submitted by a person other than the detainee.

- > 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.

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.²⁹⁰ 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 2021.²⁹¹ 3,013 people detained in immigration detention were granted provisional release in 2020. This was more than a 300% increase from 2019.²⁹²

Key strengths and main challenges

The ATD programme implemented by MOJ, FRJ and JFBA has **proven that early intervention with case management support makes a positive difference to participants' wellbeing, addresses their particular needs and vulnerabilities, and supports them to productively engage in asylum and migration processes**. In turn, this leads to better engagement with the authorities and results in **improved and timely case resolution**.

However, **the funding needs for the programme have not been sufficiently met by the government** and the number of cases referred by the Ministry over the years has remained minimal. Only 42 people have entered this programme between 2011 and 2020.

ICRRA provides for **various alternative measures that can be used at the discretion of enforcement officers**. Despite this legal ground to utilise ATD, Japan has been **using ATD in a very restrictive manner and only as an exceptional measure** rather than a default consideration.

During COVID-19 pandemic, Japan **increased the use of provisional release exponentially**. Such developments demonstrate that ATD can be implemented on a large scale and in a relatively short timeframe. Civil society organisations have said that the people released were not provided with any assistance to enable them to reside safely and securely in the community. **No financial support was provided while those on provisional release have no right to work which left them in destitution**. Despite the already existing community-based ATD programme which has been underfunded and under-utilised, Japan **continues opting for a measure centred on enforcement and monitoring**.

JORDAN

Detention overview

Jordan has received a large number of refugees fleeing neighbouring countries, including Palestinians, Iraqis and Syrians fleeing conflicts in their countries.²⁹³ Grounds for immigration detention are framed in Jordanian law as punitive measures rather than as administrative proceedings, which penalise immigration violations with fines and prison sentences; as a result, immigration detention is often arbitrary in nature.²⁹⁴

The Jordanian National law No. 24 of 1973 on Residence and Foreigners' Affairs is one of the two main laws governing immigration detention in Jordan.²⁹⁵ The law provides that any person entering or exiting Jordan irregularly or through unauthorised ports of entry or exit shall be liable to a term of imprisonment up to six months, a fine between 10 and 50 dinars, or to both penalties.²⁹⁶ The Crime Prevention Law of 1954 is another key pillar in immigration detention, as it allows the authorities to detain individuals for deportation if they have sufficient reason to believe that they committed a crime or plan to commit a crime. This puts people who cannot be returned to their countries at risk of indefinite detention.²⁹⁷ The law also provides authorities with full discretion to set bail and accept or reject guarantors, which results in a lack of transparency and consistency in the decision-making process, leaving many immigrants vulnerable to arbitrary detention.

The Kafala sponsorship system – which is widely used in the region as a means to regulate foreign labour – is codified in Law No. 24. The system binds migrant workers to their employers and denies them basic labour rights, such as job mobility.²⁹⁸ Migrant workers are regularly detained if their employers report to authorities that they left their jobs or if they are without legal work or residency permits. Migrant workers may fall into irregular status when their employers neglect or refuse to renew their annual residence permits, which puts them at risk of exploitation and detention. Additionally, people may be detained for longer periods for being unable to pay fines incurred for overstaying visas.²⁹⁹

As of 2022, Jordan hosts a total of 760,063 registered asylum seekers and refugees, including 355,698 refugee children, 30,127 of whom are considered at risk, while 2,171 are unaccompanied or separated.³⁰⁰

Developments in law and practice

Over recent years, Jordan has made significant efforts to strengthen its child protection system. A key feature of the government's approach is that it does not discriminate between children based on nationality or identity; instead, vulnerability is used as the fundamental criteria for defining prevention and response.³⁰¹ As such, refugee and migrant children benefit from child protection mechanisms and services alongside Jordanian children. While the arrival of a large number of Syrian refugees to the country impacted government services, it also provided an impetus for systemising and further developing child protection mechanisms, with UN agencies and INGOs providing significant funding and expertise.³⁰²

There are a number of alternative care arrangements for unaccompanied and separated refugee children set out in policies in Jordan.³⁰³ One example is a foster care programme for unaccompanied children which was initially developed from an informal practice within refugee camps. More recently, NGOs have started matching children with families from an established pool of those who were interested and qualified, and UNHCR supervises care arrangements.³⁰⁴ In 2015, in order to formalise and sustain these arrangements, procedures were put in place by NGOs and authorities through the development of SOPs which also include the role of case managers, Ministry of Social Development, Best Interests Determination (BID) Panels and Juvenile Courts.³⁰⁵

In 2016, members of the Child Protection Sub-Working Group (chaired by UNHCR and UNICEF) promoted efforts to strengthen data management information systems across organisations working on refugee child protection, and released SOPs for BID of refugee children in Jordan.³⁰⁶ These “helped to establish functional BID panels throughout the country,” comprising members of the Government of Jordan, UN agencies and NGOs.³⁰⁷ While BID panels for children were previously held between non-governmental actors, the Jordanian authorities are playing an increasingly active and now key role in these panels.³⁰⁸

Key strengths and main challenges

In its approach to child protection, Jordan illustrates a positive model for **enhanced cooperation between different stakeholders**, which builds ownership and sustainability as well as strengthening existing national child protection systems. The above-mentioned developments, including the SOPs, have led to **increased interest and understanding among actors, with more clarity around roles and standardisation of tools and procedures**. The authorities are **increasingly involved in case management, multi-sectoral work and case conferencing**, which now regularly takes place in refugee camps.³⁰⁹

However, the practical implementation of the child protection system in Jordan continues to face challenges, including **resource and social workforce limitations**. However, according to sources, **the basic principle that all children in Jordan benefit from protection under the law, regardless of nationality or migration status, is shared across government departments in Jordan**.³¹⁰

KAZAKHSTAN

Detention overview

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”.³¹¹ The Law of the Republic of Kazakhstan on Migration of Population³¹² enables the detention of people 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.³¹³ The Decree on Legal Status of Foreign Citizens in the Republic of Kazakhstan provides grounds for the removal of foreign citizens,³¹⁴ 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 non-national 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 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.

Detention is not to be used for pregnant women, women with children under the age of 14, children under the age of 18, persons 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 14.³¹⁵ People seeking asylum and refugees are also not detained, pursuant to the 2009 Law on Refugees.³¹⁶ In general, children (unaccompanied or children in families) are not detained in immigration detention facilities but are placed in “Minors/Child Adaptation Centres”.³¹⁷ These are reportedly semi-closed institutions, where there are restrictions on freedom of movement, and which could amount to an alternative form of detention.

There are four “special reception centres”, in Almaty, Nur-Sultan, Pavlodar and Atyrau. These are intended for the reception and detention of people who have been subjected to administrative arrest, and for non-nationals, and stateless persons subject to forced expulsion.³¹⁸ Data on the numbers of people in immigration detention are not published regularly, nor disaggregated.

Developments in law and practice

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.³¹⁹ In 2019 Kazakhstan amended its Code on Marriage and Family so as 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.

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 2021.³²⁰

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 extended. As of November 2020

Following the taking of these measures, the legal status of 146 970 foreigners was regulated, and 149 217 foreigners freely left Kazakhstan.³²¹

Key strengths and main challenges

Although there is limited information available on implementation, a key strength is the **prohibition in Kazakhstan law of the detention of certain groups of people in vulnerable situations**, as described above. Children (unaccompanied as well as children in families) are not detained although the **restrictions on freedom of movement in “Minors/Child Adaptation Centres” may, in fact, amount to *de facto* detention**. Kazakhstan’s identification and documentation campaign has also led to **important steps in providing thousands of people with a legal identity**.

LIBYA

Detention overview

Libya has long been a destination country for migrants and refugees, in addition to being a main country of transit to Europe.³²² The Libyan and Italian governments have been working together since 2017 to strengthen Libya's border controls at sea, with the aim to reduce migrant arrivals to Europe. The Libyan Coast Guards intercept and return migrants and refugees attempting to cross the Mediterranean, and they are then taken to detention centres.³²³

Libya criminalises migrants with irregular status through the 2010 Law on Combating Irregular Migration (Law No. 19). Article 6 provides that "unauthorised migrants are to be put in jail" and then deported after they serve their sentences. This implies that the law allows for indefinite detention, which is the case in practice.³²⁴ There is little to no opportunity for people who are detained to have their detention decisions reviewed, and reports document that people are often forced to pay guards or engage in forced labour or forced sex in order to secure their release.³²⁵

Libya uses dedicated detention centres for immigration purposes, and currently it is estimated that there are 34 detention centres, which are run by the Department for Combating Illegal Immigration (DCIM) under the Ministry of Interior. However, due to political instability in the country, some of those centres are reported to be guarded by militias.³²⁶ Libyan law refers to such facilities as "shelters."³²⁷

Adequate data on the numbers of people detained is lacking.³²⁸ The Independent Fact-Finding Mission on Libya estimates that there are 7,000 migrants in government-run detention centres, with a large percentage of those detained being children.³²⁹ UNHCR indicates that around 1,000 detainees are of concern to them.³³⁰ Moreover, the country also has informal detention centres run by smugglers, who hold a large number of migrants and refugees with no access to basic rights and services. Despite the concerns over such facilities, it was reported in late 2020 that several informal centres have been transferred to the control of DCIM and were rebranded as official detention centres. However, they appear to be managed the same way.³³¹

Developments in law and practice

Since 2020, Cesvi - an NGO present in Libya - provides a Community-Based Caregiving Arrangement (the 'Caregiver' programme), in which they identify a family or a person willing to host vulnerable refugees (in Tripoli this is in partnership with UNHCR). To facilitate the arrangement, the host family and guests receive material and financial assistance. However, this program is limited to extremely vulnerable protection cases who have no alternative shelter or care options in the community, for example unaccompanied children with no other family or relations in the country. The process includes identification and assessment of the appropriate host by case workers, as well as training and the establishment of a formal agreement between the host and the person being hosted. The matching process is done carefully and with sufficient time built in, so as not to do any unintended harm to the person who is being hosted and the caregiver. This process also allows for appropriate monitoring and follow-up.³³²

Moreover, as is the case in other countries in the region, community-led initiatives are also taking place in Libya. These are considered a form of 'informal' family based care, and are usually organized by extended families or diaspora communities.³³³

In recent years, NGOs and UN agencies have engaged in ongoing advocacy efforts to reduce and end detention in Libya. For instance, NGOs and UNHCR advocate for the release of refugees and people seeking asylum from detention, especially unaccompanied or separated children and other vulnerable groups, in addition to calling for alternatives to detention including care arrangements for unaccompanied children after their release.³³⁴

UNICEF and IOM are currently supporting the government to pilot an interim care centre, in partnership with an NGO and in collaboration with the Municipality of Misurata.³³⁵

Key strengths and main challenges

The 'Caregiver' programme is an example of promising practice, as it allows people of certain nationalities to reside within a safe family environment while they find a more durable solution, and can mitigate against the risk of being homeless and thus potentially at risk of arrest. However, a number of gaps remain. IDC partners explained that the programme was initially intended to be a temporary solution, and one of the key challenges moving forward is the ongoing **reliance on the programme as a long-term solution due to the lack of other alternative shelter options**. Additionally, there is **high demand for such alternative care arrangements, yet very few host families are involved**.³³⁶ Moreover, such arrangements may add to the risks faced by caregivers **because of their** status. This is one of the reasons why there are few volunteers taking part in the programme.³³⁷

Advocacy efforts to release refugees in vulnerable situations on an ad hoc basis have represented a **key achievement by international organisations in Libya**. Yet those who are released are at risk of being re-detained, due to the **lack of formalised alternatives in the country**. The government continues to detain large numbers of refugees and migrants - including children - in violation of their basic human rights. However, there are on-going discussions between organisations and the government to open a shelter for women and children.³³⁸

This includes a pilot interim care centre, which should give the government ownership and leadership of alternative care options, with the support of UN agencies and civil society.³³⁹

MALAWI

Detention overview

The main provisions regulating immigration detention in Malawi are found in the Immigration Act 1964 and the Immigration Regulations 1968. The Act provides for immigration detention as an administrative measure pending removal. There is no maximum time limit for this type of detention, but regulations specify it must be “necessary” for arranging the removal, which must be done at the first reasonable opportunity. In addition, people may be detained for up to 14 days for identity checks. Persons held under immigration powers are to be treated as pre-trial detainees and may be detained in prisons or other places of custody.

Under the Immigration Act, imprisonment may also be imposed as a criminal sanction for various migration-related offences. Terms of imprisonment range from 3 months with hard labour to five years. People who have completed such a sentence may be subject to administrative detention for the purposes of removal as described above.³⁴⁰

There is little publicly available information on immigration detention in Malawi. According to IDC’s information, most people are detained when entering northern Malawi irregularly in transit. There are also cases of people being detained in refugee camps while awaiting repatriation. In 2018, there were reportedly 34,000 immigration detainees in Malawi.³⁴¹ In 2017, 36 children were detained for migration-related reasons.³⁴² Reports suggest that both families with children and unaccompanied children are detained.

Developments in law and practice

Malawi has important legal protections in place against child immigration detention.³⁴³ Malawian law states that no child shall be imprisoned for any offence.³⁴⁴ In addition, children are not to be held in pre-trial detention except in very limited circumstances.³⁴⁵ These provisions effectively preclude the immigration detention of children.³⁴⁶

Furthermore, Malawian law includes migrant children in the mainstream child protection system.³⁴⁷ The law specifies that the welfare of the child is the paramount consideration in decisions concerning children. Unaccompanied migrant children fall in the category of children in need of care and protection and come under the responsibility of the Ministry of Gender, Children Disability and Social Welfare which has Social Welfare Offices at the District level. Local authorities have an obligation to provide accommodation for unaccompanied and separated children. However, a lack of government-run shelters means children are often placed in accommodation run by NGOs.

A promising practice is that when an unaccompanied migrant child is reported to the police, the police victims support unit works together with the district Social Welfare Office on the case. Victims support units are trained to work with children and victims meaning that the overall approach is focused on the child’s welfare.³⁴⁸ In addition, in Malawi specialised Child Justice Courts and designated child magistrates have jurisdiction over matters regarding children, including deciding on migration related detention. Within this system, probation officers play an important role in assessing each child, determining whether they are in need of care or protection and formulating recommendations regarding their release. Their reports are submitted to the prosecution service and the relevant court. The Child Justice Forum under the Judiciary also looks at all matters relating to children, and works with Child Courts and child magistrates.

Key strengths and main challenges

Although Malawian law effectively **prohibits child immigration detention**, an implementation gap means that **children are still detained for migration-related reasons**. Current practice risks **criminalising children** for their migration status, rather than providing protection and care. A key challenge relates to the **capacity of actors** to ensure that migrant children are treated as children, and that their best interests are prioritised regardless of nationality.

Training of probation officers could help them better advocate for the protection, care and release of migrant children as provided for by law. **Referral pathways** could be strengthened to ensure that immigration officers refer migrant children to the Ministry of Gender and police victim support units. Investment in **alternative care arrangements** would provide placement options for children, instead of detention.

In 2016, prompted by the challenge of non-national children unsuitably placed in the prison system of Malawi, an **Immigration Law Audit**³⁴⁹ was undertaken. This identified a number of legal mechanisms that can be used to prevent immigration detention in Malawi.³⁵⁰ In May 2017, a Technical Working Group on Alternatives to Detention and a Statement of Principles were created in which the government committed to developing an **alternative to prison pilot for children** irregularly entering the country.³⁵¹ A pilot would allow the Malawian authorities to develop and test **solutions tailored to its specific context and challenges**, thus better protecting migrant children and implementing its national and international law obligations. However, according to IDC's information, a pilot is yet to be developed.

MALAYSIA

Detention overview

The authority to detain is set out in Malaysia's Immigration Act 1959/1963. Refugees, people seeking asylum and undocumented migrant workers are all at risk of immigration detention in Malaysia, as well as anyone who unlawfully enters or remains in Malaysia, contrary to the Immigration Act 1959/63.³⁵² Any person found guilty can be fined an amount not exceeding 10,000 RM, imprisoned for up to 5 years, and may also be subject to whipping.³⁵³ There is no prohibition on the use of immigration detention for any groups. Malaysia's laws do not distinguish between children and adults, and with the exception of recognised trafficking survivors, laws do not exempt groups with specific vulnerabilities - including refugees - from these penalties. Section 55 of the Act gives the Minister of Home Affairs discretionary power to exempt any person or class of person from the application of the Act. Section 27(1) also provides the Director General of Immigration discretionary powers to release a person from immigration detention. Both of these two discretions are rarely used in practice.

Pursuant to government policy, refugees and people seeking asylum who hold UNHCR cards have some degree of protection against arrest and detention, though this is not consistently applied.³⁵⁴ Trafficking survivors granted an Interim Protection Order are not detained but may reside at protection homes or trafficking shelters run by the government or NGOs where after assessment, they may be allowed to move freely or seek employment.³⁵⁵

Malaysia has a vast immigration detention infrastructure, comprising immigration detention centres as well as a number of temporary detention facilities.³⁵⁶ 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.³⁵⁷ Disaggregated data on the numbers of children, women and men in Malaysia's immigration detention centres is lacking, and numbers for those identifying as non-binary or transgender does not exist. Conditions in detention are reported to be extremely poor, with severe overcrowding and inadequate nutrition, sanitation, hygiene and medical care.³⁵⁸ Children are regularly separated from family members.³⁵⁹ Deaths in immigration detention have been widely reported; there were 208 reported deaths from 2018 to February 2022.³⁶⁰ Detainees have reported that medical screening is lacking, and skin diseases, tuberculosis and malaria are common.³⁶¹

Developments in law and practice

SUKA Society, a Malaysian child rights NGO, implements an ATD program for unaccompanied and separated children. Established in 2015, the Community Placement and Case Management (CPCM) Program runs independently of government and uses a holistic case management approach centred around child wellbeing, 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 in order to achieve a durable solution or case resolution (resettlement to a third country, independent living for those who become adults, or voluntarily returning home if and when it is safe to do so).³⁶²

In April 2021, the Malaysian Cabinet approved an 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).³⁶³ The ATD pilot officially commenced in February 2022,³⁶⁴ with SOPs having been 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 Yayasan Chow Kit (YCK)). It is envisaged that MWFCD will work with SUKA Society and YCK; the NGOs will develop a care plan and assess the best interests of each child, and provide case management and shelter support. Phase 1 of the ATD Pilot, which is intended to run for a year, is focused on the safe return of children to their countries of origin, where it is in their best interests to do so. As of April 2022, no children have been released from immigration detention into the pilot.

On 20 April 2022, over 500 women, men, and children, mostly Rohingya refugees, escaped from a temporary immigration detention centre in Sungai Bakap, Malaysia. It was later confirmed that 6 of those who fled were killed tragically in a traffic accident, including two young children. Over the following days, at least 467 people were re-detained, and there is a continuing effort by government authorities to find and arrest the remaining refugees who fled.

Key strengths and main challenges

The use of immigration detention in Malaysia is both **widespread and arbitrary**, and used as a means of deterring and punishing people who violate the Immigration Act. ATD that are provided for in law and policies are **significantly under-utilised and not consistently implemented**. Government policy that UNHCR-registered refugees and people seeking asylum should not be prosecuted on account of their immigration status is not uniformly applied; the policy is also not publicly available and therefore can be difficult to rely on.

The ATD Pilot is an **important first step towards addressing the pervasive use of child immigration detention** in Malaysia. The collaboration between the government ministries of immigration and child protection, and civil society implementing agencies, is positive. This follows **years of coordination and discussion** between government agencies, civil society organisations (IDC, SUKA Society and YCK) and SUHAKAM (the Malaysian national human rights commission) on ways to develop ATD for children in Malaysia. However there are several key challenges with the ATD pilot, the first being the very **narrow set of criteria for children to be considered** under Phase 1 of the ATD Pilot. Under Phase 1, Rohingya children are expressly excluded from the ATD Pilot. At the same time, only children who can be safely returned to their countries of origin will be considered for release. Children will be released into a shelter, rather than family or kinship care. The ATD Pilot also only envisages the release of 5 children at any one time. Given these limitations, it is clear that while the ATD Pilot is a positive step forward, **the Malaysian government will need to urgently take other steps to address, and move towards ending the immigration detention of children**.

Separately, the SUKA CPCM program is an example of an **effective community-based ATD that supports children at risk of immigration detention**. A 2019 evaluation of the CPCM Programme found that it had significantly **improved the overall wellbeing, safety and stability of children**. At the same time, the programme cost **90% less than immigration detention and achieved 100% compliance rates**.³⁶⁵ The CPCM programme provides a strong foundation to support any future expansion of the ATD Pilot to benefit more children, beyond the current narrow criteria.

MALDIVES

Detention overview

All non-nationals without permission to enter or with expired or revoked entry permits can be subjected to detention and deportation in the Republic of Maldives. The Maldives Immigration Act 2007 does not explicitly provide for immigration detention, however according to Article 29(a) the immigration authorities have the power to detain any non-national who is 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), which allows immigration authorities to “arrange accommodation” for a non-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 can in theory be considered an irregular migrant and subject to the same risk of detention. Migrants with irregular status detained in the Maldives are typically undocumented migrant workers who are awaiting deportation or repatriation. Some may go through the criminal justice system if there are sufficient grounds to charge the migrant with a criminal offence. When this is not the case, the person may simply receive a deportation order. Some of those detained are reportedly trafficking survivors, despite the Anti-trafficking Act 2013 which provides for non-detention of trafficking survivors. This is in part due to not having an effective trafficking victim identification mechanism in place.³⁶⁶

The relevant regulation seems to limit the length of detention to 15 days for the purpose of removal.³⁶⁷ However, there are reports of migrant workers being held in immigration detention centres for weeks or sometimes years prior to deportation.³⁶⁸ Detained migrants do not have a means to challenge the legality of their detention as there is no judicial review of detention.³⁶⁹

There are two immigration detention facilities in Maldives: Malé immigration detention centre and Hulhamale Detention Centre. Some immigration detainees are also held in correctional facilities,³⁷⁰ as well as in an unregistered facility of a State-owned company. Such informal arrangements were highlighted as a major concern by the UN Working Group on Arbitrary Detention in their December 2021 visit to the Maldives.³⁷¹

Developments in law and practice

The Maldives enacted the Anti-Human Trafficking Act in 2013, which provides a legal basis for non-detention of trafficking survivors,³⁷² as well as protection measures. Under this Act, trafficking survivors are able to 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. SOPs 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.³⁷³

The Ministry of Economic Development has been running a regularisation scheme for undocumented migrant workers in the Maldives which may protect migrant workers from detention and deportation.³⁷⁴ There is no publicly available information on details regarding the process, but the regularisation programme is expected to allow migrants to change their employers in case the employer is responsible for their irregular status.³⁷⁵

Key strengths and main challenges

The regularisation scheme run by the Ministry of Economic Development is intended to **allow migrant workers to legally stay in the country for a certain period of time while looking for a new employer**. However, in 2018, it was reported that very few migrants were able to benefit from this scheme due to lack of awareness, insufficient guidance, and distrust of the authorities amongst migrant communities.³⁷⁶ More recently, the UN 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 2019.³⁷⁷

According to the Anti-Human Trafficking Act, trafficking survivors can be identified and registered by the human trafficking department of the Maldives Police Service. This would then also **exempt trafficking survivors from immigration detention**. The same law provides for various services and supports that the trafficking survivors are entitled to, including access to healthcare and counselling services, accommodation, access to interpretation services, and information on how to obtain legal assistance.³⁷⁸ The law also states that the Ministry is responsible for appointing a legal guardian for unaccompanied children.³⁷⁹

Despite these legal provisions, **trafficking survivors continue to be arrested, detained and deported instead of being provided with protection** due to insufficient victim identification mechanisms and resource constraints.³⁸⁰

MEXICO

Detention overview

Mexico's 2011 Immigration Law frames immigration detention as the general rule for people entering the country irregularly; as detention is euphemistically termed "accommodation" in the law, no constitutional protections apply.³⁸¹ Among the few formal exceptions is voluntary appearance before immigration authorities in which case procedures (including an asylum claim) can be completed outside detention.³⁸² The length of detention is limited to 60 working days, except when the person has pursued a legal remedy or claimed asylum, in which case there is no limit.³⁸³ The Immigration Law allows for a right to stay for humanitarian reasons,³⁸⁴ however the application of this provision has been highly discretionary.

Mexico has 30 immigration detention centres, which have been criticised on numerous occasions for their harsh conditions, lack of legal recourse and expedited removal procedures.³⁸⁵ These often preclude access to asylum and other protection remedies. 2019 saw unprecedented levels of detention as Mexico ramped up enforcement in response to US economic pressure; official statistics indicate that 307,679 people were detained during 2021, of whom 75,592 were children.³⁸⁶

While the detention of unaccompanied children in immigration detention centres has been unlawful since 2014, it was only in 2021 that reforms to the Immigration and Refugee Laws came into force, unequivocally prohibiting the detention of all children for reasons of their migration status.

Developments in law and practice

In 2014, Mexico passed the Children's Law establishing a National Child Protection system that covers all children irrespective of their migration situation, for the first time shifting some responsibility for migrant and refugee children to national, state and local child protection officers (where previously only immigration enforcement authorities had mandate).³⁸⁷ This key structural change paved the way for new collaborations in order to develop policies, procedures and practices for the referral, reception and care of children in alternative community settings.³⁸⁸

These structural changes have been accompanied by initiatives to ensure alternative care arrangements for children. These include a joint government-civil society alternative to detention pilot program³⁸⁹ that ran in Mexico City and Tapachula in 2015-2016, with technical advice and coordination from IDC. This watershed moment enabled the development of preliminary criteria and procedures for interinstitutional coordination among a range of stakeholders, as well as operational mechanisms and protocols for screening and referral of unaccompanied children out of detention and their placement in community care. The first 20 children were thus released to two open-door alternative child care programs, where robust case management and care models ensured their freedom of movement, access to education and healthcare, focus on building a life plan for a stay or eventual return, and communication with family. Some were able to access family reunification in the United States which is normally unavailable. A joint government-civil society evaluation pointed to an increased sense of well-being in the participants, with the pilot providing valuable evidence that children did not need to be detained and that better case resolution could be achieved in a community setting.

On the strength of this positive experience, Mexico set up a second ATD pilot, this time between the immigration and refugee authorities to release detained people seeking asylum and their families to UNHCR-sponsored NGO shelters or subsidised housing, with access to legal, psychosocial and economic assistance. People were subject to in-person reporting with both authorities and were granted a temporary

immigration permit with work rights. While the program remains an unregulated and discretionary practice, without clear guidelines, during its operation between 2017 and 2020 it benefited 18,064 people seeking asylum and their families.³⁹⁰

In 2019, Mexico set up a National Commission for the Protection of Migrant and Asylum Seeker Children³⁹¹ that brought together relevant authorities, UN agencies and civil society organisations, Asylum Access Mexico, Save the Children and IDC, among them to develop and implement policy to protect migrant and refugee children. The Commission adopted a National Protocol for the Comprehensive Protection of Migrant Children,³⁹² which mandates procedures, protocols and instruments to attend to the needs of each migrant child so that decisions are taken in their best interests, within a national mechanism that provides for screening, evaluation and referral to appropriate community settings. Central to the National Protocol is the recognition that detention is never in a child's best interests and that the commitment and coordination of all levels of government is necessary to prevent it and operationalize the National Protocol. The Commission has committed to a national plan to implement and roll out the National Protocol across 32 states spanning Mexico's migration route. With technical support from IDC and partners, some states have already set up local working groups to develop their own local protocols to screen and refer children.

IDC and civil society partners Asylum Access and IMUMI, as well as UNHCR and UNICEF, have also worked to strengthen, expand and improve capacity, infrastructure, care and services in government-run reception shelters for unaccompanied children along the migration route. The first government-run shelter for refugee children was established in the southern border state of Tabasco, followed by others such as Tin Otoch in the northern state of Sonora.³⁹³

Finally, in late 2020 the Mexican Congress approved legislative reform proposals to its Immigration and Refugee Laws that now clearly prohibit the detention of all children for reasons of their migration status.³⁹⁴

Key strengths and main challenges

While the Mexican government **continues to use detention as a first resort in migration management**, significant **efforts have been made over the past few years to address concerns about the negative impact of its policies on the increasing numbers of people in vulnerable situations** arriving at its border. The valuable evidence from the ATD pilots for unaccompanied children and people seeking asylum, the clear prohibition on detention of children and the adoption of a national referral mechanism to community care provide unparalleled **opportunities to reduce and eventually end immigration detention of children**, as well as contribute to better outcomes in the **protection of children on the move** in the regional corridor.

In the case of children, in particular, the government has **embraced the GCM's "whole of society" approach**, working in close collaboration with civil society organisations to facilitate local referral pathways and to strengthen and expand reception capacity and care in critical locations. Similarly, the commitment to implement the National Protocol through the adoption of state and local protocols and coordination mechanisms shows a **move to a "whole of government" approach to migration governance including** collaboration with local authorities. Dialogue and exchange among stakeholders can help to **create support networks for those responsible for protection** and also leads to **better informed government decision-making and better outcomes** for migrant and refugee children.

However, **children are still detained for long periods** before being referred to child protection, if at all. Once referred, most children are kept institutionalised while in Mexico. For migrant and refugee children to see the positive impacts of the reforms will require **improved screening, immediate immigration documentation** for children and families, an **adequately funded child protection**

and national shelter systems where case management is prioritised, **local coordination for referral pathways**, and opportunities for **realistic and comprehensive solutions** for children in the regional migration corridor.

Moreover, since late 2020 **very few people seeking asylum have been able to access the release program following new internal guidelines** which exclude those who entered Mexican territory irregularly, those travelling without accompanying family who entered irregularly, and children who entered irregularly. In response, IDC and partner Asylum Access Mexico brought together a new civil society task force that is building momentum around ending detention for asylum seekers and implementing alternatives.

MOROCCO

Detention overview

Morocco is a destination country for migrants and refugees, as well as an important point of transit for Mediterranean crossings to Europe.³⁹⁵ Various efforts have been made by European States to reduce migration from Morocco to Europe, by providing funding to externalise “migration management” to Morocco, similar to the approach in other North African States. More recently in 2019, joint work has been further strengthened between Spain and Morocco to reduce the movement of migrants, which led to an increase in interceptions and returns of migrants and refugees by the Moroccan Navy.³⁹⁶

The main law governing immigration detention in Morocco is Law No. 02-03 of 11 November 2003 (the Migration Act), which criminalises irregular entry of both migrants and people seeking asylum, and fails to provide an exception or guarantees for refugees and people seeking asylum. This is despite the fact that Morocco has ratified both the 1951 Refugee Convention (1956) and its 1967 Protocol (1971). Additionally, the law also provides criminal penalties, including imprisonment for certain migration-related infractions. The practice of arbitrary detention and deportation is very prevalent in Morocco.³⁹⁷

Article 34 of the Migration Act outlines provisions on establishing designated immigration detention centres, yet to date such facilities have not been established, and instead prisons and police stations are used to detain migrants, as well as transit zones and ad hoc detention facilities (such as schools, children's homes, and homeless shelters) for the purpose of detaining people awaiting deportation. Currently, there are an estimated 18 such sites used for immigration detention.³⁹⁸

In terms of risk of detention, one report has highlighted that both accompanied and unaccompanied migrant children who do not have documentation are exposed to the risk of detention.³⁹⁹ However, Black migrants and asylum seekers seem to be more at risk of detention, and have reportedly been arrested, detained and forcibly relocated out of urban areas into remote rural locations.⁴⁰⁰

Developments in law and practice

In 2014, the government adopted a National Strategy on Immigration and Asylum (Stratégie nationale d'immigration et d'asile) and implemented a series of regularisation programs for certain nationalities in 2014 and 2017 to give migrants access to documentation and services.⁴⁰¹ Additionally, temporary protection was provided to people of some nationalities who the government does not qualify as refugees. Syrians and Yemenis, meanwhile, have benefited from an “exceptional regularisation” programme, outside the more permanent migrant regularisation programmes.⁴⁰²

Whilst in Morocco there is officially no requirement for children to have legal documents, such documents are required to prove their age to authorities in order to be treated as children and obtain support. As a result, over the past three years some NGOs working jointly with UNICEF have been providing documents for children under their care, which indicate their age, in order to ensure they are assisted and treated according to their specific needs.⁴⁰³ This also aims to reduce their risk of detention and arrest.

Since 2021 two NGOs have been piloting accommodation centres as alternative care, in Teouan and Oujda cities, with the support of UNICEF. These centres provide holistic support for children in need, facilitating access to education, legal advice and training. The centres are open to national and non-national children alike, without discrimination. The pilots will run for two years and hope to inspire other civil society organisations to adopt a holistic non-discriminatory approach.⁴⁰⁴

There are no BID procedures in Morocco even for nationals, and UNICEF is currently developing SOPs with the government for this purpose, for all children.⁴⁰⁵ Moreover, emergency initiatives have been rolled out for the most vulnerable children, including reforms to the child protection system and the introduction of alternative care for children without parental care, children who are homeless, and migrant children.⁴⁰⁶ In addition, the country has a referral mechanism - established in late 2021 - that establishes clear links between social welfare, protection and justice mechanisms, and which includes all children without discrimination on the basis of nationality.⁴⁰⁷

Key strengths and main challenges

The efforts by NGOs to provide documentation for children is considered a positive **step to reducing the risk of detention**. However, challenges remain as **NGOs require additional support and training on the procedures to follow**. Additionally, **NGOs do not have the capacity and resources** to support all children in such situations.⁴⁰⁸

The law in Morocco provides a **good basis for the best interests of the child**, however this right is not sufficiently respected in tribunals and other institutions that work with children.⁴⁰⁹ Therefore, the support that UNICEF and other actors are providing should **enforce these laws and existing systems, rather than create parallel systems and structures for refugees and migrants**.

With regards to the pilot accommodation centres, these **provide an alternative model that is different from state care institutions, as they adopt a holistic, non-discriminatory approach**. However, these centres would **need time to be accepted within the host community, due to hostilities and tensions that exist between host and migrant communities**.

NAMIBIA

Detention overview

The Immigration Control Act (1993) is the main law regulating immigration detention in Namibia. The Act allows for the detention of “prohibited immigrants” as an administrative measure pending removal, or pending a tribunal’s decision on removal. There is no maximum time limit for this type of detention. In addition, people suspected of being a “prohibited immigrant” may be detained for investigation for up to 14 days, renewable. The Act also provides for imprisonment and/or a fine as a punitive sanction for various immigration-related offences relating to irregular entry and stay, with terms of imprisonment of up to five years. Under Namibia’s Refugee Act, recognised refugees and protected persons can also be detained, and deported if “it is in the interests of the sovereignty and integrity of Namibia, national security, public order, decency or morality.” There is little publicly available information on immigration detention in Namibia. According to the Global Detention Project, “the Namibian government reportedly frequently detains migrants entering the country irregularly.”⁴¹⁰ In 2019, Namibia reportedly imprisoned 286 non-nationals, many on immigration offences.⁴¹¹ In October 2020, 53 people (30 of whom were children) from the Democratic Republic of the Congo and Burundi were reportedly detained at the Katima Mulilo police station.⁴¹²

Developments in law and practice

Since 2018, Namibia has introduced important protections for victims of trafficking, which contribute to preventing their detention. Under the 2018 Combating of Trafficking Act, victims of trafficking are to be provided with protection and assistance, including being placed “in a safe place,” as well as provided with documentation which temporarily regularises their stay. Victims of trafficking are also given immunity from prosecution, including for immigration-related offences.

To support implementation of the Act, a NRM and SOPs were launched in 2019.⁴¹³ The NRM establishes a national coordination mechanism and sets out guiding principles for assisting and protecting victims of trafficking. The SOPs define detailed procedures for the identification and referral, care and long term rehabilitation of victims of trafficking. State social workers are responsible for identifying victims of trafficking at the “earliest possible moment,” as well as conducting risk assessments, defining immediate needs, providing information and referring identified victims to services and assistance. Under the SOPs, non-Namibian victims of trafficking are entitled to a period of reflection during which they can receive immediate support and accommodation in a shelter. Furthermore, in line with the Child Care and Protection Act (2015), the SOPs emphasise that a child who is a potential victim of trafficking “is considered to be a child in need of protective services, which include placing the child in suitable alternative care [or] a safe place”. A number of forms and templates are provided in the Annex, including screening and identification forms, template letters and an interview checklist.

Since launching, the government has conducted training on the NRM and SOPs.⁴¹⁴ The police and immigration officials reportedly use anti-trafficking pocket manuals outlining the SOPs and NRM.⁴¹⁵ According to IOM, the NRM and SOPs are operational and there are cases in which victims are identified and referred for assistance in practice.⁴¹⁶ In 2020, the government reportedly identified 19 trafficking victims (less than in the previous year) including 9 children and provided assistance and referred 16 victims to NGO shelters.⁴¹⁷ In the same year, the government increased funding to NGOs and shelters supporting trafficking victims.⁴¹⁸

Key strengths and main challenges

Namibian law and policies on human trafficking provide **important protections against immigration detention for victims of trafficking**. While these mechanisms are operational, information on the proportion of victims who benefit from them is unavailable. Overall the Namibian government's **approach to irregular migration remains punitive, and weak legal protections** for migrants and people seeking asylum leads many adults and children to continue to be at risk of immigration detention.⁴¹⁹

Alternatives to immigration detention are **not explicitly provided for in law**. While there is a possibility of bail, it is used in a limited way. There are promising practices, for example the government **allows those whose asylum claims have been refused a period of 90 days to leave the country**.⁴²⁰ In response to the COVID-19 pandemic, people who had overstayed visas were provided with **immunity from sanctions and allowed to leave the country** over a period of some months.⁴²¹ However, such practices remain ad hoc and are not systemised.

The government is currently reviewing the Immigration Act, which could provide an opportunity to include **alternatives to immigration detention specifically in the law**. This could pave the way for policies such as a NRM for migrants in vulnerable situations. Training could help **raise awareness on the benefits of ATD** among relevant authorities. Namibia could also work with neighbouring States to share positive practices and develop ATD in line with its international law obligations.

PHILIPPINES

Detention overview

In the Philippines, provisions are included within legislation for the arrest and detention of migrants with irregular status; detention can be for a “sufficient length of time” to enable authorities to determine if a person can legally remain in the country (e.g. if they apply for asylum).⁴²² Migrants working without a valid permit or overstaying their visas are also subject to detention. Pursuant to section 3 of the Department of Justice Circular 58 series of 2012, refugees or stateless persons are generally not detained on account of their status.⁴²³ Further, children are generally not detained in practice. Migrants working without a valid permit, or overstaying their visas, are subject to 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.

The Philippines has ratified the 1951 Refugee Convention and its 1967 protocol, as well as the 1954 Statelessness Convention. Pursuant to the policies described below, people seeking asylum and stateless persons are generally not detained.

There is one designated immigration detention centre in the Philippines, being the Bureau of Immigration Warden’s Facility. Although the number of detainees is not publicly released, it was reported that in September 2020 there were 315 non-nationals detained at the facility, despite the official capacity being 140.⁴²⁴

Developments in law and practice

A government-led Refugee and Stateless Status Determination (RSSD) procedure is currently being implemented, pursuant to the Department of Justice Circular 58 series of 2012.⁴²⁵ Circular No. 58 provides for non-detention on account of being a stateless person, refugee, or a person seeking asylum. 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 2022,⁴²⁶ institutionalising access to protection services for refugees, stateless persons and people seeking asylum.

Human trafficking legislation allows authorities to provide shelter to victims of trafficking,⁴²⁷ although in practice services for human trafficking victims remain inadequate.⁴²⁸ 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.⁴²⁹

Undocumented and separated children are generally not detained 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.⁴³⁰ 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 detained children.

During COVID-19, in a bid to decrease overcrowding at the Warden's Facility, the Philippines Bureau of Immigration in April 2020 announced that it would begin to "decongest."⁴³¹ The Bureau's decision was to "speed up the resolution of deportation cases" for those in the detention centre.⁴³² The Bureau of Immigration also announced that it would consider releasing detainees on bail, or release on recognisance.⁴³³ This was seen in practice when two pregnant women were released on bail, and another returned to her country in May 2020.⁴³⁴

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.⁴³⁵ 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.⁴³⁶

Key strengths and main challenges

The Philippines is one of the few countries in the Asia-Pacific region, and the only country in ASEAN, with a **comprehensive legal protection framework** for refugees, people seeking asylum and stateless persons. There has been **significant progress in developing and institutionalising more comprehensive systems** for the protection of these groups of people. Although it is understood that immigration detention is generally not used for refugees, people seeking asylum and stateless people, there is a **lack of publicly available data** on who is detained.

While unaccompanied and separated children are not detained, they are placed in alternative childcare facilities run by the Department of Social Welfare and Development. The **current, limited capacity of government facilities is a challenge** and partnerships are being explored with facilities managed by faith-based and civil society organisations. There appears to be a **heavy reliance on institutional care, instead of community-based alternatives**.

POLAND

Detention overview

Grounds for detention of migrants in Poland are set out in national law in the Law on Foreigners and the Act on granting protection to foreigners in Poland. According to Article 398(1) of the former, a non-national can be detained if:

- 1) A return decision is likely to be issued, without a specified period for voluntary return;
- 2) A return decision has already been issued, without a specified period for voluntary return;
- 3) The individual in question has not voluntarily left the territory of the Republic of Poland within the period specified in a return decision issued to them, and immediate removal is not possible;
- 4) The individual fails to meet the obligations set out in a number of non-custodial alternatives to detention.

A specific period for voluntary return is not given where it is thought to be likely that the individual will “escape” (abscond), or for reasons of public order and safety.

People seeking asylum can be detained for the following reasons:

- > In order to establish or verify their identity;
- > To gather information, with the asylum seeker's cooperation, connected with the asylum application, which cannot be obtained without detaining the applicant and where there is a significant risk of absconding;
- > In order to make or execute the return decision, if an asylum seeker had a possibility to claim for asylum previously and there is a justified assumption that he or she claimed asylum to delay or prevent the return;
- > When it is necessary for security reasons;
- > In accordance with Article 28 of the Dublin III Regulation, when there is significant risk of absconding and immediate transfer to another EU country is not possible.

There are six detention centres for migrants in Poland, and individuals can be detained for up to 6 months while their asylum claim is being considered and for a maximum of 18 months during return proceedings.⁴³⁷ Considerable concern has been expressed over the excessive use of detention in Poland⁴³⁸ and the failure to use detention as a last resort, in line with EU and international law.⁴³⁹ There are reports that detention orders are made without individualised assessments, including when it comes to people for whom detention poses a danger to life or health.⁴⁴⁰

Developments in law and practice

Since 2017, the Association for Legal Intervention (SIP) has been piloting the ‘No Detention Necessary’ project, an innovative approach to detention alternatives in Poland.⁴⁴¹ Based on IDC’s Community and Assessment and Placement (CAP) model, those leaving detention centres or at risk of detention are offered support in the form of case management, alongside legal and psychological counselling. The support offered by case managers includes information provision, mediation between the administrative authorities and individuals, and assistance in dealing with access to services and basic needs.

The project works primarily with people who are in returns procedures, and through it SIP has been liaising with the Border Police in order to secure people's release from immigration detention into the pilot. The majority of people are also on the government's official alternative to detention programme, and required to report regularly to the authorities (at least once a month). The government's scheme

neither offers case management nor any other type of support.

A number of provisions were introduced into Polish law in 2018, aimed to address the needs of people for whom immigration detention would cause danger to their life or their physical or mental health. This “institutional assistance” combines elements of support including accommodation, medical care and material support, with enforcement-based ATD such as reporting, designated residence, and surrender of travel documents. According to a report from SIP, the initial implementation of these provisions encountered a number of difficulties in practice and as a result the programme only began in 2020.⁴⁴² There is limited information available regarding this initiative and its progress to date.

Key strengths and main challenges

A 2020 evaluation of the No Detention Necessary pilot in Poland showed that **it had ensured participants had more relevant information in order to help them understand their case and make better-informed decisions**. It had also given people the opportunity to explore all their legal options and thus **facilitated case resolution**. The vast majority of participants remained engaged with the pilot, with only 10% of people disengaging.⁴⁴³ Evidence from the project also had a **positive impact on people’s wellbeing and strengthened their resilience**.⁴⁴⁴

Despite the success of the pilot, **the Polish government has been slow to engage with it**. During the first two years of its implementation there was no government cooperation; from 2020 SIP has been working on an ad hoc basis with the Border Police to secure releases from detention into the pilot. However, in Poland **case management is still not included more formally as part of their recognised alternatives** (which, since 2014, are set out in the Law on Foreigners and include reporting obligations, payment of bail, designated residence, and surrender of travel documents).

There is evidence from Poland showing that where alternatives have been used, they have **led to a decrease in the detained population**. In 2014, after the introduction of ATD in law, figures released by the border guard showed that the number of children detained had dropped by around 40%.⁴⁴⁵ However, **the use of alternatives to detention continues to be the exception** and, according to a 2017 report from the Ombudsperson, such measures are rarely considered.⁴⁴⁶

More broadly, **the situation in Poland regarding detention and the rights of people on the move is deteriorating dramatically**. The ongoing situation at the border with Belarus has demonstrated a disregard on the part of the authorities for those who are attempting to cross the border, with frequent use of “pushbacks” and the creation of detention camps where people are held in squalid conditions.⁴⁴⁷ This has been **in notable contrast to the response to the arrival of refugees from Ukraine** following the Russian invasion in February 2022. The Polish government promptly welcomed Ukrainian refugees, with the Interior Minister declaring that Poland would take “as many [people] as there will be at our border.”⁴⁴⁸

PORTUGAL

Detention overview

Immigration detention in Portugal is provided for in the 2007 Immigration Act (most recently amended in 2021) and the 2008 Asylum Law (amended in 2014). Immigration detention is an administrative process but detention beyond 48 hours must be approved by a court.⁴⁴⁹

Article 146 of the Immigration Act sets out the procedure for the coercive removal of a non-national “[remaining] illegally in national territory,” including detention by the police, while article 161 provides for detention in a “temporary installation centre” where the individual does not comply with the removal order or where removal is not possible within 48 hours of apprehending the person. Article 142 provides for detention, electronic surveillance, and reporting if there is a risk of absconding, however Portuguese law does not include a definition of absconding.

The Asylum Law provides for detention in the following cases:

- 1) Where there are risks to national security, public order and public health;
- 2) Where there is a risk of absconding;
- 3) In the context of applications submitted at border posts;
- 4) In the context of applications submitted following a removal decision;
- 5) Where the Dublin procedure applies.

A non-national cannot be detained purely based on their application for international protection. Moreover, a decision to detain must be based on an individual assessment and may only be taken if other, non-coercive alternatives are unavailable. The non-coercive alternatives outlined in law include a financial bond and reporting to the authorities. Electronic surveillance and house arrest are also established as “alternative measures.”

In practice, detention is rarely promoted in the case of returns and the numbers of people held in detention is low compared to other European Union (EU) Member States.⁴⁵⁰ However, civil society organisations have expressed concern regarding widespread automatic detention of people seeking asylum on arrival in the context of border procedures. These border procedures have not been functioning since March 2020, however there has been no associated change in the legal framework.⁴⁵¹ In the context of asylum, detention also continues to be routinely used in the case of applications lodged following a removal decision.

Developments in law and practice

Portugal is a champion State of the Global Compact for Safe, Orderly and Regular Migration and was one of the first countries in the world to establish a National Plan for the Implementation of the GCM, approved by a Council of Ministers Resolution in August 2019.⁴⁵² This includes an explicit commitment to “use immigration detention only as a measure of last resort and work towards alternatives,” in line with Objective 13 of the GCM. In particular, Portugal has expressed its commitment to promoting regularisation as opposed to detention. Portugal has also been a global champion for ATD and has co-sponsored three global peer learning events on ATD with the UN Network for Migration and its working group on ATD co-facilitated by IDC, alongside UNICEF and UNHCR.⁴⁵³

This stated commitment to regularisation was in line with previous Portuguese policy and legislative developments. In 2017, changes were made to the Immigration Act that introduced “subjective rights to regularisation,” upon fulfilment of certain conditions, non-nationals would be eligible for a residence

permit with visa exemption.⁴⁵⁴ This was further expanded in 2019 to include not just those who had arrived legally but all those working in Portugal who had been registered with social security for at least 12 months. Moreover, people are automatically provided with a social security number in Portugal, regardless of their legal status, which means that migrants are able to access social support and facilitates their subsequent entry into the regularisation process.

As a result of the COVID-19 pandemic, the Portuguese government granted temporary legal status to all migrants and people seeking asylum with pending applications. This benefited approximately 260,000 non-nationals, enabling them to access healthcare, social security benefits, and employment. Moreover, the final government order extending this scheme, issued in April 2021, set out the assumption that migrants with pending applications on their cases are legally resident until they have received a final decision on their application. No absolute end date was therefore given to the regularisation scheme.⁴⁵⁵

Also as a result of COVID-19, people seeking asylum detained at Lisbon airport were released from the detention centre, which closed temporarily. Further, since its reopening in August 2020, people seeking asylum have not been detained there in the context of border procedures.⁴⁵⁶

Key strengths and main challenges

When it comes to migration governance, the focus of the Portuguese government on **regularisation programmes for those without the correct documentation rather than detention is commendable** - particularly given how underused such programmes are in the European context.

However, **concerns remain over the excessive use of detention when it comes to asylum seekers**, including those who apply for asylum whilst already in detention.⁴⁵⁷ Moreover, despite the fact that in practice detention is no longer being carried out in the context of border procedures, it is **unclear whether this situation will continue or whether the discontinuation of such procedures will be enshrined in law**. In theory, given the basis for border procedures in law, they could be resumed at any moment. It is therefore important that the Portuguese government clarifies this change and legislates this issue.

Finally, despite the requirement in law that detention only be carried out following an individual assessment and if a non-custodial alternative is not available, organisations working in Portugal have expressed concerns that such **an individual assessment is rarely carried out, including in the cases of people in vulnerable situations, stateless persons, and children**.⁴⁵⁸ There are no specific mechanisms or SOPs in place to systematically identify such vulnerabilities.⁴⁵⁹

SINGAPORE

Detention overview

According to Singapore's Immigration Act of 1959, any person who is defined as a "prohibited person" can be detained. This includes people who are not in possession of valid travel documents or who enter Singapore unlawfully.⁴⁶⁰ Singapore does not have any domestic legislation for the protection of refugees or people seeking asylum. 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 asylum seekers who have been registered with UNHCR do not have any legal status in Singapore; as such, where they are in violation of the Immigration Act they may be prosecuted and detained for immigration offences. Unlawful entry or presence in Singapore is met with heavy punishments, including fines, imprisonment and caning for men aged under 50.⁴⁶¹

In practice, people at risk of detention and who are detained in Singapore are usually visa overstayers, such as those who legally entered the country on a tourist or work visa and stayed after that expired. Migrant workers can also become "overstayers" or undocumented if they are dismissed by their employers and are ineligible for a Special Pass (see below), as their work permits are tied to their employers, who must consent should the worker wish to change jobs.⁴⁶² A total of 473 migrants with irregular status and overstayers were arrested in Singapore in 2020, and a total of 932 in 2019.⁴⁶³

As of December 2021, there are 54 'Immigration Depots', some of which include prisons.⁴⁶⁴ However, information provided by migrant rights groups indicates that overstayers who are arrested and detained are most frequently brought to the Immigration and Checkpoints Authority building at Kallang Road. There is little information on conditions in these immigration detention facilities and a lack of publicly available data on the numbers of people held in immigration detention.

Developments in law and practice

When a migrant becomes undocumented or is at risk of becoming undocumented, they may apply for a Special Pass to temporarily legalise their stay in Singapore.⁴⁶⁵ This is only issued to individuals who have a valid reason (as defined by Singaporean law) to remain in the country.⁴⁶⁶ Special Pass Cards are issued by the Ministry of Manpower or the Immigration & Checkpoints Authority (ICA) from 21 May 2019.⁴⁶⁷ 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.⁴⁶⁸ 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.

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.⁴⁶⁹ It is unclear to what extent this discretion is used in practice.

Key strengths and main challenges

Special Passes **provide people who are undocumented, or about to become undocumented, with a temporary legal status** - provided they meet the relatively narrow eligibility criteria under Singaporean law. These eligibility criteria are primarily centred on enabling a person to remain in Singapore while they are awaiting resolution of employment-related legal proceedings.

By providing individuals with temporary legal status through the Special Pass, the Singaporean government in turn is able to **reduce the use of immigration detention**. However the Special Pass is a **tool used to facilitate departure from the country**, rather than a pathway to long-term residence. As a general rule, Holders of the Special Pass **do not have the right to work**; 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 been concluded), however in practice this is challenging and will usually require the support and intervention of a specialised NGO.⁴⁷⁰

SOUTH AFRICA

Detention overview

The main provisions relating to immigration detention in South Africa are contained in the South African Constitution, the Immigration Act (13 of 2002) and the Refugees Act (130 of 1998) and accompanying regulations.⁴⁷¹ The Constitution enshrines the right to dignity and to freedom from arbitrary detention, as well as key protections for people in detention which apply equally to immigration detention.⁴⁷²

The Immigration Act allows for administrative detention of up to a maximum period of 120 days of people deemed “illegal foreigners” for the purposes of deportation. In addition, the Act allows for detention of up to 48 hours of people suspected of being in the country unlawfully in order to verify their identity or status. Under the Act, imprisonment may also be imposed as a criminal sanction for offences related to irregular entry and stay in the country.

In general, the Refugees Act protects people seeking asylum from immigration detention by providing that no proceedings for unlawful entry or stay in the country may be instituted against persons who have applied for or been granted asylum. The Act allows for the detention of asylum seekers under certain limited circumstances when their asylum permit has been withdrawn. Under an amendment to the Act adopted in 2017,⁴⁷³ refugees and asylum seekers may also be detained pending removal on grounds of national security, national interest or public order.

In recent years, actors have noted increased judicial oversight and compliance with laws governing administrative immigration detention on the part of the Department Home Affairs (DHA), in part as a result of successful public interest litigation and civil society advocacy efforts.⁴⁷⁴ At the same time, the use of criminal detention has reportedly increased with non-nationals, including newly arrived asylum seekers, commonly serving sentences of up to three months for immigration offences before being transferred to detention for the purposes of deportation.⁴⁷⁵

South Africa has one dedicated immigration detention facility - the privately managed Lindela Repatriation Centre - as well as a number of police holding cells which have been designated as places of immigration detention. There are no publicly available figures on the number of people in immigration detention in the country.

Developments in law and practice

The number of children detained for migration-related reasons in South Africa has notably decreased in recent years, with reportedly little or no child immigration detention in practice since 2018.⁴⁷⁶ The law provides that children may only be detained for migration-related reasons as a measure of last resort and subject to certain safeguards, including that children may not be detained in facilities for adults.⁴⁷⁷ The law also provides for alternative care arrangements, including the possibility of foster care, and for the involvement of social workers when engaging with unaccompanied children.⁴⁷⁸ Coordinated by the Department of Social Development, intersectoral measures have been gradually implemented to improve protection and care for unaccompanied children in South Africa.⁴⁷⁹ Currently, unaccompanied children are commonly placed in Child and Youth Care Centres (CYCC), or in temporary community-based foster care.⁴⁸⁰ South Africa reported to the UN Global Study on Children Deprived of Liberty, published in 2019, that it does not detain children for migration-related reasons.⁴⁸¹ In 2020, IDC member Lawyers for Human Rights (LHR) noted that “while children are at times still identified in Lindela and detained in the holding cells at police stations, the numbers of detained children that LHR encounters have significantly

decreased from those identified in the early 2010s.⁴⁸²

For some time, South Africa has provided people seeking asylum with an Asylum Seeker Permit, which ensures protection, including from immigration detention, and allows them to work and study in the country. Under changes to the system which came into effect in 2020, individuals are required to declare their intent to apply for asylum upon entry at a recognised port of entry, at which point they are issued with a 5-day transit visa.⁴⁸³ The person then has 5 days to formally apply for asylum at a Refugee Reception Office (RRO), which issues the individual with an Asylum Seeker Permit.⁴⁸⁴ The Permit may be renewed until the authority issues a decision on their asylum case. The law states that this process should take up to 180 days, but in practice it can take years. According to IDC's information, since RROs have been closed as a result of the COVID-19 pandemic, the government has been issuing blank renewals until offices reopen.

Key strengths and main challenges

While the **decrease in the practice of child immigration detention is a positive development** in South Africa, key gaps remain. The country **does not prohibit child immigration detention in legislation**, as required by international human rights law. In addition, child protection mechanisms and services are **under-resourced and often ad hoc**. More work is needed to ensure that vital processes such as BID assessments and case management for migrant children and families are strengthened and systemised.⁴⁸⁵

The fact that **people seeking asylum are generally able to live, work and study freely in the community** is a key strength of the country's current approach to migration and asylum. However, amendments to the Refugees Act and new Regulations which came into force in 2020 have created **new barriers for people in accessing the asylum system and obtaining and renewing Asylum Seekers Permits in practice**.⁴⁸⁶ For example, observers have noted that the requirement for asylum seekers to report to an RRO within 5 days of entering the country is in many cases impracticable, if not impossible, and results in people being excluded from seeking asylum.⁴⁸⁷ Such barriers have the effect of **increasing the vulnerability of refugees and asylum seekers to detention and refoulement**.

A broader challenge is that since 2017, in the context of endemic racism and xenophobia in the country, **South Africa's migration policy has shifted to increase emphasis on securitisation**, which is restricting refugee rights and opening the door to more immigration detention.⁴⁸⁸ Observers have expressed **concerns about plans detailed in a 2017 White Paper** to build more dedicated immigration detention facilities in remote areas of the country, as well as the creation of 'processing centres' on the borders where people might be deprived of their liberty and be subjected to human rights abuses.⁴⁸⁹

SOUTH KOREA

Detention overview

The South Korean Immigration Act provides that all non-nationals who violate conditions of entry, stay and exit can be subjected to deportation and that any person suspected of being subject to deportation can be detained.⁴⁹⁰ This can include people seeking asylum, migrants with irregular status, victims of trafficking, and children. The Refugee Act also provides grounds for the use of detention for people seeking asylum in order to verify their identity or to wait for their asylum application referral result. A person who is detained while authorities are examining and deciding whether the person is subject to deportation can only be detained for a maximum of 20 days.⁴⁹¹ However, there is no maximum limit to the length of detention for those under deportation order; the Immigration Act (Article 63) states that those under deportation orders who cannot immediately be deported can be detained in any detention facility until deportation is possible.⁴⁹² Further, there are no specific provisions under the Immigration Act or the Refugee Act that prohibits the detention of children or any other vulnerable groups.

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 (the Refugee Act). Despite this, people seeking asylum who arrive in South Korea are often detained. Those who express the intention to apply for asylum at a port of entry are first accommodated at the transit zone of the airports while waiting to hear if their case is eligible to be referred to a formal Refugee Status Determination (RSD) procedure. A large number of applications receive non-referral decisions at this stage and the applicants are then detained in a deportation waiting room. There are also cases of people seeking asylum receiving departure orders while their cases are being processed.⁴⁹³ This is the case if the person has overstayed their visa, stayed in Korea for a prolonged period of time before applying for refugee status, or if they have re-applied for refugee status without a change in their circumstances. The departure order can be deferred until the final RSD decision is made, however individuals may be detained while their claim is processed.

It is an internal policy of the Justice Ministry to not detain children in principle. The government reported that migrant children under the age of 14 may only be placed in detention when deemed "unavoidable to ensure the safety of such children," and that such detention is rare.⁴⁹⁴ While no information is available on their numbers, official data shows that the number of children ages 14 to 18 in immigration detention have decreased over the years, to 19 children in 2020, compared to 57 in 2019 and 57 in 2018.⁴⁹⁵

Human trafficking survivors are also frequently detained and deported, despite existing government policy not to detain trafficking survivors. This is in part due to inadequate screening processes linked to a lack of understanding of the different forms of trafficking that can take place, which results in survivors being penalised. This is particularly the case for survivors of trafficking for sexual exploitation.⁴⁹⁶

Developments in law and practice

The Ministerial policy of the Justice Ministry provides protection against detention and deportation for undocumented children who have resided in South Korea for long periods of time. In the past, this policy did not grant legal status to the children or provide a pathway to legalisation, but only functioned as a temporary suspension of a deportation order. However, a newly enforced policy - effective from 1 February 2022 until March 2025 - grants permission to stay (a D-4 or G-1 visa) to undocumented children who are either currently in school or have graduated from school as well as their parents (G-1 visa). It also provides a pathway for legalisation of the status of undocumented children who are long-term residents

of South Korea. Parents are also able to seek employment under this visa for the purpose of supporting their children.

In response to a widely publicised incident at an immigration detention facility where a detained person was found to be tied down for a prolonged period of time from the neck to legs,⁴⁹⁷ the Ministry of Justice announced on 1 November 2021 that it would be initiating a series of legislative and policy changes to improve the immigration detention regime.⁴⁹⁸ These changes include reduction in the use of detention orders, proactive use of temporary release, establishing a legal limit to the length of detention, and the development of a plan to establish an alternative detention facility which would allow freedom of movement within the facility, aiming to shift the focus of such facilities from detention to protection.

Key strengths and main challenges

The newly introduced policy of the Ministry of Justice to legalise the status of undocumented children has **strengthened the protection of migrant children with irregular status by providing a specific type of visa to both the children and their parents**. The policy also provides the opportunity for children to transfer to longer-term visa and naturalisation. The previous policy did not grant legal status to children or provide a pathway to legalisation but only functioned as a temporary suspension of the deportation order when a child was in school; this meant that children were still subjected to detention and deportation when they no longer attended school or post-graduation. However, **the policy is expected to be in place only for three years** (until March 2025) and applies only to undocumented children who have been in South Korea for long periods (over 6 or 7 years).

SPAIN

Detention overview

Migrants are detained in Spain for the purposes of carrying out a deportation order. There are eight detention facilities in Spain (Centros de Internamiento de Extranjeros - CIE). Considerable criticism has been made of CIE due to the poor conditions people are detained in.⁴⁹⁹

Non-nationals can be initially detained for a maximum of 72 hours, after which time a judge must deliver a judicial order prolonging detention at a designated centre. The maximum length of detention is 60 days, and once the individual has been released they cannot be re-detained for the same reason.

Under Article 1 of Royal Decree 162/2014, the purpose of detention ("internment") in CIEs is to guarantee an individual's deportation. The following grounds for detention are allowed for within legislation (Reglamento de la Ley de Extranjería, the 'Aliens Act'):

- > For the purposes of expulsion from the country because of violations, including being on Spanish territory without proper authorisation, posing a threat to public order, attempting to exit the national territory at unauthorised crossing points or without the necessary documents and/or participating in clandestine migration;
- > When a judge issues a judicial order for detention in cases where authorities are unable to carry out a deportation order within 72 hours;
- > When a notification for expulsion has been issued and the person fails to depart from the country within the prescribed time limit.

Detention is intended to be used for migrants who are found to be living without a residence permit on the Spanish territory, or for those who are found to have entered the Spanish territory in an irregular manner and have been issued with a removal order. People seeking asylum should not be detained, including when subject to the Dublin procedure (but those who apply for asylum whilst in detention remain there while their claim is processed).⁵⁰⁰

Developments in law and practice

At the beginning of the COVID-19 pandemic in March 2020, the government began releasing people from immigration detention and closing Spanish immigration detention centres due to the impossibility of continuing deportations during the pandemic. By May 2020, Spain announced that its CIEs were completely empty.⁵⁰¹ However, people were released from detention without receiving support or accommodation from the state. This meant that NGOs and civil society organisations were left to provide people released from detention with the support that they needed. Spanish-based NGO Fundación Cepaim, for instance, opened its centres to migrants who had been released from detention, essentially establishing their Humanitarian Reception Programme as an unofficial alternative to detention programme.⁵⁰²

Fundación Cepaim works with people to address social and residential exclusion, as well as facilitating their integration. People are accommodated at private apartments and are provided monthly allowances and in-kind support to cover their nutrition and other basic needs. Individuals are assigned a case manager and supported holistically by a team that includes lawyers, psychologists, mediators, social workers and volunteers. They are provided with legal assistance and information on regularisation schemes, as well as Spanish classes to improve their language skills and other assistance to facilitate their integration and social inclusion.⁵⁰³

The shelters are completely open, with people able to come and go freely. Moreover, during the pandemic

the government of Spain granted extraordinary work permits for migrants to work in the agricultural sector, which gave many people the opportunity to take up employment.

Key strengths and main challenges

As the peak of the COVID-19 pandemic came to an end, and as travel restrictions were lifted and deportations were made possible, **Spain began to place people in pre-removal detention once again.**⁵⁰⁴ Fundación Cepaim's project shows the enormous potential that a case management-based ATD could have in Spain, in allowing for people to **resolve their immigration cases in the community.** The programme helps to **improve integration outcomes** for the large numbers of people who are issued with removal orders but for whom return is not possible.⁵⁰⁵ It also ensures **improved health and wellbeing** amongst people who are able to stay in the community while their cases are processed.

The programme could be **expanded to offer a case management-based ATD** along similar lines to the role it played during the pandemic. However, there has so far been **limited action taken on the part of the government to integrate case management-based ATD programmes into their ongoing approach,** and there are indications that this will not form part of Spain's national priorities for the EU Asylum, Migration and Integration Fund (AMIF).⁵⁰⁶ Programmes such as Cepaim's **remain under-resourced** and struggle to secure accommodation due to **engrained and systemic discrimination** within society towards those with irregular status.

SUDAN

Detention overview

Sudan is both a country of origin and country of destination for migrants and refugees. According to UNHCR, as of 31 January 2021 there were 1,074,527 refugees and asylum seekers in the country - 30 percent settled in camps, and 70 percent living outside of camps.⁵⁰⁷ Sources estimate a total of 1.2 million international migrants in 2019; the majority from South Sudan.⁵⁰⁸

The principal law governing immigration detention in Sudan is the 2003 Passports and Immigration Act (superseded by the 2015 Act), which explicitly enables the use of immigration detention, even without a warrant, for non-nationals who enter or remain in the country without permission.⁵⁰⁹ In practice migrants and refugees are regularly detained, particularly those without documentation, as are refugees who leave the camps.⁵¹⁰ Moreover, refugees with identification or "alien" cards are not always recognised, and their cards are at times confiscated and destroyed by law enforcement officers, which puts them at risk (including of detention).⁵¹¹ National law on preventing irregular migration explicitly enables the use of immigration detention without a warrant.

Sudan uses prisons and ad hoc immigration detention facilities to detain non-nationals, while other reports also referred to various immigration detention facilities being used, including an "Aliens Detention Centre" in Khartoum. However, there is limited information on the exact location of those facilities, their operations, and whether they remain in use.⁵¹² Children are detained with adults; sources indicate that authorities conduct round-ups, and fine or detain children without legal residency.⁵¹³ Additionally, an estimated 150 to 200 refugees and people seeking asylum are detained each month in Khartoum.⁵¹⁴ The conditions in detention facilities are reportedly poor and considered "harsh and life threatening" in addition to overcrowding as a main issue of concern, especially during COVID-19.⁵¹⁵

Developments in law and practice

In 2020, UNICEF supported the establishment of case management to ensure proper placement of children and close follow-up and monitoring of children after their placement with families. In addition, government ministries have signed an agreement to increase the number of social workers in Khartoum state. They also adopted SOPs for professionals working with children without parental care. All these developments resulted in more than 5,000 children - including migrant children - being placed in alternative family-based care under the Kafala system.⁵¹⁶ It should also be highlighted that in response to the COVID-19 Pandemic, the Sudanese authorities released 883 children from detention, aged between 13 and 17. In coordination with the authorities, UNICEF has played an active role in reuniting those children who were released from detention with their families or placing them in alternative family care.⁵¹⁷

The establishment of Family and Child Protection Units (FCPU) has also been a key development in moving towards a reduction in the use of immigration detention. FCPU are state-run centres, where detained children are placed. These units include children who have been detained for immigration related reasons, as well as criminal offences. Theoretically, children detained for criminal offences are placed in these centres as they await trial with a family judge, while children detained for administrative reasons stay in the centres until their case has been processed and are then referred for asylum procedures, alternative care arrangements, and/or durable solutions.⁵¹⁸ The FCPU employ social caseworkers, recruited by the National Council for Child Welfare (NCCW), who provide psychosocial services for children and attempt to find alternative placement options.⁵¹⁹ Further, in 2020 psychosocial support and legal services were provided by FCPU, including cases of gender-based violence (GBV).⁵²⁰

Key strengths and main challenges

The **establishment of the FCPUs has several benefits** including the separation of children from adults in detention centres, the provision of services to the children by the State and UN agencies, and the referral of children for alternative placement options. However, sources indicate that these units often do not allow children to leave;⁵²¹ and thus these facilities risk becoming **de facto detention centres**. Moreover, children often stay for long periods of time in the FCPU, which not only curtails their liberty but also **puts a burden on the capacity and resources in these units**, therefore affecting the quality of services provided.

Additionally, the government, in collaboration with UNICEF, has taken promising steps to **establish a systematic process for alternative care arrangements**, resulting in the placement of several unaccompanied and separated children. **However, without proper evaluation it remains unclear to what extent migrant and refugee children benefit from the system**. Moreover, while the **efforts taken to establish case management and increase the number of social workers is a promising step forward**, ensuring ongoing sustainability and support is a concern, especially with the **recent budget cuts initiated due to the freeze in international aid** in response to the 2021 coup d'État.

TAJIKISTAN

Detention overview

The 1998 Criminal Code of Tajikistan penalises the crossing of the State border without valid travel documents.⁵²² This means any non-national entering the country without a permit is subject to arrest and detention. However, the same article specifically notes that the sanction does not apply to those crossing the border to apply for political asylum.

The detention of people seeking asylum is reportedly very rare in Tajikistan.⁵²³ People who enter Tajikistan without valid documents but declare that they are seeking asylum are exempt from the punishments stipulated for illegal entry/stay in the State, as per article 6(4) of the 2014 Refugee Law.⁵²⁴ However, the 2014 Law of the Republic of Tajikistan on Refugees states that persons who enter Tajikistan without a permit but 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 a person seeking asylum; they must also comply with the principle of non-refoulement.⁵²⁵ Tajik authorities do not release statistics on the number of non-nationals detained in detention facilities.

There are no detention facilities or camps specifically for people seeking asylum and refugees in Tajikistan.⁵²⁶ However, this may change in the coming years following reports that the EU Interior Minister had discussed the idea of building refugee 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.⁵²⁷ In September 2021, the EU drafted a proposal for States neighbouring Afghanistan to open detention facilities, with the EU proposing to pay 600 million EUR for the upkeep of the facilities.⁵²⁸

Tajikistan, within the 2002 Chisinau Agreement on the Return of Minor Children to Their Country of Origin, keeps unaccompanied migrant children in residential childcare institutions before returning the children to their home countries. 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."⁵²⁹ Currently the juvenile reception centre in Dushanbe detains migrant children. This centre, while not specifically called a detention centre, is run by Juvenile Delinquency Prevention Service under the Ministry of Internal Affairs. The building has windows with iron bars, and the staff members wear police uniforms.⁵³⁰

Developments in law and practice

Tajikistan enacted the Law of the Republic of Tajikistan on Refugees in 2014. Individuals who apply for asylum under this law are exempted from immigration penalties for crossing the border without valid travel documents. This includes detention. The country hosts approximately 13,000 refugees and asylum seekers as of February 2022. Almost all refugees and people seeking asylum in Tajikistan are Afghans. It is the only Central Asian country to have made a public statement that they would receive people fleeing Afghanistan following the Taliban take-over of the country in August 2021. This is in stark contrast to other Central Asian neighbours who from the outset made it clear that they would not welcome large numbers of Afghan refugees.

An Amnesty Law, which came into effect on 7 January 2020, allows non-nationals 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 obtaining the residence permit, it is also possible to

apply for Tajik citizenship under this new law. Some 20,000 people, the majority being part of the stateless population in Tajikistan, are expected to be able to obtain legal status in Tajikistan through this provision and therefore will no longer be subjected to immigration penalties such as fines and imprisonment.⁵³¹

Key strengths and main challenges

Tajikistan is one of only a handful of States in Asia Pacific that **appears to not utilise detention as its primary migration management tool**, despite the country being a host to almost 20,000 refugees, people seeking asylum and stateless people as of February 2022. Instead, the introduction of the Law on Refugees in 2014 and the Amnesty Law in 2020 represent promising steps towards **removing the risk of detention for people seeking asylum and stateless people**. However, the ongoing efforts of the EU to build detention facilities in Tajikistan may result in worrying **changes which introduce detention into the country's migration governance infrastructure**.

THAILAND

Detention overview

Immigration detention is provided for in the Immigration Act of Thailand, BE. 2552 (1979). 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.⁵³² The penalties for irregular stay in Thailand are imprisonment not exceeding two years, or a fine not exceeding 20,000 THB.⁵³³ Once they have served the prison sentence, the person is then transferred to an immigration detention centre for deportation, where there is no maximum time limit on their detention.⁵³⁴ 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.

There are no publicly available, disaggregated data on the total numbers of people in immigration detention in Thailand. Despite a significant reduction in the rate of detention amongst refugees and asylum seekers in recent years, they continue to be detained in practice. As of August 2021, there were 198 refugees and people seeking asylum in immigration detention, including 140 Rohingya.⁵³⁵ Undocumented migrants, including children from neighbouring countries in particular, have been at risk of prolonged detention during the COVID-19 pandemic due to border closures. Although the Anti-Trafficking in Persons Act 2008⁵³⁶ states that trafficking survivors should not be placed in detention, challenges with identification processes mean that undocumented migrants not properly identified as trafficking survivors can be arrested, detained and deported back to their country of origin by immigration police.⁵³⁷ Refugees from Myanmar who leave the camps along the Thai-Myanmar border are also at risk of arrest and deportation.

As of 2020, there were 22 detention centres where people are held for immigration offences.⁵³⁸ The Detention Centre for Mothers and Children in Bang Khen, operated by the Immigration Bureau, 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.⁵³⁹

Developments in law and practice

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),⁵⁴⁰ with SOPs to implement the MOU-ATD following in July 2020. The general principles of the MOU-ATD and SOPs 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.⁵⁴¹ 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 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.⁵⁴² 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.⁵⁴³ 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.⁵⁴⁴ 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 who are accommodated in the shelters.

The Thai government has also established the One Stop Service (OSS) and the Management Center 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, 1,827,096 migrant workers came forward and completed their regularisation process.⁵⁴⁵

Key strengths and main challenges

The ATD MOU and its related SOPs mark **important steps towards ending the immigration detention of children in Thailand**. Between October 2018 and September 2021, 259 children and their families were released from immigration detention.⁵⁴⁶ However despite this important progress, there are **a number of key gaps** with the ATD MOU. Firstly, it **does not prevent the arrest of children**; rather, its provisions come into effect once a child has been arrested and detained. Secondly, mothers are still **required to be bailed out at extremely high costs** (THB 50,000). Thirdly, in contrast to mothers, **fathers are not typically considered for release on bail**, resulting in family separation. This in turn aggravates levels of vulnerability and negatively impacts the psychosocial wellbeing 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**.⁵⁴⁷ 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. The MOU-ATD is also not consistently implemented for Rohingya children.

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.⁵⁴⁸ This is a **potentially positive step though many details remain unclear**, including what protections those granted Protected Person status will be able to access, what groups will be eligible, and whether they will be protected from arbitrary detention.⁵⁴⁹ The Thai government is also working on a NRM, though does not currently have one in place which makes **screening, identification, and referral of trafficking survivors a challenge**.

When it comes to the NV, many migrant workers are thought to have fallen out of the process due to **limited understanding of the procedures** as a result of different agencies operating under different timelines, **higher costs of registration** resulting from primarily health check, **COVID-19 tests and in-country visa extension, and failing to find new employers** within the specified timeframe.

Trinidad and Tobago

Detention overview

The small, twin-island nation state of Trinidad and Tobago in the Caribbean faces many challenges to effectively manage recent large movements, in particular relative to population size. UNHCR reports current registration of over 22,000 refugees and people seeking asylum (22% are children),⁵⁵⁰ coming from 38 countries – primarily escaping the protracted conflicts in Venezuela (87%) and Cuba (6%), as well as others seeking safe pathways on the migration corridor to North America and Europe. Estimated numbers of Venezuelans are much higher and the pandemic has made the humanitarian situation more acute.

Since 2017 Trinidad and Tobago's national migration policy is framed in national security rhetoric, increasingly dependent on detention and deportation for migration control.⁵⁵¹ Under the 1976 Immigration Act, anyone found entering irregularly is automatically charged with the criminal offence of illegal entry and is prosecuted in the courts.⁵⁵² The police and migration officers may, without a warrant, arrest and detain any foreign national found entering the country through an irregular port of entry for up to three years. There is no vulnerability screening mechanism nor is there an exception to this provision on the basis of the protection needs of people seeking asylum. UNHCR currently undertakes registration and refugee status determination, and together with civil society partners like Living Water Community advocates for their release on a case-by-case basis. Furthermore, there is no specific legislation that prohibits the detention of children or prevents child separation in the case of breach of these immigration regulations.

People are primarily detained in the Immigration Detention Centre in Aripo, and also in a quarantine facility at the Chaguaramas Heliport, the Maximum Security Prison, the Youth Transformation and Rehabilitation Centre and police stations.

IDC partner, Caribbean Center for Human Rights (CCHR), Living Water Community (LWC) and other activists from the region, have publicly called on the government and the international community to urgently address the multiple human rights violations associated with immigration detention, including overcrowding and inhumane conditions, the lack of access and monitoring of such facilities, the lack of reliable data and information and the lack of coordination among authorities, and of transparency of policies and procedures. as well as the situation of prolonged and indefinite detention without sufficient legal basis and the detention of children.⁵⁵³

Developments in law and practice

The Immigration Act provides that a person taken into custody or detained may be granted conditional release or an order of supervision, with or without bond.⁵⁵⁴ Under this provision, refugees and people seeking asylum have been released after a bond has been paid and order of supervision granted, allowing them to reside freely while reporting on a monthly basis to immigration authorities. The order thus operates as a mechanism for release from immigration detention.

In the case of children, the Children's Act gives the Court discretion to order non-custodial arrangements that can avoid their detention.⁵⁵⁵ The Children's Authority is entrusted with the custody and mandate over migrant children where no legal guardian is available. Immigration officials make efforts to refer unaccompanied children for appropriate care arrangements; accompanied children can be added to their parent or guardian's order of supervision, although they cannot sign themselves. A case management system is also used by the Authority which includes identification, assessment, medical screenings, psychosocial support and placement of migrant children in appropriate community residences.⁵⁵⁶ The

Children's Community Residences Act also makes provision for foster care.

In the absence of refugee policy or legislation, people seeking asylum have benefited from the successful collaborative partnerships among Living Water Community, UNHCR and IOM, that have been instrumental to screening for protection needs and vulnerabilities, supporting people through their asylum process and for gradual community integration. Placement in host communities and with church-affiliated shelters that provide case management services have been successful with good compliance outcomes as well. The ability of people to sustain themselves with work in the informal sector has been a critical factor. In addition, the immediate intervention of community-based protection teams for food distribution, housing and economic assistance was a coordinated positive practice to guard against destitution and address basic needs in the pandemic.⁵⁵⁷

In 2019, the government set up a National Registration Process in an effort to register Venezuelans living in the country. Regardless of their migration status or whether they entered via a legal entry point, the more than 16,500 that registered, obtained the right to remain in the country temporarily with permission to work for one year. While some have since returned to Venezuela or moved on, registration can be renewed and registration cards have now been extended until 31 December 2022.

Key strengths and main challenges

Even with the policy focus on national security and the legal criminalization of persons for irregular entry, together with the strain on the country's resources posed by arrivals of migrants and refugees to a small nation state, the **positive practices identified in Trinidad and Tobago could be strengthened and expanded to prevent detention of vulnerable groups.**

The main challenge is to open up dialogue about what is needed, foster trust with the host community and to build on the existing resources in a whole of society approach.⁵⁵⁸

The **order of supervision** is clearly stated in law and **has been used in practice over the years as an alternative** release mechanism. **It has, however, been applied inconsistently**, at the discretion of the immigration officer, and has been conditional on the payment of bond, which many migrants are unable to fund. While the challenge is that there is **no clarity that detention is only a last resort when an order is not feasible**, the law does allow for its use without bond and a call for supervision orders on this basis could encourage people to come forward without fear of detention; instead of being at risk of detention, they could then be registered and referred to community support. **Existing community case management programs have shown good compliance outcomes.**

The **detention of refugees and people seeking asylum is a critical challenge**, especially since there is no legislation and policy framework to guide their treatment in the country. Advocates continue to call on the government to revisit the multi-agency Draft National Policy to Address Refugees and Asylum Matters and SOPs which were developed in 2014 and which have not been integrated into legislation or official policy. The **successful collaborative partnerships among Living Water Community, UNHCR and IOM** have been key.

Civil society has also noted the **importance of adopting explicit legislation to prohibit the detention of migrant and refugee children**, since the respect for the rights of children and implementation of the existing legal protections remain a challenge in practice. At present, the detention of children often depends on the judge's willingness to use the non-custodial alternatives provided for in the Children's Act. **The separation of children when their parents are**

detained for long periods is also of concern.⁵⁵⁹

The **registration of Venezuelans has been a positive response** – it is hoped that permission to stay and work will be extended and expanded, and eventually be supported by an investment in case management services for community integration. However, thousands of Venezuelans and others who were unable to register during this process, remain undocumented and at risk of detention.

TUNISIA

Detention overview

Tunisian law does not contain specific provisions for administrative immigration detention. However, unauthorised entry, residence, and exit for both Tunisian nationals and non-nationals are explicitly criminalised and sanctioned with prison and fines. The principal laws governing the entry and exit of non-nationals include the Organic Law 68-7 and the Organic Law 1975-40, which has been amended on numerous occasions, most recently by the Organic Law 2004-6.⁵⁶⁰ The Organic Law 2004-6 also penalises the provision of assistance to migrants with irregular status, thus making civil society organisations that work to assist people seeking asylum vulnerable to prosecution.

Tunisia uses detention centres as well as “reception and orientation centres” to detain migrants with irregular status. There are 27 prisons used for immigration detention purposes, and both children and adults are detained in these facilities.⁵⁶¹ The Tunisian authorities also detain migrants in reception and orientation centres, such as AL-Wardia and Ben Guerdan. Sources report that in 2019 the most common reasons for detention at both AL-Wardia and Ben Guerdan centres were: “stealthily crossing the border”, “involvement in justice issues”, “overstaying”, as well as “falsification of official documents.”⁵⁶² Tunisian authorities also use border police premises, such as airport and maritime border police stations, and unofficial detention centres to detain large numbers of migrants crossing the Tunisian borders. Generally, the conditions in such facilities are reportedly poor, with overcrowding as the main issue, in addition to inadequate food and health assistance.⁵⁶³

Tunisia currently hosts 9,374 registered asylum seekers and refugees.⁵⁶⁴ Regarding migrants with irregular status, there is a general lack of accurate data on the numbers present in Tunisia. However, it was estimated in 2018 that there were 10,000 undocumented migrants in the country.⁵⁶⁵ Additionally, children were thought to make up 19% of the total population of undocumented migrants in Tunisia in 2019.⁵⁶⁶

Developments in law and practice

In collaboration with UN agencies and civil society organisations, the Tunisian government provides alternative care arrangements for unaccompanied and separated children (UASC) According to the IOM office in Tunisia, UASCs are placed in State-run shelters, known as Child Social Protection Centres, which are run by the Ministry of Social Affairs. Unlike the reception and orientation centres, in which strict rules to exit the centres curtail the right to liberty, the Child Social Protection Centres are more open and children can be granted permission to leave throughout the day. There are currently two centres of this kind, and while these centres prevent children from being on the street and offer an alternative to their detention, they are under-staffed and lack the capacity to respond to the growing numbers of unaccompanied children in Tunisia.⁵⁶⁷

Additionally, some organisations (including UNHCR and IOM) are providing temporary accommodation for new arrivals to the country, as well as to refugees and migrants rescued at sea.⁵⁶⁸ However, according to IOM, referral of children to services outside the IOM shelter are extremely limited.

Case management in Tunisia is also well established and is run by organisations in collaboration with the government.⁵⁶⁹ Additionally, NGOs in Tunisia have screening and referral mechanisms in place for migrants to reduce their risk of detention.⁵⁷⁰ Further NGOs often conduct monitoring visits to some detention centres, such as El-Ouardia, and refer vulnerable cases to specialised ministries. However, NGOs lack access to regular detention centres and juvenile centres where migrant children are also

detained.⁵⁷¹

The government has also taken steps to reduce trafficking and enhance screening and referral mechanisms. In December 2021, Tunisia launched their NRM, which provides a platform for multi-sectoral cooperation for identifying and referring migrants in vulnerable situations, including victims of human trafficking, and particularly women and children.⁵⁷²

Key strengths and main challenges

The Child Social Protection services outlined above are intended as a **temporary solution to protect children and provide them with services**, and are considered to be a **key development to pave the way for alternative care arrangements, as they accommodate children separately from adults and provide them with services and basic needs**.

However, in reality the Child Social Protection Centres are far from optimal and they do not meet international standards.⁵⁷³ Additionally, challenges remain when it comes to the potential for improving the conditions of the Centres due to **limited resourcing and understaffing**. Even if conditions were improved in the Centres, however, there remains the question of what happens to children when they turn 18. Currently, children can only stay in the Centres until they achieve the majority age set out in Tunisian law. This means that when they reach the age of 18 they have to leave the centres, and there are **no bridging or transition programs in place to support them**.⁵⁷⁴ This leaves many young people in situations of destitution, and **vulnerable to a wide range of risks including exploitation and abuse**.

While the Tunisian government has demonstrated efforts to combat trafficking, **reported human trafficking cases continue to be on the rise in Tunisia, and sources report the lack of sufficient training for security forces and border control officers to identify potential victims of trafficking**.⁵⁷⁵

TURKEY

Detention overview

The 2013 Law on Foreigners and International Protection (LFIP), which came into force in 2014 and was most recently amended in 2019, is the main law governing immigration detention in Turkey. It sets out the use of detention for removal purposes, as well as for people seeking international protection. There are a number of circumstances which, in the law, justify the detention of somebody to whom a removal decision has been issued. Whilst the law sets out that applicants shall not be subject to administrative detention solely for lodging an international protection claim, there are also some circumstances under which people seeking asylum can be detained – for instance, for the purpose of determining their identity or when it is necessary to identify and review the grounds for their application.

When it comes to removal procedures, administrative detention has a six-month time limit in Turkey, however in some cases this can be extended for a further six months. Asylum applicants should not be detained for longer than 30 days, and only as an “exceptional action.”⁵⁷⁶ Children and families with children can be detained, with the exception of unaccompanied children seeking asylum who are under the age of 16, although in practice unaccompanied children identified as such by the authorities are placed in state-run shelters.

As of late 2021, 25 immigration detention facilities categorised as “removal centres” were in operation with a total capacity of 15,908 people. In addition, holding facilities at airports, foreigners’ police branches of provincial police directorates, and gendarmerie premises are also used for *de facto* immigration detention purposes in various situations.⁵⁷⁷

Developments in law and practice

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 provides a legislative basis for the implementation of a selection of alternative measures on non-nationals subject to removal decisions who could otherwise be subject to pre-removal detention. Seven specific alternatives are included in the law:

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; and
7. Electronic monitoring.

According to the law, these measures shall not be applied for more than 24 months and non-compliance shall be grounds for imposing pre-removal detention.⁵⁷⁸

Preparations are reportedly already underway for various implementation protocols and modalities for the listed alternatives, however these have not yet been published. An implementing regulation is expected to provide crucial guidance as to the procedures and criteria by which the authorities will determine whether to detain an individual or refer them to an alternative measure, and which of the seven alternatives listed will be applied. Such specific implementation guidance is essential in order to ensure consistent and systematic practices on the ground and prevent arbitrariness.

Currently, only two alternatives to detention – reporting and the use of a designated address – are being used in practice. In early 2020, the COVID-19 pandemic led to a number of people being released from removal centres because of travel restrictions that were in place, and which meant that returns were not possible.⁵⁷⁹

In 2020, also, 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 Netherlands. The project’s aim is to “contribute to the efforts of Turkey to address challenges arising from irregular migration with a human-rights based approach; support the efforts of the DGMM to adopt a financially sound ATD framework while safeguarding human rights, health, and welfare of migrants at the same time.”⁵⁸⁰ As of February 2021, another larger-scale EU-funded technical assistance project in support of the Turkish government, led by IOM and co-led by UNHCR Turkey, was launched. Entitled “Supporting Removal Centres’ Capacities and Fostering Alternatives to Detention,” the project will focus “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” and will run for three years.

Key strengths and main challenges

The inclusion of ATD within Turkish legislation is a **positive step forward**. Turkey is party to a number of treaties that clearly state that immigration detention should only ever be used as a last resort and should never be used where children are concerned. This law is a step towards attempting to ensure this. However, the use of ATD remains limited and discretionary without the benefit of publicly available criteria. As such, the **continued delay in the issuance of the implementing regulation for the 2019 legislative amendments** has meant that in practice only two of the seven ATD measures are currently used, subject to the discretion of the authorities.

Furthermore, despite the fact that there may be the opportunity for case management-based support included within a number of the ATD initiatives outlined in the 2019 amendment (for instance within family-based return programmes or as part of return counselling), this is not yet specified. Turkey’s ATD concept in law is **framed specifically to apply to persons subject to a pending return decision**. While per LFIP return decisions can be appealed in court and access to asylum procedures and other relevant legal migration options are safeguarded in law, these other potential migration outcomes do not appear to be specifically in Turkey’s ATD policy design at this point.

The inclusion of electronic monitoring within Turkey’s list of authorised ATD is a particular concern, particularly with regards electronic tagging. IDC regards electronic tagging as an alternative form of detention (or *de facto* detention),⁵⁸¹ given the extent to which it curtails – or even completely denies – people’s liberty and freedom of movement.

Finally, it is key that Turkey has **due process in place** to ensure that the ATD used are necessary and proportionate. The law currently states that “[it] is obligatory to impose one or more of the [ATD] obligations” on people who are subject to detention, however during the initial assessment the strengths, resources, and vulnerabilities of the individual must be taken into account in order to **ensure that the ATD is appropriate, not overly onerous, and makes use of the minimum possible level of restrictions**. Furthermore, with the exception of the electronic monitoring measure, there is no dedicated remedy by which the ATD measures can be appealed. As a principle, **it should be possible for people to challenge any restrictions imposed on them**.

UNITED KINGDOM

Detention overview

Immigration detention in the UK was introduced through the 1971 Immigration Act, and detention has subsequently featured within the Nationality, Immigration and Asylum Act 2002 as well as the Immigration Act 2016. The decision to detain somebody is an administrative one and is generally made by civil servants rather than courts, though court decisions may also result in detention.

The following reasons may justify use of detention:

- > In order to carry out a removal decision;
- > To establish a person's identity or the basis of their claim;
- > Where there is a risk that the individual will fail to comply with any conditions attached to a grant of immigration bail;
- > Where release is not considered to be "conducive to the public good."⁵⁸²

People seeking asylum may be detained on the same legal basis as other groups of migrants, however most asylum seekers are not detained before their claim is decided.⁵⁸³

There is currently no overall time limit for immigration detention in the UK, although for certain groups specific limits exist; according to guidance pregnant women, for instance, can only be detained for 72 hours, extendable to a maximum of one week with ministerial authorisation.⁵⁸⁴

The majority of people are detained in Immigration Removal Centres ("IRCs"), however the UK also detains people in prisons, Short-Term Holding Facilities, pre-departure accommodation facilities and short-term holding rooms based at ports of entry.⁵⁸⁵ There are currently seven IRCs operating in the UK.⁵⁸⁶ Their management has been subcontracted out to private, for-profit security firms.⁵⁸⁷ In 2020 approximately 15,000 people entered detention, the lowest number since statistics began in 2009.⁵⁸⁸ On average, between 81% and 94% of people detained are men.

Non-custodial alternatives are included in legislation but not required; however, according to Home Office policy detention should be a last resort and "must be used sparingly, and for the shortest period necessary."⁵⁸⁹ The alternatives included in law are electronic tagging, regular reporting, bail with sureties, and residence restrictions. Since 2018, automatic bail hearings are required every four months for detainees.

Developments in law and practice

The Detention Action Community Support Project has been working since April 2014 with migrant men with previous convictions, who have barriers to removal and have experienced or are at risk of long-term detention. Participants had been detained for periods ranging from three months to four years, following completion of prison sentences. After the person has been admitted to the project following a risk assessment, the project coordinator and the participant draw up a transition plan which sets out goals, actions and steps the participant can take. The project coordinator contacts the participant at least once a week, but the intensity and frequency of engagement varies depending on circumstances and needs. The project coordinator also seeks to address the issues raised by participants by advocating on their behalf to a range of statutory and non-statutory bodies.

The project aims to demonstrate that alternatives to detention can be effective for migrants with complex needs and risk factors who would otherwise face indefinite detention. The project aims to reduce the risk of formerly incarcerated young men with barriers to removal from reoffending or absconding, by assisting them to meet the conditions of their release and avoid long-term detention. Through one-to-one case management, participants strengthen their skills and confidence to stabilise their lives, engage positively in the community, and maintain contact with the authorities.⁵⁹⁰

In 2018, the UK Government published the Shaw Progress Report, a follow-up to the Review into the Welfare in Detention of Vulnerable Persons produced by Stephen Shaw, former Prisons and Probations Ombudsperson for England and Wales. Amongst other recommendations, the progress review urged the UK Government to “demonstrate much greater energy in its consideration of alternatives to detention.”⁵⁹¹ Shortly after its publication, and as a result of ongoing advocacy on the part of civil society organisations in the UK, the Government announced the creation of a Community Engagement pilot (CEP) Series, which set out to test approaches to supporting people to resolve their immigration cases in the community.

Following a successful bid process, Action Foundation – which had played a key role in the advocacy efforts that led to the introduction of the CEP – was granted the contract for the first of the pilots. The Action Access pilot ran between 2019 and 2021 and supported 20 women seeking asylum in a community setting in Newcastle-upon-Tyne in the North East of England. With one exception, prior to joining the pilot all of the women had been detained in Yarl’s Wood Immigration Removal Centre. Upon joining the pilot, the women were provided with shared accommodation, received one-to-one support from Action Foundation staff, and were supported to access legal counselling. The women also benefited from Action Foundation’s broader program of activity such as its free English language classes and weekly community gatherings, facilitating socialisation, signposting and referrals.

The purpose of the project was to improve voluntary engagement with the immigration system for those who would otherwise be detained, while being supported in the community to resolve their immigration case in a humane and cost-effective way. The King’s Arm Project is currently implementing the second CEP project.⁵⁹²

Key strengths and main challenges

An evaluation of the Action Access pilot was published in January 2022 by UNHCR. Despite challenges caused by the onset of the COVID-19 pandemic, the evaluation was overwhelmingly positive. It “found qualitative evidence that **participants experienced more stability and better health and wellbeing outcomes whilst being supported by Action Access in the community than they had received while in detention.** Evidence from this pilot suggests that these outcomes were achievable **without decreasing compliance with the immigration system.**”⁵⁹³ It also suggested that keeping people in the community has the potential to be much less expensive than holding individuals in detention. The report states that **the potential savings could be less than half the cost of detention,** in line with Action Foundation’s own calculations.

These findings echo those of Detention Action, whose Community Support Pilot has seen **low numbers of reoffending** (93% of of CSP participants have not re-offended since joining the project, compared to around half of all people leaving prison) and **high numbers of engagement** (83% of participants successfully completed the project).⁵⁹⁴

The UK government has accepted the recommendations of the Action Foundation pilot, including when it comes to “**[accelerating] the introduction of effective aspects of the ATD programme into the Home Office’s ‘business as usual’ model.**” It remains to be seen how this will be undertaken

in practice. The **UK continues to operate one of the largest immigration detention systems in Europe** and still has **no time limit for detention**. Civil society organisations have expressed concern about the **detention and treatment of individuals in particularly vulnerable situations**. The Nationality and Borders Bill, currently going through the Houses of Parliament, risks **further criminalising migration and may also introduce offshore detention in line with the Australian model which has been broadly criticised as a result of its serious human rights implications**.

URUGUAY

Detention overview

Uruguay recognizes the right to migrate; there is no detention for immigration administrative violations,⁵⁹⁵ except for what is considered necessary to complete an expulsion procedure. These are rarely carried out and, when they are, detention tends to last from a few hours to up to a day. Uruguay does not have immigration detention centres.

According to regulations, public institutions must provide people in an irregular situation with basic services and must also provide information on regularisation.⁵⁹⁶ Where a person has irregular status, they are given six months to regularise their status before an expulsion procedure begins. While waiting for a decision on their regularisation procedure, the person will receive a provisional certificate that allows them to work and access social security services. Regularisation is readily available for those who have been living in the country for at least seven years. Since 2009, regulations have granted access to medical services for foreign nationals regardless of their status.⁵⁹⁷

Developments in law and practice

Uruguay is part of the Southern Common Market (Mercosur) along with four other countries: Argentina, Brazil, Paraguay and Venezuela (suspended since late 2016). Since 2014, residents from member countries can apply for a 3-year temporary residence permit with minimum requirements, before applying for permanent residency. In 2017, the government granted over ten thousand permanent residence permits, more than half in favour of Venezuelan nationals.⁵⁹⁸ This program does not require the payment of any fees; nor does it stipulate any minimum income requirements.

From 2016, people born outside of the country that have a Uruguayan grandparent may apply immediately for citizenship; this particularly benefited Venezuelan nationals whose ancestors were exiled in Uruguay during the 1970s. In 2018, meanwhile, a decree was issued granting permanent residency to foreign nationals with irregular status in a vulnerable situation.⁵⁹⁹

In 2020, regulations were introduced regarding undocumented Venezuelan children and adolescents.⁶⁰⁰ These regulations detail interagency cooperation between the migration authorities and the Uruguayan Institute for the Child and Adolescent in order to identify protection needs and ensure BID for children. The protocol was particularly intended to address the fact that many children with irregular status lack documentation to prove their links to the adults that accompany them. It provides for specialised protection, identification of needs, and detection of possible trafficking victims. Qualified experts are responsible for putting in place these measures.

Key strengths and main challenges

Uruguay's approach to immigration has been praised as human rights-oriented, and is a **commendable example of a country that does not use immigration detention as part of its migration governance framework**. The fact that the country **provides a number of ways to access regular stay for those in an irregular situation** has also become a key factor in its good migration governance.⁶⁰¹

Uruguay is becoming a country of destination, meaning that one of the main challenges the country faces is to **ensure that migrants and their communities are able to access essential services and the labour market, and that any tensions with host communities are minimised.** Uruguay's response to the Venezuelan crisis has provided positive results in terms of access to basic rights, in particular.. However, **access to regular stay remains a challenge for people arriving from countries that are not part of Mercosur.**

USA

Detention overview

The US has the largest immigration detention system in the world. The main legal provisions relating to immigration detention are contained in the Immigration and Nationality Act (INA),⁴ which was amended in 1996 in ways that substantially grew the use of detention through the increased criminalization of migrants and use of "expedited removal."⁶⁰² Importantly, the continuous growth of Immigration and Customs Enforcement (ICE) infrastructure and budget has not led to effective solutions to case backlogs or supporting communities in navigating the immigration system. Despite operating under a civil legal system, ICE detention relies on the infrastructure and practices of criminal detention.⁶⁰³

Both people encountered at the border and those apprehended in the interior of the US are subject to immigration detention. ICE has the authority to decide whether to detain or release individuals into US communities. ICE reportedly takes into account factors including immigration history, criminal record, risk of flight, ties to the community and potential threats to public safety when assessing detention,⁶⁰⁴ but in practice decisions to detain are often arbitrary and based on available ICE detention space rather than any individualized assessment of risk.⁶⁰⁵ Those in the immigration process are not guaranteed an attorney and only about 14% of detained immigrants have representation.⁶⁰⁶

Between 2009 and 2019, ICE's detention budget almost doubled from 1.8 billion to 3.5 billion US dollars.⁶⁰⁷ In 2022, 34,000 immigration detention beds were funded by Congress in facilities across the country.⁶⁰⁸ While ICE owns and operates some of the facilities; the vast majority are contracted, including to for-profit private prison companies. There is a long and recorded history of poor conditions and ill-treatment in immigration detention, including deaths in custody, physical and sexual abuse, and lack of access to adequate health care, nutrition, exercise and amenities.⁶⁰⁹ Three "Family Staging Centers" were previously used for family detention, but in December 2021, it was reported that the government had stopped detaining migrant families.⁶¹⁰ It is also worth mentioning that in April 2018, the Trump administration initiated a "zero tolerance" policy that in a few months separated over two thousand children from their parents.⁶¹¹ Furthermore, for decades, the US has pursued efforts to externalize control of its borders by running, financing and assisting offshore interdiction programs; its policies have not only influenced neighboring countries to use immigration detention, but have also played a role in its spread across other parts of the world.⁶¹²

The US government also runs a large-scale "Alternatives To Detention (ATD) program", known as the Intensive Supervision Appearance Program (ISAP). Managed by ICE, this uses surveillance and monitoring measures including GPS tracking via an ankle monitor, smartphone app and facial recognition, and in-person check-ins.⁶¹³ The program has been steadily growing and in March 2022, it was reported that ICE was monitoring 182,607 people in its "ATD" programs.⁶¹⁴ With its focus on enforcement, civil society groups have expressed concerns that the government has co-opted the term ATD to extend custody and that the program has not been met with a reduction in detention⁶¹⁵ (see below).

Developments in law and practice

From early 2016 till mid-2017, ICE ran a community-based pilot program that operated as an alternative to detention for families presenting special needs that government officials determined to be incompatible with detention. The Family Case Management Program (FCMP) was designed for families with young children, pregnant women, persons with health or mental health issues or victims of violence. The program aimed to help individuals navigate their immigration proceedings in part through providing increased

stability through case management support services including:

- > An initial intervention that included referrals for legal, medical and food assistance
- > English language training;
- > Information on court proceedings and laws;
- > Cultural guidance;
- > Planning assistance for the eventualities of return, removal, or a relief from removal;
- > Transportation assistance.

The program enrolled almost one thousand heads of households, serving over two thousand individuals, of which more than half were children. Case workers sought to build trust by providing referrals and information to both navigate the immigration system and find stability in the community. Of the families enrolled, 99.3% attended their immigration court hearings and 99.4% attended their appointments with ICE.⁶¹⁶ It was also effective in securing final removals and cost \$38 per day per family unit, much lower than ICE's family detention which costs nearly \$320 per person per day.⁶¹⁷ As the Women's Refugee Commission notes, the FCMP achieved near perfect compliance rates with ICE and immigration court requirements "at a fraction of the cost of detention and supported hundreds of families in finding stability in their communities, supporting them with their immigration requirements, and beginning to prepare them for the outcomes of their case".⁶¹⁸ Although it was planned to run for five years, the program was abruptly ended by the Trump administration in June 2017 for political reasons.

In 2021, the Department of Homeland Security (DHS) announced a new congressionally directed Alternatives to Detention (ATD) Case Management Pilot Program (CMPP), which will "provide voluntary case management and other services to ensure that noncitizens in removal proceedings have access to legal information and other critical services".⁶¹⁹ Services will reportedly include "mental health services, human trafficking screening, legal orientation programs, cultural orientation programs, connections to social services, and departure planning and reintegration services for individuals returning to their home countries."⁶²⁰ A National Board chaired by the DHS Office of Civil Rights and Civil Liberties (CRCL) and composed of non-profit organizations will oversee and manage the pilot program and award funds to eligible local governments and non-profit organizations for its implementation.⁶²¹ The National Board plans to solicit proposals from potential CMPP service providers later in 2022.⁶²²

Key strengths and main challenges

The Family Case Management Program was "intended to demonstrate to government officials, Congress, and the public how a program focused on case management support to immigrants in proceedings could best function".⁶²³ Beyond numbers, the success of the FCMP lies in the **investment in quality individualized case management and legal orientation**.⁶²⁴ As ICE'S own evaluation found, this centered around a **relationship of trust**, with case managers helping participants to understand information and "cope with the psychological aspect of **navigating immigration proceedings**".⁶²⁵ The program also had **weaknesses**, including that it was contracted to the company GEO Care, a division of Geo Group which lacked relevant case management experience and was linked to the private prison industry.

At the same time, the immigration **detention infrastructure in the US remains enormous**, and true case management pilots like FCMP are quite small and have had only a **limited impact**. Furthermore, the US's government's general **approach to ATD is strongly focused on enforcement** and has been widely criticized as flawed by civil society groups. In particular, concerns have been raised that the program extends custody through a sliding scale of **surveillance and monitoring measures** used to control individuals in addition to official detention.⁶²⁶ This includes the growing use of **ankle monitor devices** - a controversial and stigmatizing form of surveillance, which allows

government officials to constantly monitor an individual's whereabouts and can constitute **de facto detention**.⁶²⁷ These surveillance methods have tangible detrimental psychological and safety effects on immigrant communities.⁶²⁸ In addition, the government's **case management** as it stands is rooted in an **enforcement-based non supportive framework** due to funding coming from the same agency seeking to deport individuals.⁶²⁹ In general, there is a **lack of transparency** regarding the basis for decisions to apply ATD measures with different levels of supervision to individuals, as well as the length of time ATD measures are applied; there is also a lack of recourse against such decisions.⁶³⁰ Overall, the US "ATD program" **does not reduce immigration detention** but runs parallel to the detention system and **expands the government's reach** into immigrant communities.⁶³¹

The DHS's newly initiated Case Management Pilot Program (CMPP) resides **outside of ICE** and under the responsibility of DHS's Office of Civil Rights and Civil Liberties – whose primary role is not enforcement – and will be overseen by a Board of **non-profit organizations**. However, as it is conceived, it is **not linked to reducing detention** as it will not be available as an alternative to detention for people who would otherwise be detained.⁶³²

There is a need for more **investment in community-based case management** programs that are well designed and contracted to not-for-profit community-based organizations with demonstrable experience in serving refugee and immigrant populations.⁶³³ In line with international best practice, such programs should be **disconnected from enforcement** and support individuals to **find stability and engage** with immigration processes, while leading to detention reduction.⁶³⁴ As learnings from the FCMP have shown, community-based case management could be **expanded**, save millions of dollars, **reduce costly and harmful immigration detention** and increase **efficiency**, achieving **better outcomes for individuals and the US government**.⁶³⁵

ZAMBIA

Detention overview

The main provisions relating to immigration detention in Zambia are found in the Immigration and Deportation Act (No. 18 of 2010) and the Refugees Act (No. 1 of 2017). The Immigration and Deportation Act provides that non-nationals may be detained for the purposes of removal or deportation for a maximum period of up to 120 days.⁶³⁶ Under the Act, imprisonment may also be imposed as a criminal sanction for various offences relating to contraventions of the Act.

The Refugees Act provides that a recognised refugee may be detained for the purposes of expulsion on national security or public order grounds.⁶³⁷ The Act also sets out various offences for which recognised and unrecognised refugees may be imprisoned. Zambia maintains reservations to Article 26 of the 1951 Refugee Convention, restricting refugees' rights to exercise freedom of movement and residence, which contributes to the vulnerability of refugees and people seeking asylum to immigration detention.⁶³⁸

There is little publicly available information on the practice of immigration detention in Zambia. Reports suggest that due to lack of funds to carry out deportations, people may be kept in immigration detention for longer than the maximum period allowed by law.⁶³⁹ UNHCR has reported that in border areas where reception facilities are absent, asylum seekers and refugees are detained in prisons alongside criminal detainees pending the outcome of their asylum applications and subsequent relocation to refugee settlements.⁶⁴⁰

Developments in law and practice

In July 2014, Zambia launched a NRM and associated Guidelines with clear procedures and protocols for first line officials to identify and refer migrants in vulnerable situations to relevant authorities and service providers for assistance.⁶⁴¹ The guidelines and NRM have been highlighted globally as a positive practice in preventing immigration detention through strengthened screening, referral, and placement of individuals in the community.⁶⁴² They have also been drawn on by other governments developing their own NRMs for migrants in vulnerable situations.⁶⁴³ Since their adoption, training has been rolled out to support implementation of the NRM, and Zambia has taken steps to further develop ATD in the country.

In 2017, the government established five semi-permanent reception facilities in border areas for people seeking asylum from the Democratic Republic of the Congo.⁶⁴⁴ UNHCR stated that these facilities "serve as alternatives to detention (ATD) for new arrivals... and ensure they are no longer housed in police cells or detained in correctional facilities as shelter options. New arrivals are housed in these reception facilities before they are first relocated to Kenani transit Centre in Nchelenge, then relocated to the Mantapala refugee settlement."⁶⁴⁵

In addition, under the Refugees Act 2017, people who have been refused asylum may be allowed to remain in the country for a period of up to three months, which can be extended for a further three months.⁶⁴⁶ This gives people the opportunity to leave the country on their own terms and with dignity.

In 2019, UNHCR reported that the Zambian government had adopted a practice of not detaining migrant children and mothers with young children on the basis of their immigration status, following joint efforts of UN agencies and partners.⁶⁴⁷ The government also started releasing mothers with young children who were detained in areas without shelters and moving them to the nearest shelters.⁶⁴⁸ Shelters in Chikumbi and Sesheke were reportedly opened as part of Zambia's response to recommendations made

in the 2016 Migration Dialogue for Southern Africa (MIDSA) for governments to implement alternatives to detention.⁶⁴⁹ Since the COVID-19 pandemic, new shelters for unaccompanied and separated migrant children have been opened, while others have been renovated.⁶⁵⁰

In 2019, the Zambian government also launched “Guidelines for Best Interests Determination for Vulnerable Child Migrants in Zambia.”⁶⁵¹ These guidelines aim to formalise and operationalise BID processes and improve the quality and consistency of services for migrant children, in line with the NRM and international, regional and national standards.

From 2021 to 2023, the Zambian government, UNICEF and UNHCR are implementing a \$1.5 million national programme to strengthen child protection systems and provide alternatives to immigration detention in the country, as part of the ‘EU Global Promotion of Best Practices for Children in Migration’ programme.⁶⁵²

Zambia decreased its use of immigration detention in the context of the COVID-19 pandemic.⁶⁵³ In 2020, Zambian authorities significantly increased their use of report orders in order to further reduce the number of people detained (report orders allow individuals to check in with immigration officers for formalities instead of being detained).⁶⁵⁴ Over 10,000 report orders were issued in 2020, compared with over 5,000 in 2019.⁶⁵⁵

Key strengths and main challenges

The NRM and associated guidelines have **strengthened the identification and referral of migrants in vulnerable situations** by first line officers and service providers, and improved coordination and collaboration among State and non-State actors in providing protective assistance. According to the UN Network on Migration, they have “successfully diverted many migrants in vulnerable situations from the detention system.”⁶⁵⁶ The establishment of shelters and reception facilities has further **helped to ensure that vulnerable groups, including newly arrived asylum seekers and children, avoid immigration detention.**

In terms of gaps, more work needs to be done to **ensure that the policy is understood by both State and civil society actors** involved in migration procedures. A high level of rotation among first line immigration officials has created **difficulties for implementation and highlighted the need for continued training.**⁶⁵⁷

A **key challenge is resources:** for the NRM to be well implemented, many areas of government must coordinate and act, which requires funding. **By investing further in developing and supporting alternatives to detention,** the progress Zambia has made in reducing the use of immigration detention, including in response to the COVID-19 pandemic, can be sustained and expanded.

ZIMBABWE

Detention overview

The key provisions regulating immigration detention in Zimbabwe are found in the Immigration Act (1979), the Refugees Act (1978) and the Immigration Regulations of 1998. The Immigration Act provides for immigration detention for identification purposes (14 days) and for the purposes of removal. In addition, the Act sets out various migration-related offences which are punishable by a fine and/or imprisonment of up to one or two years. The Refugees Act allows for the arrest and detention of recognised refugees whose expulsion has been ordered on national security or public order grounds. Both Acts provide that people may be detained administratively in a prison, police cells or “other convenient place.”

There is little publicly available information on immigration detention in Zimbabwe. According to IDC's information, migrants who are found by the authorities to have irregular status are commonly fined and then detained administratively for the purposes of removal. Many are reportedly in transit en route to South Africa. In 2016, there were reportedly 2,316 people detained for migration-related reasons in Zimbabwe.⁶⁵⁸ There are cases of migrant children being detained with their parents.⁶⁵⁹

Migrants with irregular status are held in prisons alongside those detained for criminal reasons, with little or no possibility of communicating with the outside world.⁶⁶⁰ Given the smaller number of women's prisons in the country, women migrants tend to be detained either in the maximum security prison in Harare or in provincial womens' prisons, which are often in areas without the presence of civil society organisations to assist them and further away from the countries they are to be removed to.⁶⁶¹

A key concern is that undocumented migrants can be detained indefinitely in prisons for the purposes of removal. If the authorities do not have the funds to carry out removal and Embassies are unresponsive, people with simple immigration cases may spend many years in prison without having been convicted of a crime.⁶⁶² There are reportedly cases of people having spent “4, 5 and 6 years” in prison awaiting removal.⁶⁶³ IOM and civil society organisations play a role in facilitating voluntary return for some individuals, but without the possibility of communicating outside, some detained people are left with no assistance.⁶⁶⁴ There is reportedly a lack of effective oversight as Judicial Officers who visit detention places do not exercise diligence, and often ignore arbitrary immigration detention.⁶⁶⁵

There were reportedly some measures taken in relation to COVID-19 including release of 4,208 prisoners between March and June 2020 under a presidential amnesty order.⁶⁶⁶ In December 2020, the High Court ordered the government to release funds for food and water in prison, to separate healthy inmates from those who are ill, and provide essential medicines among other measures.⁶⁶⁷

Developments in law and practice

In 2018, IOM provided support for the Government to hold a multi-stakeholder workshop on ATDs. This workshop led to the development of a country position paper on ATDs. Official statistics presented at the workshop, including on the scale of irregular migration and the cost of detention, highlighted the “enormous financial implications of detaining migrants and made a case for an alternative approach.”⁶⁶⁸

In December 2019, the Government of Zimbabwe launched an NRM for Vulnerable Migrants. The NRM reportedly seeks to “support frontline officials in the identification, protection and referral of vulnerable migrants in a manner that secures the full enjoyment of migrants' rights as enshrined in international, regional and national frameworks.”⁶⁶⁹ The NRM reportedly stipulates guidelines for frontline officials and

"links together stakeholders involved in identification, referral, assistance, repatriation and monitoring, and defines clear roles for each, along with the procedures to follow, to ensure the protection of vulnerable migrants' human rights."⁶⁷⁰ The NRM was developed by the Ministry of Public Service, Labour and Social Welfare, with support of IOM in consultation with a range of stakeholders involved in "migration, child care and protection at the district, provincial and national level."⁶⁷¹ Following its launch, the government reportedly conducted training on its NRM for 128 government and civil society representatives from seven districts.⁶⁷²

Key strengths and main challenges

It was not possible to find information on the implementation of the NRM since its launch in 2019. However, a common challenge in Zimbabwe appears to be an **"implementation gap"** between human rights-compliant policies on paper and implementation in practice.⁶⁷³

Furthermore, as mentioned above, a key concern is a **lack of rule of law and due process**, with people detained in immigration detention being denied **basic safeguards against arbitrary detention** including the ability to communicate with the outside world and challenge their detention, **leading to individuals being detained indefinitely contrary to international law**.

In spite of the 2018 workshop mentioned above, Zimbabwe still **does not have alternatives to immigration detention in law**, except for the possibility of people "entering into a bond" for their release.⁶⁷⁴ It is not clear if the possibility of releasing people in bond is used in practice.

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About International Detention Coalition (IDC)

IDC is a powerful global network of organisations, groups, individuals, as well as representatives of communities impacted by immigration detention, based in over 100 countries. IDC members have a wide range of specialisations related to immigration detention and alternatives to detention (ATD), including academia, law, research, policy, direct service, advocacy, and community organising.

IDC staff work nationally and regionally in Africa, the Americas, Asia Pacific, Europe, the Middle East and North Africa, and at the global level. Staff coordinate with members and partners on advocacy, research, coalition and capacity building, as well as create opportunities for national, regional and global collaboration to reduce and end immigration detention, and further rights-based ATD.

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