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## **International Law and Migration Detention: Coding State Adherence to Norms**

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# **International Law and Migration Detention: Coding State Adherence to Norms**

**By Michael Flynn, Mariette Grange, and Izabella Majcher**

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## **International Law and Migration Detention: Coding State Adherence to Norms**

### **Executive Summary**

The project “International Law and Migration Detention: Coding State Adherence to Norms” was launched in February 2011 with the objective of developing a methodology for assessing whether states adhere to international legal norms relevant to the burgeoning global phenomenon of immigration detention. A project of the Graduate Institute’s Global Migration Centre (formerly the Programme for the Study of Global Migration) that builds on previous work undertaken by the Global Detention Project, the SNIS-funded research initiative has had several noteworthy results, including:

- (1) the elaboration of an overarching normative framework for immigration detention that covers all binding norms – be they universal or regional;
- (2) the review of universal and regional soft law instruments;
- (3) the development of indicators to assess the degree to which countries adhere to these norms;
- (4) the in-depth development of an online database documenting the phenomenon of immigration-related detention that serve the dual goals of publicizing rigorously constructed data on national detention regimes and providing a central organizing framework for information and analysis on detention produced by relevant actors across the globe;
- (5) the establishment of a network of legal advocates and rights actors to assist in developing an analytical framework for assessing detention policies and producing data necessary for assessing state performance; and
- (6) the publication of a series of reports building on the work of the project that explore various dimensions of the detention phenomenon.

## **Introduction**

Migration-related detention is a widespread, yet partially documented, phenomenon. While detention is one of the main tools used by states to control access to their territory and to manage their borders, the international normative framework is plagued by recurrent ambiguities and misunderstandings. At the same time, detention of migrants has increasingly become the target of criticism from experts and advocates, who charge that those involved in the treatment of detainees consistently fail to abide by established international norms.

Against such a background, the tasks carried out by the SNIS project have been threefold. The first objective of the SNIS research project has been to identify, refine and classify the myriad of international rules governing detention of migrants. The overall result of our endeavor is to provide a comprehensive and well-accepted legal framework able to guide the different actors involved in this controversial field.

The second objective of the research has been then to provide tools for assessing state behavior regarding migration detention. With this objective in mind the research team has identified and developed indicators for recording and measuring states' commitments to international legal norms, as well as implementation efforts at the domestic level.

The third and last task has been to collect the two above mentioned results into an online database making information on detention practices available to any person interested in the matter. In other words, the idea was to define indicators helping to assess the level(s) of State compliance to international norms applicable to migration detention, with one related objective of making comparison of detention practices possible in the light of different defined variables.

Despite the growing importance of detention regimes in states' responses to migration, there is no systematic, comprehensive data to undertake rigorous comparative scholarship, to inform the decisions of national policy-makers, or to aid the efforts of international human rights practitioners and local migrant rights groups. By devising indicators of states' commitments to norms and establishing an online database to measure performance vis-à-vis these indicators, the SNIS project has produced an important tool that will have enduring utility for a range of stakeholders both governmental and nongovernmental.

*Vincent Chetail*

*Director, Global Migration Center (Graduate Institute of International and Development Studies)*

## Part I

### A Normative Framework for Immigration Detention

At the heart of this SNIS-supported project on immigration detention is the challenge of observing and analysing detention practices and policies through the lens of internationally recognized norms. Thus, a critical phase of the project was “normative mapping,” during which researchers assessed relevant international and regional legal regimes to map out an overarching normative framework relevant to immigration-related detention. This undertaking was not the first endeavour to map the international legal standards regulating immigration detention.<sup>1</sup> However, the legal framework resulting from our research is more systematic, detailed, and clear with respect to both sources and overall structure. This part presents the overarching framework developed by the project, discusses the sources used to develop it, and lays out the framework’s structure.

During an early phase of this mapping initiative, researchers were faced with a decisive question: Should the normative framework be based solely on hard law or extend to soft law norms commonly used by international mechanisms and non-governmental organizations? Ultimately, the team decided to base the normative framework solidly on hard law sources because of the binding character of the norms enshrined in international legal instruments (see Annex 1), while reviewing relevant soft law sources to help interpret the content of some of these norms. Because hard law sources are legally enforceable, state performance in terms of their implementation could be more readily assessed by means of indicators (see Part. II on indicators).

The mapping work focused primarily on human rights and refugee-related instruments. We identified norms relevant to immigration-detention laid down in all main UN human rights conventions, including: the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment of Punishment (OP-CAT); the Convention on the Rights of the Child (CRC); the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW); the Convention on the Right of Persons with Disabilities (CRPD); and the International Convention for the Protection of All Persons from Enforced Disappearances

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<sup>1</sup> See for example United Nations High Commissioner for Refugees, *Back to Basics: The Right to Liberty and Security of Person and ‘Alternatives to Detention’ of Refugees, Asylum-Seekers, Stateless Persons and Other Migrants*, 2011; Amnesty International, *Migration-Related Detention: A research guide on human rights standards relevant to the detention of migrants, asylum-seekers and refugees.*, 2007; Isabel Ricupero & Michael Flynn, *Migration and Detention: Mapping the International Legal Terrain*, Global Detention Project Working Paper No. 2, 2009; chapter 4 of International Commission of Jurists, *Practitioners guide on migration and international human rights law*, 2011.

(ICPED). Additionally, we assessed two refugee-related instruments, the Convention relating to the Status of Refugees and Convention relating to the Status of Stateless Persons.

Besides human rights and refugee related instruments, researchers also undertook thorough reviews of other sources of international law, including law of the sea, diplomatic, anti-terror, labour, and penal law. Instruments pertaining to these other branches of international law that contain norms relevant to immigration detention are 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime and 2000 Protocol against Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime as well as 1963 Vienna Convention on Consular Relations.

Complementing this review of universal instruments was an in-depth assessment of regional legal instruments. Researchers assessed legal instruments adopted under the auspices of seven regional organisations: the Organisation of American States (OAS), the South Asian Association for Regional Cooperation (SAARC), the League of Arab States (LAS), the Organisation of Islamic Cooperation (OIC), the African Union (AU), the Council of Europe (CE), and the European Union (EU).

As a first phase of our regional mapping effort, we assessed core international human rights instruments, including the American Convention on Human Rights (ACHR), the Revised Arab Charter on Human Rights (Arab Charter), the African Charter on Human and Peoples' Rights (ACHPR), the European Convention on Human Rights (ECHR), and the European Union Charter of Fundamental Rights (EU Charter). Researchers subsequently conducted in-depth assessment of instruments addressing protection of specific categories of persons, like children (SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia, OIC Covenant on the Rights of the Child in Islam, AU African Charter on the Rights and Welfare of the Child and CE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse), and women (OAS Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, and AU Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa).

Additionally, our research led us to consider provisions provided in conventions preventing and combating certain acts, such as trafficking (SAARC Convention on Prevention and Combating Trafficking in Women and Children for Prostitution and CE Convention on Action against Trafficking in Human Beings) and torture and disappearance (CE European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, OAS Inter-American Convention to Prevent and Punish Torture, and OAS Inter-American Convention on Forced Disappearance of Persons). Finally, EU asylum and migration-related pieces of secondary legislation – Asylum Procedures Directive, Returns Directive, Reception Conditions Directive, and Dublin Regulation – are important sources of immigration-detention relevant norms.

Although the hard law sources served as a basis for the legal framework, the researchers also conducted research into relevant recommendations, resolutions, guidelines, comments, and conclusions by universal and regional human rights bodies (see Annex 2). This exercise was

useful because norms provided in these sources tend to be more detailed than hard law norms, and thus they assist efforts to interpret them. Three kinds of documents containing soft law standards were relied on. First and foremost, the assessment focused on standards that deal explicitly with immigration detention, such as the 1999 Working Group on Arbitrary Detention (WGAD), *Deliberation No.5: Situation regarding immigrants and asylum-seekers*, 2012 UN High Commissioner For Refugees (UNHCR), *Detention Guidelines*; 2010 Parliamentary Assembly of the Council of Europe (PACE), *10 guiding principles on the legality of detention of asylum seekers and irregular migrants* and *15 European rules governing minimum standards of conditions of detention of migrants and asylum seekers*, and 2009 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Safeguards for irregular migrants deprived of their liberty*.

Then, the researchers broadened the scope of the analysis and looked at general detention-related standards, such as 1955 *Standard Minimum Rules for the Treatment of Prisoners*, 1988 *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, and 2008 OAS *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*. Finally, several documents addressing human rights of migrants contain standards relevant to detention settings, such as 2005 Committee on the Rights of the Child (CRC), *General Comment No.6: Treatment of Unaccompanied and Separated Children outside their Country of Origin*, 2005 Committee of Ministers of Council of Europe, *Twenty Guidelines on Forced Return*, and 2006 PACE, *Human rights of irregular migrants*.

Having researched all the above mentioned hard and soft law sources, researchers identified a set of norms applicable to immigration detention – normative framework for immigration related detention (see below). As foreseen in the original SNIS proposal, the normative framework is composed of two broad normative categories in international human rights law, relating to the right to liberty (A) and the security of the person (B). The first part – the right to liberty – lists standards protecting individuals from arbitrary detention. These standards include: lawfulness of detention, necessity and proportionality, and procedural guarantees (the right to information, legal and linguistic assistance, judicial review of detention, and compensation).

The second limb of the framework – the right to security – comprises standards addressing treatment of detainees. These embrace the fundamental rights and freedoms (the right to life, freedom from torture and ill-treatment, right to be treated with dignity), basic detention-related guarantees (right to be registered and be held in officially recognized place of detention), standards on conditions of confinement (separation of categories, basic material conditions, provision of food and water, access to health care and training for detention facility personnel), right to contact with the outside world (family and relatives, consular representatives), access by competent NGOs and IOs, procedural guarantees (right to lodge complaint against inadequate treatment, investigation and compensation), and additional guarantees for minors (access to education and child-specific activities). In addition, the researchers discovered that in many countries immigration status-related violations may trigger criminal charges (e.g. Italy, Germany, France, Egypt, Thailand, the United States, and the United Kingdom). Thus, some basic procedural norms applicable to criminal proceedings were added to the framework (right to be present at the trial or to have the conviction reviewed by a higher tribunal).

**A) The right to liberty: the protection from arbitrary detention**

1. Legality/lawfulness: detention in accordance with procedure prescribed by law [administrative detention and criminal incarceration]
2. Necessity and proportionality of administrative detention
  - 2.1. Detention as a measure of last resort
  - 2.2. The non-penalisation clause
  - 2.3. Limitations on the length of detention
3. Procedural standards [administrative detention and criminal incarceration]
  - 3.1. Information provided to detainees
    - 3.1.1. Notification of the legal and factual reasons for arrest (detention order) in a language the person concerned understands
    - 3.1.2. Information on one's rights
  - 3.2. Legal assistance
  - 3.3. Assistance of interpreter
  - 3.4. Accessible and effective remedies/ judicial review
  - 3.5. Right to compensation for unlawful detention
4. Additional guarantees for persons charged with a criminal offence based on immigration status-related violation(s):
  - 4.1. Right to be present at the trial
  - 4.2. Right to have the conviction and sentence reviewed by a higher tribunal

**B) The right to security: treatment of detainees**

1. Fundamental rights and freedoms of detainees
  - 1.1. Right to life
  - 1.2. Freedom from torture and ill-treatment; right to respect for one's integrity and to be protected against violence and abuse
  - 1.3. Right to be treated with humanity and respect for dignity
  - 1.4. Right to equal protection before the law without any discrimination
  - 1.5. Freedom of thought, conscience and religion
2. Basic detention-related guarantees
  - 2.1. Right to be registered (records)
  - 2.2. Right to be held in officially recognized place of detention
3. Conditions of detention



- 3.1. Separation of immigration detainees from persons accused or convicted under criminal law
  - 3.2. Adequate material conditions
  - 3.3. Accommodation and separation of specific categories
    - 3.3.1. Families
      - 3.3.1.1. Minors' entitlement not to be separated from their parents or other relatives
      - 3.3.1.2. Appropriate accommodation to lodge families
    - 3.3.2. Unaccompanied minors: entitlement to be kept separate from adults
  - 3.4. Provision of food and water
  - 3.5. Access to health care
  - 3.6. Provision of specific training for detention facility personnel
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4. Right to contact with the outside world (including correspondence)
    - 4.1. Family, relatives and friends
    - 4.2. Consular representative
- 
5. Access by competent NGOs and international organizations
- 
6. Procedural guarantees
    - 6.1. Right to lodge a complaint against inadequate conditions or treatment in detention/ right to effective remedy
    - 6.2. Investigation into the cause of death, disappearance or alleged ill-treatment of a detained person occurred during his or her detention
    - 6.3. Right to compensation
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7. Additional guarantees for minors
    - 7.1. Access to education
    - 7.2. Access to child-specific activities, leisure and play

## **Part. II**

### **Establishing Indicators for Norms-based Assessment of Immigration Detention**

Developing an overarching normative framework relevant to the practice of immigration detention provided the SNIS research team with the necessary groundwork for applying a human rights-based approach to analyzing state behavior when it comes to the treatment of migrant detainees. However, a framework alone is not sufficient. There must be some way to systematically assess state performance. Thus, the research team developed indicators for recording and measuring states' commitments to norms, as well as implementation efforts at the domestic level. This research served as a basis for our efforts to draft a database manual, which was in turn used to develop the database (see Annex 6).

As a first step towards the development of qualitative and quantitative indicators, we mapped out early and current thinking and progress on indicators, in particular but not limited to human rights-related indicators. This included an analytical survey of sources identified in the initial SNIS Research Plan, as well as meetings and consultations with experts and statisticians. As part of this phase of the project, we undertook a process aimed at adopting a model and defining a set of parameters for immigration-detention related indicators. This latter phase included the identification of sources and an exercise to test the feasibility of translating the indicators identified into dimensions that can be coded into a database.

#### **From statistics to human rights indicators**

At the international level, indicators have long been used as a measuring tool in the development policy context and have been described as “tools for providing specific information on the state or condition of an event, activity or outcome” (Nahem and Sudders 2004). In the mid-1970s, the Organization for Economic Co-operation and Development focused on statistical measures as social indicators to monitor levels and changes over time (OECD 1976). Three decades later, there was growing awareness of the inherent challenges to creating indicators in numeric form (UNDP 2006). Interest for human rights assessment tools also prompted academics and development practitioners to explore the use of human rights indicators in the context of development aid. Until then the human rights community had been very wary of any measurement of state compliance and implementation (Filmer-Wilson 2005). In 2005, in response to a request from the United Nations human rights treaty supervisory bodies, the Office of the High Commissioner for Human (OHCHR) launched a process to develop a conceptual and methodological framework to identify operationally feasible human rights indicators. The outcome document defines human-rights indicators as “specific information on the state or condition of an object, event, activity or outcome that can be related to human rights norms and

standards; that addresses and reflects human rights principles and concerns; and that can be used to assess and monitor the promotion and implementation of human rights” (OHCHR 2012).

The SNIS project’s dual-focused normative framework broadly categorizing detention-related norms under the right to liberty and security of persons (see part one of this working paper) has also been featured amongst the indicators for some rights developed by OHCHR to test the validity of their model (OHCHR 2012). The OHCHR definition, and its “structural-process-outcome” methodology described below, generally fit the purpose of the SNIS funded project and provided useful guidance for the research, in particular as it expands the scope of definitions used for instance by OECD or the World Bank (Vera 2003). This initial phase in the research was a stepping stone for identifying indicators that would cover human-rights related parameters and safeguards.

### **Opting for a model**

The “structural-process-outcome” methodology proposed by OHCHR aims to measure three inter-related aspects regarding state adherence to human rights norms, including commitment to specific norms, the efforts undertaken to follow through with norms adopted, and the results achieved. In short, the structural-process-outcome model for indicators translates into “commitment + efforts + results.” Structural indicators reflect the adoption/ratification of legal instruments; process indicators assess the existence of basic institutional mechanisms for the realisation of the human rights; outcome indicators, which are generally the hardest to develop and implement, are intended to capture the status of realisation of human rights in a given context (OHCHR 2012).

Process indicators relate to policy instruments thus, unlike structural indicators (which, for example, assess whether a state has ratified a relevant treaty), one can develop multiple indicators to assess implementation of individual norms. In the database, the influence of process indicators can be seen in our inclusion of fields to confirm whether specific norms, as embodied in specific practices like the provision of procedural standards, are both adopted “in law” as well as implemented “in practice.” Thus, the database construction manual provides the following for procedural standards:

#### “F. Procedural standards

Field III.F.1: Provision of basic procedural standards. This field will provide a list of procedural standards, each of which will be accompanied by two checkboxes -- “In law” and “In practice” – to indicate whether such standards are adhered to.

One complication with this effort is that a given indicator can be either structural or process depending on the situation or perspective. For instance, constitutional and domestic legal provisions related to immigration detention, also included in the database, can be viewed as “process” indicators insofar as they provide a tool to incorporate relevant provisions from binding instruments ratified. But domestic legal texts can also be viewed as “structural” indicators. In this

respect the “structural-process-outcome” should be regarded as a useful and flexible analytical tool to build indicators.

In assessing a state’s efforts to adhere to the various norms formally adopted that are related to liberty and security of the person, project researchers developed process indicators on specific concerns raised by relevant international and regional human rights bodies.

In order to analyse the results a state has achieved, the project developed outcome indicators that aim to record changes over time in detention practices, such as changes in the number of immigration detainees, or availability of alternatives to detention.

### **Methodology for developing broader indicators**

An important objective of this phase of the research was to adopt standards for indicator determination in order to develop an empirical methodology, based on Global Detention Project research expertise, for constructing data on national laws and policies that would include data for testing state adherence to the norms. A survey of literature from academia, government, development agencies and national human rights institutions provided useful sets of criteria and guidelines. Based on this, researchers drew up a tentative list of indicators for assessing the implementation of norms for immigration-related detention. It combined elements to both develop and validate some of the research team choices (e.g. combining pre-existing published data with project specific indicators), bearing in mind that “indicators may describe situations as well as possibly be used to measure changes but also that indicators can be both quantitative and qualitative statements” (Andersen and Sano 2006).

For the purpose of coding state adherence to relevant norms in relation to immigration detention, the five-step SMART criteria (be Specific, Measurable, Attainable, Relevant, and Time-bound) is only partly helpful. Some objectives might not always be “attainable” given that in some national contexts one aim might not be realistic (i.e. 24h hour availability of drinking water in a detention place in a country where even tap water is not drinkable). On the other hand, guidelines for performance indicators by the Vera Institute of Justice (Vera) proved very relevant as for instance the suggestion to measure outcomes with balanced baskets of indicators (Vera 2003). The basket of indicators researchers adopted around ratification of international standards expanded beyond mere ratification (Ibrahim Index). It includes: ratio of relevant treaties ratified; relevant reservations to articles relevant for immigration detention; acceptance of individual complaints procedures; ratio of complaints procedures accepted; treaty bodies decisions on individual complaints and relevant recommendations issued by treaty bodies. This was also replicated for regional treaties. Individual measures in such a basket of indicators make it possible to identify *gaps* where simpler measurement would record *progress*. This basket included both quantitative (ratification rate, acceptance of complaints procedures) and qualitative standards (jurisprudence and recommendations of treaty supervisory bodies). A few initially identified additional elements for this ratification-related basket of indicators were finally discarded, as they might render the basket unnecessarily heavy (i.e. date of initial reports to treaty bodies, outstanding last periodic reports to treaty body).

Another VERA guideline recommends isolating the experiences of relatively powerless groups, such as people living in poverty. Researchers included data on detention of vulnerable persons: unaccompanied minors; accompanied minors; asylum seekers; women; pregnant women; stateless persons; the elderly; victims of trafficking and persons with disabilities. Data is disaggregated by gender and age and designed to record both legal provisions for their detention, as well as whether detention occurred in practice. In line with relevant international standards of protection of victims of trafficking in persons, domestic legislation in many countries, does provide that trafficked persons should not be detained, yet they often are placed and maintained in immigration detention.

Indicators to measure availability of procedural standards adhered to the requirement that “human rights indicators should cover the substantive contents of rights” (Andersen and Sano 2006). Disaggregated data on law and practice was also used for procedural standards to evaluate if the norms contained in relevant treaties are incorporated into national laws and regulations (information to detainees, right to legal counsel, access to free interpretation services, access to consular assistance, access to asylum procedures, independent review of detention, right to appeal the lawfulness of detention, complaints mechanism regarding detention conditions, and compensation for unlawful detention) to verify adherence to international standards. Thus information on procedural standards combined process indicators (law) with outcome indicators (practice).

This methodology also combined less complex and more traditional numeric and statistical indicators including the number of immigration detainees or data on detention time-frame (measured in days).

Inclusion of statistical indicators on population, incarceration, and related social phenomenon helped contextualize the scope and nature of immigration detention. In line with another two VERA guidelines (using the simplest and least expensive indicators possible and designing indicators that make sense to most people) data on population, refugees, asylum-seekers and international migrants was included. Statistics on the number of persons in prisons were included, as well as the percentage of foreigners in detention (World Prison Brief). The specificity of the database created is to make available a broad array of relevant data not usually gathered in a single tool. Clusters of country data were also disaggregated along regional, sub-regional political and geographical groupings, to allow database users to make political and/or regional grouping comparisons (e.g. use of alternatives to detention in European Union and North America).

### **Sources and availability of data**

Researchers opted for combining sources to develop valid indicators. They used both pre-existing data, as for instance United Nations information for the ratification basket described above and crafted specific ones (ratio of relevant treaties ratified and complaints procedures accepted).

As much as possible researchers used internationally recognized sources to ensure consistency and comparability. One drawback of this method is that institutions that collect large datasets on a yearly basis often publish data and statistics with one to two years delay. For instance, the

available UNHCR statistical yearbook in December 2013 was published in 2012 and contains statistical data for 2011. However, over time, inclusion of statistics from these publicly available and reliable datasets ensures excellent comparability.

Whenever possible researchers used institutional data and statistics generated and collected by ministries and Government authorities as well as government reports to international or regional human rights and other mechanisms. In regions with longstanding institutions with well-developed set of norms, standards, regulations and research and reporting mechanisms, such as the Council of Europe, or the European Union, ample use of official data was used. In countries where national human rights institutions and non-governmental organisations have access to places of immigration detention, researchers used data in public reports.

Early in the research, the researcher met with a Swiss statistician in charge of the development of a conceptual and methodological framework for developing indicators at the Office of the High Commissioner for Human Rights. The research methodology also included direct exchanges, mostly by electronic mail, to clarify or seek additional information. Indicator development work included substantive exchanges with officials and researchers at Eurostat (apprehensions and detention), the United Nations High Commissioner for Refugees statistical section (refugee recognition rate), the Office of the High Commissioner for Human rights (ratification charts and reporting schedule), the United Nations Population Division (statistics for international migrants), the European Committee for the Prevention of Torture (availability of reports from country visits in English), the World Population Brief (statistics on prison population across the United Kingdom), and the French National Institute for Statistics and Economic Studies (difference between “migrant” and “foreign” population) and the Office of the Correctional Investigator, Government of Canada (access to immigration detainees in correctional institutions), the Canadian Red Cross (visit to places of immigration detention), and lawyers associations in Spain (status of adoption of immigration detention regulations).

Additionally, the team has benefitted from numerous interactions with various non-governmental organization sources in host a countries, including several that were used to develop country profiles for this project (Thailand, Egypt, Spain, Greece, Italy, Poland, Ecuador and Ukraine). Researchers collected and/or corroborated data through interviews with Global Detention Project partners, bearing in mind ethical considerations about the confidentiality of sources to ensure security depending on country situations.

Team members have also been invited on numerous occasions to present the indicators in the database at regional meetings of the International Detention Coalition, which have impacted how we have designed the database. For instance, in November 2013, team member Michael Flynn led a workshop at the IDC’s Middle East and North Africa regional conference in Amman, Jordan. During this workshop, Flynn asked participants at the conference to test whether the grounds for detention in their national legislation could be mapped onto the data categories for grounds of detention developed by the SNIS team. Among the most important findings was that many of these countries provide explicit penalties, including both administration and criminal confinement, for non-citizens who try to make unauthorized exits from these countries. As a result, the team adapted the necessary data fields to include a stand-alone ground related to unauthorized exit. This interaction provides an important example of how indicator-based data

fields can lead to important insights into how immigration detention is patterned in different parts of the globe.

### **The way forward**

Researchers have created descriptions of the indicators and instructions on how to enter and code them in a database manual to serve as a guide for developing the online relational database (data warehouse) as well as a source of ideas for how the information in the database can be presented on the website and associated database portal. Additionally, researchers have collected data on 19 countries, representing a cross section of countries from different geographical regions as well as contrasting migration realities.<sup>2</sup>

A key initial objective of this project was to harness the power of the new database to provide indicator-based “report cards” on each of state case studies, as foreseen in the original proposal to SNIS. Unfortunately, technical issues related to the launching of the database have limited our ability to pursue this objective at this time. Nevertheless, as the following working paper makes clear, the process of undertaking systematic research of detention regimes based on measures arising from the project’s efforts to create a normative framework from immigration detention has yielded a number of useful insights, leading to a variety of publications that will serve as the basis for our ongoing research into state performance on this issue.

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<sup>2</sup> The list of countries profiled includes nine EU countries (France, Spain, UK, Austria, Germany, Italy, Poland, Greece, and Hungary); two non-EU European countries (Switzerland and Ukraine); four countries in the Americas (Canada, United States, Ecuador, and Mexico); one North African country (Egypt); and three Asia-Pacific nations (Thailand, Japan, and Australia).

### **Part. III**

#### **Freedom versus Security: How Different Norms Interact with Policy Choices**

As the previous two parts of this working paper make clear, human rights norms relevant to immigration-related detention can be divided into two broad categories: those relating to the right to liberty and those relating to security of person. Although these categories overlap in both law and practice, one set of norms is related closely to the legality of deprivation of liberty while the other involves the appropriate treatment of detainees. This division rests on a fundamental normative distinction provided in the International Covenant for Civil and Political Rights (ICCPR), Article 9(1) of which provides: “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”

As part of our original proposal for this SNIS project, the research team proposed investigating broader theoretical implications of this dual-pronged structure of detention-related norms, including assessing the degree to which differing norms can shape not only internal laws and policies, but also interact with the mechanics of international relations in diffusing detention practices globally. This part of the working paper discusses some of our key findings in this regard.

Scholars investigating the spread of immigration control mechanisms have long noted the multitudinous character of diffusion in this arena of policy, particularly within the European sphere where the evolution of internal freedom of movement in the EU has been accompanied by increasing efforts to control the external borders of the region and externalize control efforts to third countries (Karakayali and Rigo, pp. 68-69).

But what role has human rights played in this phenomenon? Some scholars have suggested that many state practices can be explained as efforts to evade human rights obligations. According to Guiraudon and Lahav, while it is important to observe how liberal states are susceptible to diffusion of human rights norms, their response to this diffusion is more complex than many scholars of globalization have recognized. In their “Reappraisal of the State Sovereignty Debate: The Case of Migration Control,” the authors review Council of Europe jurisprudence to assess the degree to which international legal instruments constrain national policymaking. They argue that in contrast to globalist views regarding the erosion of national policy making in the face of international norms, states instead “circumvent normative constraints” by employing a number of avoidance mechanisms. Placing themselves squarely in the debate over the clash between sovereign interests and normative regimes, the authors highlight migration as being a particularly difficult area for the diffusion of norms because it runs directly into the resilience “of a nation-state when it comes to refusing access, residence, or naturalization on its territory” (Guiraudon and Lahav 2000).



The authors demonstrate how states respond to normative pressure by devising strategies that shift the location of immigration control responsibilities. They write that migration control policy during the decade of the 1990s “reveals a threefold dynamic: a shift of decision making in monitoring and execution of powers upward to intergovernmental fora (i.e., Schengen, the [EU] Justice and Home Affairs “third pillar”), downward to local authorities (through decentralization), and outward to non-state actors (in particular, private companies, such as airline carriers, transport companies, security services, travel companies, employers, and civic actors).” They add: “Efforts to reconcile liberal norms, reinforced by international human rights instruments, and to effectively control immigration are resulting in shifting and extending national liabilities.”

Among the techniques of constraint avoidance that Guiraudon and Lahav discuss are “remote control” and “burden sharing” arrangements.<sup>3</sup> Examples of these include imposing sanctions on transport companies that carry aliens and establishing cooperative agreements with neighboring states and sending countries, as well as the “devolution” of certain roles to private entities, which can be observed in the increasing privatization of detention centers in countries across the globe (Flynn and Cannon 2009).

## **Freedom**

An important initial observation that can be made about the SNIS project’s normative structure is that it identifies a series of norms that can have the effect of circumscribing sovereignty by calling into question the state’s right to decide who can enter and remain on its territory, including the right to liberty. These norms appear to be a source of discomfort for modern liberal democracies when it comes to the practice of immigration detention, which in effect is the practice of locking people up without charging them of crimes. As Wilsher points out, throughout their long histories of detaining non-citizens, the United States and the United Kingdom—as well as other key detaining countries like Australia—have struggled to find legal justifications for this practice, in part because of what he terms the “uncomfortable recognition of the dissonance between immigration detention and liberal legal orthodoxy” (Wilsher 2011, p. 56).

Other scholars have noted that an additional element of immigration detention that undermines a state’s claim to liberalism is the fact that this form of detention tends to be outside criminal processes, thereby enabling states to use the mechanism of deprivation of liberty without providing the same legal guarantees to immigration detainees that are afforded criminal suspects and convicts. In her 2013 working paper [“Crimmigration’ in the European Union through the Lens of Immigration Detention](#),” SNIS team member Izabella Majcher analyses the disjuncture between the rights provided criminal detainees under EU law and those provided immigration

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<sup>3</sup> Aristide Zolberg initially developed the concept of “remote control” to characterize the emergence of visa regimes, which enable states to regulate entrance onto their territory before a person’s arrival. See Zolberg, “Matters of State: Theorizing Immigration Policy,” in *The Handbook of International Migration: The American Experience*, New York: Russell Sage: 1999. See also, Zolberg, “Guarding the Gates in a World on the Move,” Social Science Research Council 2001.

detainees. Arguing that EU directives on migrants and asylum seekers provide a peculiar case of “crimmigration”—or the convergence of criminal and immigration laws—Majcher discusses how the detention provisions provided in the Returns Directive and the recently revised Reception Conditions Directive selectively incorporate criminal justice objectives while rejecting protective features that are provided in criminal processes. Thus, while immigration detention sanctioned by EU directives may pursue objectives similar to those of criminal justice—retribution, deterrence, or incapacitation—detainees are not entitled to due process guarantees afforded to their criminal counterparts.

In effect, immigration detention, because it contradicts the right to liberty and does so in a way that is counter to key features of the rule of law, undermines foundational aspects of modern liberal democracies. This fact seems to have spurred many key migration detention countries to adopt misleading discourses regarding detention as well as to widen detention practices by developing partnerships that help deflect pressure and “externalizing” detention and interdiction efforts to client states. This helps explain why across the globe today one can find immigration detention centres “hiding” their identities behind inaccurate or imprecise names: Turkey has called its migrant detention centres “guesthouses”; Mexico uses “migratory stations” (*estaciones migratorias*) for the temporary housing (*alojamiento temporal*) of migrants; Hungary has “guarded shelters,” Italy has “welcome centres” (*centri di accoglienza*), and France has “centres of administrative retention” (*centres de rétention administrative*). (This recognition has helped spur specific follow on research by SNIS team members, including Mariette Grange’s 2013 Global Detention Project Working Paper, ["Smoke Screens: Is There a Correlation between Migration Euphemisms and the Language of Detention?"](#))

Of course, not all countries use such creative terminology to describe their detention operations, but most states appear to view the penal nature of immigration detention as a source of embarrassment, a phenomenon one could term “sovereign discomfort,” as SNIS team member Michael Flynn argued in his 2013 Global Detention Project Working Paper [The Hidden Costs of Human Rights: The Case of Immigration Detention](#).

At the same time that states appear to soften the edges of administrative detention in their discourses, they also appear to seek to evade norms that limit their freedom of action with respect to non-citizens by endeavoring to export interdiction efforts to other countries, raising questions about the evasion of their responsibilities as established in international legal instruments. A case in point is the West African nation of Mauritania, which in 2006 opened its first dedicated detention centre for irregular migrants in the port city of Nouadhibou with assistance provided by the Spanish Agency for International Development Cooperation. The centre, which assists Mauritania’s efforts to crack down on migrants using the country en route to the Canary Islands, was set up in a former school restored by Spanish authorities. Before 2006, in the rare instances that migrants were arrested by the police they were typically held at police stations (AI 2008).

Spain’s involvement in establishing the detention centre has led to questions over who controls the facility and guarantees the rights of the detainees. While the centre is officially managed by the Mauritanian National Security Service, Mauritanian officials “clearly and emphatically” stated to a Spanish human rights organization in October 2008 that Mauritanian authorities

perform their jobs at the express request of the Spanish government (European Social Watch 2009).

The Mauritania case reflects a broader trend of main migrant destination countries attempting to deflect migratory pressures, and the rights afforded migrants and asylum seekers, by externalizing immigration controls to states that are not considered main destinations of migrants and where the rule of law is often weak. This raises questions about the culpability of liberal democracies in the abuses detainees suffer when they are interdicted before reaching their destinations. Observers have expressed similar concerns with respect to the numerous other efforts to thwart the arrival of asylum seekers, such as EU discussions on extraterritorial processing centres, Australia's "Pacific Solution," and U.S. Caribbean interdiction policies. (The mechanics of these various diffusions efforts are explored in a forthcoming journal article by SNIS team member Michael Flynn titled "There and Back Again: Immigration Detention and Policy Transfer.")

As the notion of "remote control" discussed earlier makes clear, the externalization of border controls includes a range of phenomenon, not all of which involve the diffusion of policies from one state to another. According to Lahav and Guiraudon, these efforts can be arranged on a "playing field" that runs along two intersecting axes: public-private and domestic-international (Lahav and Guiraudon 2000, p. 58). Thus, for example, in the domestic sphere, we find some states delegating responsibility for apprehending migrants to local police forces (public) and increasingly using for-profit companies (private) to run detention centers. In the international sphere, for instance, states pressure airlines (private) to verify whether travelers have proper travel documentation and arrange with third-countries (public) to manage migration movements (i.e. by establishing readmission agreements).

It is in the last quadrant—public international—that we observe the phenomenon of policy diffusion relevant to this section of the working paper. In their study of the external dimension of EU immigration policy, for example, Lavenex and UçArer (2004) contend that there are various avenues by which the EU effects external policy changes. These include "the unintended externalities of EU policies on third countries, the purposeful export of common policies through bilateral and/or multilateral agreements, and the extension of European policies to third countries through institutionalized forms of cooperation" (Lavenex and UçArer 2004, p. 418).

Lavenex and UçArer propose a broad conceptual outline for capturing the variety of ways by which immigration policies diffuse internationally, which they term the "policy transfer framework." According to this framework, which they base on EU relations with third countries, there are four principal "forms of policy adaptation and transfer": (1) *unilateral emulation*, which the authors, following Checkel (2001), describe as cases in which countries are "cognitively motivated" to adopt a policy they learned or observed from another without any external pressure or coercion; (2) *adaption through externality*, which is a mix of voluntary and involuntary adaption that occurs when a state elects to adopt a specific policy in response to the impact of policies adopted by a neighboring country; and two types of *policy transfer through conditionality*, which in the case of Europe is a policy transfer that occurs at "the insistence of the EU" and "where cooperation on a certain aspect of asylum and immigration policy is regulated by a bilateral agreement between the EU and the third country." One version of this the authors

call (3) *opportune conditionality*, which occurs when one country insists that another adopt a policy, but such adoption is viewed by the adopting country as a welcome development; the other version, (4) *policy transfer through inopportune conditionality*, which refers specifically to the EU context and indicates transfers that “occur in a more authoritative manner, which usually implies significant costs to the third country. ... The broad network of EU external agreements provides a powerful tool for binding third countries to common EU policies, thereby extending the scope of the latter.” (Lavenex and UçArer 2004, p. 421).

Reviewing key aspects of their framework, Lavenex and UçArer write: “In sum, the transfer and diffusion of EU policies can be initiated and facilitated by third country governments who—for one reason or another—opt to alter their domestic policies. Alternatively, diffusion can ... be actively promoted by the EU and its member states when the export of common policies (or parts of them) is seen as a means to resolve common problems at home. Innovators may attempt to devise complex combinations of carrots and sticks to entice others to participate in this endeavor, thereby expanding the circle of participating countries and, arguably, enhancing the effectiveness of a particular policy. In a field such as international migration which is characterized by intensive interdependence, adaptation by one group of countries may soon develop further externalities, slowly extending the reach of the new policy context” (Lavenex and UçArer 2004, p. 422).

Lavenex and UçArer’s framework can assist efforts to theorize on the variety of ways in which immigration control policies diffuse and help us to systematically characterize the mechanics of detention diffusion within the larger phenomenon of the externalization of immigration controls. For instance, as the case of Spain and Mauritania seems to show, a key aspect of externalization involves transferring not policies *per se* but rather migratory pressures. This is achieved through the use of two key tools: the pushing out of the external border (Frontex) and the enlistment of third countries in managing migration (readmission agreements). Because of the transfer of pressure away from Europe, a dilemma emerged: what to do with the migrants stranded in Mauritania? This led to the establishment of Mauritania’s first dedicated immigration detention center. Thus, the detention of migrants in Mauritania evolved from being an ad hoc practice to a standard *modus operandi*.

This case reveals how the spreading of detention practices can be an artifact of other, more ordinary processes, including norm evasion in decision-making processes. Using Lavenex and UçArer’s framework, we could argue that the diffusion and eventual institutionalization of immigration detention involved a combination of both *adaptation through externality*—that is, a mix of voluntary and involuntary adaptation in response to the impact of policies adopted by another country—and *policy transfer through conditionality* involving a level of coercion by the destination country which arguably was motivated by a desire to avoid constraints on sovereignty that are embodied in the right to liberty and non-refoulement. Ultimately, however, because the decision-making regarding the establishment of “offshore” detention centers like the one in Nouadhibou tends to be opaque, it is often left to observers to infer the mix of motivations that are behind the decisions.

## Security

In contrast to norms related to liberty, those related to security of person appear to be more relevant to the issue of the evolution of internal detention practices. Thus, for example, advocacy related to the conditions of confinement can impact both the legal grounds used for the detention of non-citizens as well as how detention regimes are constructed. A key focus of this working paper is the forms of detention. It is this issue—the physical aspect of detention—that is most closely related to security of person, including the treatment of detainees and the conditions of their detention. In this respect, Article 10 of the ICCPR provides: “1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. 2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons; (b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.”

In addition to the ICCPR, there are a number of treaties that have specific provisions related to security of person while in detention, as well as to their treatment and conditions of confinement. To give a few examples:

The International Convention for the Protection of All Persons from Enforced Disappearances (ICPED) provides specific guarantees with respect to the maintenance of records regarding detainees. Article 17 states: “Each State Party shall assure the compilation and maintenance of one or more up-to-date official registers and/or records of persons deprived of liberty, which shall be made promptly available, upon request, to any judicial or other competent authority or institution authorized for that purpose by the law of the State Party concerned or any relevant international legal instrument to which the State concerned is a party.” The ICPED also provides a specific norm regarding places of detention, stating Article 17(1) that “No one shall be held in secret detention and Article 17(2)(c) that each State Party shall “Guarantee that any person deprived of liberty shall be held solely in officially recognized and supervised places of deprivation of liberty.”

The Convention against Torture (CAT) provides norms related to the training of personnel at detention facilities. Article 10(1) states: “Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.”

The Vienna Convention on Consular Relations (VCCR) contains norms related to the right of detainees to have contact with the outside world, in this case with one’s consular representatives. Article 36(1)(c) provides that “consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgment.”

Many of these provisions are reinforced in binding regional treaties. Thus, for instance, the Inter-American Convention on Forced Disappearance of Persons (IACFDP) reiterates the ICPED’s

provisions related to the maintenance of proper prison registries and records, as well as on the use of officially recognized facilities. Article 11 provides: “Every person deprived of liberty shall be held in an officially recognized place of detention and be brought before a competent judicial authority without delay, in accordance with applicable domestic law. The States Parties shall establish and maintain official up-to-date registries of their detainees and, in accordance with their domestic law, shall make them available to relatives, judges, attorneys, any other person having a legitimate interest, and other authorities.”

Critical to the diffusion of these norms are the various bodies that have been set up to review their implementation and report on state efforts to adhere to them. At the UN level, specific treaty bodies have been established that monitor the implementation of the treaties. Monitoring implementation of the ICCPR, for example, is the Human Rights Committee. Similarly, in Europe, the European Court of Human Rights was established to make binding legal judgments on implementation of the Council of Europe’s European Convention on Human Rights. Likewise, the Council of Europe’s European Convention for the Prevention of Torture created the Committee for the Prevention of Torture (CPT) to provide “a non-judicial preventive mechanism to protect persons deprived of their liberty against torture and other forms of ill-treatment [which] complements the judicial work of the European Court of Human Rights” (CPT, “About the CPT”). As we will see later, the CPT’s reporting mechanism provides a rich and highly detailed record of states’ responses to normative pressure.

While the ICCPR and the other treaties discussed above provide norms that are broadly related to the treatment of all people who have been deprived of their liberty, they do not cover issues related specifically to immigration detainees. The only international human rights treaty that provides specific protections for international migrants is the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW).<sup>4</sup> However, while its provisions are binding on states that have ratified the treaty, the ICRMW is one of the least ratified international human rights conventions, which means that many of its protections can effectively be considered “soft law” for most states in the international system. Nevertheless, it is in this treaty that we find one of the more important norms related to the evolution of migration-related detention regimes: the separation of migrant detainees from other kinds of detainees.

As we saw earlier, in our discussion of the ICCPR, the principle of the separation of different categories of detainees (including children from adults, and convicted detainees from accused detainees) is well established in international human rights law.<sup>5</sup> In the Migrant Workers Convention, this principle was adapted to include immigration detainees. Article 17(3) states: “Any migrant worker or member of his or her family who is detained in a State of transit or in a State of employment for violation of provisions relating to migration shall be held, in so far as practicable, separately from convicted persons or persons detained pending trial.”

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<sup>4</sup> Although the Migrant Workers Convention is the only UN human rights convention that provides protections for migrant workers, the International Labor Organization has a host of treaties on the rights of migrant workers.

<sup>5</sup> Article 10 of the ICCPR provides that “Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons; (b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.”

This norm has corollaries in a number of soft law instruments. For instance, the UN Standard Minimum Rules for the Treatment of Prisoners, which was adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Geneva in 1955, states: “Persons imprisoned for debt and other civil prisoners shall be kept separate from persons imprisoned by reason of a criminal offence.” Although it does not specifically mention immigration detainees, the Standard Minimum Rules’ discussion of “civil prisoners” clearly encompasses immigration detainees who are confined for administrative—as opposed to criminal—purposes.

Similarly, the Council of Europe’s Committee for the Prevention of Torture (CPT) has on numerous occasions reiterated the norm regarding the separation of immigration detainees from criminal detainees. It interprets the norm broadly and combines it with the norm on detaining people in recognized facilities. Not only should immigration detainees be held separately, argues the CPT, they should also be confined in specific facilities. Thus, the CPT Standards states: “On occasion, CPT delegations have found immigration detainees held in prisons. Even if the actual conditions of detention for these persons in the establishments concerned are adequate—which has not always been the case—the CPT considers such an approach to be fundamentally flawed. A prison is by definition not a suitable place in which to detain someone who is neither convicted nor suspected of a criminal offence.”

Recently, this soft law norm has become hard law in the European Union, with the entry into force in 2011 of the EU Return Directive, which provides rules for how EU member states can treat third-country nationals who are to be deported.<sup>6</sup> Article 16(1) states: “Detention shall take place as a rule in specialized detention facilities. Where a Member State cannot provide accommodation in a specialized detention facility and is obliged to resort to prison accommodation, the third-country nationals in detention shall be kept separated from ordinary prisoners.”

Despite the fact that only very recently has this norm become “hard law”—and then only in a one region of the world (the European Union), as well as for the few countries that have ratified the Migrant Workers Convention—the norm providing that immigration detainees be held in specialized facilities has long been a key element in advocacy regarding immigration related detention, and as such has played an instrumental role in the evolution of this practice.

There are a number of cases that reflect advocacy related to this norm. In France, for example, the idea of establishing specialized facilities was driven by human rights considerations promoted by French activists, which eventually swayed French authorities in the early 1980s to close the country’s ad hoc “clandestine jails” and establish dedicated facilities in the form of “centres de rétention administrative” (Fischer 2011). More recently, we see it in the case of the Spanish-funded detention center in Mauritania, in which both Mauritanian and Spanish authorities, when confronted with criticism of the ad hoc nature of the detention facility being used in Nouadhibou, claimed that a new, purpose-built center would be created in the near future that would meet international standards.

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<sup>6</sup> Directive 2008/115/EC on common standards and procedures in member states for returning illegally staying third-country nationals.

In yet another case, in early 2011, an official with the UN High Commissioner for Refugees described the Berks County Family Shelter—a misleadingly named facility which today is the only site in the United States that detains families—as the embodiment “of the best practices for a truly civil immigration detention model.” The official explained that “UNHCR believes strongly that the vast majority of asylum seekers should not be detained,” but in the event that asylum seekers are detained, Berks was the model to follow (UNHCR 2011).

By all accounts, Berks operates in a humane and “non-penal” manner. However, while it is clearly important to applaud improvements in the treatment of detainees, is it a good idea for the international community’s premier agency protecting asylum seekers to provide its imprimatur to efforts—even limited ones—to detain them, including children? UNHCR, as a political *and* humanitarian entity, by necessity must at times walk a thin line between its treaty-based mandate and the desires of its state partners. On the other hand, this sort of encouragement from a leading humanitarian agency arguably provides “normative cover” for detention practices, shielding the state from uncomfortable questions regarding the right to liberty and helping entrench immigration detention into the institutional framework of the nation-state (Flynn 2013).

Rights actors frequently focus their detention-related advocacy on promoting the proper treatment of detainees and applauding efforts by states to differentiate between criminal incarceration and the administrative detention of irregular migrants and asylum seekers. However, there is cause for concern that the emergence of specialized detention regimes can lead to increased use of detention in the face of growing international migration.

In contrast to the United States, most European countries ceased some time ago to use criminal facilities for the purposes of immigration detention. But the process of shifting from informal to formal detention regimes, which has occurred over the last two decades, has paralleled the growth in immigration detention in this region.

Is there a connection between these two developments? The case of Ireland is illustrative. Ireland’s immigration detention estate has been notable for two main reasons—its exceedingly small number of detainees each year (numbering in the dozens) and the fact that it has no official facility to confine these people. However, in 2006, after an official visit to the country, the Council of Europe’s Committee for the Prevention of Torture admonished Ireland for detaining failed asylum seekers slated for deportation in prisons. The CPT pointed out that this treatment violated norms established in the European Convention on Human Rights. The CPT then recommended that Ireland build a facility that would be dedicated to this purpose. In its response, the government of Ireland promised to do just that, stating that it was in “ongoing discussions with the Irish Prison Service ... with the aim of providing a separate purpose built facility for immigration offenders at the new complex that conforms to best international standards.”

As journalist Deepa Fernandes (2007) once wrote regarding the U.S. “immigration-industrial complex”: “With the increase in prison beds to house immigrants comes the pressure to fill them.” Ireland thus represents an important test case for the future: With the shift to specialized facilities, will there be an uptick in the numbers of people detained?



Growing international advocacy on this issue appears to be leading to the institutionalization of detention regimes in disparate parts of globe. This institutionalization—whose most obvious characteristic is the establishment of dedicated immigration detention centers to replace prisons or other off-the-shelf facilities—seems to have a number of important outcomes. First, it appears to embed deprivation of liberty into the fabric of states’ standard operating procedures with respect to the deportation of unwanted foreigners.

Second, institutionalization is leading to the creation of what Sikkink terms “principled issue-networks,” which she defines as networks of actors that are “driven primarily by shared values or principled ideas—ideas about what is right and wrong—rather than shared causal ideas or instrumental goals” (Sikkink 1993, p. 412).

However, what is interesting about the “principled issue-networks” is that—in contrast to Sikkink’s model of human rights NGOs networking with international bodies and private foundations—these are informal groupings that have as integral members national authorities. Whether it is UNHCR appearing in a press briefing with U.S. authorities to proclaim the human nature of a family detention center in the United States; French advocacy groups agreeing to work with government officials in the establishment of dedicated detention facilities; or Spanish authorities working with Mauritanian authorities to develop model detention centers based on the advice of human rights groups; what is striking in all these examples is that we see the emergence of ad hoc networks in support of concrete human rights norms whose very existence provides powerful normative cover to the practice of detaining foreigners for immigration-related reasons.

## Conclusion

This SNIS project on immigration detention has served as an excellent opportunity to expand our understanding of how international norms have played a role in influencing the ways states implement detention practices. Because of the project, the groundwork has been laid for developing systematic data on detention regimes that allows for comparative study of state practices based on carefully constructed norm-based indicators.

Implementing these ideas in a structured format amendable to data development presents a host of challenges that often cannot be observed until an attempt is made. In particular, the effort to build generalizations that can encompass complex phenomenon across a wide variety of national contexts is exceptionally challenging. A case in point is the discussion earlier in this paper regarding grounds for detention. After months of evaluation that included input from knowledgeable observers who advised the SNIS team, it was not until these grounds were tested on a sample group from one particular region of the world that we realized our categories had to be re-adjusted. And each time a re-adjustment like that occurs, it means revisiting both the underlying arguments used to build the concepts, but also the mechanics of changing the database itself and re-entering new data, all of which adds up to an extraordinarily lengthy process.

Nevertheless, while there are arguably no perfect data categories to capture any particular social phenomenon, it is the effort itself at developing theoretical frameworks and testing them on reality that leads to insights. As such, the SNIS project has been invaluable to our continuing work studying and analysing immigration detention regimes. The database will serve as an important resource for future publications on this phenomenon, some of which are already programmed, including a comparative study of the 19 countries reviewed as part of our research. We expect this study to provide enormous insight into both the strengths and weaknesses of the global normative regime relevant to this issue.

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6) Annexes to SNIS final report

Annex 1. Mapping the international legal framework too migration-related detention

Annex 2. Flynn's paper

Annex 3. Data indicators

Annex 4. Questionnaire

Annex 5. Majcher's paper

Annex 6. Grange's paper

## **ANNEX I. Mapping the International Norms relevant to Migration-Related Detention**

- 1. International sources of binding norms**
  - 2. Regional sources detailed**
- 3. International Interpretative Guidance**
  - 4. Relevance of ILO law**
  - 5. Counter-terrorism**
  - 6. Relevance of maritime law**

## INTERNATIONAL SOURCES OF BINDING NORMS

### A) The right to liberty: The protection from arbitrary detention

	international	regional
<p>1. Legality [administrative detention and criminal incarceration]</p>	<p><b>ICCPR: art. 9(1)</b> Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.</p> <p><b>ICRMW: art. 16(1)</b> Migrant workers and members of their families shall have the right to liberty and security of person.</p> <p><b>ICRMW: art. 16(4)</b> Migrant workers and members of their families shall not be subjected individually or collectively to arbitrary arrest or detention; they shall not be deprived of their liberty except on such grounds and in accordance with such procedures as are established by law.</p> <p><b>CRC: art. 37(b)</b> States Parties shall ensure that: (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law [...]</p> <p><b>ICPED: art. 17(2)(a) and (b)</b> Without prejudice to other international obligations of the State Party with regard to the deprivation of liberty, each State Party shall, in its legislation: ( a ) Establish the conditions under which orders of deprivation of liberty may be given; ( b ) Indicate those authorities authorized to order the deprivation of liberty.</p> <p><b>CRPD: art.14(1)</b> States Parties shall ensure that persons with disabilities, on an equal basis with others: (a) Enjoy the right to liberty and security of person; (b) Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.</p>	<p><b>ECHR: art. 5(1)(f)</b> Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.</p> <p><b>ACHR: art.7(1), 7(2) and 7(3)</b> (1). Every person has the right to personal liberty and security. (2). No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto. (3). No one shall be subject to arbitrary arrest or imprisonment.</p> <p><b>ACHPR: art. 6</b> Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.</p> <p><b>Arab Charter: art. 14(1) and 14(2)</b> 1. Every individual has the right to liberty and security of person and no one shall be arrested, searched or detained without a legal warrant. 2. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.</p> <p><b>EU Charter: art.6</b> Everyone has the right to liberty and security of person.</p> <p><b>Convention of Belem do Para: art. 4(c)</b> Every woman has the right to the recognition, enjoyment, exercise and protection of all human rights and freedoms embodied in regional and international human rights instruments. These rights include, among others: (c). The right to personal liberty and security.</p>

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			<p><b>CRCI: art. 19(1)</b> No child shall be deprived of his/her freedom, save in accordance with the law and for a reasonable and a specific period.</p>
2. Lawfulness, necessity and proportionality of administrative detention	2.1. Lawful grounds		<p><b>ECHR: art. 5(1)(f)</b> No one shall be deprived of his liberty save in the following cases [...] (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.</p> <p><b>Return Directive: art. 15(1)</b> [...] Member States may only keep in detention a third-country national who is the subject of return procedures in order to prepare the return and/or carry out the removal process, in particular when: (a) there is a risk of absconding or (b) the third-country national concerned avoids or hampers the preparation of return of the removal process. [...]</p>
	2.2. Detention as a measure of last resort	<p><b>CRC: art. 37(b)</b> States Parties shall ensure that: (b) [...] The arrest, detention or imprisonment of a child [...] shall be used only as a measure of last resort [...]</p>	<p><b>ACRWC: art. 30(1)(a), (b) and (c)*</b> States Parties to the present Charter shall undertake to provide special treatment to expectant mothers and to mothers of infants and young children who have been accused or found guilty of infringing the penal law and shall in particular: (a) ensure that a non-custodial sentence will always be first considered when sentencing such mothers; (b) establish and promote measures alternative to institutional confinement for the treatment of such mothers; (c) establish special alternative institutions for holding such mothers.</p> <p><b>SAARC CWC: art. 4(3)(c)</b> [...] States Parties shall provide special care and treatment to children in a country other than the country of domicile and expectant women and mothers who are detained along with infants or very young children, and shall promote, to the best possible extent, alternative measures to institutional correction [...]</p> <p><b>Return Directive: 15(1)</b> Unless other sufficient but less coercive measures can be applied effectively in a specific case, Member States may only keep in detention a third-country national who is the subject of return procedures in order to prepare the return and/or carry out the removal process [...]</p> <p><b>Return Directive: 17(1)</b> Unaccompanied minors and families with minors shall</p>

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			<p>only be detained as a measure of last resort [...]</p> <p><b>Procedures Directive: art. 18(1)</b> Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum.</p> <p><b>Reception Directive: art. 7(3)</b> When it proves necessary, for example for legal reasons or reasons of public order, Member States may confine an applicant to a particular place in accordance with their national law.</p>
	<p>2.3. The non-penalisation clause</p>	<p><b>Refugee Convention: art. 31(1)</b> The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.</p> <p><b>Smuggling Protocol: art. 5 [criminal liability of migrants]</b> Migrants shall not become liable to criminal prosecution under this Protocol for the fact of having been the object of conduct set forth in article 6 of this Protocol, see article 6(1) (a) The smuggling of migrants; (b) When committed for the purpose of enabling the smuggling of migrants: (i) Producing a fraudulent travel or identity document; (ii) Procuring, providing or possessing such a document; (c) Enabling a person who is not a national or a permanent resident to remain in the State concerned without complying with the necessary requirements for legally remaining in the State by the means mentioned in subparagraph (b) of this paragraph or any other illegal means.</p>	<p><b>CATHB: art. 26</b> Each Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so.</p>

	<p>2.4. Limitations on the length of detention</p>	<p><b>CRC: art. 37(b)</b> States Parties shall ensure that: (b) [...] The arrest, detention or imprisonment of a child [...] shall be [...] for the shortest appropriate period of time.</p>	<p><b>Return Directive: art. 15(1)</b> Any detention shall be for as short a period as possible and only maintained as long as removal arrangements are in progress and executed with due diligence.</p> <p><b>Return Directive: art. 15(5) and (6)</b> (5). Detention shall be maintained for as long a period as the conditions laid down in paragraph 1 are fulfilled and it is necessary to ensure successful removal. Each Member State shall set a limited period of detention, which may not exceed six months. (6). Member States may not extend the period referred to in paragraph 5 except for a limited period not exceeding a further twelve months in accordance with national law in cases where regardless of all their reasonable efforts the removal operation is likely to last longer owing to: (a) a lack of cooperation by the third-country national concerned, or (b) delays in obtaining the necessary documentation from third countries.</p> <p><b>Return Directive: art. 17(1)</b> Unaccompanied minors and families with minors shall only be detained [...] for the shortest appropriate period of time.</p> <p><b>CRCI: art. 19(1)</b> No child shall be deprived of his/her freedom, save in accordance with the law and for a reasonable and a specific period.</p>	
<p>3. Procedural standards [administrative detention and criminal incarceration]</p>	<p>3.1. Information provided to detainees</p>	<p>3.1.1. Notification of the legal and factual reasons for arrest [detention order] in a language the person concerned understands</p>	<p><b>ICCPR: art. 9(2)</b> Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.</p> <p><b>ICCPR: art. 14(3)(a)*</b> In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him.</p> <p><b>ICRMW: art. 16(5)</b> Migrant workers and members of their families who are arrested shall be informed at the time of arrest as far as possible in a language they understand of the reasons for their arrest and they shall be promptly informed in a language they understand of any charges against them.</p> <p><b>ICRMW: art. 18(3)(a)*</b> In the determination of any criminal charge against them,</p>	<p><b>ECHR: art. 5(2)</b> Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.</p> <p><b>ECHR: art. 6(3)(a)*</b> Everyone charged with a criminal offence has the following minimum rights to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him.</p> <p><b>ACHR: art.7(4)</b> Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.</p> <p><b>ACHR: art. 8(2)(b)*</b> Every person accused of a criminal offense [...] is entitled, with full equality, to the following minimum guarantees: (b) prior notification in detail to the accused of the charges against him.</p>

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			<p>migrant workers and members of their families shall be entitled to the following minimum guarantees: (a) To be informed promptly and in detail in a language they understand of the nature and cause of the charge against them.</p> <p><b>CRC: art. 40(2)(b)(ii)*</b></p> <p>[...] States Parties shall, in particular, ensure that: (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees: (ii) To be informed promptly and directly of the charges against him or her [...]</p>	<p><b>Arab Charter: art. 14(3)</b></p> <p>Anyone who is arrested shall be informed at the time of arrest, in a language which he understands, of the reasons for his arrest and shall be promptly informed of any charges against him. [...]</p> <p><b>Arab Charter: art. 16(1)*</b></p> <p>[...] During the investigation and the trial, the accused shall be entitled to the following minimum guarantees: 1. To be informed promptly and in detail, in a language which he understands, of the nature and cause of the charge against him.</p> <p><b>ACRWC: art. 17(2)(c)(ii)*</b></p> <p>States Parties to the present Charter shall in particular: (c) ensure that every child accused in infringing the penal law: (ii) shall be informed promptly in a language that he understands and in detail of the charge against him [...]</p> <p><b>CRCI: art. 19(3)(b)</b></p> <p>States Parties to the Covenant shall observe the following: (b) A child shall be informed immediately and directly about the charges against him/her upon his/her summoning or apprehension [...]</p> <p><b>Return Directive: art. 15(2)</b></p> <p>Detention shall be ordered in writing with reasons being given in fact and in law.</p>
		<p>3.1.2. Information on one's rights:</p>	<p>[ the right to legal assistance]</p> <p><b>ICCPR: art.14(3)(d)*</b></p> <p>In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality (d) [...] to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right [...]</p> <p><b>ICRMW: art. 18(3)(d)*</b></p> <p>In the determination of any criminal charge against them, migrant workers and members of their families shall be entitled to the following minimum guarantees: (d) [...] to defend themselves in person or through legal assistance of their own choosing; to be informed, if they do not have legal assistance, of this right [...]</p> <p>[the right to consular assistance]</p> <p><b>VCCR: art. 36(1)(b)</b></p> <p>With a view to facilitating the exercise of consular functions relating to nationals of the sending State: (b) if he so requests,</p>	<p>[the right to appeal]</p> <p><b>Return Directive: art. 15(2)(b)</b></p> <p>When detention has been ordered by administrative authorities, Member States shall: (b) [...] grant the third-country national concerned the right to take proceedings by means of which the lawfulness of detention shall be subject to a speedy judicial review to be decided on as speedily as possible after the launch of the relevant proceedings. In such a case Member States shall immediately inform the third-country national concerned about the possibility of taking such proceedings.</p>

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		<p>the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. [...] The said authorities shall inform the person concerned without delay of his rights under this subparagraph.</p> <p><b>ICRMW: 16(7)(c)</b></p> <p>When a migrant worker or a member of his or her family is arrested or committed to prison or custody pending trial or is detained in any other manner: (c) The person concerned shall be informed without delay of this right and of rights deriving from relevant treaties, if any, applicable between the States concerned, to correspond and to meet with representatives of the said authorities [The consular or diplomatic authorities of his or her State of origin or of a State representing the interests of that State] and to make arrangements with them for his or her legal representation.</p> <p><b>Smuggling Protocol: art. 16(5)</b></p> <p>In the case of the detention of a person who has been the object of conduct set forth in article 6 of this Protocol, each State Party shall comply with its obligations under the Vienna Convention on Consular Relations, where applicable, including that of informing the person concerned without delay about the provisions concerning notification to and communication with consular officers.</p>	
	<p>3.2. Legal assistance</p>	<p><b>ICCPR: art. 14(3)(b)* and (d)*</b></p> <p>In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; (d) [...] to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this rights; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;</p> <p><b>ICRMW: art. 18(3)(b)* and (d)*</b></p> <p>In the determination of any criminal charge against them, migrant workers and members of their families shall be entitled to the following minimum guarantees: (b) To have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing; (d) [...] to defend themselves in person or through legal assistance of their own choosing; to be informed, if they do not have legal assistance, of this right; and to</p>	<p><b>ECHR: art. 6(3)(b)* and (c)*</b></p> <p>Everyone charged with a criminal offence has the following minimum rights: (b) to have adequate time and facilities for the preparation of his defence; (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;</p> <p><b>ACHR: art. 8(2)(c)* , (d)* and (e)*</b></p> <p>Every person accused of a criminal offense [...] is entitled, with full equality, to the following minimum guarantees: (c). adequate time and means for the preparation of his defense; (d). the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing and to communicate freely and privately with his counsel; (e). the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time</p>

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		<p>have legal assistance assigned to them, in any case where the interests of justice so require and without payment by them in any such case if they do not have sufficient means to pay;  <b>CRC: art. 37(d)</b>  States Parties shall ensure that: (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance [...]  <b>CRC: art. 40(2)(b)(ii)*</b>  [...] States Parties shall, in particular, ensure that: (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees: (ii) [...] to have legal or other appropriate assistance in the preparation and presentation of his or her defence.  <b>ICPED: art. 17(2)(d)</b>  Without prejudice to other international obligations of the State Party with regard to the deprivation of liberty, each State Party shall, in its legislation: ( d ) Guarantee that any person deprived of liberty shall be authorized to communicate with and be visited by [...] counsel [...]</p>	<p>period established by law;  <b>ACHPR: art. 7(1)(c)</b>  Every individual shall have the right to have his cause heard. This comprises: (c) the right to defense, including the right to be defended by counsel of his choice;  <b>Arab Charter: art. 16(2) *, (3)* and (4)*</b>  [...] During the investigation and the trial, the accused shall be entitled to the following minimum guarantees: 2. To have adequate time and facilities for the preparation of his defense [...]. 3. To [...] defend himself or through legal assistance of his own choosing or with the assistance of his lawyer, with whom he can freely and confidentially communicate. 4. To have free legal assistance of a lawyer to defend himself if he does not have sufficient means to pay for his defense, and if the interests of justice so require. [...].  <b>Arab Charter: art. 13(1)*</b>  Everybody has the right to a fair trial [...]. State Parties shall ensure financial aid to those without the necessary means to pay for legal assistance to enable them to defend their rights.  <b>EU Charter: art. 47</b>  [...]Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented. Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice  <b>ACRWC: art. 17(2)(c)(iii)*</b>  States Parties to the present Charter shall in particular: (c) ensure that every child accused in infringing the penal law: (iii) shall be afforded legal and other appropriate assistance in the preparation and presentation of his defence.  <b>CRCI: art. 19(3)(c)</b>  States Parties to the Covenant shall observe the following: (c) the child shall be provided with legal and humanitarian assistance where needed including access to a lawyer [...]</p>
	<p>3.3. Assistance of interpreter</p>	<p><b>ICCPR: art. 14(3)(f)*</b>  In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court.  <b>ICRMW: art. 16(8)</b></p>	<p><b>ECHR: art. 6(3)(e)*</b>  Everyone charged with a criminal offence has the following minimum rights: (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.  <b>ACHR: art. 8(2)(a)*</b></p>

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		<p>Migrant workers and members of their families who are deprived of their liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of their detention and order their release if the detention is not lawful. When they attend such proceedings, they shall have the assistance, if necessary without cost to them, of an interpreter, if they cannot understand or speak the language used.</p> <p><b>ICRMW: art. 18(3)(f)*</b></p> <p>In the determination of any criminal charge against them, migrant workers and members of their families shall be entitled to the following minimum guarantees: (f) To have the free assistance of an interpreter if they cannot understand or speak the language used in court.</p> <p><b>CRC: art. 40(2)(b)(vi)*</b></p> <p>[...] States Parties shall, in particular, ensure that: (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees: (vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used.</p>	<p>Every person accused of a criminal offense [...] is entitled, with full equality, to the following minimum guarantees: (a) the right of the accused to be assisted without charge by a translator or interpreter, if he does not understand or does not speak the language of the tribunal or court.</p> <p><b>Arab Charter: art. 16(4)*</b></p> <p>[...] During the investigation and the trial, the accused shall be entitled to the following minimum guarantees: (4). [...] To have the free assistance of an interpreter if he cannot understand or speak the language of the court.</p> <p><b>ACRWC: art. 17(2)(c)(ii)*</b></p> <p>States Parties to the present Charter shall in particular: (c) ensure that every child accused in infringing the penal law: (ii) [...] shall be entitled to the assistance of an interpreter if he or she cannot understand the language used.</p> <p><b>CRCI: art. 19(3)(c)</b></p> <p>States Parties to the Covenant shall observe the following: (c) the child shall be provided with legal and humanitarian assistance where needed including access to [...] interpreter if necessary.</p>
	<p>3.4. Accessible and effective remedies / Judicial review of the lawfulness of the detention</p>	<p><b>ICCPR: art. 9(4)</b></p> <p>Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.</p> <p><b>ICRMW: 16(8)</b></p> <p>Migrant workers and members of their families who are deprived of their liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of their detention and order their release if the detention is not lawful. [...]</p> <p><b>CRC: art. 37(d)</b></p> <p>States Parties shall ensure that: (d) Every child deprived of his or her liberty shall have [...] the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.</p> <p><b>ICPED: art. 17(2)(f)</b></p> <p>Without prejudice to other international obligations of the State Party with regard to the deprivation of liberty, each State Party shall, in its legislation: ( f ) Guarantee that any person deprived of liberty or, in the case of a suspected enforced disappearance, since the person deprived of liberty is not able to exercise this</p>	<p><b>ECHR: art. 5(4)</b></p> <p>Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.</p> <p><b>ACHR: art. 7(6)</b></p> <p>Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies.</p> <p><b>Arab Charter: art. 14(6)</b></p> <p>Anyone who is deprived of his liberty by arrest or detention shall be entitled to proceedings before a court, in order that a court may decide without delay on the lawfulness of his arrest or detention, and order his release if the arrest or the</p>

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		<p>right, any persons with a legitimate interest, such as relatives of the person deprived of liberty, their representatives or their counsel, shall, in all circumstances, be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of the deprivation of liberty and order the person's release if such deprivation of liberty is not lawful.</p> <p><b>[right to be brought promptly before the court]*</b>  <b>ICCPR: art. 9(3)*</b>  Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. [...]</p> <p><b>ICCPR: art. 10(2)(b)* [minors]</b>  Accused juvenile persons shall [...] brought as speedily as possible for adjudication.</p> <p><b>ICRMW: 16(6)*</b>  Migrant workers and members of their families who are arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. [...]</p> <p><b>ICRMW: 17(2)* [minors]</b>  [...] Accused juvenile persons shall be [...] brought as speedily as possible for adjudication.</p>	<p>detention is not lawful.</p> <p><b>Return Directive: art. 15(2) and 15(3)</b>  (2) [...] When detention has been ordered by administrative authorities, Member States shall: (a) either provide for a speedy judicial review of the lawfulness of detention to be decided on as speedily as possible from the beginning of detention; (b) or grant the third-country national concerned the right to take proceedings by means of which the lawfulness of detention shall be subject to a speedy judicial review to be decided on as speedily as possible after the launch of the relevant proceedings. In such a case Member States shall immediately inform the third-country national concerned about the possibility of taking such proceedings. The third-country national concerned shall be released immediately if the detention is not lawful. (3). In every case, detention shall be reviewed at reasonable intervals of time either on application by the third-country national concerned or ex officio. In the case of prolonged detention periods, reviews shall be subject to the supervision of a judicial authority.</p> <p><b>Procedures Directive: art. 18(2)</b>  Where an applicant for asylum is held in detention, Member States shall ensure that there is a possibility of speedy judicial review.</p> <p><b>[right to be brought promptly before the court]*</b>  <b>ECHR: art. 5(3)*</b>  Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. [...]</p> <p><b>ACHR: art. 7(5)*</b>  Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. [...]</p> <p><b>ACHR: art. 5(5)* [minors]</b>  Minors while subject to criminal proceedings shall be [...] brought before specialized tribunals, as speedily as possible, so that they may be treated in accordance with</p>
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			<p>their status as minors.</p> <p><b>Arab Charter: art. 14(5) *</b></p> <p>Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. [...]</p> <p><b>IACFDP: art. 11</b></p> <p>Every person deprived of liberty shall [...] be brought before a competent judicial authority without delay, in accordance with applicable domestic law. [...]</p>
	3.5. Right to compensation for unlawful detention	<p><b>ICCPR: art. 9(5)</b></p> <p>Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.</p> <p><b>ICCPR: art. 14(6)*</b></p> <p>When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.</p> <p><b>ICRMW: art. 16(9)</b></p> <p>Migrant workers and members of their families who have been victims of unlawful arrest or detention shall have an enforceable right to compensation.</p> <p><b>ICRMW: art. 18(6)*</b></p> <p>When a migrant worker or a member of his or her family has, by a final decision, been convicted of a criminal offence and when subsequently his or her conviction has been reversed or he or she has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to that person.</p>	<p><b>ECHR: art. 5(5)</b></p> <p>Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.</p> <p><b>Prot.7: art. 3*</b></p> <p>When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed, or he has been pardoned, on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to the law or the practice of that State concerned, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.</p> <p><b>ACHR: art. 10*</b></p> <p>Every person has the right to be compensated in accordance with the law in the event he has been sentenced by a final judgment through a miscarriage of justice.</p> <p><b>Arab Charter: art. 14(7)</b></p> <p>Anyone who is the victim of unlawful arrest or detention shall be entitled to compensation.</p> <p><b>Arab Charter: art. 19(2)*</b></p> <p>Anyone whose innocence has been established by a final judgment shall be entitled to compensation for damage suffered.</p>
4. Additional guarantees for persons charged with a criminal offence based on immigration status-	4.1. Right to be present at the trial	<p><b>ICCPR: art. 14(3)(d)*</b></p> <p>In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality (d) To be tried in his presence [...]</p> <p><b>ICRMW: art. 18(3)(d)*</b></p> <p>In the determination of any criminal charge against them,</p>	<p><b>Arab Charter: art. 16(3)*</b></p> <p>[...] During the investigation and the trial, the accused shall be entitled to the following minimum guarantees: (3) to be tried in his presence in front of a judge, [...]</p>

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related violation(s)		migrant workers and members of their families shall be entitled to the following minimum guarantees: (d) To be tried in their presence [...]	
	4.2. Right to have the conviction and sentence reviewed by a higher tribunal	<p>ICCPR: art.14(5)*  Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.</p> <p>ICRMW: art. 18(5)*  Migrant workers and members of their families convicted of a crime shall have the right to their conviction and sentence being reviewed by a higher tribunal according to law.</p> <p>CRC: art. 40(2)(b)(v)*  [...] States Parties shall, in particular, ensure that: (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees: (v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law.</p>	<p>Prot.7: art. 2*  Everyone convicted of a criminal offence by a tribunal shall have the right to have conviction or sentence reviewed by a higher tribunal. The exercise of this right, including the grounds on which it may be exercised, shall be governed by law.</p> <p>ACHR: art 8(2)(h)*  Every person accused of a criminal offense [...] is entitled, with full equality, to the following minimum guarantees: (h) the right to appeal the judgment to a higher court.</p> <p>Arab Charter: art. 16(7)*  [...] During the investigation and the trial, the accused shall be entitled to the following minimum guarantees: (7). If convicted of a crime, to have his conviction and sentence reviewed by a higher tribunal according to law.</p> <p>ACRWC: art. 17(2)(c)(iv)*  States Parties to the present Charter shall in particular: (c) ensure that every child accused in infringing the penal law: (iv) shall have the matter determined as speedily as possible by an impartial tribunal and if found guilty, be entitled to an appeal by a higher tribunal.</p> <p>CRCI: art. 19(3)(d)*  States Parties to the Covenant shall observe the following: (d) Expeditious consideration of the case by a specialized juvenile court, with the possibility of the judgment being contested by a higher court, once the child is convicted.</p>

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## B) The right to security: conditions of detention and treatment of detainees

		international	regional
1. Fundamental rights and freedoms of detainees	1.1. Right to life	<p><b>ICCPR: art. 6(1)</b> Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.</p> <p><b>CRC: art. 6(1)</b> States Parties recognize that every child has the inherent right to life.</p> <p><b>ICRMW: art. 9</b> The right to life of migrant workers and members of their families shall be protected by law.</p> <p><b>CRPD: art.10</b> States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.</p>	<p><b>ECHR: art.2(1)</b> Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.</p> <p><b>ACHR: art. 4 (1)</b> Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.</p> <p><b>ACHPR: art. 4</b> Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.</p> <p><b>Arab Charter: art. 5</b> (1) Every human being has an inherent right to life. (2) This right shall be protected by law. No one shall be arbitrarily deprived of his life.</p> <p><b>EU Charter: art. 2</b> Everyone has the right to life.</p> <p><b>Convention of Belem do Para: art. 4(a)</b> Every woman has the right to the recognition, enjoyment, exercise and protection of all human rights and freedoms embodied in regional and international human rights instruments. These rights include, among others: a. The right to have her life respected;</p> <p><b>Maputo Protocol: art. 4(1)</b> Every woman shall be entitled to respect for her life and the integrity and security of her person. All forms of exploitation, cruel, inhuman or degrading punishment and treatment shall be prohibited.</p> <p><b>ACRWC: art. 5(1)</b> Every child has an inherent right to life. This right shall be protected by law.</p> <p><b>CRCI: art.6 (1)</b> The child shall have the right to life from when he is a fetus in his/her mother's womb or in the case of his/her mother's death [...];</p>

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	<p>1.2. Freedom from torture and ill-treatment; right to respect for one's integrity and to be protected against violence and abuse</p>	<p>[Freedom from torture and ill-treatment]  <b>ICCPR: art. 7</b>  No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.  <b>CAT: art. 2</b>  1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. 2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture. 3. An order from a superior officer or a public authority may not be invoked as a justification of torture.  <b>CAT: art. 11</b>  Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.  <b>CAT: art 16</b>  1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment. 2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.  <b>CRC: art. 37(a)</b>  States Parties shall ensure that: (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. [...]  <b>ICRMW: art. 10</b>  No migrant worker or member of his or her family shall be subjected to torture or to cruel, inhuman or degrading treatment</p>	<p>[Freedom from torture and ill-treatment]  <b>ECHR: art.3</b>  No one shall be subjected to torture or to inhuman or degrading treatment or punishment.  <b>ACHR: art.5(2)</b>  No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. [...].  <b>ACHRP: art. 5</b>  [...] All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.  <b>Arab Charter: art. 8</b>  1. No one shall be subjected to physical or mental torture or to cruel, inhuman or degrading treatment or punishment. 2. The State Parties shall protect every person in their territory from being subjected to such practices and take effective measures to prevent such acts. The practice thereof, or participation therein, shall be regarded as a punishable offense. Each victim of an act of torture is entitled to a right to compensation and rehabilitation.  <b>EU Charter: art. 4</b>  No one shall be subjected to torture or to inhuman or degrading treatment or punishment.  <b>Convention of Belem do Para: art. 4(d)</b>  Every woman has the right to the recognition, enjoyment, exercise and protection of all human rights and freedoms embodied in regional and international human rights instruments. These rights include, among others: d. The right not to be subjected to torture;  <b>Maputo Protocol: 4(1)</b>  [...] All forms of exploitation, cruel, inhuman or degrading punishment and treatment shall be prohibited.  <b>IACPPT: art. 1</b>  The State Parties undertake to prevent and punish torture in accordance with the terms of this Convention.  <b>IACPPT: art. 6</b>  In accordance with the terms of Article 1, the States Parties shall take effective measures to prevent and punish torture within their jurisdiction. The States Parties shall ensure that all acts of torture and attempts to commit torture are offenses under their criminal law and shall make such acts punishable by severe penalties that</p>
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		<p>or punishment.  <b>CRPD: art. 15</b>  1. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation. 2. States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.</p> <p><b>[the respect for one’s integrity]</b>  <b>CRPD: art. 17</b>  Every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others.</p> <p><b>[protection against violence/abuse]</b>  <b>CRC: art. 19(1)</b>  1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.  <b>ICRMW: 16(2)</b>  Migrant workers and members of their families shall be entitled to effective protection by the State against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions.  <b>CRPD: art.16(1)</b>  States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the, from all forms of exploitation, violence and abuse, including their gender-based aspects.  <b>ICERD: art. 5(b)</b>  5.[...] States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: [...] (b) The right to security of person and protection by the State against violence or bodily harm, whether</p>	<p>take into account their serious nature. The States Parties likewise shall take effective measures to prevent and punish other cruel, inhuman, or degrading treatment or punishment within their jurisdiction.  <b>ACRWC: art. 16(1)</b>  State parties to the present Charter shall take specific legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse, while in the care of a parent, legal guardian or school authority or any other person who has the care of the child.  <b>ACRWC: 17(2)(a)</b>  State parties to the present Charter shall in particular: (a) ensure that no child who is detained or imprisoned or otherwise deprived of his or her liberty is subjected to torture, inhuman or degrading treatment or punishment;  <b>CRCI: art. 17(2)</b>  States Parties shall take necessary measures to protect the child from: [...] 2. All forms of torture and inhumane or humiliating treatment in all circumstances and conditions, or his/her smuggling, kidnapping, or trafficking in him/her.  <b>SAARC CWC: art. 4(3)(a)</b>  States Parties shall ensure that appropriate legal and administrative mechanisms and social safety nets and defenses are always in place to: a) Ensure that their national laws protect the child from any form of discrimination, abuse, neglect, exploitation, torture, or degrading treatment, trafficking and violence.</p> <p><b>[the respect for one’s integrity]</b>  <b>ACHR: art.5(1)</b>  Every person has the right to have his physical, mental, and moral integrity respected.  <b>ACHPR: art. 4</b>  Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.  <b>EU Charter: art. 3(1)</b>  Everyone has the right to respect for his or her physical and mental integrity.</p>
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		<p>inflicted by government officials or by any individual group or institution;</p>	<p><b>Convention of Belem do Para: art. 4(b)</b>  Every woman has the right to the recognition, enjoyment, exercise and protection of all human rights and freedoms embodied in regional and international human rights instruments. These rights include, among others: b. The right to have her physical, mental and moral integrity respected</p> <p><b>Maputo Protocol: 4(1)</b>  Every woman shall be entitled to respect for her life and the integrity and security of her person. [...]</p> <p><b>[protection against violence/abuse]</b>  <b>Convention of Belem do Para: art. 3</b>  Every woman has the right to be free from violence in both the public and private spheres.</p> <p><b>Maputo Protocol: art. 3</b>  [...] States Parties shall adopt and implement appropriate measures to prohibit any exploitation or degradation of women. States Parties shall adopt and implement appropriate measures to ensure [...] protection of women from all forms of violence, particularly sexual and verbal violence.</p> <p><b>CRCI: art.6 (2)</b>  States Parties to the Covenant shall guarantee the basics necessary for the survival and development of the child and for his/her protection from violence, abuse, exploitation, and deterioration of his/her health conditions.</p> <p><b>CRCI: art. 17(3)</b>  States Parties shall take necessary measures to protect the child from: [...] 3. All forms of abuse, particularly sexual abuse.</p>
	<p>1.3. Right to be treated with humanity and respect for the dignity of human person</p>	<p><b>ICCPR: art. 10(1)</b>  All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.</p> <p><b>CRC: art. 37(c)</b>  Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. [...]</p> <p><b>ICRMW: art. 17(1)</b>  Migrant workers and members of their families who are deprived</p>	<p><b>ACHR: art.5(2)</b>  [...] All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.</p> <p><b>ACHRP: art. 5</b>  Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status.</p> <p><b>Arab Charter: art. 20(1)</b>  Persons sentenced to a penalty of deprivation of liberty shall be treated with humanity and with respect for the</p>

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		<p>of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person and for their cultural identity.</p> <p><b>CRPD: art. 3(a)</b></p> <p>The principles of the present Convention shall be: (a) Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;</p>	<p>inherent dignity of the human person.</p> <p><b>EU Charter: art. 1</b></p> <p>Human dignity is inviolable. It must be respected and protected.</p> <p><b>Convention of Belem do Para: art. 4(e)</b></p> <p>Every woman has the right to the recognition, enjoyment, exercise and protection of all human rights and freedoms embodied in regional and international human rights instruments. These rights include, among others: e.. The rights to have the inherent dignity of her person respected and her family protected;</p> <p><b>Maputo Protocol: art. 3 (1)</b></p> <p>Every woman shall have the right to dignity inherent in a human being and to the recognition and protection of her human and legal rights.</p> <p><b>CRCI: art.19(2)</b></p> <p>A child deprived of his/her freedom shall be treated in a way consistent with dignity, respect for human rights and basic freedoms. Needs of persons of his/her age shall be observed.</p>
	<p><b>1.4. Right to equal protection before the law without any discrimination</b></p>	<p><b>ICCPR: art. 2(1)</b></p> <p>Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.</p> <p><b>ICCPR: art 26</b></p> <p>All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.</p> <p><b>CRC: art. 2</b></p> <p>1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. 2. States Parties shall take all appropriate measures to ensure that the child is</p>	<p><b>ECHR: art. 14</b></p> <p>The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.</p> <p><b>Prot 12: art. 1</b></p> <p>The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. 2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.</p> <p><b>ACHR: art. 1(1)</b></p> <p>The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social</p>

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		<p>protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.</p> <p><b>ICRMW: art. 1(1)</b></p> <p>The present Convention is applicable, except as otherwise provided hereafter, to all migrant workers and members of their families without distinction of any kind such as sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.</p> <p><b>ICRMW: art 7</b></p> <p>States Parties undertake, in accordance with the international instruments concerning human rights, to respect and to ensure to all migrant workers and members of their families within their territory or subject to their jurisdiction the rights provided for in the present Convention without distinction of any kind such as to sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.</p> <p><b>ICERD: art. 2(1)</b></p> <p>States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end: (a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation; [...]</p> <p><b>ICERD, art. 1(1)</b></p> <p>In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.</p> <p><b>ICERD: art. 5</b></p> <p>In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law [...]</p> <p><b>CEDAW: art. 2 (c) (d)</b></p> <p>States Parties condemn discrimination against women in all its</p>	<p>condition.</p> <p><b>ACHR: art.24</b></p> <p>All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.</p> <p><b>AP-ACHR: art. 3</b></p> <p>The States Parties to this Protocol undertake to guarantee the exercise of the rights set forth herein without discrimination of any kind for reasons related to race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition.</p> <p><b>ACHPR: art. 2</b></p> <p>Every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.</p> <p><b>ACHPR: art. 3</b></p> <p>1. Every individual shall be equal before the law. 2. Every individual shall be entitled to equal protection of the law.</p> <p><b>Arab Charter: art. 3(1)</b></p> <p>Each State Party to the present Charter undertakes to ensure to all individuals within its territory and subject to its jurisdiction the right to enjoy all the rights and freedoms recognized herein, without any distinction on grounds of race, color, sex, language, religion, opinion, thought, national or social origin, property, birth or physical or mental disability.</p> <p><b>Arab Charter: art. 11</b></p> <p>All persons are equal before the law and have a right to enjoy its protection without discrimination.</p> <p><b>EU Charter: art. 20</b></p> <p>Everyone is equal before the law.</p> <p><b>EU Charter: art. 21</b></p> <p>Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited. 2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European</p>
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		<p>forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: [...] (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination; (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;</p> <p><b>CEDAW: art. 15(1)</b> States Parties shall accord to women equality with men before the law.</p> <p><b>CRPD: art. 3(b)</b> The principles of the present Convention shall be: [...] (b) Non-discrimination</p> <p><b>CRPD: art. 4(1)</b> States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability.</p> <p><b>CRPD: art. 5</b> States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law. 2. States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds. 3. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided. 4. Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention.</p> <p><b>ICESCR: art. 2(2)</b> The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.</p> <p><b>ICESCR: art 3</b> The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present</p>	<p>Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.</p> <p><b>Convention of Belem do Para: art. 4(f)</b> Every woman has the right to the recognition, enjoyment, exercise and protection of all human rights and freedoms embodied in regional and international human rights instruments. These rights include, among others: f. The right to equal protection before the law and of the law;</p> <p><b>Convention of Belem do Para: art. 6(a)</b> The right of every woman to be free from violence includes, among others: a. The right of women to be free from all forms of discrimination</p> <p><b>ACRWC: art.3</b> Every child shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in this Charter irrespective of the child's or his or her parents' or legal guardians' race, ethnic group, colour, sex, language, relation, political or other opinion, national and social origin, fortune, birth or other status.</p> <p><b>Maputo Protocol: art. 2(1)</b> States Parties shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures.</p> <p><b>Maputo Protocol: art.8</b> Women and men are equal before the law and shall have the right to equal protection and benefit of the law [...]</p> <p><b>CRCI: art.5</b> States Parties shall guarantee equality of all children as required by law to enjoy their rights and freedoms stipulated in this Covenant regardless of sex, birth, race, religion, language, political affiliation, or any other consideration affecting the right of the child [...]</p> <p><b>SAARC CWC: art. 4(3)(a)</b> States Parties shall ensure that appropriate legal and administrative mechanisms and social safety nets and defenses are always in place to: a) Ensure that their national laws protect the child from any form of discrimination, abuse, neglect, exploitation, torture, or degrading treatment, trafficking and violence</p> <p><b>CATHB: art. 3</b> The implementation of the provisions of this Convention by Parties, in particular the enjoyment of measures to</p>
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		<p>Covenant.  <b>Refugee Convention: art. 3</b>  The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.</p> <p><b>Statelessness Convention: art.3</b>  The Contracting States shall apply the provisions of this Convention to stateless persons without discrimination as to race, religion or country of origin.</p>	<p>protect and promote the rights of victims, shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.</p> <p><b>CPCSESA: art.2</b>  The implementation of the provisions of this Convention by the Parties, in particular the enjoyment of measures to protect the rights of victims, shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, state of health, disability or other status</p>
	<p>1.5. Freedom of conscience and religion</p>	<p><b>ICCPR: art. 18(1)</b>  Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.</p> <p><b>CRC: art. 14(1)</b>  States Parties shall respect the right of the child to freedom of thought, conscience and religion.</p> <p><b>ICRMW: art. 12(1)</b>  Migrant workers and members of their families shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of their choice and freedom either individually or in community with others and in public or private to manifest their religion or belief in worship, observance, practice and teaching.</p> <p><b>Refugee Convention: art. 4</b>  The Contracting States shall accord to refugees within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practise their religion and freedom as regards the religious education of their children.</p> <p><b>Statelessness Convention: art.4</b>  The Contracting States shall accord to stateless persons within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practise their religion and freedom as regards the religious education of their children.</p>	<p><b>ECHR: art.9(1)</b>  Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.</p> <p><b>ACHR: art. 12(1)</b>  Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one's religion or beliefs, and freedom to profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private.</p> <p><b>ACHPR: art. 8</b>  Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.</p> <p><b>Arab Charter: art. 30</b>  Every person shall have the right to freedom of thought, belief and religion, which may be subject only to such limitations as are prescribed by law.</p> <p><b>EU Charter: 10(1)</b>  Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.</p> <p><b>Convention of Belem do Para: art. 4(i)</b></p>

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			<p>Every woman has the right to the recognition, enjoyment, exercise and protection of all human rights and freedoms embodied in regional and international human rights instruments. These rights include, among others: i. The right of freedom to profess her religion and beliefs within the law;  <b>ACRWC: art. 9(1)</b>  Every child shall have the right to freedom of thought, conscience and religion.</p>
<p>2. Basic detention-related guarantees</p>	<p>2.1. Compilation and maintenance of official and up-to-date registers or records of the detainees</p>	<p><b>ICPED: art. 17(3)</b>  Each State Party shall assure the compilation and maintenance of one or more up-to-date official registers and/or records of persons deprived of liberty, which shall be made promptly available, upon request, to any judicial or other competent authority or institution authorized for that purpose by the law of the State Party concerned or any relevant international legal instrument to which the State concerned is a party. The information contained therein shall include, as a minimum:  ( a ) The identity of the person deprived of liberty; ( b ) The date, time and place where the person was deprived of liberty and the identity of the authority that deprived the person of liberty;  ( c ) The authority that ordered the deprivation of liberty and the grounds for the deprivation of liberty; ( d ) The authority responsible for supervising the deprivation of liberty; ( e ) The place of deprivation of liberty, the date and time of admission to the place of deprivation of liberty and the authority responsible for the place of deprivation of liberty; ( f ) Elements relating to the state of health of the person deprived of liberty; ( g ) In the event of death during the deprivation of liberty, the circumstances and cause of death and the destination of the remains; ( h ) The date and time of release or transfer to another place of detention, the destination and the authority responsible for the transfer.  <b>ICPED: art. 18(1)</b>  [...] each State Party shall guarantee to any person with a legitimate interest in this information, such as relatives of the person deprived of liberty, their representatives or their counsel, access to at least the following information: ( a ) The authority that ordered the deprivation of liberty; ( b ) The date, time and place where the person was deprived of liberty and admitted to the place of deprivation of liberty; ( c ) The authority responsible for supervising the deprivation of liberty; ( d ) The whereabouts of the person deprived of liberty, including, in the event of a transfer to another place of deprivation of liberty, the destination and the authority responsible for the transfer; ( e ) The date, time and place of release; ( f ) Elements relating to the state of health of</p>	<p><b>IACFDP: art. 11</b>  Every person deprived of liberty shall be held in an officially recognized place of detention and be brought before a competent judicial authority without delay, in accordance with applicable domestic law.  The States Parties shall establish and maintain official up-to-date registries of their detainees and, in accordance with their domestic law, shall make them available to relatives, judges, attorneys, any other person having a legitimate interest, and other authorities.</p>

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		<p>the person deprived of liberty; ( g ) In the event of death during the deprivation of liberty, the circumstances and cause of death and the destination of the remains</p> <p>ICPED: art. 22(b) and (c)</p> <p>[...] each State Party shall take the necessary measures to prevent and impose sanctions for the following conduct: [...] ( b ) Failure to record the deprivation of liberty of any person, or the recording of any information which the official responsible for the official register knew or should have known to be inaccurate; ( c ) Refusal to provide information on the deprivation of liberty of a person, or the provision of inaccurate information, even though the legal requirements for providing such information have been met.</p>	
	2.2. Right to be held in a recognized detention facility	<p>ICPED: art. 17(1) and 12(2)(c)</p> <p>1. No one shall be held in secret detention. 2. Without prejudice to other international obligations of the State Party with regard to the deprivation of liberty, each State Party shall, in its legislation: [...] ( c ) Guarantee that any person deprived of liberty shall be held solely in officially recognized and supervised places of deprivation of liberty;</p>	<p>IACFDP: art. 11</p> <p>Every person deprived of liberty shall be held in an officially recognized place of detention and be brought before a competent judicial authority without delay, in accordance with applicable domestic law. [...]</p>
3. Conditions of detention	3.1. Separation of immigration detainees from persons accused or convicted under criminal law	<p>ICRMW: art. 17(3)</p> <p>Any migrant worker or member of his or her family who is detained in a State of transit or in a State of employment for violation of provisions relating to migration shall be held, in so far as practicable, separately from convicted persons or persons detained pending trial.</p> <p>[separation of accused persons from convicted]</p> <p>ICCPR: art. 10(2)(a)*</p> <p>Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;</p> <p>ICRMW: art. 17(2)*</p> <p>Accused migrant workers and members of their families shall, save in exceptional circumstances, be separated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons. Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.</p>	<p>Returns Directive: 16(1)</p> <p>Detention shall take place as a rule in specialised detention facilities. Where a Member State cannot provide accommodation in a specialised detention facility and is obliged to resort to prison accommodation, the third-country nationals in detention shall be kept separated from ordinary prisoners.</p> <p>[separation of accused persons from convicted]</p> <p>ACHR: art. 5(4)*</p> <p>Accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons.</p> <p>Arab Charter: art. 20(2)*</p> <p>Accused persons shall be separated from convicted persons and shall be subject to treatment appropriate to their status as unconvicted persons.</p>

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	3.2. Adequate accommodation/ material conditions			<p>CRPD: art. 2 [...]"Reasonable accommodation" means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms; [...]</p> <p>CRPD: art.14(2) States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of this Convention, including by provision of reasonable accommodation.</p>	<p>Maputo Protocol: art. 24(b) The States Parties undertake to: b) ensure the right of [...] or women in detention by providing them with an environment which is suitable to their condition and the right to be treated with dignity.</p> <p>SAARC CWC: art. 4(3)(c)* States Parties shall [...] c.) Administer juvenile justice in a manner consistent with the promotion of the child's sense of dignity and worth, and with the primary objective of promoting the child's reintegration in the family and society. In doing so, States Parties shall provide special care and treatment to children in a country other than the country of domicile and expectant women and mothers who are detained along with infants or very young children [...]</p> <p>Reception Directive: art. 13(2) Member States shall make provisions on material reception conditions to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence. Member States shall ensure that that standard of living is met in the specific situation of persons who have special needs, in accordance with Article 17, as well as in relation to the situation of persons who are in detention.</p>
	3.3. Accommodation and separation of specific categories [minors and families]	3.3.1. Families	3.3.1.1. Minors' entitlement not to be separated from parents	<p>CRC: art. 9(1) and (4) 1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence. [...] 4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse</p>	<p>AP-ACHR. Art. 16 Every child, whatever his parentage, has the right to the protection that his status as a minor requires from his family, society and the State. Every child has the right to grow under the protection and responsibility of his parents; save in exceptional, judicially-recognized circumstances, a child of young age ought not to be separated from his mother. [...]</p> <p>ACRWC: art. 19 1. Every child shall be entitled to the enjoyment of parental care and protection and shall, whenever possible, have the right to reside with his or her parents. No child shall be separated from his parents against his will, except when a judicial authority determines in accordance with the appropriate law, that such separation is in the best interest of the child. 2. Every child who is separated from one or both parents shall have the right to maintain personal relations and direct contact with both parents on a regular basis. 3. Where separation results from the action of a State Party, the State Party shall provide the child, or if</p>

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			consequences for the person(s) concerned.	<p>appropriate, another member of the family with essential information concerning the whereabouts of the absent member or members of the family. States Parties shall also ensure that the submission of such a request shall not entail any adverse consequences for the person or persons in whose respect it is made. 4. Where a child is apprehended by a State Party, his parents or guardians shall, as soon as possible, be notified of such apprehension by that State Party.</p> <p><b>CRCI: art. 8(2) and (3)</b></p> <p>(2) No child shall be separated from his/her parents against their will [...] (3) States Parties shall take into account in their social policies the child's best interests and if separation from his/her parents is necessary, no child shall be deprived of maintaining relations with them.</p>
		3.3.1.2. Appropriate accommodation for families		<p><b>ACRWC: art. 30(1)(a-c)*</b></p> <p>State parties to the present Charter shall undertake to provide special treatment to expectant mothers and to mothers of infants and young children who have been accused or found guilty of infringing the penal law and shall in particular: (a) ensure that a non-custodial sentence will always be first considered when sentencing such mothers; (b) establish and promote measures alternative to institutional confinement for the treatment of such mothers; (c) establish special alternative institutions for holding such mothers; (d) ensure that a mother shall not be imprisoned with her child;</p> <p><b>Return Directive: art. 17(2)</b></p> <p>Families detained pending removal shall be provided with separate accommodation guaranteeing adequate privacy.</p>
		3.3.2. Unaccompanied minors: separation from adults	<p><b>ICCPR: art. 10(2)(b)*</b></p> <p>Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.</p> <p><b>CRC: art. 37(c)</b></p> <p>[...] In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;</p> <p><b>ICRMW: art. 17(2)* and 17(4) *</b></p> <p>2. [...] Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication. 4. [...] Juvenile offenders shall be separated from adults and be accorded treatment appropriate to their age and legal status.</p>	<p><b>ACHR: art. 5(5)*</b></p> <p>Minors while subject to criminal proceedings shall be separated from adults and brought before specialized tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors.</p> <p><b>ACRWC: art.17(2)(b)</b></p> <p>State parties to the present Charter shall in particular:</p> <p>(b) ensure that children are separated from adults in their place of detention or imprisonment;</p> <p><b>CRCI: art. 19(3)(a)</b></p> <p>States Parties to the Covenant shall observe the following:</p> <p>a) A child deprived of his/her freedom shall be separated from adults in special places for delinquent children.</p> <p><b>Return Directive: art. 17(4)</b></p>

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			Unaccompanied minors shall as far as possible be provided with accommodation in institutions provided with personnel and facilities which take into account the needs of persons of their age.
	3.4. Provision of food and water	<p><b>ICESCR: art.11 (1)</b> The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. [...]</p>	<p><b>AP-ACHR: art. 12(1)</b> Everyone has the right to adequate nutrition which guarantees the possibility of enjoying the highest level of physical, emotional and intellectual development.</p> <p><b>Arab Charter: art. 38</b> Everyone shall have the right to an adequate standard of living for himself and his family, ensuring well-being and a decent life, including adequate food, clothing, housing, services and a right to a safe environment. The State Parties shall take appropriate measures within their available resources to ensure the realization of this right</p> <p><b>Maputo Protocol: art. 15(a)</b> States Parties shall ensure that women have the right to nutritious and adequate food. In this regard, they shall take appropriate measures to: a) provide women with access to clean drinking water, sources of domestic fuel, land, and the means of producing nutritious food;</p> <p><b>ACRWC: art. 14(2)(c)</b> State parties to the present Charter shall undertake to pursue the full implementation of this right and in particular shall take measures: [...] (c) to ensure the provision of adequate nutrition and safe drinking water;</p>
	3.5. Access to health care	<p><b>ICESCR: art.12 (1) and 12(2)(d)</b> 1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. 2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.</p> <p><b>CRC: art.24 (1) and 24(2)(b)</b> 1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health-care services. 2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures: (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;</p>	<p><b>AP-ACHR: art. 10(1) and 10(2)(a) and (b)</b> 1. Everyone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental and social well-being. 2. In order to ensure the exercise of the right to health, the States Parties agree to recognize health as a public good and, particularly, to adopt the following measures to ensure that right: a. Primary health care, that is, essential health care made available to all individuals and families in the community; b. Extension of the benefits of health services to all individuals subject to the State's jurisdiction;</p> <p><b>ACHPR: art. 16 (1)</b> Every individual shall have the right to enjoy the best attainable state of physical and mental health.</p> <p><b>Arab Charter: art.39(1) and 39(2)(a)</b> The State Parties shall recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the right of every citizen</p>

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	<p><b>ICRMW: art. 28</b> Migrant workers and members of their families shall have the right to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the State concerned. Such emergency medical care shall not be refused them by reason of any irregularity with regard to stay or employment.</p> <p><b>CRPD: art. 16(4)</b> States Parties shall take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of protection services. Such recovery and reintegration shall take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person and takes into account gender- and age-specific needs.</p> <p><b>CRPD: art. 25</b> States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, [...]</p> <p><b>CEDAW: art. 12</b> 1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning. 2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.</p> <p>[recovery]</p> <p><b>CRC: art. 39</b> States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.</p>	<p>to enjoy free and non-discriminatory access to health services and health care centres. 2. The steps to be taken by the State Parties shall include those necessary to: a. Develop basic healthcare and ensure the free and non-discriminatory access to the services of health care centres.</p> <p><b>EU Charter: 35</b> Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.</p> <p><b>ACRWC: art. 14(1) and 14(2)(b)</b> Every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health. 2. State parties to the present Charter shall undertake to pursue the full implementation of this right and in particular shall take measures: [...] (b) to ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;</p> <p><b>Maputo Protocol: art. 14(2)(a)</b> States Parties shall take all appropriate measures to: a) provide adequate, affordable and accessible health services, including information, education and communication programmes to women especially those in rural areas;</p> <p><b>CRCI: art. 15(7)</b> Providing preventive medical care, disease and malnutrition control, as well as providing the necessary health care for him/her and for his/her mother.</p> <p><b>SAARC CWC: art. 4(2)</b> Recognising basic services such as education, health care, with special attention to the prevention of diseases and malnutrition, as the cornerstone of child survival and development, States Parties shall pursue a policy of development and a National Programme of Action that facilitate the development of the child. [...]</p> <p><b>Return Directive: art. 16(3)</b> Particular attention shall be paid to the situation of vulnerable persons. Emergency health care and essential treatment of illness shall be provided.</p>
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	<p>3.6. Provision of specific training for detention facility personnel</p>	<p><b>CAT: art.10</b>  1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual</p>	<p><b>IACFDP: art. 8</b>  [...] The States Parties shall ensure that the training of public law-enforcement personnel or officials includes the necessary education on the offense of forced disappearance of persons.</p> <p><b>IACPPT: art. 7</b></p>

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		<p>subjected to any form of arrest, detention or imprisonment.</p> <p>2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person.</p> <p><b>ICPED: art. 23(1)</b></p> <p>Each State Party shall ensure that the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody or treatment of any person deprived of liberty includes the necessary education and information regarding the relevant provisions of this Convention, in order to: ( a ) Prevent the involvement of such officials in enforced disappearances; ( b ) Emphasize the importance of prevention and investigations in relation to enforced disappearances; ( c ) Ensure that the urgent need to resolve cases of enforced disappearance is recognized.</p> <p><b>CRPD: art.13(2)</b></p> <p>In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.</p>	<p>The States Parties shall take measures so that, in the training of police officers and other public officials responsible for the custody of persons temporarily or definitively deprived of their freedom, special emphasis shall be put on the prohibition of the use of torture in interrogation, detention, or arrest. The States Parties likewise shall take similar measures to prevent other cruel, inhuman, or degrading treatment or punishment.</p> <p><b>Convention of Belem do Para: art. 8(c)</b></p> <p>The States Parties agree to undertake progressively specific measures, including programs: [...] to promote the education and training of all those involved in the administration of justice, police and other law enforcement officers [...]</p> <p><b>CPCSESA: art.5 (1)</b></p> <p>Each Party shall take the necessary legislative or other measures to encourage awareness of the protection and rights of children among persons who have regular contacts with children in the education, health, social protection, judicial and law-enforcement sectors and in areas relating to sport, culture and leisure activities.</p>
<p>4. Right to contact with outside world (including correspondence)</p>	<p>4.1. Family, relatives and friends</p>	<p><b>ICRMW: art. 17(5)</b></p> <p>During detention or imprisonment, migrant workers and members of their families shall enjoy the same rights as nationals to visits by members of their families.</p> <p><b>ICPED: art. 17(2)(d)</b></p> <p>Guarantee that any person deprived of liberty shall be authorized to communicate with and be visited by his or her family, counsel or any other person of his or her choice, subject only to the conditions established by law, or, if he or she is a foreigner, to communicate with his or her consular authorities, in accordance with applicable international law;</p>	<p><b>Arab Charter: art. 14(3)</b></p> <p>[...] Anyone who is arrested has a right to contact his relatives.</p> <p><b>Arab Charter: art. 16(2)*</b></p> <p>[...] During the investigation and the trial, the accused shall be entitled to the following minimum guarantees: [...]</p> <p>2. To have adequate time and facilities [...] to contact his relatives.</p> <p><b>Return Directive: art. 16(2)</b></p> <p>Third-country nationals in detention shall be allowed —on request — to establish in due time contact with legal representatives, family members and competent consular authorities.</p>
	<p>4.2. Consular representative</p>	<p><b>VCCR: art. 36(1) (c)</b></p> <p>[...] consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgement. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.</p>	<p><b>ECCF: art. 6</b></p> <p>1. A consular officer shall be informed without delay by the competent authorities of the receiving State when, within his district, any national of the sending State is subjected by the said authorities to any measure depriving him of his liberty. 2. All communications between a consular officer and a national of the sending State who is arrested or detained otherwise than in pursuance of a final judgment of a court or of a final administrative decision, shall be forwarded without delay</p>

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		<p><b>ICRMW: art. 16(7)</b>  When a migrant worker or a member of his or her family is arrested or committed to prison or custody pending trial or is detained in any other manner: (a) The consular or diplomatic authorities of his or her State of origin or of a State representing the interests of that State shall, if he or she so requests, be informed without delay of his or her arrest or detention and of the reasons therefore; (b) The person concerned shall have the right to communicate with the said authorities. Any communication by the person concerned to the said authorities shall be forwarded without delay, and he or she shall also have the right to receive communications sent by the said authorities without delay; (c) The person concerned shall be informed without delay of this right and of rights deriving from relevant treaties, if any, applicable between the States concerned, to correspond and to meet with representatives of the said authorities and to make arrangements with them for his or her legal representation.</p> <p><b>ICRMW: 23</b>  Migrant workers and members of their families shall have the right to have recourse to the protection and assistance of the consular or diplomatic authorities of their State of origin or of a State representing the interests of that State whenever the rights recognized in the present Convention are impaired. In particular, in case of expulsion, the person concerned shall be informed of this right without delay and the authorities of the expelling State shall facilitate the exercise of such right.</p> <p><b>ICPED: art. 17(2)(d)</b>  Guarantee that any person deprived of liberty shall be authorized to communicate with and be visited by his or her family, counsel or any other person of his or her choice, subject only to the conditions established by law, or, if he or she is a foreigner, to communicate with his or her consular authorities, in accordance with applicable international law;</p>	<p>by the competent authorities. A consular officer shall be entitled to visit him and to interview him. The rights referred to in the present paragraph shall be exercised in conformity with the law of the receiving State, provided, however, that the said law enables full effect to be given to the purposes for which the rights accorded under this paragraph are intended. 3. All communications between a consular officer and a national of the sending State who is detained in an institution within his district in pursuance of a final judgment of a court or of a final administrative decision, shall be forwarded without delay having regard to the regulations of that institution. Subject to that limitation, a consular officer shall have the right, after having informed the competent authority, to visit such national and to interview him, including interviews in private.</p> <p><b>Return Directive: art. 16(2)</b>  Third-country nationals in detention shall be allowed — on request — to establish in due time contact with legal representatives, family members and competent consular authorities.</p>
<p>5. Access by competent national and international organisations and NGOs</p>		<p><b>OPCAT: art. 3, 4, 17, 19 and 20</b>  3. Each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as the national preventive mechanism).  4. Each State Party shall allow visits, in accordance with the present Protocol, by the mechanisms referred to in articles 2 [Subcommittee] and 3 to any place under its jurisdiction and control where persons are or may be deprived of their liberty,</p>	<p><b>ECPT: art. 1</b>  There shall be established a European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Committee”). The Committee shall, by means of visits, examine the treatment of persons deprived of their liberty with a view to strengthening, if necessary, the protection of such persons from torture and from inhuman or degrading treatment or punishment.</p> <p><b>ECPT: art. 2</b></p>

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		<p>either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence (hereinafter referred to as places of detention). These visits shall be undertaken with a view to strengthening, if necessary, the protection of these persons against torture and other cruel, inhuman or degrading treatment or punishment.</p> <p>17. Each State Party shall maintain, designate or establish, at the latest one year after the entry into force of the present Protocol or of its ratification or accession, one or several independent national preventive mechanisms for the prevention of torture at the domestic level. [...]</p> <p>19. The national preventive mechanisms shall be granted at a minimum the power: (a) To regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment; (b) To make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations; [...]</p> <p>20. In order to enable the national preventive mechanisms to fulfil their mandate, the States Parties to the present Protocol undertake to grant them: (a) Access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location; (b) Access to all information referring to the treatment of those persons as well as their conditions of detention; (c) Access to all places of detention and their installations and facilities; (d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the national preventive mechanism believes may supply relevant information; (e) The liberty to choose the places they want to visit and the persons they want to interview;</p> <p>ICPED: art. 17(2)(e)</p> <p>Guarantee access by the competent and legally authorized authorities and institutions to the places where persons are deprived of liberty, if necessary with prior authorization from a judicial authority;</p>	<p>Each Party shall permit visits, in accordance with this Convention, to any place within its jurisdiction where persons are deprived of their liberty by a public authority.</p> <p><b>Return Directive: art. 16(4)</b></p> <p>Relevant and competent national, international and nongovernmental organisations and bodies shall have the possibility to visit detention facilities, as referred to in paragraph 1 [1. Detention shall take place as a rule in specialised detention facilities. Where a Member State cannot provide accommodation in a specialised detention facility and is obliged to resort to prison accommodation, the third-country nationals in detention shall be kept separated from ordinary prisoners.], to the extent that they are being used for detaining third-country nationals in accordance with this Chapter. Such visits may be subject to authorisation.</p> <p><b>Procedures Directive: 21(1)(a)</b></p> <p>Member States shall allow the UNHCR: (a) to have access to applicants for asylum, including those in detention and in airport or port transit zones;</p>
6. Procedural guarantees	6.1. Right to effective remedy against inadequate conditions or treatment	<p>CAT: art. 13</p> <p>Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its</p>	<p>ECHR: art. 13</p> <p>Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy</p>

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		<p>jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given. [right to an effective remedy]</p> <p><b>ICCPR: art. 2(3)</b> (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted.</p> <p><b>ICPED: art. 8(2)</b> Each State Party shall guarantee the right of victims of enforced disappearance to an effective remedy during the terms of limitation.</p>	<p>before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.</p> <p><b>ACHR: art. 25</b> 1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties. 2. The States Parties undertake: a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state; b. to develop the possibilities of judicial remedy; and c. to ensure that the competent authorities shall enforce such remedies when granted.</p> <p><b>ACHPR: art. 7(1)(a)</b> Every individual shall have the right to have his cause heard. This comprises: (a) the right to an appeal to competent national organs against acts violating his fundamental rights as recognised and guaranteed by conventions, laws, regulation and customs in force;</p> <p><b>Arab Charter: art. 12</b> [...] All persons within the territory of the State Parties are ensured a right to legal remedy.</p> <p><b>Arab Charter: art. 23</b> Each State Party to the present Charter shall ensure that any person whose rights or freedoms recognized in the present Charter are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.</p> <p><b>EU Charter: art.47</b> Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. [...]</p> <p><b>Convention of Belem do Para: art. 4(g)</b> Every woman has the right to the recognition, enjoyment, exercise and protection of all human rights and freedoms embodied in regional and international human rights</p>
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			instruments. These rights include, among others [...] The right to simple and prompt recourse to a competent court for protection against acts that violate her rights [...] <b>Maputo Protocol: art. 25</b> States Parties shall undertake to provide for appropriate remedies to any women whose rights or freedoms, as therein recognized, have been violated [...]
	6.2. Obligation to carry out inquiry in case of ill-treatment, disappearance or death occurred during detention	<b>ICPED: art. 12 (2)</b> Where there are reasonable grounds for believing that a person has been subjected to enforced disappearance, the authorities referred to in paragraph 1 of this article shall undertake an investigation, even if there has been no formal complaint. <b>CAT: art. 12</b> Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction. <b>CRPD: art. 16(5)</b> States Parties shall put in place effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.	<b>IACPPT: art. 8</b> The States Parties shall guarantee that any person making an accusation of having been subjected to torture within their jurisdiction shall have the right to an impartial examination of his case. Likewise, if there is an accusation or well-grounded reason to believe that an act of torture has been committed within their jurisdiction, the States Parties shall guarantee that their respective authorities will proceed properly and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal process. After all the domestic legal procedures of the respective State and the corresponding appeals have been exhausted, the case may be submitted to the international fora whose competence has been recognized by that State.
	6.3. Right to compensation	<b>CAT: art. 14</b> 1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation. 2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law	<b>Arab Charter: art. 8(2)</b> The State Parties shall protect every person in their territory from being subjected to such practices and take effective measures to prevent such acts. The practice thereof, or participation therein, shall be regarded as a punishable offense. Each victim of an act of torture is entitled to a right to compensation and rehabilitation. <b>IACPPT: art. 9</b> The States Parties undertake to incorporate into their national laws regulations guaranteeing suitable compensation for victims of torture. [...]
7. Additional guarantees for minors	7.1. Access to education	<b>CRC: art. 28(1)(a)</b> States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular: (a) Make primary education compulsory and available free to all; <b>ICESCR: art.13(1) and 13(2)(a)</b> 1. The States Parties to the present Covenant recognize the right of everyone to education. [...] 2. The States Parties to the present Covenant recognize that, with a view to achieving the full	<b>Prot 1: art. 2</b> No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religions and philosophical convictions. <b>AP-ACHR: art. 13(1) and (3) (a)</b> 1. Everyone has the right to education. 3. The States

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		<p>realization of this right: (a) Primary education shall be compulsory and available free to all  <b>CERD: art. 5(e)(v)</b>  In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:[...] The right to education and training;  <b>ICRMW: art. 30</b>  Each child of a migrant worker shall have the basic right of access to education on the basis of equality of treatment with nationals of the State concerned. Access to public pre-school educational institutions or schools shall not be refused or limited by reason of the irregular situation with respect to stay or employment of either parent or by reason of the irregularity of the child's stay in the State of employment.  <b>CRPD: art. 24 (1) and (2)</b>  1 States Parties recognize the right of persons with disabilities to education [...] 2. In realizing this right, States Parties shall ensure that: (a) Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability; (b) Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;  <b>Refugee Convention: art. 22(1)</b>  The Contracting States shall accord to stateless persons the same treatment as is accorded to nationals with respect to elementary education.  <b>Statelessness Convention: art. 22(1)</b>  The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education.  <b>UNESCO Convention: art. 1(a)</b>  For the purposes of this Convention, the term 'discrimination' includes any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education and in particular: (a) Of depriving any</p>	<p>Parties to this Protocol recognize that in order to achieve the full exercise of the right to education: a. Primary education should be compulsory and accessible to all without cost;  <b>AP-ACHR: art. 16</b>  [...]Every child has the right to free and compulsory education, at least in the elementary phase, and to continue his training at higher levels of the educational system.  <b>ACHPR: art. 17(1)</b>  Every individual shall have the right to education.  <b>EU Charter: art. 14(1) and 14(2)</b>  1. Everyone has the right to education and to have access to vocational and continuing training. 2. This right includes the possibility to receive free compulsory education.  <b>ACRWC: art. 11(1)</b>  Every child shall have the right to education.  <b>CRCI: art.12(2) (i) and (ii)</b>  States Parties to the present Covenant shall provide: i) Compulsory, free primary education for all children on an equal footing. ii. Compulsory, free primary education on a progressive basis so that, within then years, it is made available to all children.  <b>SAARC CWC: art. 4(2)</b>  Recognising basic services such as education, health care, with special attention to the prevention of diseases and malnutrition, as the cornerstone of child survival and development, States Parties shall pursue a policy of development and a National Programme of Action that facilitate the development of the child. [...]  <b>CATHB: art. 12(1)(f)</b>  Each Party shall adopt such legislative or other measures as may be necessary to assist victims in their physical, psychological and social recovery. Such assistance shall include at least: [...] f) access to education for children.  <b>Return Directive: art. 17(3)</b>  Minors in detention shall have the possibility to engage in leisure activities, including play and recreational activities appropriate to their age, and shall have, depending on the length of their stay, access to education.</p>
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		<p>person or group of persons of access to education of any type or at any level;  <b>UNESCO Convention: art. 3(e)</b>          In order to eliminate and prevent discrimination within the meaning of this Convention, the States Parties thereto undertake:          (e) To give foreign nationals resident within their territory the same access to education as that given to their own nationals.  <b>Trafficking Protocol: art. 6(4)</b>          Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate [...] education [...]</p>	
	7.2. Access to child-specific activities	<p><b>CRC: art. 31(1)</b>          States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.</p>	<p><b>ACRWC: art. 12(1)</b>          State parties recognise the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.  <b>CRCI: art.13(1)</b>          The child is entitled to times for rest and play, and to exercise legitimate activities that are suitable to his/her age during his/her free time.  <b>Return Directive: art. 17(3)</b>          Minors in detention shall have the possibility to engage in leisure activities, including play and recreational activities appropriate to their age, and shall have, depending on the length of their stay, access to education.</p>

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### **Universal instruments**

#### **Human rights instruments**

International Covenant on Civil and Political Rights (ICCPR), 1966

International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966

International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 1966

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984

Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment of Punishment (OP-CAT), 2002

Convention on the Rights of the Child (CRC), 1990

International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW), 1990

Convention on the Right of Persons with Disabilities (CRPD), 2006

International Convention for the Protection of All Persons from Enforced Disappearances (ICPED), 2006

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### **Refugee and statelessness instruments**

Convention relating to the Status of Refugees (Refugee Convention), 1951

Convention relating to the Status of Stateless Persons (Statelessness Convention), 1954

### **Consular protection**

Vienna Convention on Consular Relations (VCCR), 1963

### **Trafficking/smuggling**

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Trafficking Protocol), 2000

Protocol against Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (Smuggling Protocol), 2000

### **Education**

United Nations Educational, Scientific and Cultural Organisation, Convention against Discrimination in Education (UNESCO Convention), 1960

### **Regional instruments**

#### **Organisation of American States (OAS)**

American Convention on Human Rights (ACHR), 1969

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (AP-ACHR), 1988

Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belem do Para), 1994

Inter-American Convention to Prevent and Punish Torture (IACPPT), 1985

Inter-American convention on Forced Disappearance of Persons (IACFDP), 1994

#### **South Asia Association for Regional Cooperation (SAARC)**

Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia (SAARC CWC), 2002

Convention on Prevention and Combating Trafficking in Women and Children for Prostitution (SAARC CPCTWC), 2002

#### **The League of Arab States (LAS)**

Revised Arab Charter on Human Rights (Arab Charter), 2004

#### **Organisation of the Islamic Cooperation (OIC)**

Covenant on the Rights of the Child in Islam (CRCI), 2004

#### **African Union (AU)**

African Charter on Human and Peoples' Rights (ACHPR), 1981

African Charter on the Rights and Welfare of the Child (ACRWC), 1990

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), 2003

#### **Council of Europe (CoE)**

Convention for the Protection of Human Rights and Fundamental Freedoms (commonly known as the European Convention on Human Rights (ECHR)), 1950 (amended by subsequent protocols)

Protocol 7 to the European Convention on Human Rights (Prot 7), 1984 (amended by protocol 11)

Protocol 1 to the European Convention on Human Rights (Prot 1), 1952 (amended by protocol 11)

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Protocol 12 to the European Convention on Human Rights (Prot 12), 2000

European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT), 1987

Convention on Action against Trafficking in Human Beings (CATHB), 2005

Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CPCSESA), 2007

European Convention on Consular Functions (ECCF), 1967

**European Union**

Directive on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status (2005/85/EC) (Procedures Directive)

Directive on Common Standards and Procedures in Member States for Returning Illegally Staying Third-country Nationals (2008/115/EC) (Return Directive)

Directive laying down minimum standards for the reception of asylum seekers (2003/9/EC) (Reception Directive)

European Union Charter of Fundamental Rights (EU Charter), 2000

## REGIONAL LAW SOURCES DETAILED

### Explanation

We have not included instruments dealing with the extradition or terrorism, as a detention which might arise in this context does not fit to the definition of migration-related detention used by the project, i.e. detention on the ground of status.

### Americas

- 1) **Organisation of American States (OAS):** Antigua and Barbuda, Argentina, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, The Bahamas, Trinidad and Tobago, the US, Uruguay and Venezuela

### Refugee instruments

#### **Territorial asylum/Asylum in foreign territory:**

##### **1939 Treaty on Asylum and Political Refuge**

##### **1954 Convention on Territorial Asylum**

Persons persecuted for their beliefs, opinions, or political affiliations, or for acts which may be considered as political offences may be granted protection in the territory of a foreign State (1954 Convention, art. 2; 1939 Treaty, art.11). The irregular entry does not affect the provisions of the 1954 Convention (1954 Convention, art.5). Both instruments provide for the possibility of internment of political refugees. Indeed, at the request of the interested State, the host State shall take steps to keep watch over, or to intern at a reasonable distance from its border, those refugees who are notorious leaders of a subversive movement, as well as those against whom there is evidence that they are disposed to join it (1954 Convention, art. 9; 1939 Treaty, art.13). All the expenses resulting from the internment are at the charge of the State that makes the request (1954 Convention, art. 9; 1939 Treaty, art.14). The political internees may leave the host State under the condition that they are not to go to the country which they came from and the interested government shall be notified about such departure (1954 Convention, art. 10; 1939 Treaty, art.15).

#### **Diplomatic asylum:**

##### **1928 Convention on Asylum**

##### **1933 Convention on Political Asylum**

##### **1939 Treaty on Asylum and Political Refuge**

##### **1954 Convention on Diplomatic Asylum**

The territorial State shall respect asylum granted in legations (such as any seat of a regular diplomatic mission, the residence of chiefs of mission), war vessels, and military camps or aircraft, to persons pursued for political reasons or for political offenses (1954 Convention, art.1; 1939 Treaty, art.2; 1928 Convention, art.2). Such asylum may be granted to persons who are in danger of being deprived of their life or liberty because of political persecution and cannot, without a risk, ensure their safety in any other way (1954 Convention, art.6). The asylee's right to liberty is addressed in respect to his or her depart from the territorial State. Indeed, the territorial State shall provide the guarantees that asylee's life, liberty, or personal integrity may not be endangered or his or her safety is ensured and grant a safe conduct (1954 Convention, art. 5, 11 and 12; 1939 Treaty, art.6; 1928 Convention, art.1). After the departure, if the territorial State notifies its intention to request extradition of the asylee, the State that granted the asylum shall ensure that the person concerned remains in its territory until the formal request for extradition is received. However, the preventive surveillance over the asylee may not exceed thirty days (1954 Convention, art. 17).

### Human rights instruments

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### **1969 American Convention on Human Rights**

The Convention enshrines the right to life (art.4), right to human treatment (art.5), right to personal liberty and security (art.7), minors' right to the measures of protection required by his condition as a minor as well as provides for procedural guarantees, such as the right to fair trial (art.8), freedom from Ex Post Facto Laws (art.9) and the right to compensation (art. 10). Particularly, it addresses explicitly the persons deprived of their liberty affirming that they shall be treated with respect for the inherent dignity (art. 5(2)), accused detainees shall be segregated from convicted (art. 5(4)) and minors from adults (art. 5(5)). Finally it sets out the right to seek and be granted asylum in a foreign territory (art.22 (7)), and prohibits *refoulement* (art. 22(8)) and collective expulsion of aliens (art. 22(9)).

### **1988 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador"**

The Protocol lays down the right to health (art.10), right to food (art.12), right to education (art.13) and child-specific rights (art.16). State shall guarantee the exercise of these rights without discrimination on the grounds of, among others, national origin. (art.3)

### **1994 Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women "Convention of Belem Do Para"**

The Convention affirms the women's right personal liberty and security, right to life, right not to be subjected to torture as well as the right to respect for dignity and physical, mental and moral integrity (art.4). Moreover, States shall take special account of the vulnerability of women to violence by reason of, among others, their status as migrants or refugees (art.9).

### **1985 Inter-American Convention to Prevent and Punish Torture**

The States Parties are required to prevent and punish torture and other cruel, inhuman, or degrading treatment of punishment (art.1 and 6). The Convention enshrines also the obligation of *non-refoulement* where there are grounds to believe that the person's life is in danger or that he or she will be subjected to torture or to cruel, inhuman or degrading treatment (art.13).

### **1994 Inter-American Convention on Forced Disappearance of Persons**

As set forth in the Convention, every detainee shall be held in an officially recognized place of detention and be brought before a competent judicial authority without delay, in accordance with applicable domestic law (art.11). Likewise, States shall establish and maintain official up-to-date registries of their detainees and, in accordance with their domestic law, shall make them available to relatives, judges, attorneys, any other person having a legitimate interest, and other authorities (art.11).

## **2) Sub-regional integration systems**

- **Andean Community of Nations (CAN):** Bolivia, Colombia, Ecuador and Peru

### **Consular protection**

The **Decision 548 (2003 Andean Cooperation Mechanism on Consular Assistance and Protection and Migratory Matters)**, the regulations needed for its implementation have not yet been approved) enables the nationals of Member States who are within the territory of a third State where their country of origin has no diplomatic/consular representation to avail themselves of the diplomatic/consular protection of any other Member States. Particularly the consular agents may ensure the appropriate conditions of detention, the application of due process and the right to defence (art.7 (f)) and representation before the courts (art.7(h)).

### **The free movement of persons**

**Decision 503 (Recognition of national identification documents, 2001)** provides that the citizens of any Member Country may be admitted to any other Member Country as tourists merely by presenting the national identification documents, without the need for a visa, for up to 90 days (art.1 and 10). They cannot engage in gainful activity (art.2). Immigration authorities of the recipient country shall require the presentation of the Andean Immigration Card (TAM) as the sole administrative document provided for in Community legislation (art.4) (the Andean Migration Card has been established by **the 1996 Decision 397**). The Decision 545 (2003 Andean Labour Migration Instrument) is relevant only for labour migration.

- **Southern Common Market (MERCOSUR):** Argentina, Brazil, Paraguay and Uruguay

\* Applicable only to persons detained under criminal law (accused or convicted)

### The free movement of persons

**Agreement on Movement Across Neighbouring Borders** between the Member States of the MERCOSUR (1999 Decision 18/99 and 2000 Decision 14/00) enables persons living in the proximity of the border to cross it and stay in the neighbouring country for seventy-two hours. **Agreements on Residence** for State Party Nationals; and Bolivia and Chile (2002 Decision 28/02, not yet in force) offers the possibility for the nationals of these countries to obtain residence permit and thus the right to enter, leave, circulate and stay in the host State, irrespectively of the conditions of his or her entry (art.3 and 8). **Agreements on Regularization** of Internal Migration for MERCOSUR Citizens; and Bolivia and Chile (2002 Decision 28/02) provide for the possibility of regularisation on the nationals of a Member State in the other, irrespectively of the conditions of his or her entry (art.1 and 2).

- **Caribbean Community (CARICOM)/Caricom Single Market and Economy (CSME):** Antigua & Barbuda, Bahamas, Barbados, Belize, Dominica, Grenada, Guyana , Haiti, Jamaica, Montserrat, St. Kitts & Nevis, Saint Lucia, St. Vincent & The Grenadines, Suriname, Trinidad & Tobago (Haiti, the Bahamas and the Montserrat are not party to the CSME)

### The free movement of persons

**CARICOM Travel Card (CARIPASS) Treaty**<sup>1</sup> (Antigua And Barbuda, Grenada, St. Kitts & Nevis, Saint Lucia, Trinidad & Tobago, 2010 entry into force but the national legislation is not yet in place) sets out that CARICOM citizens using the CARIPASS are automatically granted a six month stay when visiting another participating state, while eligible non-CARICOM citizens are automatically granted three months.

- **Central American Integration System (SICA):** Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama

### The free movement of persons

Within the SICA, El Salvador, Guatemala, Honduras and Nicaragua signed the 2006 **Central America-4 (CA-4) Border Control Agreement**<sup>2</sup> establishing the free movement across borders between the four signatory states of its citizens without any restrictions or checks. Foreign nationals who enter one of the signatory countries can also travel to other signatory States without having to obtain additional permits or to undergo checks at border checkpoints.

- **North American Free Trade Agreement (NAFTA):** Canada, the US and Mexico. It is not relevant as the movement of peoples within the NAFTA regime is limited to the temporary entry for business persons (chapter 16).

## Asia

- **Association of Southeast Asian Countries (ASEAN):** Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam

### The free movement of persons

**2006 ASEAN Framework Agreement on Visa Exemption** provides that Member Countries shall exempt citizens of any other Member Countries holding valid national passports from visa requirement for a period of stay of up to fourteen days, provided that such stay shall not be used for purposes other than visit. (art.1)

- **South Asian Association for Regional Cooperation (SAARC):** Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka. The free movement facilitation is not relevant as it addresses only skilled labour (by virtue of the 1992 Visa Exemption Scheme several categories of skilled workers and professionals are entitled to one-month stay in a SAARC country).

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<sup>1</sup> I could not find the text of this treaty, I will continue the research if you want me to keep this information

<sup>2</sup> *Ibid.*

\* Applicable only to persons detained under criminal law (accused or convicted)

## Human rights instruments

### **2002 SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia**

States Parties shall pursue a policy of development focusing on accelerating the progressive universalization of the child's access to the basic services like education and health care (art. 4(2)). States shall ensure that their national laws protect the child from torture or degrading treatment or trafficking (art. 4(3)). With respect to administration of juvenile justice, States shall provide special and treatment to children in a country other than the country of domicile, expectant women and mothers who are detained along with infants or very young children and shall promote, to the best possible extent, alternative measure to institutional correction, keeping in mind the best interest of the child (art. 4(3)).

### **2002 SAARC Convention on Prevention and Combating Trafficking in Women and Children for Prostitution**

Pending repatriation of victims, States Parties shall provide them with care and maintenance, including legal advice and health care facilities, and establish protective rehabilitation shelters (art.9(2) and 9(3)).

## **The Arab and Islamic States**

- **The League of Arab States (LAS):** Algeria, Bahrain, Comoros, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Palestine, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, UAE and Yemen

## Refugee instruments

### **1994 Arab Convention on Regulating Status of Refugees in the Arab Countries** (not yet in force)

Apart from the persecution on account of race, religion, nationality, membership of a particular social group or political opinion, the Convention sets out also such grounds as aggression, occupation and foreign domination as well as natural disasters or grave events resulting in major disruption of public order (art.1).

## Human rights instruments

### **2004 Revised Arab Charter on Human Rights**

The Charter guarantees the right to life (art. 5), the freedom from torture, cruel, inhuman or degrading treatment (art.8), the right to fair trial (art.13), the right to liberty and security of person (art.14), the due process guarantees (art.13, 15, 16, 18 and 19), treatment of detainees with humanity and respect for the dignity (art.20) and a special legal regime for minors in conflict with law (art.17). Moreover, it sets out the right to seek asylum (art. 28) and prohibits extradition of political refugees (art.28) and collective expulsions (art.26). With respect to socio-economic rights, the Charter lays down the right to adequate standard of living (art.38), the right to the enjoyment of the highest attainable standard of physical and mental health (art.39) and the right to education (art. 41).

- **Organisation of the Islamic Conference (OIC):** Azerbaijan, Jordan, Afghanistan, Albania, UAE, Indonesia, Uzbekistan, Uganda, Iran, Pakistan, Bahrain, Brunei, Bangladesh, Benin, Burkina Faso, Tajikistan, Turkey, Turkmenistan, Chad, Togo, Tunisia, Algeria, Djibouti, Saudi Arabia, Senegal, Sudan, Syria, Suriname, Sierra Leone, Somalia, Iraq, Oman, Gabon, Gambia, Guyana, Guinea, Guinea-Bissau, Palestine and Comoros

## Human rights instruments

### **2004 Covenant on the Rights of the Child in Islam**

The Covenant guarantee the right to life (art.6), right to education (art.12), the right to a standard of living suitable to his/her mental, psychological, physical and social development (art.14(4)), the right to health (art.15), the protection from torture, inhuman or humiliating treatment as well as from smuggling and trafficking (art.17(2)), the right to liberty, guarantees of due process as well as treatment in detention respecting dignity and separation from adults (art.19). Moreover, States Parties shall ensure, as much as possible, that refugee children, or those legally assimilated to this status, enjoy the rights provided for in the Covenant (art.21).

\* Applicable only to persons detained under criminal law (accused or convicted)

## Europe

- **Council of Europe (CoE):** Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Monaco, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russia Federation, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Macedonia, Turkey, Ukraine and the UK

### Human rights instruments

#### **1950 European Convention on Human Rights**

The Convention guarantees the right to liberty and security (art 5), right to life (art.2), freedom from torture, inhuman or degrading treatment (art.3) and several procedural due process safeguards (art. 6 and 7).

#### **1963 Protocol 4 to the ECHR: Protecting certain Additional Rights**

Collective expulsion of aliens is prohibited (art.4).

#### **1987 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment**

The Convention establishes a system of visits to place of detention of the States Parties through its European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) with the purpose of protecting detainees from torture and other inhuman or degrading treatment or punishment.

#### **2005 Convention on Action against Trafficking in Human Being**

If the competent authorities have reasonable ground to believe that a person has been victim of trafficking that person shall not be removed from the territory under the identification process as victim has been completed and shall be granted a recovery and reflection period during which the expulsion shall not be possible (art. 10(2) and 13(1)). States shall issue a renewable residence permit to victims where the competent authority considers that their stay is necessary owing to their personal situation or for the purpose of their co-operation with the authorities in investigation or criminal proceedings (art.14). Victims shall receive appropriate assistance, including accommodation, psychological and material assistance, legal counselling and translation (art.10 (2) and 12). Unaccompanied minors shall be provided with representation by a legal guardian, organisation or authority acting in his or her best interests (art. 10(4)). A return shall be with due regard for the rights, safety and dignity of the victim (art. 16(2)). Child victims shall not be returned, if there is indication, following a risk and security assessment, that such return would not be in the best interests of the child (art.16 (7)).

#### **2007 Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse**

Child victims of sexual exploitation or abuse are entitled to assistance needed for their physical and psycho-social recovery (art.14).

#### **2011 Convention on preventing and combating violence against women and domestic violence (not yet in force)**

The Convention lays down the possibility for the victims of violence against women, whose residence status depends on that of the spouse/partner, to be granted an autonomous residence permit and suspension of expulsion proceedings, in the event of dissolution of the marriage/relationship (art.59). State Parties shall ensure that gender-based violence against women may be recognized as a form of persecution in line with the Geneva Convention and respect the principle of *non-refoulement* (art.60 and 61). The measures of protection shall be secured without discrimination on any ground, such as, among other, migrant or refugee status (art. 4(3)).

### Consular protection

#### **1967 European Convention on Consular Functions**

#### **1967 Protocol to the European Convention on Consular Functions concerning the Protection of Refugees (not yet in force)**

The consular officer shall be informed without delay by the competent authorities of the receiving State when any national of the sending State is subjected by the said authorities to any measure depriving him of his liberty and shall be entitled to visit and interview him or her (art.6). A consular officer shall also be entitled to assist, arrange legal representation and suggest an interpreter to assist such national (art.4). By virtue of the Protocol, the consular officer of the State where the refugee has his habitual residence shall be entitled to protect such a refugee and to defend his or her rights, however the host State has the right to decline to admit such an entitlement.

### The free movement of persons

\* Applicable only to persons detained under criminal law (accused or convicted)

### **1955 European Convention on Establishment**

Each Contracting Party shall facilitate the entry into its territory by nationals of the other Parties for the purpose of temporary visits and shall, to the extent permitted by its economic and social conditions, facilitate the prolonged or permanent residence in its territory of nationals of the other Parties (art. 1 and 2).

### **1957 European Agreement on Regulations governing the Movement of Persons between Member States of the Council of Europe**

The Agreement aims at facilitating the movement up to three months between the States Parties (art.1)

### **1959 European Agreement on the Abolition of Visas for Refugees**

Refugees lawfully resident in the territory of a Contracting Party shall be exempt from the obligation to obtain visas for entering or leaving the territory of another Party by any frontier, provided that their visit is of not more than three months' duration (art.1)

- **European Union (EU):** Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the UK

### **Migration-related detention**

#### **2003 Directive on Minimum Standards for the Reception of Asylum Seekers (2003/9/EC)** (DK and IE and not bound by the Directive)

EU Member States may confine an asylum seeker to a particular place in accordance with their national law when it proves necessary, for example, for legal reasons or for reasons of public order (art.7(3)). Standard of living of the persons detained shall be adequate (art. 13(2)).

#### **2005 Directive on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status (2005/85/EC)** (DK is not bound by the Directive)

Member States shall not hold a person in detention for the sole reason that he or she is an asylum seeker. Where an asylum seeker is held in detention, Member States shall ensure that there is a possibility of speedy judicial review (art.18)

#### **2008 Directive on Common Standards and Procedures in Member States for Returning Illegally Staying Third-country Nationals (2008/115/EC)** (DK, UK and IE are not bound by the Directive but IC, N, CH and LI are)

Pre-removal detention could be imposed unless other sufficient but less coercive measures can be applied effectively in a specific case. Detention may be resorted to in order to prepare the return or carry out the removal process, particularly when there is a risk of absconding or the person concerned avoids or hampers the preparation of return process. The maximal period of detention is six months which can be extended up to eighteen months when, regardless of all their reasonable efforts the operation is likely to last longer due to a lack of cooperation by the detainee or delays in obtaining the necessary documentation from third countries. Detention order, giving legal and factual reasons, shall be issued by judicial or administrative authorities, in the latter case the lawfulness shall be reviewed by the court, either automatically or at the request. In terms of conditions of detention, immigration detainees shall be placed in specialised detention facilities, but State may resort to ordinary prison. In such a case they shall be separated from ordinary prisoners, however this obligation may be derogated from in the emergency situations. The contact with legal representatives, family members and competent consular authorities shall be allowed. Relevant national, international and non-governmental organisations shall have possibility to visit detention places, what may be subject to authorisation. Vulnerable detainees shall receive particular attention. Unaccompanied minors and families with minors shall be detained as a measure of last resort and for the shortest appropriate period of time. Families shall be provided with separate accommodation. Minors shall have the access to leisure activities and, depending on the length of their stay, in education. Finally, unaccompanied minors shall, as far as possible, be provided with accommodation in institutions disposing of personnel and facilities taking into account the needs of persons of their age. (Art.15-18)

### **Human rights instruments**

#### **2000 European Union Charter of Fundamental Rights**

The charter guarantees the right to life (art.2), right to integrity of the person (art.3), right to freedom from torture, inhuman or degrading treatment (art.4), right to liberty and security (art.6), right to effective remedy and fair trial, including free legal aid if necessary to ensure effective access to justice (art. 47). It also set out the right to asylum (art.18) and prohibits collective expulsions and *refoulement* (art.19).

\* Applicable only to persons detained under criminal law (accused or convicted)

**2004 Directive on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities (2004/81/EC)** (DK and UK are not bound by the Directive) The victims of trafficking shall be granted a reflection period during which the return decision cannot be enforced (art. 6). After the expiry of this period the persons concerned should receive the 6-month residence permit (which may be prolonged) if their presence is needed for the investigations of the judicial proceedings; they intend to cooperate; or have severed all relations with the suspects (art.8).

### The free movement of persons

**2004 Directive on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (2004/38/EC)** (also European Economic Area (EEA) countries: LI, N and IC)

The nationals of the EU and EEA Member States are entitled to enter and stay up to three months in the territory of any other Member State (art. 5 and 6). For the periods longer than three months, they need to fulfil the administrative procedures (art.7).

- **Commonwealth of Independent States (CIS):** Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Ukraine and Uzbekistan

### The free movement of persons

The **1992 Bishkek Agreement** on visa-free migration had virtually ceased, mainly due to withdrawal by Russia in 2000 and other States.

## Africa

- 1) **African Union (AU):** Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, CAR, Chad, Comoros, Congo, Cote d'Ivoire, DRC, Djibouti, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Libya, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mozambique, Namibia, Niger, Nigeria, Rwanda, Saharawi, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, Sudan, Swaziland, Tanzania, Togo, Tunisia, Uganda, Zambia and Zimbabwe

### Refugee instruments

#### **1969 Convention Governing the Specific Aspects of Refugee Problems in Africa**

Under the Convention, the term refugee include not only persons who leave their country as a result of a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, but also those who flee owing external aggression, occupation, foreign domination or events seriously disturbing public order in either part of the whole territory of his country of origin or nationality (art.1). No person shall be rejected at the frontier, returned or expelled to a territory where his life, physical integrity or liberty would be threatened for the above reasons (art.2 (3)). States Parties shall use their best endeavours to receive refugees and secure their settlement (art.2 (1)) and no refugee shall be repatriated against his will (art.5 (1)).

### Human rights instruments

#### **1981 African (Banjul) Charter on Human and Peoples' Rights**

The Charter enshrines the right to life (art.4), protection from torture, cruel, inhuman or degrading punishment or treatment (art.5), right to liberty and security (art.6), due process guarantees (art.7), right to seek and obtain asylum (art.12(3)), prohibition of mass expulsion on national, racial, ethnic or religious grounds (art. 12(5)), right to health (art.16) and right to education (art.17).

#### **1990 African Charter on the Rights and Welfare on the Child**

The Charter sets forth the right to life (art. 5(1)), protection from torture, inhuman or degrading treatment (art.16), protection from torture, inhuman or degrading treatment or punishment in detention (art. 17(2)(a)), separation from adult in detention (art. 17(2)(b)), special treatment for children of imprisoned mothers (art.30), protection and assistance to refugee children (art.23), right to education (art.11) and the right to health (art.14).

\* Applicable only to persons detained under criminal law (accused or convicted)



### **2003 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa**

The Charter lays down the right to life, integrity and security of the person (art.4) including access to refugee status, determination procedures and protection for refugee women (art. 4(g)), right to education (art. 12), right to health (art.14) and in respect to women in detention, the suitable environment and the right to be treated with dignity (art. 24).

## **2) Sub-regional integration systems**

### **The free movement of persons**

- **Economic Community of West African States (ECOWAS):** Benin, Burkina Faso, Cape Verde, Cote d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo

**1979 Protocol on Free Movement of Persons, Right of Residence and Establishment** enables the Community citizens who possess a valid travel document and international health certificate to enter and stay up to ninety days in any Member State without a visa requirement (Part III, art.3). The situation of irregular migrants is addressed in **the 1986 Supplementary Protocol on the Code of Conduct for the Implementation of the Protocol on Free Movement of Persons, the Right of Residence and Establishment**. As stipulated therein, measures shall be taken to guarantee that irregular immigrants enjoy and exercise their fundamental human rights. Particularly, any person under expulsion order shall be given a reasonable period of time to return and the enforcement of the expulsion order shall be carried out in a humane manner with due respect for the human dignity and without injury to the person, rights or properties of the immigrant (Chapter III, art.3).

- **East African Community (EAC):** Burundi, Kenya, Rwanda, Tanzania and Uganda

The **2009 Protocol on the Establishment of the East African Community Common Market** provides for visa-free movement within the Community in accordance with the Regulations annexed to the Protocol (art. 7). By virtue of the Regulations, intra-community visitors who possess valid identity card or common standard travel document may enter to and stay up to six months in any Member State (Regulation 5).

- **Common Market for Eastern and Southern Africa (COMESA):** Burundi, Comoros, DRC, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia and Zimbabwe

The **2001 Protocol on the Free Movement of Persons, Labour, Services, Right of Establishment and Residence** (not yet in force) sets forth a gradual approach, starting with the relaxation of visa requirements (visa issued at the border at the presentation of valid travel documents, art.3) and seeking to achieve visa-free entry and stay up to ninety days (within two years after the entry into force, art.4).

- **Southern African Development Community (SADC):** Angola, Botswana, DRC, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe

According to the **2005 Protocol on the Facilitation of Movement of Persons** (not yet in force) intra-community visitors with valid travel documents and evidence of sufficient means of support during the visit are entitled to enter and stay up to ninety days per year in any Member State without a visa requirement (art.14).

- **Economic Community of Central African States/ Communauté Economique des Etats de l'Afrique Centrale (ECCAS/CEEAC)** Angola, Burundi, Cameroon, CAR, Congo, DRC, Equatorial Guinea, Gabon and Sao Tomé and Principe

**The 1983 Protocol on Freedom of Movement and Right of Establishment** attached to the Treaty Establishing ECCAS provides for the right of entry and stay up to three months for the tourism-related reasons. To this end the Community citizens need to present identity card, passport, international health record and the evidence of sufficient means of support and return.<sup>3</sup>

<sup>3</sup> However, according to the IOM, *Free Movement of Persons in Regional Integration Processes*, 2007, they still need visa.

\* Applicable only to persons detained under criminal law (accused or convicted)

- **Community of Sahel-Saharan States (CEN-SAD):** Benin, Burkina Faso, the Central African Republic, Chad, Côte d'Ivoire, the Comoros, Djibouti, Egypt, Eritrea, The Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Libya, Kenya, Mali, Mauritania, Morocco, Niger, Nigeria, São Tomé and Príncipe, Senegal, Sierra Leone, Somali, Sudan, Togo and Tunisia

**The Draft Agreement on Free Movement and Establishment of Persons** (not yet in force) provides for visa-free migration only to certain categories of persons.

## INTERNATIONAL INTERPRETATIVE GUIDELINES

### A) The right to liberty

		international	regional
1. The protection from arbitrary detention	The principles of legality and lawfulness	UDHR: art. 9 Body of Principles: Principle 2 WGAD Deliberation 5: Principle 6 WGAD Criteria: Guarantee 2 UNHCR Guidelines: Guideline 3 <sup>A</sup> CERD GR: para. 19 ExCom 44: para. (b) SRHRM Rec: para.75(c)	ADRDM: art. XXV 20 Guidelines: Guideline 6(1) PACE Guiding principles: Principles 3 and 4 IACionHR Principles: Principle IV CM Rec. 5: para. 4 <sup>A</sup> Guidelines on accelerated procedures: para. XI(4) <sup>A</sup>
	The principles of necessity and proportionality	SRHRM Rec: para.75(f) WGAD Criteria: Guarantee 13 WGAD Rec. 2007: para. 80(b) WGAD Rec. 2008: para. 82  Presumption against detention:  [stateless persons] ExCom 106: para. (w)  [asylum seekers] ExCom 44: para. (b) UNHCR Guidelines: Guidelines 2, 3, 4, 6, 7 and 8  [victims of trafficking] OHCHR Principles&Guidelines: para.7 and Guideline 2(6), 4(5) and 6(1) SRHRM Rec: para.75(b) [and victims of smuggling]  [minors] Havana Rules: para. 2 UNHCR Guidelines on Children: para. 7(6) <sup>A</sup> ExCom 107: para. (b)(xi) <sup>A</sup> SRHRM Rec: para.75(a) SRHRM Rec. 2009: para. 106 CRC GC: para. 61 [unaccompanied minors]	PACE Rec. 1624 PACE Res. 1509: para. 12(4) 20 Guidelines: Guideline 6(1) PACE Guiding principles: Principles 1, 6 and 7 CPT 19 <sup>th</sup> Report: para. 80 IACionHR Principles: Principle III(4) PACE Rec. 1547: para. 13(v)(e) and 13(v)(f) CommDH Rec: para. 3  Presumption against detention:  [asylum seekers] PACE Res. 1471: para. 8(12)(1) PACE Guiding principles: Principle 2 Guidelines on accelerated procedures: para. XI(1) and XI(4) CM Rec. 5: para. 4 and 6  [victims of trafficking and smuggling] PACE Rec. 1624  [minors] PACE Res. 1509: para. 12(4) PACE Rec. 1703: para. 9(iii)(j) [separated minors] PACE Rec. 1596: para. 7(iii) PACE Guiding principles: Principle 9

\* Applicable only to persons detained under criminal law (accused or convicted)

			<p>[unaccompanied minors]  Guidelines on accelerated procedures: para. XI(2)<sup>A</sup>  CM Rec. 5: para. 20<sup>A</sup>  20 Guidelines: Guideline 11(1)  CPT 19<sup>th</sup> Report: para. 97  PACE Rec. 1624  IACionHR Principles: Principle III(1)  AALCO Principles: art. IV(7)<sup>A</sup></p> <p>[vulnerable persons]  PACE Res. 1509: para. 12(4)  PACE Guiding principles: Principle 9</p>
2. Length of detention	Prohibition of indefinite detention: detention justified as long as proceedings are in progress and are executed with due diligence	WGAD Deliberation 5: Principle 7 WGAD Criteria: Guarantee 10 SRHRM Rec: para.75(g)	20 Guidelines: Guideline 7 PACE Rec. 1624
	Detention for the shortest period possible	WGAD Deliberation 5: Principle 7 WGAD Rec. 2008: para. 82 Havana Rules: para. 2	20 Guidelines: Guidelines 8(1) and 10(1) PACE Res. 1471: para. 8(12)(1) <sup>A</sup> PACE Rec. 1624 PACE Res. 1509: para. 12(4) PACE Guiding principles: Principle 10 IACionHR Principles: Principle III(1) CM Rec. 5: para. 4 <sup>A</sup> Guidelines on accelerated procedures: para. XI(7) <sup>A</sup> PACE Rec. 1547: para. 13(v)(e) [1 month] and 13(v)(a) [15 days in transit zones]
3. Procedural safeguards	Information provided to detainees	<p>[information provided in writing]  WGAD Deliberation 5: Principle 8  WGAD Criteria: Guarantee 5  SRHRM Rec: para.75(d)</p> <p>[information provided in the language the person concerned understands]  Body of Principles: Principle 14  WGAD Deliberation 5: Principle 8  WGAD Criteria: Guarantee 5  UNHCR Guidelines: Guideline 5(i)<sup>A</sup>  Havana Rules: para. 24  SRHRM Rec: para.75(d)</p>	<p>[information provided in writing]  PACE Rec. 1624  CPT 19<sup>th</sup> Report: para. 85</p> <p>[information provided in the language the person concerned understands]  PACE Rec. 1624  PACE Res. 1509: para. 12(5)  20 Guidelines: Guideline 6(2)  IACionHR Principles: Principle VI  Guidelines on accelerated procedures: para. XI(5)<sup>A</sup></p>
	Notification of the legal and factual reasons for arrest [detention order]	Body of Principles: Principles 10 and 11(2) WGAD Deliberation 5: Principle 8 WGAD Criteria: Guarantee 5	20 Guidelines: Guideline 6(2) PACE Rec. 1624 IACionHR Principles: Principles IV and V

\* Applicable only to persons detained under criminal law (accused or convicted)

			UNHCR Guidelines: Guideline 5(i) <sup>A</sup> SRHRM Rec: para.75(d)	Guidelines on accelerated procedures: para. XI(5) <sup>A</sup> PACE Rules: Rule. III
		Information on one's rights and the applicable procedure [including on the right to appeal, on the right to legal assistance, on the right to consular assistance]	Body of Principles: Principle 13 UNHCR Guidelines: Guideline 5(i) <sup>A</sup> Havana Rules: para. 24  [on the right to effective remedy] WGAD Deliberation 5: Principle 8 SRHRM Rec: para.75(d)  [on the right to legal assistance] Body of Principles: Principle 17(1) UNHCR Guidelines: Guideline 5(ii) <sup>A</sup> Principles on lawyers: para.5*  [on the right to consular assistance] Body of Principles: Principle 16(2) SRHRM Rec: para.75(d)	20 Guidelines: Guideline 10(7) PACE Rec. 1624 PACE Res. 1509: para. 12(5) IACionHR Principles: Principle V CPT 7th Report: para. 30 PACE Rules: Rule III  [on the right to effective remedy] 20 Guidelines: Guideline 6(2) CPT 19th Report: para. 86 Guidelines on accelerated procedures: para. XI(5) <sup>A</sup>  [on the right to legal assistance] 20 Guidelines: Guideline 10(7) CPT 19th Report: para. 84  [on the right to consular assistance] 20 Guidelines: Guideline 10(7) CPT 19th Report: para. 84 PACE Res. 1509: para. 12(6) IACionHR Principles: Principle VI
	Legal assistance and representation	Access to the lawyer: adequate time and facilities for the consultation with the counsel (right to be visited by and communicate in private with counsel) and his assistance during interviews	Standard Minimum Rules: Rules 93 and 94 Body of Principles: Principles 17(1) and 18 Bangkok Rules: Rule 2(1) WGAD Deliberation 5: Principle 2 WGAD Criteria: Guarantees 6 and 7 UNHCR Guidelines: Guidelines 5(v) and 10(iv) <sup>A</sup> Havana Rules: para. 60 Principles on lawyers: para. 7* and 8*	CPT 7 <sup>th</sup> Report: para. 30 and 31 CPT 19 <sup>th</sup> Report: para. 81, 82 and 86 PACE Res. 1509: para. 12(4) IACionHR Principles: Principles V and XVIII CM Rec. 5: para. 17 <sup>A</sup> Guidelines on accelerated procedures: para. XI(5) and XI(6) <sup>A</sup> 20 Guidelines: Guideline 10(5) PACE Rules: Rule. VIII
		Counsel of one's own choosing	Body of Principles: Principle 17 WGAD Criteria: Guarantee 7 Principles on lawyers: para. 1*	IACionHR Principles: Principle V
		Counsel officially appointed, free of charge	Standard Minimum Rules: Rules 93 and 94 Body of Principles: Principle 17(2) UNHCR Guidelines: Guideline 5(ii) <sup>A</sup> Principles on lawyers: para. 6* CEDAW GR: para. 26(l) SRHRM Rec: para.75(c)	CPT 19 <sup>th</sup> Report: para. 82 and 86 PACE Res. 1509: para. 12(4) PACE Rec. 1624 PACE Res. 1471: para. 8(12)(2) <sup>A</sup> PACE Rules: Rule. IX PACE Rec. 1547: para. 13(v)(d)

\* Applicable only to persons detained under criminal law (accused or convicted)

	Access to free interpretation services	Body of Principles: Principle 14 Havana Rules: para. 6 SRHRM Rec: para.75(c)	CPT 7th Report: para. 30 CPT 19 <sup>th</sup> Report: para. 84 and 86 PACE Res. 1471: para. 8(12)(2) <sup>A</sup> PACE Res. 1509: para. 12(4) IACionHR Principles: Principle V PACE Rec. 1624
Remedies / Judicial review of the lawfulness of the detention within a reasonable time, able to lead to release if detention is found unlawful	Initial judicial review/judicial confirmation of detention order	Body of Principles: Principles 11(1) and 37* UNHCR Guidelines: Guidelines 5(iii) and (iv) <sup>A</sup> WGAD Criteria: Guarantees 3 and 4 WGAD Deliberation 5: Principles 3 and 8 Havana Rules: para. 14 ExCom 44: para. (e) <sup>A</sup> SRHRM Rec: para.75(c) WGAD Rec. 2008: para. 82	ADRDM: art. XXV CPT 19 <sup>th</sup> Report: para. 86 PACE Rec. 1624 PACE Res. 1509: para. 12(5) 20 Guidelines: Guideline 9(1) Guidelines on accelerated procedures: para. XI(6) <sup>A</sup> PACE Guiding principles: Principle 3
	Periodic judicial review of continued detention/ challenge the lawfulness of the continuance of detention	Body of Principles: Principles 11(3) and 32 UNHCR Guidelines: Guidelines 5(iii) and (iv) <sup>A</sup> SRHRM Rec: para.75(d) WGAD Rec. 2008: para. 82	20 Guidelines: Guideline 8(2) CPT 19 <sup>th</sup> Report: para. 86 PACE Res. 1509: para. 12(5) IACionHR Principles: Principles VI and VII CM Rec. 5: para. 5 <sup>A</sup> PACE Guiding principles: Principle 3 PACE Rules: Rule. X
	Right to compensation for unlawful detention		
Fair trial guarantees: right to a fair and public hearing by an independent and impartial tribunal*		UDHR: art. 10	ADRDM: art. XXVI IACionHR Principles: Principle V
	Presumption of innocence	UDHR: art. 11(1) Standard Minimum Rules: Rule 84(2)* Body of Principles: Principle 36* Havana Rules: para. 17* Beijing Rules: Rule 7(1)*	ADRDM: art. XXVI
	Right to be present at the trial		
	Prohibition of self-incrimination: right not to testify against oneself and to remain silent	Body of Principles: Principle 38 Beijing Rules: Rule 7(1)*	IACionHR Principles: Principle V
	The principles of equality of arms and adversarial proceedings, including attendance and examination of witnesses	Beijing Rules: Rule 7(1)*	
	The prohibition of double jeopardy: <i>ne bis in idem</i>		IACionHR Principles: Principle V
	Right to have the conviction and	Beijing Rules: Rule 7(1)*	IACionHR Principles: Principle V

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	sentence reviewed by a higher tribunal		
	Freedom from retrospective effect of penal legislation	UDHR: art. 11(2)	IACionHR Principles: Principle V

## B) Conditions of detention

		international	regional
1. Fundamental safeguards	Right to life Right to be free from torture and ill-treatment Right to be treated with humanity and respect for dignity <i>[this category will be split according to the normative framework]</i>	UDHR: art. 3 and 5 Standard Minimum Rules: Rules 33, 34 and 54(1) Body of Principles: Principles 1 and 6 Basic principles: Principle 1 CERD GR: para. 21 CEDAW GR: para. 26(j) and 26(l) Havana Rules: para. 63 , 64, 66 and 67 Code of Conduct: art. 3 and 5 Principles on prevention&investigation: para. 1	ADRDM: art. I and XXV IACionHR Principles: Principles I and XXIII(2) CM Rec. 5: para. 9 <sup>A</sup> PACE Rules: Rules I and XII
	Right to be free from forced labour <i>[to be completed, it is a new category]</i>		
	Right to equal protection by law without discrimination	UDHR: art. 2 and 7 Standard Minimum Rules: Rule 6(1) Body of Principles: Principle 5 Basic principles: Principles 2 and 11 Bangkok Rules: Rule 1 CEDAW GR: para. 26(j) CERD GR: para. 18 Havana Rules: para. 4	ADRDM: art. II IACionHR Principles: Principle II PACE Rec. 1703: para. 9(iii)(b)
	Freedom of thought, conscience and religion	UDHR: art. 18 and 21 Standard Minimum Rules: Rules 41 and 42 Basic principles: Principle 3 UNHCR Guidelines: Guideline 10(viii) <sup>A</sup> Havana Rules: para. 48	ADRDM: art. III IACionHR Principles: Principle XV CM Rec. 5: para. 15 <sup>A</sup>
2. Basic detention-related guarantees	Right to be registered (records)	Standard Minimum Rules: Rule 7 Body of Principles: Principle 12 Bangkok Rules: Rule 3 WGAD Criteria: Guarantee 9 WGAD Deliberation 5: Principle 4 Havana Rules: para. 19-21 and 23	CPT 19 <sup>th</sup> Report: para.85 IACionHR Principles: Principle IX(2) PACE Rules: Rule IV
	Right to be held in a recognized detention	Standard Minimum Rules: Rules 44(1) and (3)	CPT 7 <sup>th</sup> Report: para.30

\* Applicable only to persons detained under criminal law (accused or convicted)

	facility(including information on the place of custody and any other subsequent transfer, notification of this information to detainee's family)		Body of Principles: Principle 16(1) WGAD Criteria: Guarantee 8 WGAD Deliberation 5: Principle 9 Havana Rules: para. 22 Principles on prevention&investigation: para. 6	CPT 19 <sup>th</sup> Report: para. 81 IACionHR Principles: Principle III(1)
	Disciplinary measures <i>[to be completed, it is a new category]</i>			
3. Conditions of detention	Separation on account of migration status	Accommodation in specific facilities	WGAD Criteria: Guarantee 8 WGAD Deliberation 5: Principle 9 UNHCR Guidelines: Guideline 10(iii) <sup>A</sup> Beijing Rules: Rule 13(4)* SRHRM Rec: para.75(d)	CPT 7 <sup>th</sup> Report: para. 29 20 Guidelines: Guideline 10(1) PACE Res. 1509: para. 12(4) IACionHR Principles: Principle XIX CM Rec. 5: para. 10 <sup>A</sup> Guidelines on accelerated procedures: para. XI(7) <sup>A</sup> CommDH Rec: para. 7 PACE Rules: Rule. II
		Separation of immigration detainees form other detainees (if held in prison facilities)	Standard Minimum Rules: Rules 8(c), 85(1) and 94 Body of Principles: Principle 8 [separation of convicted detainees from other categories] WGAD Criteria: Guarantee 8 WGAD Deliberation 5: Principle 9 UNHCR Guidelines: Guideline 10(iii) <sup>A</sup> Beijing Rules: Rule 13(4)* ExCom 44: para. (f) <sup>A</sup> SRHRM Rec: para.75(i) and 75(n)	CPT 7 <sup>th</sup> Report: para. 28 20 Guidelines: Guideline 10(4) PACE Res. 1509: para. 12(4) CM Rec. 5: para. 10 <sup>A</sup> CommDH Rec: para.7 PACE Res. 1471: para. 8(12)(2) <sup>A</sup> PACE Rec. 1475: para. 10(i)(e) <sup>A</sup> PACE Rec. 1547: para. 13(v)(c)
	Accommodation/ material conditions	Space (floor space, beds and bedding)	Standard Minimum Rules: Rules 10 and 19 UNHCR Guidelines: Guideline 10(ix) <sup>A</sup> Havana Rules: para. 33 SRHRM Rec: para.75(n)	CPT 7 <sup>th</sup> Report: para. 29 20 Guidelines: Guideline 10(2) IACionHR Principles: Principles XII and XVII
		Sanitary and bathing conditions (including hygienic products)	Standard Minimum Rules: Rules 12, 13, 15, 16 and 26(1)(c) Bangkok Rules: Rule 5 UNHCR Guidelines: Guideline 10(ix) <sup>A</sup> Havana Rules: para. 34	IACionHR Principles: Principle XII
		Cleanliness and hygiene; premises in good order	Standard Minimum Rules: Rules 12, 14, 19, 26(1)(b) and (d)	20 Guidelines: Guideline 10(2) CPT 7 <sup>th</sup> Report: para. 29
		Lighting, heating, ventilation	Standard Minimum Rules: Rules 10, 11, 12 and 26(1)(c)	IACionHR Principles: Principle XII
	Accommodation of specific categories	Women: separation from men	Standard Minimum Rules: Rule 8(a) UNHCR Guidelines: Guidelines 8 and 10(ii) <sup>A</sup> SRHRM Rec: para.75(n)	PACE Res. 1509: para. 12(4) IACionHR Principles: Principles XIX and XX CM Rec. 5: para. 14 <sup>A</sup>

\* Applicable only to persons detained under criminal law (accused or convicted)



				20 Guidelines: Guideline 10(4) PACE Rec. 1547: para. 13(v)(h)
	Families	Minors' entitlement not to be separated from parents		20 Guidelines: Guidelines 10(4) and 11(2) CPT 19 <sup>th</sup> Report: para. 87 and 100 IACionHR Principles: Principle XIX CM Rec. 5: para. 14 and 21 <sup>A</sup> CommDH Rec: para. 6 <sup>A</sup>
		Appropriate accommodation for families	SRHRM Rec. 2009: para. 108	20 Guidelines: Guideline 11(2) PACE Res. 1509: para. 12(4) CM Rec 5: para. 22 <sup>A</sup> Guidelines on accelerated procedures: para. XI(7) <sup>A</sup>
		Unaccompanied minors: separation from adults	Standard Minimum Rules: Rules 8(d) and 85(2) UNHCR Guidelines: Guideline 10(ii) <sup>A</sup> Havana Rules: para. 29 SRHRM Rec. 2002: para.75(a) SRHRM Rec. 2009: para. 108	CPT 19 <sup>th</sup> Report: para. 100 IACionHR Principles: Principle XIX CM Rec. 5: para. 14 <sup>A</sup>  [accommodation in child specific reception centres] 20 Guidelines: Guideline 11(4) CPT 19 <sup>th</sup> Report: para. 97 CM Rec. 5: para. 23 <sup>A</sup> CommDH Rec: para. 6 <sup>A</sup>
		Peoples with disabilities <i>[to be completed, it is a new category]</i>		
	Quantity and quality of food supplies adequate to detainees' need, water available at all times		Standard Minimum Rules: Rules 20 and 26(1)(a) Havana Rules: para. 37	ADRDM: art. XI IACionHR Principles: Principle XI
	Adequate regime (including access to newspapers, TV, outdoor activities, exercise)		Standard Minimum Rules: Rules 21, 26(1)(e), 39 and 40 Body of Principles: Principle 28 UNHCR Guidelines: Guideline 10(vi) <sup>A</sup> Havana Rules: para. 47 and 62 SRHRM Rec: para.75(n)	CPT 7 <sup>th</sup> Report: para. 29 CPT 19 <sup>th</sup> Report: para. 79 20 Guidelines: Guidelines 10(1) and 10(2) PACE Rules: Rule VI IACionHR Principles: Principle XIII Guidelines on accelerated procedures: para. XI(7) <sup>A</sup> PACE Guiding principles: Principle 8
	Access to health care (also mental health, including specific needs of women, vulnerable persons, like victims of trafficking)		UDHR: art. 25 Standard Minimum Rules: Rules 22-25 and 52 Body of Principles: Principle 24 UNHCR Guidelines: Guideline 10(v) <sup>A</sup> Havana Rules: para. 49-55 Principles on health personnel: Principle 1 SRHRM Rec: para.75(k) CESCR GC: para. 34	ADRDM: art. XI CPT 7 <sup>th</sup> Report: para. 31 CPT 19 <sup>th</sup> Report: para. 81, 82, 87 and 91 PACE Res. 1509: para. 12(4) CommDH Rec: para. 8 PACE Rules: Rule VII CM Rec. 5: para. 13 <sup>A</sup>

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		<p>[specific health care for women]  Standard Minimum Rules: Rule 23  Bangkok Rules: Rules 6, 8-18, 38 and 39  CEDAW GR: para. 26(j)  UNHCR Guidelines: Guideline 8<sup>A</sup></p> <p>[specific health care for victims of abuse and other vulnerable persons]  Bangkok Rules: Rule 25(2)  CERD GR: para. 36  UNHCR Guidelines: Guideline 7<sup>A</sup>  SRHRM Rec: para.75(m)</p>	<p>[specific health care for vulnerable persons]  IACionHR Principles: Principle X  CM Rec. 5: para. 13<sup>A</sup></p>
	Staff (its qualities and training)	<p>Standard Minimum Rules: Rules 46 – 53 and 54(2)  Bangkok Rules: Rules 29 - 35  CERD GR: para. 21  Havana Rules: para. 81-87  SRHRM Rec: para.75(j)</p>	<p>CPT 7<sup>th</sup> Report: para. 29  CPT 19<sup>th</sup> Report: para. 77  20 Guidelines: Guidelines 10(1) and 10(3)  PACE Rules: Rule XIII  IACionHR Principles: Principle XX  Guidelines on accelerated procedures: para. XI(7)<sup>A</sup>  PACE Rec. 1547: para. 13(v)(g)</p>
4. Right to contact with outside world (including correspondence)	Family, relatives and friends	<p>Standard Minimum Rules: Rule 37  Body of Principles: Principles 15 and 19  Bangkok Rules: Rules 2(1), 26, 27 and 28  WGAD Criteria: Guarantee 6  WGAD Deliberation 5: Principle 2  UNHCR Guidelines: Guideline 10(iv)<sup>A</sup>  Havana Rules: para. 59 and 60  SRHRM Rec: para.75(n)</p>	<p>CPT 19<sup>th</sup> Report: para. 87  CPT 7<sup>th</sup> Report: para. 31  PACE Res. 1509: para. 12(4)  IACionHR Principles: Principles V and XVIII  CM Rec. 5: para. 18<sup>A</sup>  20 Guidelines: Guideline 10(5)  PACE Rules: Rule VIII  PACE Rec. 1547: para. 13(v)(d)</p>
	Consular representative	<p>Standard Minimum Rules: Rule 38(1)  Body of Principles: Principle 16(2)  Bangkok Rules: Rule 2(1)  WGAD Criteria: Guarantee 6  WGAD Deliberation 5: Principle 2</p>	<p>CPT 19<sup>th</sup> Report: para. 83  PACE Res. 1509: para. 12(6)  IACionHR Principles: Principle V</p>
	Independent organisations	<p>Standard Minimum Rules: Rule 38(2) [refugees and stateless persons]  Body of Principles: Principle 16(2)[refugees]  UNHCR Guidelines: Guideline 5(v)<sup>A</sup>  Havana Rules: para. 59  ExCom 44: para. (g)<sup>A</sup></p>	<p>CPT 19<sup>th</sup> Report: para. 87  CPT 7<sup>th</sup> Report: para. 31  PACE Res. 1509: para. 12(4)  CM Rec. 5: para. 16 and 18<sup>A</sup>  20 Guidelines: Guideline 10(5)  PACE Rules: Rule VIII  PACE Rec. 1547: para. 13(v)(d)</p>
5. Independent monitoring		Standard Minimum Rules: Rule 55	20 Guidelines: Guideline 10(5)

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		Body of Principles: Principle 29 Bangkok Rules: Rule 25(3) WGAD Criteria: Guarantee 14 WGAD Deliberation 5: Principle 10 Havana Rules: para. 72 Principles on prevention&investigation: para. 7 SRHRM Rec: para.75(k)	PACE Rules: Rule XV CPT 19 <sup>th</sup> Report: para. 89 IACionHR Principles: Principle XXIV CommDH Rec: para. 6 PACE Res. 1471: para. 8(12)(4) <sup>A</sup>
6. Procedural guarantees	Right to lodge complain against inadequate conditions or treatment)	Standard Minimum Rules: Rule 36 Body of Principles: Principles 9 and 33 Bangkok Rules: Rule 7 UNHCR Guidelines: Guideline 10(x) <sup>A</sup> Havana Rules: para. 75-77 SRHRM Rec: para.75(l)	20 Guidelines: Guideline 10(6) PACE Rules: Rule XIV CPT 19 <sup>th</sup> Report: para. 96 IACionHR Principles: Principle V CM Rec. 5: para. 19 <sup>A</sup>
	Obligation to carry out inquiry in case of ill-treatment, disappearance or death occurred during detention	Body of Principles: Principles 7(1) and 34 Bangkok Rules: Rule 25(1) Havana Rules: para. 57 Principles on prevention&investigation: para. 9	IACionHR Principles: Principle XXIII(3)
	Right to compensation	Body of Principles: Principle 35 Havana Rules: para. 7 Principles on prevention&investigation: para. 20	
7. Additional guarantees for minors	Education	UDHR: art. 26 Bangkok Rules: Rule 37 UNHCR Guidelines: Guideline 6 <sup>A</sup> Havana Rules: para. 38-42 CRC GC: para. 63 SRHRM Rec: para.75(a)	ADRDM: art. XII CPT 19 <sup>th</sup> Report: para. 99 IACionHR Principles: Principle XIII 20 Guidelines: Guideline 11(3)
	Assistance of guardian Specific activities, recreation and play <i>[this category will be split according to the normative framework]</i>	Bangkok Rules: Rule 38 UNHCR Guidelines: Guideline 6 <sup>A</sup> SRHRM Rec: para.75(a) CRC GC: para. 63	20 Guidelines: Guideline 11(3) Guidelines on accelerated procedures: para. XI(2) <sup>A</sup> CPT 19 <sup>th</sup> Report: para. 98 and 99 PACE Rec. 1624 CM Rec. 5: para. 23 <sup>A</sup>

\* Applicable only to persons detained under criminal law, accused or convicted

<sup>A</sup> Applicable only to asylum seekers

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\* Applicable only to persons detained under criminal law (accused or convicted)

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\* Applicable only to persons detained under criminal law (accused or convicted)

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## INTERNATIONAL LABOUR LAW RELEVANCE

This one-page summary recaps the context for including – or not - International Labour Organization (ILO) instruments into the state legal profiles beyond the human rights, refugees, migrants, statelessness, transnational organised crime and consular instruments initially considered. It uses as a starting point the “normative mapping” section included the Research Plan (revised) submitted to SNIS i.e.:

“[...] researchers on this SNIS-funded project will initially divide standards into two broad normative categories that are provided in Article 3 of the Universal Declaration of Human Rights—those relating to the right to liberty and those relating to the security of the person. Although these categories overlap in both law and practice, one set of norms is related closely to the modalities of deprivation of liberty while the other involves the treatment of individuals while in detention. The basis of this initial distinction would be grounded in Articles 9, 10, and 11 of the ICCPR, taking into account the varying interpretations of these by treaty bodies and Special Rapporteurs and supplementing the normative schemes with rights provided in other treaties that provide specific provisions with respect to the detention of non-citizens, including the Vienna Convention on Consular Relations, the Refugee Convention, and the Migrant Workers Convention.”

### ILO instruments perspective

The ILO - now a specialized agency of the United Nations – was established in 1919 and largely predates the creation of the United Nations. Since then, it has adopted a number of international legal instruments containing indirect or direct references to migration for employment.

A sub-set of ILO conventions are migrant-specific instruments, in particular the Migration for Employment Convention (Revised), 1949 (C.97) and the Migrant Workers (Supplementary Provisions) Convention, 1975 (C.143).<sup>4</sup> C.97 deals with “immigrants lawfully within” the territory of States parties (Article 6.1) and excludes undocumented migrant workers from protection, which places it outside the purview of the SNIS project. C.143 includes a part entitled “Migration in abusive conditions” which refers to respect of “the basic human rights of all migrant workers”.<sup>5</sup> According to the ILO Committee of Experts on the Application of Conventions and Recommendations, this provision in C.143 “refers to all migrant workers, irrespective of their legal status in the country of immigration. The exercise of these basic human rights is not linked any requirement as to citizenship or legal residence in the country of employment.”<sup>6</sup> This treaty might thus be included in a sub-set of relevant instruments in the State legal profiles for the SNIS project, bearing in mind that ILO instruments do not include provisions in relation to sanctions in relation for irregular migrant workers.<sup>7</sup>

The Forced Labour Convention (C. 29) adopted in 1930 offers a more direct reference to the SNIS project, inasmuch as instances of forced labour might be found in situations of detention for immigration status. Although for the purposes of this Convention, the term forced or compulsory labour shall not include “any work or service exacted from any person *as a consequence of a conviction in a court of law*”<sup>8</sup> the ILO has clarified that *persons in detention* should not be obliged to perform labour.<sup>9</sup>

Other migrant-specific instruments adopted by the ILO include the Migration for Employment Recommendation (Revised), 1949 (No. 86) and the Migrant Workers Recommendation, 1975 (No. 151). Recommendations – typically dealing with the same subjects as Conventions – set out guidelines that can orient national policy and action. They are non-binding instruments and as such cannot be included in SNIS state legal profile.

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<sup>4</sup> See *ILO Multilateral Framework on Labour Migration : Non-binding principles and guidelines for a rights-based approach to labour migration*, 2006

<sup>5</sup> Article 1

<sup>6</sup> *Report of the Committee of Experts on the Application of Conventions and Recommendations (articles 19, 22 and 35 of the Constitution)*, International Labour Conference, 87th Session 1999, Report III (Part IB), General Survey on the reports on the Migration for Employment Convention (Revised) (No. 97), and Recommendation (Revised) (No. 86), 1949, and the Migrant Workers (Supplementary Provisions) Convention (No. 143), and Recommendation (No. 151), 1975

<sup>7</sup> *Ibid.* The Committee recalls that the measures advocated in Part I of Convention No. 143 to combat clandestine movements of migrants are primarily targeted at the demand for clandestine labour rather than the supply. **The ILO instruments accordingly do not address the question of sanctions against migrant workers in an irregular situation.**

<sup>8</sup> Article 2.2

<sup>9</sup> International Labour Conference, 96th Session, 2007, *Report III (Part 1B), General Survey concerning the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105)*

\* Applicable only to persons detained under criminal law (accused or convicted)

By definition, ILO treaties chart and protect labour rights.<sup>10</sup> Inclusion of C.29 and C.143 in the state legal profiles should be done as part of a sub-set of instruments *related* but not pivotal to status related immigration detention.

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<sup>10</sup> The international treaty that includes provisions to protect migrant workers in situations of detention was drafted and adopted by the UN General Assembly 1990, as a *human rights* convention: the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

\* Applicable only to persons detained under criminal law (accused or convicted)

# Counter-terrorism international legal regime and the SNIS project

## Defining the scope for the research

This one-page summary recaps the context for including – or not - international instruments against terrorism into the state legal profiles beyond the human rights, refugees, migrants, statelessness, transnational organised crime and consular instruments initially considered. It uses as a starting point the “normative mapping” section included in the Research Plan (revised) submitted to SNIS i.e.:

"[...] researchers on this SNIS-funded project will initially divide standards into two broad normative categories that are provided in Article 3 of the Universal Declaration of Human Rights—those relating to the right to liberty and those relating to the security of the person. Although these categories overlap in both law and practice, one set of norms is related closely to the modalities of deprivation of liberty while the other involves the treatment of individuals while in detention. The basis of this initial distinction would be grounded in Articles 9, 10, and 11 of the ICCPR, taking into account the varying interpretations of these by treaty bodies and Special Rapporteurs and supplementing the normative schemes with rights provided in other treaties that provide specific provisions with respect to the detention of non-citizens, including the Vienna Convention on Consular Relations, the Refugee Convention, and the Migrant Workers Convention. “

## Counter-terrorism legal regime perspective

Terrorism has been described as “one of the most serious threats to international peace and security”.<sup>11</sup> Since 1963, a number of universal legal instruments related to the prevention and suppression of international terrorism, have been adopted and constitute the universal legal regime against terrorism.<sup>12</sup> As per The United Nations Office on Drugs and Crime (UNODC, that includes the UN Terrorism Prevention Branch):

“Most of these conventions and protocols are *penal in nature* with a common format. Typically the instruments:

1. Define a particular type of terrorist violence as an offence under the convention, such as seizure of an aircraft in flight by threat or violence;
2. Require State Parties to penalize that activity in their domestic law;
3. Identify certain bases upon which the Parties responsible are required to establish jurisdiction over the defined offence, such as registration, territoriality or nationality;
4. Create an obligation on the State in which a suspect is found to establish jurisdiction over the convention offence and to refer the offence for prosecution if the Party does not extradite pursuant to other provisions of the convention. This last element is commonly known as the principle of “no safe haven for terrorists”. It has been stressed by the Security Council in Resolution 1373 of 28 September 2001, as an essential anti-terrorism obligation of Member States.”<sup>13</sup>

Abundant research indicates that non-nationals have been substantially affected by detention in relation to the fight against terrorism, especially since September 11, 2001. However, this type of detention clearly falls outside the purview of the SNIS project as it is linked to an internationally recognized criminal activity and not to immigration status. This position is echoed in recent substantive studies on international norms in relation to migration and immigration detention.<sup>14</sup> In this context it would be unhelpful to include international instruments on terrorism in the state legal profiles for the SNIS project.

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<sup>11</sup> United Nations General Assembly Resolution 60/288, *The United Nations Global Counter-Terrorism Strategy*, adopted in September 2006

<sup>12</sup> Convention on Offences and Certain Other Acts Committed on Board Aircraft, 1963; Convention for the Suppression of Unlawful Seizure of Aircraft, 1970; Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971; Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, 1988; Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 1973; International Convention against the Taking of Hostages, 1979; Convention on the Physical Protection of Nuclear Material, 1980; Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988; Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 2005; Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 1988; Protocol to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, 2005; Convention on the Marking of Plastic Explosives for the Purpose of Detection, 1991; International Convention for the Suppression of Terrorist Bombings, 1997; International Convention for the Suppression of the Financing of Terrorism, 1999; International Convention for the Suppression of Acts of Nuclear Terrorism, 2005; Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation 2010; Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft 2010

<sup>13</sup> <https://www.unodc.org/unodc/en/terrorism/conventions.html?ref=menuaside>

<sup>14</sup> “Administrative detention for reasons of national security, although distinct from detention for the purposes of immigration control, may nevertheless disproportionately affect non-nationals” in International Commission of Jurists, *Migration and International Human Rights Law*, Practitioners Guide No. 6, 2011 and <sup>14</sup>“Migration-related detention is understood to mean detention for migration-related reasons, and not extending to detention of migrants

\* Applicable only to persons detained under criminal law (accused or convicted)



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for general criminal or penal reasons or for terrorism or national security related reasons separate from migration for forced or voluntary migrants” Amnesty International, *Migration-Related Detention: A research guide on human rights standards relevant to the detention of migrants, asylum-seekers and refugees*, 2007

\* Applicable only to persons detained under criminal law (accused or convicted)

# Maritime law and the SNIS project

## Defining the scope for the research

This one-page summary recaps the context for including – or not - elements of maritime law into the state legal profile profiles beyond the human rights, refugees, migrants, statelessness, transnational organised crime and consular instruments initially considered. It uses as a starting point the “normative mapping” section included in the Research Plan (revised) submitted to SNIS i.e.:

[...] researchers on this SNIS-funded project will initially divide standards into two broad normative categories that are provided in Article 3 of the Universal Declaration of Human Rights—those relating to the right to liberty and those relating to the security of the person. Although these categories overlap in both law and practice, one set of norms is related closely to the modalities of deprivation of liberty while the other involves the treatment of individuals while in detention. The basis of this initial distinction would be grounded in Articles 9, 10, and 11 of the ICCPR, taking into account the varying interpretations of these by treaty bodies and Special Rapporteurs and supplementing the normative schemes with rights provided in other treaties that provide specific provisions with respect to the detention of non-citizens, including the Vienna Convention on Consular Relations, the Refugee Convention, and the Migrant Workers Convention. “[emphasis added]

## Maritime law perspective

Maritime law codifies the long-observed maritime tradition to render assistance to persons in distress at sea into international legal obligation for states (cf. United Nations Convention on the Law of the Sea, UNCLOS). However, a comparable legally binding duty to disembark these rescued persons does not exist in the law of the sea.<sup>15</sup> Problems arising around disembarkation of persons rescued had not initially been foreseen by the drafters of maritime treaties. As a consequence of the increase in irregular maritime migration - and largely under pressure from UNHCR and other organisations working in cooperation with the International Migration Organisation (IMO) - a series of amendments have been adopted in the past ten years in an attempt to fill this gap (cf. International Convention on Maritime Search and Rescue/SAR and International Convention for the Safety of Life at Sea/SOLAS amended conventions).

The body of maritime law, also known as law of the sea -whether the UN developed UNCLOS or subsequent treaties adopted by IMO - does not include safeguards in relation to deprivation of liberty or security. The 320-article UNCLOS only addresses maritime migration, interdiction and rescue at sea obliquely.<sup>16</sup> In this context, whenever temporary confinement aboard ships occurs, it is generally incidental to unwillingness by coastal states (including states parties to the SAR with specific responsibility for co-ordination of regional search and rescue zones “rescue coordination centres”) to allow shipmasters to disembark rescued persons. In reviewed literature, scant references to confinement aboard ships are mentioned and if so, not assimilated to deprivation of liberty in the sense of ICCPR and other regional norms. Rather, prolonged detention is referred to in relation to “what happens *after* a rescue or interception has taken place, since many of the protection risks that can result from these two practices are significant.”<sup>17</sup> Further, one instrument that does include a clause on rights and guarantees in relation to custody explicitly cites “applicable provisions of international law, including international human rights law”.<sup>18</sup>

Sea operations by coastal states in response to irregular maritime migrants also take the form of “interception at sea”, with migration control objectives overriding the humanitarian concerns behind rescue at sea. Expert literature indicates that intercepted persons are often subsequently diverted into the rescue system thus burdening a framework already under considerable strain.<sup>19</sup> Case law generated by interception at sea does primarily build on international or regional human rights law and not on maritime law.<sup>20</sup>

Finally, the intersection of maritime law and irregular sea migration gives rise to complex debates on the applicability of relevant norms in coastal areas and on the high seas, discussions on the responsible states, and applicability of norms and monitoring thereby in international waters.

<sup>15</sup> Jasmine Coppens, Eduard Sommers, *Towards New Rules on Disembarkation Persons Rescued at Sea?* The international Journal of Marine and Coastal law 25 (2010) 377-403, Martinus Nijhoff Publishers, May 2020 available at <http://docserver.ingentaconnect.com/deliver/connect/mnp/09273522/v25n3/s3.pdf?expires=1306230195&id=62880958&titleid=5059&acname=Universite+de+Geneve&checksum=57CBD3BFA030F0E675262A7F514E278D> (last visited on 24 May 2011)

<sup>16</sup> Richard Barnes, *The International Law of the Sea and Migration Control*, in Bernard Ryan, Valsamis Mitsilegas *Extraterritorial immigration control: legal challenges*, Brill, 2010

<sup>17</sup> Barbara Miltner, “Human security and protection from refoulement in the maritime context”, in Alice Edwards, Carla Ferstman, (Eds), *Human Security and Non-Citizen: Law, Policy and International Affairs*, Cambridge University Press, 2010

<sup>18</sup> See reference to the Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation in the appended Table.

<sup>19</sup> *Ibid.*

<sup>20</sup> CAT Committee’s decision in *J.H.A. v. Spain, CAT/C/41/D/323/2007*, UN Committee Against Torture (CAT), 21 November 2008 and the other is the ECtHR decision in *Medvedev and Others v. France* (no 3394/03). They are both focused in part on jurisdictional issues and on whether the people who were intercepted were in “control” of the state. The decisions may or may not be relevant to what you’re thinking about.

\* Applicable only to persons detained under criminal law (accused or convicted)

Should it be decided that the State legal profiles make reference to a set of maritime law instruments, we should be very clear that while these instruments do bear links to migration flows and asylum, they do not include elements of a regulatory framework in relation to immigration detention, nor conditions of detention. Personally, in view of the focus for the research in the SNIS proposal, I would advocate against including maritime law instruments in the state legal profiles for fear that it might create confusion in respect to status related immigration detention and the relevant international legal framework.

## Annex II. Data Indicators Field Instructions

- I. International Law
- II. Domestic Laws and Policies
- III. Immigration and Detention-Related Statistics

### **INTERNATIONAL LAW**

1. International treaties
2. Regional legal instruments
3. Readmission agreements
4. Non-treaty-based human rights mechanisms

#### **1. International Treaties**

**Field IV.1.1: Treaty** This field will provide a multiple-choice menu that will allow researchers to select both the treaties a country has ratified as well the specific year when that treaty was ratified by that country. It will also provide the option to “ADD NEW TREATY.” The year-ratification submenu will be a menu that begins with the year 1900 and goes through to the current year and also with the option to ADD NEW YEAR.

#### **Menu**

- International Convention on the Elimination of All Forms of Racial Discrimination, 1965 (ICERD) + YEAR RATIFICATION
- International Covenant on Civil and Political Rights, 1966 (ICCPR) + YEAR RATIFICATION
- International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR) + YEAR RATIFICATION
- Convention on the Elimination of All Forms of Discrimination against Women, 1979 (CEDAW) + YEAR RATIFICATION
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 (CAT) + YEAR RATIFICATION
- Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2002 (OPCAT) + YEAR RATIFICATION
- Convention on the Rights of the Child, 1989 (CRC) + YEAR RATIFICATION
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990 (ICRMW) + YEAR RATIFICATION

- **Convention on the Rights of Persons with Disabilities, 2006 (CRPD) + YEAR RATIFICATION**
- **International Convention for the Protection of All Persons from Enforced Disappearance, 2006 (CPED) + YEAR RATIFICATION**
- **Geneva Convention Relating to the Status of Refugees, 1951 (RC) + YEAR RATIFICATION**
- **Protocol to the Geneva Convention Relating to the Status of Refugees, 1967 (RP) + YEAR RATIFICATION**
- **Convention Relating to the Status of Stateless Persons, 1954 (CSP) + YEAR RATIFICATION**
- **Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000 (CTOCTP) + YEAR RATIFICATION**
- **Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, 2000 (CTOCSP) + YEAR RATIFICATION**
- **Vienna Convention on Consular Relations, 1963 (VC)**
- **ADD NEW TREATY + YEAR RATIFICATION**

**Field IV.1.1a:** Ratio of international treaties ratified. This field will provide a ratio of the number of relevant treaties ratified by the country in question.

**Field IV.1.2:** International Treaty Reservations This field will provide a multiple-choice menu that will allow researchers to select the relevant treaty articles to which a country has made a reservation or interpretative declaration and provide submenu to select “Reservation Year.” It will also provide the option to “ADD NEW ARTICLE” in the event a new treaty is adopted in the future that has relevant articles.

#### **Menu**

- **ICERD Article 1, non-discrimination**
- **ICERD Article 2, right to equal protection by law**
- **ICERD Article 5, non-discrimination and the right to security**
- **ICCPR Article 2, right to equal protection without discrimination, right to effective remedy**
- **ICCPR Article 6, right to life**
- **ICCPR Article 7, torture or cruel, inhuman or degrading treatment or punishment**
- **ICCPR Article 9, arbitrary arrest or detention, liberty and security, challenges to the lawfulness of detention, right to compensation**

- ICCPR Article 10, right to be treated with humanity and dignity, separation of accused from convicted persons and of accused juveniles from adults
- ICCPR Article 14, procedural safeguards
- ICCPR Article 18, freedom of conscience and religion
- ICCPR Article 26, equality before the law and non-discrimination
- ICESCR Article 2, non-discrimination
- ICESCR Article 3, equal rights of men and women
- ICESCR Article 11, right to an adequate standard of living including food and housing
- ICESCR Article 12, right to health (physical and mental)
- ICESCR Article 13, right to education
- CEDAW Article 2, non-discrimination and equal protection
- CEDAW Article 12, non-discrimination in the field of health
- CAT Article 1, definition of torture
- CAT Article 2, prevention and absolute prohibition and of torture
- CAT Article 10, training of law enforcement personnel
- CAT Article 11, safeguards for the custody and treatment of persons in detention
- CAT Article 12, prompt and impartial investigation
- CAT Article 13, right to complain
- CAT Article 14, redress and compensation
- CAT Article 16, safeguards against other acts of cruel, inhuman or degrading treatment or punishment
- OPCAT Articles 1-4 visits by international and national bodies to place where persons are deprived of liberty to prevent torture and ill-treatment
- OPCAT Articles 17-20, national preventive mechanisms and access to all places of detention
- CRC Article 2, non-discrimination
- CRC Article 6, right to life
- CRC Article 9, separation from parents as a result of detention
- CRC Article 14, freedom of conscience and religion
- CRC Article 24, right to health
- CRC Article 19, protection from maltreatment
- CRC Article 28, right to education
- CRC Article 31, right to rest, play and to recreational activities
- CRC Article 37, protection from torture and ill-treatment, deprivation of liberty, separation from adults, protection from arbitrary detention, and detention as last resort
- CRC Article 39, physical and psychological recovery and social reintegration for victims of abuse

- CRC Article 40, procedural safeguards
- ICRMW Article 1, non-discrimination
- ICRMW Article 7, non-discrimination
- ICRMW Article 9, right to life
- ICRMW Article 10, protection from torture and ill-treatment
- ICRMW Article 12, freedom of conscience and religion
- ICRMW Article 16, safeguards against arbitrary arrest or detention, due process of law (information on rights in custody, legal representation, review of detention, access to interpreter, and right to compensation), right to communicate with consular authorities (and be visited if applicable)
- ICRMW Article 17, right to be treated with humanity and dignity, separation from convicted persons or persons detained pending trial, non-discrimination, right to visits by members of family
- ICRMW Article 18, procedural safeguards
- ICRMW Article 23, right to consular assistance
- ICRMW Article 28, emergency medical care irrespective of migration status
- ICRMW Article 30, right to education for children irrespective of immigration status
- CRPD Article 2, definitions: "Reasonable accommodation"
- CRPD Article 3, non-discrimination
- CRPD Article 5, non-discrimination
- CRPD Article 4, full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination
- CRPD Article 10, right to life
- CRPD Article 13, training of personnel working in the field of justice
- CRPD Article 14, liberty and security of the person
- CRPD Article 15, freedom from torture and ill-treatment
- CRPD Article 16, investigations into exploitation, violence, and abuse and prosecution where appropriate
- CRPD Article 17, protection of the integrity of the person
- CRPD Article 24, right to education
- CRPD Article 25, right to health
- ICPED Articles 12, obligation to carry out investigations into disappearances
- ICPED Articles 17, prohibition of secret detention, deprivation of liberty and registration, right to be visited by family, counsel or other person and to communicate with consular authority
- ICPED Article 18, access to information about deprivation of liberty

- ICPED Article 22, registration of detainees
- ICPED Article 23, training of personnel involved in custody of persons deprived of liberty
- RC Article 3, non-discrimination
- RC Article 4, freedom of religion
- RC Article 22, right to education
- RC Article 31, non-penalization on account of their illegal entry or presence
- SP Article 3, non-discrimination
- SP Article 4, freedom of religion
- SP Article 22, right to education
- CTOCTP Article 6, assistance to and protection of victims of trafficking in persons
- CTOCTP Article 7, status of victims of trafficking in persons in receiving States
- CTOCTP Article 8, repatriation of victims of trafficking in persons
- CTCOSP Article 5, non-liability to criminal prosecution for smuggled migrants
- CTCOSP Article 16, consular assistance
- VC Article 36, consular notification and effective access to consular protection
- ADD NEW ARTICLE

**Field IV.1.3: Individual complaints procedure:** This field will be a multiple-choice menu that will allow researchers to select the relevant complaints procedures that a country has accepted and provide a submenu to indicate the “Acceptance Year.” It will also offer “ADD NEW COMPLAINTS PROCEDURE.”

### Menu

- ICCPR, First Optional Protocol to the International Covenant on Civil and Political Rights, 1966
- ICESCR, Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, 2008
- ICERD, declaration under article 14 of the Convention
- CEDAW, Optional Protocol to the Convention on the Elimination of Discrimination against Women, 1999
- CAT, declaration under article 22 of the Convention
- CRC, [Third] Optional Protocol to the UN Convention on the Rights of the Child establishing a communications procedure, 2011
- ICRMW, declaration under article 77
- CRPD, Optional Protocol to the Convention on the Rights of Persons with Disabilities
- ADD NEW COMPLAINTS PROCEDURE



**Field IV.1.4: Ratio of complaints procedures accepted:** This field will be used by researchers to manually type in the ratio of procedures accepted vis-à-vis the total number possible, which will depend on the number of relevant treaties the country has ratified.

**Field IV.1.5: Treaty bodies decisions on individual complaints:** This field will allow researchers to record information about decisions made by treaty bodies on individual complaints that are related to immigration detention. Researchers will be able to enter multiple complaints for each treaty body. For each New Decision entered, there will be (1) a drop-down menu to select the relevant treaty body; (2) a text box called “Case Details” to enter the necessary identifying information for the decision (for example, “*Bakhtiyari v Australia* (2003) 1069/20029”); and (3) menu to enter the “Decision Year.”

#### Treaty bodies menu

- Human Rights Committee
- Committee on Economic, Social and Cultural Rights
- Committee on the Elimination of Racial Discrimination
- Committee on the Elimination of Discrimination Against Women
- Committee against Torture
- Committee on the Rights of the Child
- Committee on Migrant Workers
- Committee on the Right of Persons with Disabilities
- Committee on Enforced Disappearance
- ADD NEW TREATY BODY

**Field IV.1.6: Relevant recommendations issued by treaty bodies** This field allows researcher to provide details about the recommendations issued by UN treaty bodies. For each New Recommendation entered, there will be three main menus: (1) a drop-down menu to select the relevant Treaty Body (please title this drop down menu “Treaty Body”) for the recommendation in question; (2) a text box called “Recommendation Excerpt” which will allow for VERY LONG entries of text taken directly from the recommendation; and (3) menu to enter the “Recommendation Year.” **NO YEAR OBSERVATION.**

#### Treaty Body Menu

- Human Rights Committee
- Committee on Economic, Social and Cultural Rights
- Committee on the Elimination of Racial Discrimination
- Committee on the Elimination of Discrimination Against Women
- Committee against Torture
- Committee on the Rights of the Child

- **Committee on Migrant Workers**
- **Committee on the Right of Persons with Disabilities**
- **Committee on Enforced Disappearance**
- **ADD NEW TREATY BODY**

## **2. Regional Legal Instruments**

**Field IV.2.1: Regional Organizations and Alliances:** This field allows researchers to select all the regional organizations and alliances to which a country belongs that have treaties containing provisions relevant to immigration detention. It will offer the option to ADD NEW BLOC (Information about which countries belong to which bloc are provided in “SECTION VII Geopolitical Indicators” of the database/manual.)

### Menu

- African Union
- Association of Southeast Asian Nations
- Council of Europe
- European Union
- League of Arab States
- Organization of American States
- Organization of Islamic Cooperation
- Schengen Area
- South Asian Association for Regional Cooperation

**Field IV.2.2: Regional Legal Instruments** This field will provide a multiple-choice menu that will allow researchers to select both the regional instruments a country has ratified/adopted/transposed, as well as the year they ratified/adopted/transposed them.<sup>1</sup> It will provide an option to “ADD NEW INSTRUMENT.”

### **Council of Europe treaties and dates of ratification**

#### Menu

- **Convention for the Protection of Human Rights and Fundamental Freedoms (commonly known as the European Convention on Human Rights, 1950 (amended by subsequent protocols) (ECHR) + YEAR RATIFICATION**
- **Protocol 1 to the European Convention on Human Rights (Prot 1), 1952 (amended by protocol 11) (ECHR1) + YEAR RATIFICATION**
- **Protocol 7 to the European Convention on Human Rights (Prot 7), 1984 (amended by protocol 11) (ECHR7) + YEAR RATIFICATION**

<sup>1</sup> For directive transpositions, when two legal instruments (law followed by a subsequent decree) have been adopted, or when the instrument of transposition includes a subsequent date for entry into force, the date used in the database will be the most recent one.

- **Protocol 12 to the European Convention on Human Rights (Prot 12), 2000 (ECHRP12) + YEAR RATIFICATION**
- **European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 1987 (ECPT) + YEAR RATIFICATION**
- **European Convention on Consular Functions, 1967 (ECCF) + YEAR RATIFICATION**
- **Convention on Action against Trafficking in Human Beings, 2005 (CATHB) + YEAR RATIFICATION**
- **Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 2007(CPCSE) + YEAR RATIFICATION**
- **ADD NEW TREATY**

### **Reservations to Council of Europe treaties**

#### **Menu**

- **ECHR Article 2, right to life**
- **ECHR Article 3, freedom from torture or inhuman or degrading treatment or punishment**
- **ECHR Article 5, right to liberty and security**
- **ECHR Article 6, procedural safeguards**
- **ECHR Article 9, freedom of thought, conscience and religion**
- **ECHR Article 13, right to an effective remedy before a national authority**
- **ECHR Article 14, non-discrimination**
- **ECHRP1 Article 2, right to education**
- **ECHRP7 Article 2, Right of appeal in criminal matters**
- **ECHRP7 Article 3, Compensation for wrongful conviction**
- **ECHRP12 Article 1, general prohibition of discrimination**
- **ECPT Article 1, visits by European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment**
- **ECPT Article 2, visits to any place within [its] jurisdiction where persons are deprived of their liberty by a public authority**
- **CATHB Article 3, non-discrimination principle**
- **CATHB Article 12, assistance to victims**
- **CATHB Article 26, non-punishment provision**
- **ADD NEW RESERVATION**

### **European Union (EU) directives/regulations and dates of transposition or adoption**

#### **Menu**

- **Directive on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status - Procedures Directive (TRANSPOSITION DEADLINE: December 2007)**
- **Directive on Common Standards and Procedures in Member States for Returning Illegally Staying Third-country Nationals - Return Directive (TRANSPOSITION DEADLINE: December 2010)**
- **Directive laying down minimum standards for the reception of asylum seekers - Reception Directive (RDAS) (TRANSPOSITION DEADLINE: February 2005)**
- **Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national – Dublin Regulation (RD) (ENTRY INTO FORCE: March 2003)**
- **ADD NEW DIRECTIVE/REGULATION**

#### **African Union (AU) treaties and dates of ratification**

##### **Menu**

- **African Charter on Human and Peoples' Rights, 1981 (ACHPR) + YEAR RATIFICATION**
- **African Charter on the Rights and Welfare of the Child (ACRWC), 1990 + YEAR RATIFICATION**
- **Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), 2003 (APRW) + YEAR RATIFICATION**
- **ADD NEW TREATY**

#### **Reservations to African Union treaties**

##### **Menu**

- **ACHPR Article 2, non-discrimination**
- **ACHPR Article 3, equality before the law**
- **ACHPR Article 4, right to life**
- **ACHPR Article 5, recognition of legal status, freedom from torture and ill-treatment**
- **ACHPR Article 6, right to liberty and security, protection from arbitrary arrested or detention**
- **ACHPR Article 7, procedural guarantees**
- **ACHPR Article 8, freedom of conscience and religion**
- **ACHPR Article 16, right to health**
- **ACHPR Article 17, right to education**
- **ACRWC Article 3, non-discrimination**
- **ACRWC Article 5, right to life**

- **ACRWC Article 9, freedom of thought, conscience and religion**
- **ACRWC Article 11, right to education**
- **ACRWC Article 12, right to rest and leisure**
- **ACRWC Article 14, right to health, food and water**
- **ACRWC Article 16, protection from torture and ill-treatment**
- **ACRWC Article 17, procedural guarantees, freedom from torture and ill-treatment, separation from adults in detention or imprisonment, legal assistance**
- **ACRWC Article 19, separation and safeguards**
- **ACRWC Article 30, children of imprisoned mothers, alternatives to confinement**
- **APRW Article 2, elimination of discrimination against women**
- **APRW Article 3, right to dignity, protection from violence**
- **APRW Article 4, rights to life, integrity and security of the person, protection from violence and ill-treatment, reparation**
- **APRW Article 8, equality before the law**
- **APRW Article 14, right to health**
- **APRW Article 15, right to food and water**
- **APRW Article 24, rights of women in detention, right to be treated with dignity**
- **APRW Article 25, remedies**
- **ADD NEW RESERVATION**

## **Organization of American States (OAS) treaties and dates of ratification**

### **Menu**

- **American Convention on Human Rights, 1969 (ACHR) + YEAR RATIFICATION**
- **Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, 1988 (APACHR) + YEAR RATIFICATION**
- **Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belem do Para), 1994 (CBDP) + YEAR RATIFICATION**
- **Inter-American Convention to Prevent and Punish Torture, 1985 (IACPPT) + YEAR RATIFICATION**
- **Inter-American convention on Forced Disappearance of Persons, 1994 (IACFDP) + YEAR RATIFICATION**
- **ADD NEW TREATY**

## **Reservations to Organization of American States treaties**

### **Menu**

- ACHR Article 1, obligation to respect rights (non-discrimination)
- ACHR Article 4, right to life
- ACHR Article 5, right to humane treatment (freedom from torture)
- ACHR Article 7, right to personal liberty
- ACHR Article 8, right to a fair trial
- ACHR Article 10, right to compensation
- ACHR Article 12, freedom of conscience and religion
- ACHR Article 24, right to equal protection
- ACHR Article 25, right to judicial protection
- APACHR Article 3, obligation of non-discrimination
- APACHR Article 10, right to health
- APACHR Article 12, right to food
- APACHR Article 13, right to education
- APACHR Article 16, rights of children
- CBDP Article 4, right to life, to physical integrity, to personal liberty and security, freedom from torture, right to equal protection before the law, procedural safeguards, right of freedom to profess her religion and beliefs
- CBDP Article 6, right to be free from all forms of discrimination
- CBDP Article 8, education and training of all those involved in the administration of justice, police and other law enforcement
- IACPPT Article 1, prevention and punishment of torture
- IACPPT Article 6, prevention and punishment of torture
- IACPPT Article 7, training of police officers and other public officials responsible for the custody of persons temporarily or definitively deprived of their freedom prevention and punishment of torture
- IACPPT Article 8, investigations into allegations of torture prevention and punishment of torture
- IACPPT Article 9, right to compensation for victims of torture prevention and punishment of torture
- IACFDP Article 8, training of public law-enforcement personnel or officials
- IACFDP Article 11, detention in recognized places and maintenance of official up-to-date registries, procedural standards
- **ADD NEW RESERVATION**

## **League of Arab States treaties and dates of ratification**

### **Menu**

- **Revised Arab Charter on Human Rights(AC) – Arab Charter, 2004 + YEAR RATIFICATION**

- **ADD NEW TREATY**

## **Reservations to League of Arab States treaties**

### **Menu**

- **AC Article 3, non-discrimination**
- **AC Article 5, right to life**
- **AC Article 8, freedom from torture or ill-treatment, right to compensation**
- **AC Article 11, equality before the law**
- **AC Article 12, right to legal remedy**
- **AC Article 13, right to fair trial**
- **AC Article 14, right to liberty and security, procedural guarantees, medical examination, right to compensation**
- **AC Article 16, procedural guarantees, legal assistance**
- **AC Article 19, right to compensation**
- **AC Article 20, right to be treated with humanity, conditions of detention**
- **AC Article 23, right to effective remedy**
- **AC Article 30, freedom of thought, conscience and religion**
- **AC Article 38, right to food**
- **AC Article 39, right to health**
- **ADD NEW RESERVATION**

## **South Asian Association for Regional Cooperation (SAARC) treaties and dates of ratification**

### **Menu**

- **Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia, 2002 + YEAR RATIFICATION**
- **Convention on Prevention and Combating Trafficking in Women and Children for Prostitution 2002 + YEAR RATIFICATION**
- **ADD NEW TREATY**

## **Reservations South Asian Association for Regional Cooperation (SAARC) treaties**

### **Menu**

- **CPCTWC Article 9, health care**
- **CWC Article 4, non-discrimination, protection from torture and ill-treatment, treatment in detention, education and health**
- **ADD NEW RESERVATION**

## Organization of Islamic Cooperation (OIC) treaties and dates of ratification

### Menu

- **Covenant on the Rights of the Child in Islam, 2004 + YEAR RATIFICATION**
- **ADD NEW TREATY**

## Reservations to Organization of Islamic Cooperation treaties

### Menu

- **CRCI Article 5, non-discrimination**
- **CRCI Article 6, right to life, protection from abuse**
- **CRCI Article 8, protection from separation from parents, best interest of the child**
- **CRCI Article 12, right to education**
- **CRCI Article 13, right to rest and play**
- **CRCI Article 15, access to health care**
- **CRCI Article 17, protection from torture and ill-treatment**
- **CRCI Article 19, legality of detention, procedural safeguards, and legal assistance, special needs of children**
- **ADD NEW RESERVATION**

## Association of Southeast Asian Nations (ASEAN) treaties and dates of ratification.

### Menu

- **ADD NEW TREATY + YEAR RATIFICATION**

## Reservations to Association of Southeast Asian Nations treaties

### Menu

- **ADD NEW RESERVATION**

**Field IV.2.3: Regional judicial decisions on individual complaints:** This field will allow researchers to record information about decisions made by regional judicial bodies on individual complaints that are related to immigration detention. Researchers will be able to enter multiple complaints for each regional judicial body. For each New Decision entered, there will be (1) a drop-down menu to select the relevant regional judicial body; (2) a text box called "Case Details" to enter the necessary identifying information for the decision (for example, "*Bakhtiyari v Australia* (2003) 1069/20029"); and (3) menu to enter the "Decision Year."

## Judicial bodies multiple-choice menu options

- **European Court of Human Rights (ECtHR)**



- Court of Justice of European Union (CJEU)
- African Commission on Human and Peoples' Rights (ACHPR)
- Inter-American Court of Human Rights (IACtHR)
- ADD NEW JUDICIAL BODY

**Field IV.2.4: Relevant recommendations issued by regional human rights mechanisms** This field allows researcher to provide details about the recommendations issued by regional human rights mechanisms. For each New Recommendation entered, there will be three main menus: (1) a drop-down menu to select the relevant special procedure (please title this drop down menu “Regional Human Rights Mechanism”) for the recommendation in question; (2) a text box called “Recommendation Excerpt” which will allow for VERY LONG entries of text taken directly from the recommendation; and (3) menu to enter the “Recommendation Year.” **NO YEAR OBSERVATION.**

#### Human rights mechanisms menu options

- European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)
- European Commission against Racism and Intolerance (ECRI)
- Council of Europe Commissioner for Human Rights
- Inter-American Commission on Human Rights (IACHR)
- Inter-American Rapporteurship on the Rights of Persons Deprived of Liberty (IARRPDL)
- Inter-American Rapporteurship on the Rights of Migrants (IARRM)
- Special Rapporteur on Prisons and Conditions of Detention in Africa (SRPCD)
- Special Rapporteur on Refugees, Asylum Seekers, IDPs and Migrants in Africa (SRRASM)
- ADD NEW HUMAN RIGHTS MECHANISM

### 3. Bilateral/multilateral agreements linked to readmission (RAD)

**Field I.3.1** This field allows researchers to provide details readmission agreements it has with other countries. It will provide a multiple-choice menu that allows researchers to select the country with which the state in question has signed bilateral or regional readmission-related agreements. The list of countries in the menu is the list of countries used for the overall database. Additionally, when filling in data for EU countries, it will be necessary to “Add New” for each external EU country with which the EU has established agreements, stating for example “Mexico (EU agreement).” When filling in the data for Mexico, researchers will select “EU” from the list of agreements in the drop down menu. For each country selected by researchers for a bilateral or regional readmission agreement they will be able to choose the year in which

it came into force. The year menu will begin from 1950 and continuing through to 2013, with the option to “ADD NEW YEAR.”

### Menu Listing Agreements

- XXX Country + date
- ADD NEW Agreement + date

## 4. Non-treaty-based human rights mechanisms

### Field I.4.1: Visits by Special Procedures of the Human Rights Council

**(SP):** This field will be a multiple choice menu that will allow researchers to select each of the special procedures that have visited the country in question as well as the year of the last visit. The year-visit submenu will begin with the year 1990 and continue through to 2013, with the option to ADD NEW YEAR. It will also include an option to “ADD NEW SPECIAL PROCEDURE”

### Special Procedures Menu

- Working Group on arbitrary detention
- Special Rapporteur on the promotion and protection of human rights while countering terrorism
- Special Rapporteur on extrajudicial, summary or arbitrary executions
- Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health
- Special Rapporteur on the human rights of migrants
- Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance
- Special Rapporteur on freedom of religion or belief
- Special Rapporteur on the sale of children, child prostitution and child pornography
- Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment
- Special Rapporteur on trafficking in persons, especially in women and children
- Special Rapporteur on violence against women, its causes and consequences
- ADD NEW SPECIAL PROCEDURE

### Field I.4.2 Relevant Recommendations by Special Procedures of the

**Human Rights Council:** This field allows researcher to provide details about the recommendations issued by special procedures. For each New Recommendation entered, there will be three main menus: (1) a drop-down menu to select the relevant special procedure (please title this drop down menu “Special Procedures”) for the recommendation in question; (2) a text

box called “Recommendation Excerpt” which will allow for VERY LONG entries of text taken directly from the recommendation; and (3) menu to enter the “Recommendation Year.” **NO YEAR OBSERVATION.**

### **Special Procedures Menu**

- **Working Group on arbitrary detention**
- **Special Rapporteur on the promotion and protection of human rights while countering terrorism**
- **Special Rapporteur on extrajudicial, summary or arbitrary executions**
- **Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health**
- **Special Rapporteur on the human rights of migrants**
- **Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance**
- **Special Rapporteur on freedom of religion or belief**
- **Special Rapporteur on the sale of children, child prostitution and child pornography**
- **Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**
- **Special Rapporteur on trafficking in persons, especially in women and children**
- **Special Rapporteur on violence against women, its causes and consequences**
- **ADD NEW SPECIAL PROCEDURE**

**Field I.4.3 Relevant Recommendations of the Universal Periodic Review of the UN Human Rights Council:** This field will be a YES/NO menu that will allow researchers to indicate whether the country in question has been issued relevant recommendations about its immigration-related detention policies or practices during the Universal Periodic Review. It will also include a submenu that will allow researchers to designate the last year such recommendations were issued, starting with year 2008 and going through until 2013 with the option to ADD NEW YEAR.

## **DOMESTIC LAWS AND POLICIES**

### **Add contents**

#### **A. Legal tradition**

**Field III.A.1** This field will allow researchers to indicate all the type(s) of legal tradition(s) in each country. If a country has more than one tradition, select “Add Another rItem.” No observation date.

#### **Menu**

- **Civil law**
- **Common law**
- **Customary law**
- **Jewish law**
- **Muslim law**

#### **B. Laws and regulations**

**Field III.B.1: Constitutional guarantees?** This field (to be titled **Constitutional guarantees?** in the database) will provide a YES/NO menu that will allow researchers to designate whether the country in question has a constitution that provides specific protections relevant to immigration detention (**“Constitutional protections” Yes/No**). For those countries where “YES” is selected, a subfield (**titled “Constitution and Relevant Articles**) will be provided to allow researchers to manually type in the name of the constitution (the English-language translation of the name with the option to include the native-language name in parenthesis) and to list the relevant articles of the constitution. There will also be a **YEAR ADOPTED** field and a **LAST YEAR AMENDED** field, both of which will go back as far as 1750. No observation date.

**Field III.B.2: Core pieces of national legislation:** This field will provide researchers the option to manually type in the name(s) of core national legislation. There will be an ADD NEW option to enter multiple pieces of legislation. For each piece of legislation added, will be a YEAR ADOPTED field and a LAST YEAR AMENDED field. No observation date.

**Field III.B.3: Additional legislation** This field will provide researchers the option to manually type in the name(s) of additional national legislation that provide rights and guarantees related to immigration detention as well as the date(s) legislation was last revised. There will be an ADD NEW option to enter multiple pieces of legislation. For each piece of legislation added, will be a YEAR ADOPTED field and a LAST YEAR AMENDED field. No observation date.

**Field III.B.4: Regulations, standards, guidelines:** This field will provide researchers the ability to manually type in the name of relevant regulations, standards, or guidelines

and the dates they were issued. There will be an ADD NEW option to enter multiple regulations. For each piece of regulation added, there will be a YEAR PUBLISHED. No observation date.

### C. Grounds for administrative immigration-related detention

**Field III.C.1: Immigration-status-related grounds** This field will be a multiple-choice menu that will provide researchers the option to choose the status-related grounds provided in legislation for detaining non-citizens. It will provide the option to ADD NEW GROUND. It will have “Year observation” date.

#### Menu

- Detention to prevent unauthorised entry at the border
- Detention to establish/verify identity and nationality
- Detention for irregular entry, exit or stay
- Detention for failing to respect non-custodial measures
- Detention for failing to respect a voluntary removal order
- Detention to effect removal
- Detention during the asylum process
- Detention to prevent absconding
- Detention by executive discretion
- Detention pending transfer to another Schengen country
- ADD NEW GROUND

**Field III.C.2: Non-immigration-status-related grounds providing for administrative detention in immigration legislation.** This field will be a multiple-choice menu that will provide researchers the option to choose non-immigration-related grounds that are provided in immigration legislation for detaining non-citizens in administrative detention. It will provide the option to ADD NEW GROUND. It will have “Year observation” date.

#### Menu

- Detention on health-related grounds
- Detention on public order, threats or security grounds
- Detention for suspicion of terrorist-related activities
- ADD NEW GROUND

### D. Criminalization of immigration-related violations

**Field III.D.1: Does the country provide specific criminal penalties for immigration-related violations?** This field will be comprised of two YES/NO menus that allow

researchers to indicate whether the country in question provides specific criminal penalties—fines and incarceration—in law for immigration-related violations. It will have “Year observation” date.

**Menu: Fines:** YES/NO

**Menu: Incarceration:** YES/NO

**Field III.D.2: Grounds for criminal immigration-related detention/incarceration and maximum potential duration of incarceration:** This field will provide researchers a multiple-choice menu to select the ground(s) provided in legislation for incarcerating a person for criminal convictions on immigration-status-related violations. The field will provide an option ADD NEW so that researchers can add additional grounds as necessary. For each ground selected there will be an accompanying subfield that allows researchers to type in the maximum length of criminal incarceration (number of days) provided in law for violating that specific ground. It will have “Year observation” date.

#### Menu

- Illegal entry
- Illegal re-entry
- Declared inadmissible by another Schengen state|Declared inadmissible by another Schengen state
- ADD NEW GROUND

### **E. Length of detention**

**Field III.E.1: Maximum length for administrative immigration detention in law.** This field will allow researchers to select either “NO LIMIT” or the total number of days people can be detained, from 1 to 500, with the option to ADD NEW LIMIT. It will have “Year observation” date.

#### Days

- **NO LIMIT**
- **1**
- **2**
- **...**
- **500**
- **ADD NEW LIMIT**

**Field III.E.2: Longest recorded instance of immigration detention.** This field will allow researchers to entry the maximum number of days that the state has ever held a person continuously in administrative immigration detention. It will have “Year observation” date.

**Field III.E.3: Maximum length of time in custody prior to issuance of a detention order.** This field will allow researchers to indicate the maximum amount of time a person

can be help in custody before being formally issued a detention order or equivalent. It will provide a submenu that will allow researchers to select either “NO LIMIT” or the total number of days people can be detained, from 1 to 500 days, with the option to ADD NEW LIMIT. It will have “Year observation” date.

**Field III.E.4: Average length of detention.** This field will allow researchers to indicate the approximate average length of time spent in administrative immigration detention. It will provide a submenu that will allow researchers to select from 1 to 500 days, with the option to ADD NEW AVERAGE. When statistics are provided in fractions (eg 9.7) researchers will ADD NEW to provide the fraction. It will have “Year observation” date.

**Field III.E.5: Maximum length of detention for asylum-seekers.** This field will allow researchers to select either “NO LIMIT” or the total number of days asylum seekers can be detained, from 1 to 500, with the option to ADD NEW LIMIT. It will have “Year observation” date.

Days

- NO LIMIT
- 1
- 2
- ...
- 500
- ADD NEW LIMIT

**Field III.E.6: Maximum length of detention for persons detained upon arrival at ports of entry.** This field will allow researchers to indicate the maximum length of detention upon arrival at ports of entry, including land borders, airports, and seaports. It will provide researchers a menu to select from 1 to 500, with the option to ADD NEW LIMIT. It will have “Year observation” date.

Days

- NO LIMIT
- 1
- 2
- ...
- 500
- ADD NEW LIMIT

**F. Procedural standards**

**Field III.F.1: Provision of basic procedural standards.** This field will provide a list of procedural standards, each of which will be accompanied by two checkboxes -- “In law” and “In practice” – to indicate whether there standards are adhered to. It will have “Year observation” date.

Menu

In law

In practice

Information to detainees	x	x
Right to legal counsel	x	
Access to free interpretation services		
Access to consular assistance		
Access to asylum procedures		
Independent review of detention		
Right to appeal the lawfulness of detention		
Complaints mechanism regarding detention conditions		
Compensation for unlawful detention		

## G. Non-custodial measures (alternatives to detention)

**Field III.G.2: Types of non-custodial measures adopted:** This field will be multiple-choice menu that allows researchers to select the types of non-custodial measures officially made available. The list of measures is based in part on those provided in UNHCR’s 2013 Detention Guidelines. For each item, there will be an option to select “In Law” and/or “In Practice.” It will have “Year observation” date.

### Menu options

• Unconditional release	In Law	In Practice
• Release on bail	In Law	In Practice
• Provision of a guarantor	In Law	In Practice
• Supervised release (reporting)	In Law	In Practice
• Electronic monitoring	In Law	In Practice
• Home detention (curfew)	In Law	In Practice
• Registration/deposit of documents	In Law	In Practice
• Designated regional residence	In Law	In Practice
• Designated non-secure housing	In Law	In Practice
• ADD NEW MEASURE	In Law	In Practice

**Field III.G.3: Impact of alternatives:** This field will allow researchers to indicate whether there is evidence demonstrating that since the adoption of alternatives-to-detention measures the rate of detention in the country has INCREASED or DECREASED either overall or for a subset of the potential detainee population. In addition, the menu will provide the option to select NOT APPLICABLE OR UNKNOWN. The field will be accompanied by a text box that allows researchers to briefly describe nature of the impact that has been observed (for instance, whether an increase has been observed for just families in detention or overall, and the extent to which this has been shown to be a result of the adoption of non-custodial measures). It will have “Year observation” date.

### Menu options

- Increased
- Decreased
- Not applicable



- Unknown

## H. Vulnerable persons

**Field III.H.1: Detention of vulnerable persons:** This field is to indicate the situation of vulnerable people in the given country. The field will provide a menu with two rows of checklists, one for indicating whether each particular vulnerable group can be detained in law, and a second for indicating if they are in practice. It will have “Year observation” date.

Menu options	In law	In practice
<ul style="list-style-type: none"> <li>• Unaccompanied minors</li> <li>• Accompanied minors</li> <li>• Asylum seekers</li> <li>• Women</li> <li>• Pregnant women</li> <li>• Stateless persons</li> <li>• Elderly</li> <li>• Victims of trafficking</li> <li>• Persons with disabilities</li> <li>• ADD NEW GROUP</li> </ul>		

## I. Mandatory detention

**Field III.I.1 Mandatory detention:** This field will be a YES/NO menu that allows researchers to indicate whether the country in question has legal statutes or regulations providing for mandatory detention. In cases where “YES” is selected, there will be a multiple-choice submenu to indicate the categories of non-citizens who are subject to mandatory administrative detention. It will have “Year observation” date.

**Main Menu:** YES/NO

**Submenu options:**

- All asylum seekers
- Persons who request asylum upon arrival at a port of entry
- Persons who request asylum after entry
- Persons who request asylum after being placed in removal proceedings
- All apprehended non-citizens who do not have proper documentation
- Non-citizens who have been placed in removal proceedings
- Non-citizens who have violated a re-entry ban
- ADD NEW

## J. Expedited removal and re-entry ban

**Field III.J.1 Expedited/fast track removal:** This field will be a YES/NO menu that allows researchers to indicate whether the country in question uses expedited/fast track removal procedures. It will have “Year observation” date.

**Field III.J.1 Re-entry ban:** This field will be a YES/NO menu that allows researchers to indicate whether the country in question imposes re-entry bans. It will have “Year observation” date

## **IMMIGRATION AND DETENTION-RELATED STATISTICS**

### **A. Detention, expulsion, and incarceration statistics**

### **B. Demographics and immigration-related statistics**

#### **A. Detention, expulsion, and incarceration statistics**

**Field II.A.1 Number of immigration detainees** This field will be used to manually type in the total number of immigration detainees during a given year-observation. Year-observation.

**Field II.A.2 Number of detained asylum seekers** This field will allow researchers to manually type in the number of asylum seekers placed in administrative immigration detention during a given year-observation. Year-observation.

**Field II.A.3 Number of detained minors** This field will allow researchers to manually type in the annual number of people under the age of 18, including both accompanied and unaccompanied minors, placed in administrative immigration detention during a given year-observation. Year-observation.

**Field II.A.4 Number of apprehensions of non-citizens.** This field will be used to manually type in the total number of apprehensions of non-citizens during a given year-observation. Year-observation.

**Field II.A.5 Immigration detainees as a percentage of total international migrant population.** This field will be used to manually type in the total number of immigration detainees as a percentage of the country's total international migrant population during a given year-observation. Year-observation.

**Field II.A.6 Estimated total immigration detention capacity.** This field will be used to manually type in the estimated total immigration detention capacity of the country—including in administrative, criminal, and ad hoc facilities—during a given year-observation. Year-observation.

**Field II.A.7 Estimated capacity of dedicated long-term immigration detention centres.** This field will be used to manually type in the total detention capacity of country's dedicated immigration detention centres during a given year-observation. Year-observation.

**Field II.A.8 Number of different types of facilities used for immigration detention purpose.** This field will provide a list of different types of facilities and a box next to each type that will allow researchers to type in the number of each type that are used during a given Year Observation. There will be the option to leave the number field empty if there is no data for that particular type of facility. **Important to note, for each item on the**

**menu**, there must be a Year-observation corresponding to that item because we may only have data about only some or a few of these during a given year. If it is easier, this field can be broken into 6 separate fields, one for each type of facility.

**Menu**

<b>Dedicated long-term immigration detention centres</b>	<b>#</b>
<b>Dedicated medium-term immigration detention centres</b>	<b>#</b>
<b>Immigration offices</b>	<b>#</b>
<b>Transit facilities</b>	<b>#</b>
<b>Criminal facilities</b>	<b>#</b>
<b>Ad hoc facilities</b>	<b>#</b>

**Field II.A.9 Number of persons expelled (voluntary returns and deportations).** This field will allow researchers to manually type in the number of persons expelled (returned/deported) from the country in question during a given year-observation. Year-observation.

**Field II.A.10 Percentage of persons removed in relation to total number of people placed in removal procedures.** This field will provide researchers the option to select the percentage of persons removed in relation to total number of people placed in removal procedures during a given year-observation. The menu will provide the option to choose between 1 and 100 percent. Year-observation.

**Field II.A.11 Criminal prison population** This field will be used to manually type in the total criminal prison population in the country in question (including pre-trial detainees and remand/pre-charge prisoners) during a given year-observation. Year-observation.

**Field II.A.12 Percentage of foreign prisoners.** This field will be used to indicate the percentage of foreign criminal prisoners in the country in question during a given year-observation. Year-observation. The menu will provide the option to choose between 1 and 100 percent.

**Field II.A.13 Prison population rate.** This field will be used to type in the criminal prison population rate (per 100,000 of national population) during a given year-observation. Year-observation.

**B. Demographics and immigration-related statistics**

**Field II.B.1 Population.** This field will allow researchers to manually type in the total population of the country in question during a given year-observation. Year-observation.

**Field II.B.2 International migrants.** This field will allow researchers to manually type in the total number of international migrants in the country in question during a given year-observation. Year-observation.

**Field II.B.3 International migrants as a percentage of the population.** This field will allow researchers to select the percentage of international migrants with respect to the

total population of the country in question during a given year-observation. Year-observation. The menu will provide the option to choose between 1 and 100 percent.

**Field II.B.4 Estimated number of undocumented migrants.** This field will allow researchers to manually type in the estimated number of undocumented migrants in the country in question during a given year-observation. Year-observation.

**Field II.B.5 Refugees.** This field will allow researchers to manually type in the number of recognized refugees in the country in question during a given year-observation. Year-observation.

**Field II.B.6 Ratio of refugees per 1000 inhabitants.** This field will allow researchers to type in the number of refugees per 1000 inhabitants in a given country using UNHCR's yearly statistics. Year-observation. The menu will allow researchers to type in percentages that include decimal points (ie 1.1, or 13.45, etc)

**Field II.B.7 Total number of new asylum-seekers applications.** This field will allow researchers to manually type in the total number of new asylum applications in the country in question during a given year-observation. Year-observation.

**Field II.B.8 Refugee recognition rate.** This field will allow researchers to select the refugee recognition rate in the country in question (the recognition rate is a percentage, from 1 to 100 percent) during a given year-observation. Year-observation.

**Field II.B.9 Stateless persons.** This field will allow researchers to manually type in the number of stateless persons in the country in question during a given year-observation. Year-observation.

## Annex 4. Questionnaire on Immigration Detention Law and Practice

Name(s) of respondent(s) \_\_\_\_\_

Organization \_\_\_\_\_

Date completed \_\_\_\_\_

### SECTIONS

- A. Legal Framework
- B. Detention Regime
- C. Procedural Standards
- D. Alternatives, Costs, and Other Detention-related Details
- E. Detention Infrastructure

**NOTE ON SOURCES:** This questionnaire requires that you provide details about the sources of information used to complete each question. Sources can include a specific law or policy, NGO reports, government or international organization publications, media reports, or court cases. Additionally, sources could be individual observations made by the person(s) completing the questionnaire as well as interviews with knowledgeable sources in government or non-governmental organisations. In the case of interviews, please indicate the full name of the person interviewed, his/her job title or position, the date of the interview, and the name and position of the person who carried out the interview. If the source is a personal observation made by the respondent during a visit to a detention centre or other relevant experience, the source information must specify precisely when this observation was made and its context.

### **A. Legal Framework**

#### **1) LEGAL GROUNDS FOR IMMIGRATION DETENTION**

- **Full names (in original official language and translated into English) of most recent immigration and asylum laws that have provisions on administrative immigration-related detention, as well as date of adoption and any amendments that have been made since adoption of law.** Indicate sources of information, including web pages. Please provide source/reference for English text if it is a translation.
- **List the grounds for detaining noncitizens for immigration-related reasons only (i.e. overstaying visas, unauthorized entry, etc) as well as the specific law(s) (including relevant articles/sections) where these grounds are provided.**

#### **2) VULNERABLE GROUPS**

**Please detail whether laws (or regulations) provide specific provisions for the protection of the following vulnerable groups as well as any conditions under which they can be detained.** Please indicate both law, and practice (especially if practice is different from legal provisions):

- **Asylum seekers:**
- **Minors (unaccompanied and accompanied):**
- **Stateless persons:**
- **Victims of trafficking:**
- **Recognized refugees:**
- 

### **3) PROPOSED CHANGES IN LEGISLATION AND/OR POLICY**

- **Are any new laws or policies under consideration at this time in your country that would impact the current detention regime?** If “Yes,” please describe. Provide sources/references.

### **4) FEDERAL/DECENTRALIZED SYSTEMS**

- **Please indicate if your country has a federal or centralized form of national governance. If your country is a federal (or decentralized) system please describe variations in detention policies/laws between states/cantons/regions/provinces.**

### **5) FORMAL CRIMINALISATION**

- **Describe any penalties (fines, incarceration) that are provided in criminal law (as opposed to administrative immigration law) specifically for violations linked to immigration status.** List the specific laws/articles.
- **Are these criminal law sanctions systematically applied? If not, under what specific circumstances are they applied?**

## **B. Detention Regime**

### **6) LENGTH OF DETENTION (provide source/reference including website references if available)**

- **Is there a maximum length of detention in law for non-citizens who have been taken into administrative custody for immigration status-related reasons?** Describe limits; list law or policy.
- **Can maximum detention limits be extended for specific reasons?** Please detail and provide law or policy.
- **Is there a maximum length of time a noncitizen can be held in custody before they are formally issued a detention order by relevant body/court (i.e. at ports of entry)?**
- **What is the longest recorded instance of immigration detention?** Please provide details.
- **What is the average length of time for administrative immigration detention during [YEAR/other administrative period]?** Please provide source.
- **Please describe any variations in maximum detention periods for pre- and post-removal/expulsion orders.** Please provide source.
- **Is there a different maximum length for asylum-seekers?** Please describe.
- **Is there a different length for persons detained at the points of entry (borders/airports)?** Please provide source.
- **Are maximum detention lengths respected?** Please describe.

### **7) NONDEPORTABLE PERSONS (provide source/reference including website references if available)**

- **Please describe any specific provisions regarding the treatment of noncitizens who have reached their maximum lengths in detention but remain nondeportable.**

### **8) PLACES OF DETENTION**

- **Does law or policy describe what places can be used for the purpose of administrative immigration detention?** Please list the relevant laws/policies/regulations and describe their relevant provisions.

### **9) DETAINING AUTHORITIES**



- **Does law or policy empower specific law enforcement bodies to arrest/detain people for immigration-related reasons?** Please list the relevant laws/policies/regulations and describe their relevant provisions.

## 10) CUSTODIAL AUTHORITIES

- **Which government agency has overall custody of noncitizens held in administrative immigration detention?** Please list the relevant laws/policies/regulations and describe their relevant provisions.
- **Are different categories or detainees (i.e. minors, asylum seekers, etc) in the custody of different agencies?**

## 11) SEGREGATION

- **Does law or policy provide for separating detainees for:**
  - **Legal reasons (separating criminal detainees from immigration detainees)**
  - **Gender (separating women and men)**
    - **And/or detaining women with families (when family detention units exist)**
  - **Age reasons (separating unaccompanied children from adults)**
  - **Families (are there special detention units for children)**
- Please list the relevant laws/policies/regulations and describe their relevant provisions.

## 12) DISTINCTIONS / DISCRIMINATION

- **Are specific groups *more often detained* than other groups on grounds of nationality, ethnicity, gender, age, social status/poverty or other grounds?** Please mention sources of information used for answering the question.
- **Are specific groups *treated differently during detention* on grounds of nationality, ethnicity, gender, age, social status/poverty or other grounds?** Please mention sources of information used for answering the question.

## **C. Procedural Standards**

### **13) ACCESS TO LEGAL COUNSEL**

- **Is detainee access to legal counsel provided in law/policy?** Please describe level of access and cite law/policy.
- **Is this access provided in actual practice?** Please describe sources of information.
- **Please describe type (public, private) of legal counsel detainees have access to.**
- **Do noncitizens detained in transit zones have access to legal counsel?**

### **14) INFORMATION TO DETAINEES ABOUT DETENTION**

- **Are detainees informed of the reason for detention?** Please describe sources of information.
- **Is information provided in languages detainees understand?** Please describe sources of information.

### **15) CONSULAR ASSISTANCE**

- **To your knowledge, are detainees informed of their right to consular assistance? Are there any limitations imposed on detainees regarding their access to consular representatives?**

### **16) CAN DETAINEES CLAIM ASYLUM?**

- **Yes or No?**
- **Please describe any limitations on ability to claim asylum while in detention.**
- **Does UNHCR have access to immigration detainees?** Please describe.

### **17) REVIEW OF DETENTION**

- **Is there an automatic judicial or administrative review of the necessity and legality of detention?** Please cite law/policy.
- **How frequently are detention decisions reviewed?** Please describe sources of information.

### **18) APPEALS**

- **Please describe provisions for appealing detention decision or challenging the lawfulness of detention.** Please cite law/policy.

### **19) COMPLAINTS**

- **Do detainees have access to complaints mechanisms regarding their treatment in detention?** Please describe.
- 

### **20) TRANSLATION**

- **Do detainees have access to free interpretation or translation services?**

### **21) COMPENSATION**

- **Do detainees have access to compensation for unlawful detention?** (please describe sources of information)

## **D. Additional Information**

### **22) ALTERNATIVES TO DETENTION**

The International Detention Coalition defines “alternatives to detention” as: *Any legislation, policy or practice that allows for asylum seekers, refugees and migrants to reside in the community with freedom of movement while their migration status is being resolved or while awaiting deportation from the country*

- **According to this broad definition, please describe any alternative to detention laws, policies or practices that have been adopted or are under consideration in your country. For each non-custodial measure that has been officially adopted, please indicate whether it is used in practice.**
  
- **If a country has adopted alternative to detention law, policy or practice has there been any discernible impact on detention practices? For example:**
  - **Have a decreasing number of people been detained for immigration purposes since the adoption of alternatives?**
  - **Has your country stopped detaining certain categories of migrants as a result of the adoption of alternatives (e.g. children, families, refugees and asylum seekers, survivors of torture or trauma, trafficked persons, aged persons, persons with mental or physical health concerns etc)?**
  - **Have conditions of detention or access to legal aid improved as a result of the adoption of alternatives?**

### **23) STATISTICS**

**Do officials maintain statistics on the issues below? If yes, please provide details.**

- **Number of people detained on immigration-related charges (YEAR)?**
- **Number of children detained on immigration-related charges (YEAR)?**
- **Number of asylum-seekers detained on immigration-related charges (YEAR)?**
- **Total immigration detention capacity (YEAR)?**
- **Average number of people in immigration detention at any given time (during what YEAR)?** **Number of people deported (YEAR)**

### **24) COST OF DETENTION**

- **Please detail any available information regarding the costs of immigration-related detention (annual budget, cost per detainee day, budget for building and maintenance, security, staff, food, etc). Please describe sources of information.**

### **25) CIVIL SOCIETY**

- **List any nongovernmental organizations or national human rights mechanisms that work with or on behalf of detainees; describe their role and capacity.**
- **Have NGOs or other rights mechanisms filed complaints in relation to migrant detention at the national, regional, and international levels? Detail recent or landmark cases.**

### **26) OFFICIAL VISITS and INTERNATIONAL COOPERATION**

- **Please describe whether any international or regional rights bodies have made official visits to immigration detention centres in your country. Provide details about most recent visits as well as any outcomes (official reports, etc.)**

- **Does your country have readmission or other supra-state agreements that allow it to receive OR “return” third-country nationals?** Please describe, indicate with which countries and name and date of agreement.
- **Does your country provide OR receive any financial or other forms of assistance from another country or international body (like the European Union or the International Organisation for Migration)?** Please describe.

## **27) OTHER ISSUES**

- **Describe any relevant important issues in your national context that are not addressed in this state-level questionnaire (maximum 200 words).**

## **E. Detention Infrastructure**

**I. Overall Detention System:** Please provide a brief overview of no more than 2-3 paragraphs describing the types of facilities that are typically used in your country for the purposes of immigration-related detention, detailing the different facilities that may be used during the various phases of detention, from initial apprehension (including at ports of entry or upon making an asylum claim) to eventual removal. Facilities can include police stations, local jails, prisons, dedicated immigration detention centres, airport lock ups, or any other kind of facility you are aware of, like former hotels or military bases. As part of this overview, provide a list of all the sites of immigration detention that you are aware of (including the name of the facility, its location, and the type of facility). Only include on the list those facilities that are typically used for periods of more than three days. (For a detailed description of how the Global Detention Project categorizes detention centres in its data, see “An Introduction to Data Construction on Immigration-related Detention,” available here:

[www.globaldetentionproject.org/fileadmin/publications/GDP\\_data\\_introduction\\_v2.pdf](http://www.globaldetentionproject.org/fileadmin/publications/GDP_data_introduction_v2.pdf).)

**II. Individual Facility Data:** Please choose 2-3 facilities (if that many exist) in your country, targeting the most used detention centres, and provide the following specific information for each of them:

- 1) Official name of detention facility
- 2) Type of facility: **A. prison; B. police station, C. dedicated immigration detention centre;** or **D. other.** If “other,” please carefully describe what kind of facility or camp it is.
- 3) Location of facility (city and region/state)
- 4) Name of agency or entity that manages the facility (for example, the police, the immigration authority, etc.)
- 5) Detainee demographics (does the facility detain men, women, children, and/or families?)
- 6) Detainee segregation: does the facility separate men, women and children? If it is a prison, are criminal detainees separated from immigration detainees?
- 7) Facility capacity (the official number of people that can be detained in the facility)
- 8) Reported population: Provide details
- 9) Provide a description of the living conditions in each facility.