



COUNTRY REPORT

IMMIGRATION DETENTION IN PORTUGAL

RESETTLING REFUGEES, DETAINING ASYLUM SEEKERS

JUNE 2019

THE GLOBAL DETENTION PROJECT MISSION

The Global Detention Project (GDP) is a non-profit organisation based in Geneva that promotes the human rights of people who have been detained for reasons related to their non-citizen status. Our mission is:

- To promote the human rights of detained migrants, refugees, and asylum seekers;
- To ensure transparency in the treatment of immigration detainees;
- To reinforce advocacy aimed at reforming detention systems;
- To nurture policy-relevant scholarship on the causes and consequences of migration control policies.

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Front cover image: A *Servicio De Estrangeiros e Fronteiras* (SEF) officer inspects passports at Lisbon Airport, © Miguel A. Lopes

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GLOSSARY

CIT Centros de instalação temporária (Temporary Installation Areas)

CPR Portuguese Refugee Council

IOM International Organisation for Migration

NPM National Preventative Mechanism

SEF Servicio De Estrangeiros e Fronteiras (Foreigners and Borders

Service)

UHSA Unidade Habitacional de Santo António



KEY FINDINGS

- There is no definition of the risk of absconding in Portuguese law, and the concept is broadly interpreted.
- Asylum seekers may be placed in detention when they lodge their asylum request at a border post.
- Portuguese law does not prohibit the detention of children and reports suggest that the country has begun to regularly confine unaccompanied and accompanied minors in detention facilities.
- "Alternatives to detention" are rarely considered for asylum seekers.
- No legal standard exists for the regulation of conditions in detention.
- Limited statistics concerning the country's detention estate are available.



1. INTRODUCTION

Portugal has actively sought to encourage refugee resettlement on its territory, including since the onset of the "refugee crisis" in 2015. While many other EU states like Hungary, Slovakia, and Slovenia have notoriously sought to close their borders and limit refugee quotas established by the European Commission (EC), Portugal has bucked the trend, even announcing that it should accept 10,000 refugees—three times its EC quota.¹ Prime Minister Antonio Costa declared to applause at a party conference in May 2018, "We need more immigration and we won't tolerate any xenophobic rhetoric."²

This policy has been motivated in part by the country's shrinking population. According to Eurostat, the country's population has shrunk every year since 2010.³ The Interior Minister stated in a 2019 interview that accepting refugees is "an economic and social opportunity."⁴ Notably, in 2018, when Mediterranean countries like Malta and Italy were refusing to allow humanitarian search-and-rescue boats to land, Portugal offered refuge to migrants and asylum seekers stranded at sea. The country signed a bilateral agreement with Greece to relocate 1,000 refugees and asylum seekers, pledged to admit 1,100 from Turkey and Egypt,⁵ and reportedly entered into talks with Germany to relocate thousands more.⁶

Despite these ambitious plans, the country has not received the numbers it has sought to attract and many of those resettled in Portugal have since left, reportedly due to a lack of opportunities and the poor management and delivery of state support. Scholars have also expressed doubt over the motives behind this apparent change of heart in the country's approach to refugees, arguing that it may also be seen as a "convenient political strategy" that serves the national interest "by promoting the image of a supportive country in the

¹ P. M. Costa and L. Sousa, "Portugal's Openness to Refugees Makes Demographic and Economic Sense," *Refugees Deeply*, 10 February 2017, https://www.newsdeeply.com/refugees/community/2017/02/10/portugals-openness-to-refugees-makes-demographic-and-economic-sense

² The Straits Times, "Portugal, the European Country that Wants More Migrants," 2 July 2018, https://www.straitstimes.com/world/europe/portugal-the-european-country-that-wants-more-migrants

³ Eurostat, "Database," https://ec.europa.eu/eurostat/data/database

⁴ L. Lee, "Portugal, the European Country that Still Welcomes Refugees," *Al Jazeera*, 8 March 2019, https://www.aljazeera.com/news/2019/03/portugal-european-country-welcomes-refugees-190308103521681.html

⁵ UNHCR, "First Resettled Refugees Arrive in Portugal Under New Scheme," 19 December 2018, https://www.unhcr.org/news/press/2018/12/5c1a0d624/first-resettled-refugees-arrive-portugal-under-new-scheme.html

⁶ N. Donn, "Portugal 'In Advanced Talks with Germany to Relocate Thousands of Refugees," *Portugal Resident*, 10 March 2019, https://www.portugalresident.com/2019/03/10/portugal-in-advanced-talks-with-germany-to-relocate-thousands-of-refugees/

⁷ K.J. Jurriaans, "Portugal, the Country that Can't Get Enough Refugees," *Middle East Eye,* 23 August 2017, https://www.middleeasteye.net/news/portugal-country-cant-get-enough-refugees

current European refugee crisis, despite its internal socio-economic crisis, as well as a way of obtaining human resources to boost economic activity and combat the country's demographic deficit."8

Also importantly, while Portuguese authorities have continued to praise the merits of refugee resettlement, the country has simultaneously implemented strict immigration control measures. When asylum seekers lodge applications at the country's borders, they are systematically detained—an issue that was flagged in 2019 by UNHCR in its submission to the Universal Periodic Review for Portugal.

There has also been an increase in the numbers of children being placed in detention. Until 2017 children appear to have been rarely detained; since then, however, authorities have placed children (both accompanied and unaccompanied) and other vulnerable groups in detention more regularly. While the *Servicio De Estrangeiros e Fronteiras* (SEF) (Foreigners and Borders Service) reported that two accompanied children were detained in 2015, in 2017 17 unaccompanied children were detained at the border for periods ranging from four to 50 days, and 40 families with children were detained for periods ranging from three to 60 days. In 2018, 75 asylum-seeking children were detained at the country's borders.

While conditions in the country's sole dedicated immigration detention facility are reported to be "adequate," conditions in airport detention facilities have been criticised as inappropriate for "longer term" detention. Observers have also said that they are not suitably equipped for confining children and families.

⁸ P. M. Costa and L. Sousa, "You Are Welcome in Portugal: Conviction and Convenience in Framing Today's Portuguese Politics on European Burden Sharing of Refugees," *Oxford Monitor of Forced Migration*, 6 (2), https://bit.ly/2l8W9hs

⁹ Asylum Information Database (AIDA), "Country Report: Portugal, 2017 Update," March 2018, https://www.asylumineurope.org/reports/country/portugal



2. LAWS, POLICIES, PRACTICES

2.1 Key norms. Provisions related to immigration detention in Portugal are provided in two key laws. Law 23/2007,¹⁰ hereinafter referred to as the "Immigration Act," provides "the legal framework for entry, permanence, exit, and removal of foreigners into and out of national territory" (*Regulamenta a lei 23/2007, de 4 de Julho, que aprova o regime jurídico de entrada, permanência, saída e afastamento de cidadãos estrangeiros do território nacional*). This law has been amended five times, most recently in March 2019 by Law 28/2019. Meanwhile, Law 27/2008¹¹ of June 30, amended by Law 26/2014 of 5 May, (hereinafter the "Asylum Law,)" provides for the detention of asylum seekers under certain circumstances.

2.2 Grounds for immigration detention. Portugal provides three grounds for the expulsion or removal of non-citizens. The first ground consists of expulsion as an accessory penalty, that is, following a criminal conviction. The remaining two grounds are expulsion following irregular entry or stay (an administrative expulsion) and expulsion if there is reason to believe the individual poses a threat to national security (which requires a judiciary order). Article 142 of the Immigration Act provides for the possibility of detaining non-citizens during expulsion proceedings. More specifically, Article 146 of the Immigration Act establishes that a foreign citizen who unlawfully enters or stays in Portugal is to be arrested by the police and placed in SEF (*Servicio De Estrangeiros e Fronteiras* [Foreigners and Borders Service]) custody. Detention beyond 48 hours must be authorised by a judge.

The main ground justifying immigration detention is the risk of absconding (Article 142). However, there is no definition of the risk of absconding in Portuguese law. This is thus out of line with the ruling of the Court of Justice of the European Union in Al Chodor, which found that objective criteria for finding a risk of absconding must be established in a binding legal provision. Legal provision. Legal provision. The Experts have reported that the concept of absconding is broadly interpreted in Portugal. It may suffice that a non-citizen does not have a habitual residence for them to be considered at risk of absconding. According to the Portuguese Ombudsman

¹⁰ SEF Immigration and Borders Service, "Legislation – Regime for Foreign Nationals," http://www.sef.pt/portal/V10/EN/aspx/legislacao/index.aspx?id_linha=4191&menu_position=4133#0

¹¹ SEF Immigration and Borders Service, "Legislation – Asylum Regime," http://www.sef.pt/portal/V10/EN/aspx/legislacao/index.aspx?id_linha=4212&menu_position=4134#0

¹² João Portugal (Provedor de Justiça, Portugal), Phone call with Agnese Zucca (Global Detention Project), 22 May 2019.

¹³ Article 142 applies both to the administrative expulsion of non-citizens for illegal stay and entry and for the expulsion of non-citizens due to the suspicion of posing a threat to national security (João Portugal (Provedor de Justiça, Portugal), Phone call with Agnese Zucca (Global Detention Project), 22 May 2019).

¹⁴ The Al Chodor ruling concerned the risk of absconding in the context of detention within the Dublin trasfer but the Court's reasoning applies by analogy to the risk of absconding as a ground warranting pre-removal detention.

¹⁵ J. Esteves, "Redial Project: National Synthesis Report – Portugal (Draft)," *Odysseus Network*, 2017, http://euredial.eu/docs/publications/national-synthesis-reports/Portugal_III.PDF

(*Provedor de Justiça*), if a person hampers immigration procedures in a "non-normal way"—such as changing their address frequently, avoiding receipt of notifications, or failing to communicate important changes in circumstances—it can be understood by a judge "as enhancing the risk of that particular case, therefore allowing a more restrictive measure."¹⁶

Detention pursuant to Articles 142 and 146 refers to on-going proceedings and is thus applied preventively, before a definitive judicial decision on expulsion or removal has been taken. However, Portuguese law also provides for the possibility of detaining non-citizens once a definitive decision has been taken. ¹⁷ In these cases, non-citizens are granted a 10 to 20 day period in which they should leave Portugal. At the same time however, Article 160 of the Immigration Act provides for the possibility of detaining the individual for 30 days (and up to a maximum of three months in exceptional cases).

2.3 Criminalisation. Portugal does not penalise irregular entry or stay with fines or imprisonment.¹⁸

2.4 Asylum seekers. When Portugal transposed the EU Reception Conditions Directive, it expanded the instances in which asylum seekers may be detained—similar to Slovakia—significantly increasing the instances in which asylum seekers may be detained.¹⁹

According to Article 35A, Paragraph 1 of the Asylum Law, non-citizens applying for asylum cannot be kept in detention for the mere fact of having requested protection. Paragraphs 2 and 3 of the same article provide grounds for which asylum seekers may be detained in instances where less coercive measures cannot be applied. Paragraph 2 establishes that applicants can only be placed or held in detention facilities on grounds of national security, public order, public health, or when there is a risk of absconding, based on an individual assessment. However, Paragraph 3 states that asylum seekers may also be detained when asylum applications are (a) lodged at border posts, (b) submitted following a removal decision, or (c) in the context of the Dublin procedure.

Applications submitted at border posts are subject to a "special system." Article 26(1) states that applicants need to remain in the international zone of the port or airport pending the decision on their asylum application. According to Article 24(4), the SEF is to then issue a decision on the application within seven days. The detention of asylum seekers must be communicated to a competent magistrate who must assess it within 48 hours (Article 35A (6)).

According to the Portuguese Refugee Council (CPR), asylum seekers are systematically detained when they lodge their application at the border. As well as this, they report that in practice non-citizens remain in detention after submitting an application from a detention facility. However, the CPR reports that it is not aware of any asylum seekers that have been

¹⁶ Joao Portugal (Provedor de Justica Portugal), Letter to Michael Flynn (Global Detention Project), 6 October 2017.

¹⁷ João Portugal (Provedor de Justiça, Portugal), Phone call with Agnese Zucca (Global Detention Project), 22 May 2019.

¹⁸ European Union Agency for Fundamental Rights (FRA), "Criminalisation of Migrants in an Irregular Situation and of Persons Engaging with Them," March 2014, http://fra.europa.eu/en/publication/2014/criminalisation-migrants-irregular-situation-and-persons-engaging-them

¹⁹ Portuguese Refugee Council (CPR), "Portugal Adopts New Asylum Legislation Transposing EU Asylum Directives," *European Council on Refugees and Exiles (ECRE)*, 10 July 2014, https://www.ecre.org/portugal-adopts-new-asylum-legislation-transposing-eu-asylum-directives/

detained on the grounds of national security, public order, and public health; a risk of absconding; or under the Dublin procedure.²⁰

In its 2019 submission to the Universal Periodic Review of Portugal, UNHCR raised concerns regarding the systematic detention of asylum seekers at the border.²¹

2.5 Children. Portuguese law provides for the detention of children. Reflecting the EU Returns Directive, Article 146A(3) states that "special attention" must be given to various groups of "vulnerable persons" in detention, including children and unaccompanied children (as well as disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape, or other serious forms of psychological, physical, or sexual violence).

The law stipulates that detained families are to be provided with separate accommodation (Article 146A(6)). However, according to the Portuguese Ombudsman, in practice this law cannot be applied in most detention facilities because they lack adequate space and conditions for families and children. Acting in its capacity as Portugal's National Preventive Mechanism (NPM), the ombudsman reported in 2017: "The installations are inept to accommodate families either due to the absence of rooms for families that ensure privacy and allow family members to stay together or due to the lack of equipment for children."²²

The detention of asylum seeking unaccompanied and accompanied minors is also implicitly provided for in Articles 26(2) and 35 B(6)(7) and (8) of the Asylum Law, which stipulate special conditions in facilities for unaccompanied minors, separate accommodation for families, and monitoring and support for vulnerable persons.

According to the ombudsman, until 2017 very few child detention cases were reported—in 2015, only two accompanied children were detained, according to statistics provided by the SEF.²³ One reason for this, according to the ombudsman, is that children whose age is in doubt are likely not included in statistics. In a message to the Global Detention Project (GDP), the ombudsman wrote that "in most of the cases the age of border line cases is probably registered as undetermined."²⁴ In its 2017 report on immigration detention, the

²⁰ Conselho Português para os Refugiados (CPR), "Country Report: Portugal," *Asylum Information Database* (*AIDA*), *European Council on Refugees and Exiles (ECRE*), April 2019, http://www.asylumineurope.org/sites/default/files/report-download/aida pt 2018update.pdf

²¹ Un High Commissioner for Refugees (UNHCR), "Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights' Compilation Report, Universal Periodic Review: 3rd cycle, 33rd Session," May 2019, https://www.refworld.org/docid/5ccad2737.html

²² Provedor de Justica, "*Tratamento dos cidadãos estrangeiros em situação irregular ou requerentes de asilo nos centros de instalação temporária ou espaços equiparados*," 2017, https://www.provedor-jus.pt/site/public/archive/doc/Cidadaos_estrangeiros_e_o_direito_a_um_tratamento_digno.pdf

²³ Joao Portugal (Provedor de Justica), Email Correspondence with Michael Flynn (Global Detention Project), 25-26 October, 2017.

²⁴ Joao Portugal (Provedor de Justica), Email Correspondence with Michael Flynn (Global Detention Project), 25-26 October, 2017.

ombudsman highlighted the lack of statistics concerning children as a barrier preventing better assessment of the country's detention practices.²⁵

However, as the Portuguese Refugee Council (CPR) has reported, since 2017 Portugal has changed its practice regarding the detention of children: unaccompanied and accompanied minors, as well as other members of vulnerable groups, who used to be exempted in practice, are now more regularly confined in detention facilities. According to the CPR, 75 asylum-seeking children (24 unaccompanied and 51 accompanied) were detained at the border in 2018. According to information gathered by the GDP, in cases other than detention at the border, which take place at the UHSA in Porto, detention of children remains rare.²⁶

In 2017, the confinement of an asylum-seeking family with children at Lisbon Airport was heavily criticised by the ombudsman, particularly due to the inadequate detention conditions offered to a child with special needs.²⁷ Later, in July 2018, media reports circulated highlighting the detention of young asylum seekers at the airport's "Temporary Installation Area" (CIT),²⁸ prompting criticism from the ombudsman and UNICEF.²⁹ In response, the Interior Ministry determined that accompanied and unaccompanied children under the age of 16 cannot be detained for more than seven days in the CIT, amongst other measures.³⁰

In its submission to the Universal Periodic Review of Portugal (which took place in May 2019), UNHCR expressed its concern over the change in practice resulting in the resumption of the detention of children (and other members of vulnerable groups) at the border and recommended that the country end the detention of children, particularly those who are unaccompanied.³¹

2.6 Other vulnerable groups. The detention of vulnerable persons is provided for in Portuguese law. According to Article 146A(3) of the Immigration Act, vulnerable individuals include (other than children): disabled individuals, elderly people, pregnant women, single parents with children, and victims of torture, rape, and other serious forms of violence.

²⁵ Provedor de Justiça, *Tratamento dos cidadãos estrangeiros em situação irregular ou requerentes de asilo nos centros de instalação temporária ou espaços equiparados*, 2017, https://www.provedor-jus.pt/site/public/archive/doc/Cidadaos_estrangeiros_e_o_direito_a_um_tratamento_digno.pdf. Original quote: "Os dados fornecidos são úteis para uma compreensão geral da situação das pessoas detidas, dos funcionários e dos locais de detenção visitados; revelaram-se, contudo, insuficientes para um tratamento unitário e transversal, uma vez que se verificou que os serviços não recolhem, organizam e tratam os elementos estatísticos que seriam importantes para o conhecimento efetivo da particular realidade dos CIT. Por exemplo, excetuando o caso da UHSA, não existem (ou são insuficientes) registos sobre agregados familiares, menores não acompanhados e pessoas em situação de vulnerabilidade, designadamente com deficiência, transexuais ou mulheres grávidas ou lactantes."

²⁶ Joao Portugal (Provedor de Justice, Portugal), Email to Michael Flynn (GDP), 21 May 2019.

²⁷ Asylum Information Database (AIDA), "Detention of Vulnerable Applicants: Portugal," https://www.asylumineurope.org/reports/country/portugal/detention-vulnerable-applicants

²⁸ See: J.G. Henriques,, "SEF detém crianças requerentes de asilo contra recomendações da ONU," Publico, 22 July 2018, https://www.publico.pt/2018/07/22/sociedade/noticia/sef-detem-criancas-requerentes-de-asilo-contra-recomendacoes-da-onu-1838478

²⁹ Expresso, "*Unicef Portugal exige fim de detenção de crianças no aeroporto*," ²⁴ July 2018, https://expresso.pt/sociedade/2018-07-24-Unicef-Portugal-exige-fim-de-detencao-de-criancas-no-aeroporto

³⁰ Asylum Information Database, "Detention of Vulnerable Applicants: Portugal," https://www.asylumineurope.org/reports/country/portugal/detention-vulnerable-applicants#footnote7_w86ctoa

³¹ UN High Commissioner for Refugees (UNHCR), "Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights' Compilation Report. Universal Periodic Review: 3rd cycle, 33rd Session," May 2019, https://www.refworld.org/docid/5ccad2737.html

Article 160(4) of the Immigration Act provides for special guarantees for vulnerable persons placed in detention following a definitive expulsion decision.

The detention of vulnerable applicants is also provided for in the Asylum Law, in Article 35B(8). Article 2(1)(y) of the Asylum Law specifies that members of the following groups are to be considered as in need special procedural guarantees: unaccompanied minors, disabled persons, elderly persons, pregnant women, single parents with children, and victims of torture, rape, or other serious form of violence.

2.7 Length of detention. Non-citizens can be placed in pre-removal detention for up to 60 days for both pre-removal detention (Article 146 (3) of the Immigration Act) and for the detention of asylum seekers (Article 35B (1) of the Asylum Law). Pursuant to Article 160(3) of the Immigration Act, the maximum period of detention following a definitive expulsion or removal decision is 30 days, although this can be extended to a maximum of three months in exceptional cases (Article 160(6), Immigration Act).

Asylum seekers who are detained at the border can be confined for up to seven days (Article 24(4) of the Asylum Law). If the seven-day period expires before a decision on the asylum application has been taken, the applicant is to be allowed to enter national territory (Article 26(4)). However, if the application is rejected and the applicant files an appeal, they can be detained pending a final decision for up to 60 days.³²

2.8 Procedural standards. The right to liberty is constitutionally guaranteed to everyone under Portuguese law (Portuguese Constitution, Article 27(1)). Consequently, a detention order needs to be validated by a judge of the lower criminal court (*juízo de pequena instância criminal*) within 48 hours of detention (Article 146, Immigration Act). Other guarantees for foreign citizens in immigration detention include the right to contact legal representatives, family members, and consular authorities (Article 40(1) and 146A (1), Immigration Act) and the right to be informed of such rights (Article 146A(6), Immigration Act).

With respect to asylum seekers in border procedures, detention must be communicated within 48 hours to the judge of the lower criminal court for validation (Article 35A(5) and 35A(6), Asylum Law). For asylum seekers, review of detention can both be made *ex officio* by the judge or requested by the detained applicant when new circumstances or information may render detention unlawful. Asylum seekers also enjoy the other guarantees mentioned above for detained non-nationals (found in Article 35 B of the Asylum Law). In addition, applicants for international protection have the right to contact representatives of UNHCR, the Portuguese Refugee Council, and NGOs working on UNHCR's behalf (Article35B(3), Asylum Law). The representatives of these organisations have a right to access detention facilities (Article 49(6), Asylum Law).

2.9 Non-custodial measures ("alternatives to detention"). Article 142 of the Immigration Act provides for a number of non-custodial measures, specifying that most of the measures

³² João Portugal (Provedor de Justiça, Portugal), Email to Michael Flynn (Global Detention Project), 21 May 2019; Conselho Português para os Refugiados (CPR), "Country Report: Portugal," *Asylum Information Database (AIDA), European Council on Refugees and Exiles (ECRE)*, April 2019,

http://www.asylumineurope.org/sites/default/files/report-download/aida_pt_2018update.pdf; República Portuguesa, "Article 35B(1), Lei do Asilo (Lei n°27/2008, de 30 de junho, que estabelece as condições e procedimentos de concessão de asilo ou proteção subsidiária e os estatutos de requerente de asilo, de refugiado e de proteção subsidiária, alterada pela Lei n° 26/2014 de 5 de maio," https://sites.google.com/site/leximigratoria/lei-do-asilo

provided in the Code of Criminal Procedure can be applied. These include: a statement of identity and residence; bail; reporting to authorities; job suspension; prohibition and imposition of behaviour (e.g. prohibition to leave a given area); and the obligation to stay at home. Article 142 also lists two additional measures (besides detention) that apply specifically to immigration cases: reporting to the SEF, and residence restrictions with electronic surveillance.

Similar non-custodial measures are provided for in Article 160(3), in the context of the enforcement of a definitive expulsion or removal decision. These include regular reporting to the SEF, residence restrictions with electronic surveillance, and bail.

By contrast, the Asylum Law explicitly states that applicants for international protection may only be placed in detention "if it is not possible to effectively implement less serious alternatives." However, the only alternatives that are listed are reporting to the SEF or house arrest with electronic surveillance (Article 35A (4)). According to the CPR however, assessments of asylum seekers' individual situations are not conducted and alternatives are seldom considered in practice, except for cases relating to the release of vulnerable applicants.³³ In its 2018 report, the European Commission against Racism and Intolerance (ECRI) denounced Portugal's excessive detention of asylum seekers.³⁴

According to the European Migration Network's 2014 report on detention, residence restrictions with electronic surveillance represent an "alternative form of detention and not an alternative to detention," as non-citizens are effectively confined in a house.³⁵

2.10 Detaining authorities and institutions. According to the Immigration Act, non-citizens in an irregular situation can be detained by a police authority and, if possible, handed over to the SEF (Article 146(1)). Several authorities are competent for such arrests (the SEF itself, the *Guarda Nacional Republicana*, the *Polícia de Segurança Pública*, the *Polícia Judiciária*, and the *Polícia Marítima*) (Article 146(7)).

The SEF is responsible for the management of Portugal's sole detention facility (*centro de instalacao temporaria*)—the Unidade Habitacional de Santo António (UHSA), in Porto. The SEF collaborates with several non-state actors in delivering services at the facility, including the International Organisation for Migration (IOM), Jesuit Refugee Services (JRS), and Doctors of the World (*Medicos du Mundo*). In 2017, the ombudsman told the GDP, "JRS provides help to internees and identifies vulnerabilities, with the help of a psychological and social care team (it also provides legal aid) and the IOM is responsible for adequate training of staff. JRS participates in the centre management, but the ultimate responsibility lies always with the SEF (state)."³⁶

³³ Conselho Português para os Refugiados (CPR), "Country Report: Portugal," *Asylum Information Database (AIDA), European Council on Refugees and Exiles (ECRE)*, April 2019, http://www.asylumineurope.org/sites/default/files/report-download/aida_pt_2018update.pdf

³⁴ European Commission against Racism and Intolerance (ECRI), "ECRI Report on Portugal, Fifth Monitoring Cycle," 2 October 2018, https://rm.coe.int/fifth-report-on-portugal/16808de7da

³⁵ SEF Immigration and Borders Service, "The Use of Detention and Alternatives to Detention in the Context of Immigration Policies, Synthesis Report for the EMN Focussed Study 2014," 2014, https://bit.ly/2nmXvYy

³⁶ Joao Portugal (Provedor de Justica Portugal), Letter to Michael Flynn (Global Detention Project), 6 October 2017.

Short-term holding facilities located at the airports of Faro, Porto, Lisbon, Funchal, and Ponta Delgada, as well as border control stations, are under the management of SEF, ANA (*Aeroportos de Portugal*), and air operators.

As with legislation in other EU countries, Portuguese law stipulates that airline carriers are responsible for returning foreign nationals who do not meet requirements for entry. They must also pay expenses related to a passenger's period of stay in a detention facility (Immigration Act, Article 41(2)).

2.11 Domestic monitoring. Immigration detention practices receive scrutiny from both official entities and NGOs. The Portuguese Ombudsman (*Provedor de Justiça*), through its mandate as the NPM, is responsible for visiting detention facilities. In the second half of 2016 the NPM visited, without prior notification, the CITs in Porto, Lisbon, and Faro, as well as the UHSA.³⁷ In 2017, the NPM visited the CIT in Lisbon.³⁸

The Portuguese Refugee Council (CPR) and other national NGOs working in this domain have a right to access detention facilities, pursuant to Article 49(6) of the Asylum Law. The CPR produces "country reports" for ECRE's Asylum Information Database, which provide information about asylum detention in Portugal.³⁹

2.12 International monitoring. Portugal's detention practices have received attention from several international bodies. Portugal is a member state of the Council of Europe and ratified the European Convention on the Prevention of Torture in 1990. Consequently, it can receive CPT monitoring visits from the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). The last CPT visit took place in 2016,⁴⁰ but the delegation did not visit sites of immigration detention on that occasion, and nor did it visit such facilities in its 2013, 2012, or 2008 visits.⁴¹

Portugal has been a party to the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment since 1989, and ratified its Optional Protocol (OPCAT)

³⁷ Provedor de Justiça, "O Mandato," http://www.provedor-jus.pt/?idc=50; Provedor de Justiça, "Tratamento dos cidadãos estrangeiros em situaçaoirregular ou requerentes de asilo nos centros de instalação temporária ou espaços equiparados", Visitas do Mecanismo Nacional de Prevenção, http://www.provedor-jus.pt/archive/doc/Cidadaos_estrangeiros_e_o_direito_a_um_tratamento_digno.pdf

³⁸ Provedor de Justiça, "*Relatório à assemblea da república 2017,*" 2018, https://www.provedor-jus.pt/site/public/archive/doc/MECANISMO_2017_web.pdf

³⁹ Asylum Information Database, "Portugal," http://www.asylumineurope.org/reports/country/portugal

⁴⁰ Council of Europe, "The CPT and Portugal," https://www.coe.int/en/web/cpt/portugal

⁴¹ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), "Report to the Portuguese Government on the Visit to Portugal Carried Out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 September to 7 October 2016, CPT/Inft (2018) 6," https://rm.coe.int/168078e1c8; European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), "Report to the Portuguese Government on the Visit to Portugal Carried Out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 13 to 17 May 2013, CPT/Inf (2013) 35," https://rm.coe.int/16806979c5; European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), "Report to the Portuguese Government on the Visit to Portugal Carried Out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), "Report to the Portuguese Government on the Visit to Portugal Carried Out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), "Report to the Portuguese Government on the Visit to Portugal Carried Out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 14 to 25 January 2008, CPT/Inf (2009) 123," https://rm.coe.int/16806979b8

in 2013.⁴² As such, places of detention can be monitored by the UN Subcommittee on the Prevention of Torture (SPT). The SPT visited Portugal in May 2018, but the report on the visit remains confidential.⁴³

2.13 Transparency and access to information. It is challenging to source up to date and comprehensive information about immigration detention in Portugal. Between 2013 and 2015, the GDP and its partner Access Info Europe sent several requests to the SEF seeking basic information about where people are detained for immigration-related reasons and how many children and asylum seekers had been detained in recent years. The requests, which were framed as freedom of information requests permitted under Portuguese law, were part of a larger study of 33 countries in Europe and North America whose findings were published in the 2015 report "The Uncounted: The Detention of Migrants and Asylum Seekers in Europe." Portugal was one of a small handful of countries—including Cyprus, Iceland, Italy, Malta, and Norway—that did not respond to any requests for information.⁴⁴

More recently, in its 2017 report on the treatment of undocumented migrants and asylum seekers in detention centres, Portugal's NPM reported that it was unable to acquire adequate detention statistics. Highlighting gaps in available records concerning families and unaccompanied minors, the report stated that the government did not keep sufficient statistics for an affective assessment of the country's detention estate. In 2019, the CPR also noted that the SEF had not shared the total number of immigration detainees for 2018.

2.14 Trends and statistics. In a 2017 report on immigration detention practices in Portugal, the ombudsman reported that 2,444 people were placed in detention in 2016 compared to 2,071 in 2015.⁴⁷ Among the 2,444 detained in 2016, 2,194 were detained at Lisbon airport;

⁴² Office of the High Commissioner for Human Rights (OHCHR), "Status of Ratification: Interactive Dashboard," http://indicators.ohchr.org/

⁴³ Office of the High Commissioner for Human Rights (OHCHR), "Visits and Public Reports (Chronological Order)," *Optional Protocol on the Convention against Torture (CAT-OP)*, https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/CountryVisits.aspx?SortOrder=Chronological

⁴⁴ Global Detention Project and Access Info Europe, "The Uncounted: The Detention of Migrants and Asylum Seekers in Europe," December 2015, https://www.globaldetentionproject.org/the-uncounted-the-detention-of-migrants-and-asylum-seekers-in-europe

⁴⁵ Original quote: "Os dados fornecidos são úteis para uma compreensão geral da situação das pessoas detidas, dos funcionários e dos locais de detenção visitados; revelaram-se, contudo, insuficientes para um tratamento unitário e transversal, uma vez que se verificou que os serviços não recolhem, organizam e tratam os elementos estatísticos que seriam importantes para o conhecimento efetivo da particular realidade dos CIT. Por exemplo, excetuando o caso da UHSA, não existem (ou são insuficientes) registos sobre agregados familiares, menores não acompanhados e pessoas em situação de vulnerabilidade, designadamente com deficiência, transexuais ou mulheres grávidas ou lactantes." See: Provedor de Justica, "*Tratamento dos cidadãos estrangeiros em situação irregular ou requerentes de asilo nos centros de instalação temporária ou espaços equiparados*," 2017, https://www.provedor-

jus.pt/site/public/archive/doc/Cidadaos_estrangeiros_e_o_direito_a_um_tratamento_digno.pdf

⁴⁶ Conselho Português para os Refugiados (CPR), "Country Report: Portugal," *Asylum Information Database (AIDA), European Council on Refugees and Exiles (ECRE)*, April 2019, http://www.asylumineurope.org/sites/default/files/report-download/aida pt 2018update.pdf

⁴⁷ Provedor de Justica, "Tratamento dos cidadãos estrangeiros em situação irregular ou requerentes de asilo nos centros de instalação temporária ou espaços equiparados," 2017, https://www.provedor-jus.pt/site/public/archive/doc/Cidadaos_estrangeiros_e_o_direito_a_um_tratamento_digno.pdf

184 at the UHSA; 148 at Porto airport; and 102 at Faro airport.⁴⁸ According to an ombudsman report from 2011, 2,896 non-citizens were detained in 2009 (2,438 at Lisbon airport; 253 at UHSA; 113 at Porto airport; and 92 at Faro airport). The vast majority of detainees are from Brazil.49

Statistics provided in the 2014 European Migration Network (EMN) study on detention, drafted by the SEF, indicate much lower detention rates, which contrast sharply with detention levels reported by the ombudsman. The report claims that 248 people were detained in 2010, 235 in 2011, and 196 in 2012.50 The EMN report also states that there are no detention statistics available for 2009 despite the provision of statistics in the 2011 ombudsman's report.51

The ombudsman told the GDP that one reason for the discrepancies between its statistics and those reported by the EMN is that the SEF appears to have only reported detention statistics for the UHSA facility for the EMN study, even though most detention cases occur at airport transit facilities.52

For more recent years (2017 and 2018), however, detention statistics are not available.

In 2018, 4,760 non-citizens were found to be illegally present in Portugal; compared to 6,005 in 2017 and 6,500 in 2016.53 In 2018 4,590 were ordered to leave Portuguese territory; 5,760 in 2017; and 6,200 in 2016.54 However, the number of citizens that were actually returned following an order to leave is much smaller: 305 in 2018, 325 in 2017, and 405 in 2016.55

2.15 External sources of funding or assistance. Portugal has received funding from the IOM for immigration detention activities. In 2017, the IOM allocated 36,900 USD of its 2018 budgeted resources to "contribute to upholding human rights standards for migrants under administrative detention in Portugal by strengthening collaboration with the Immigration and

⁴⁸ Provedor de Justica, "Tratamento dos cidadãos estrangeiros em situação irregular ou requerentes de asilo nos centros de instalação temporária ou espaços equiparados," 2017, https://www.provedorjus.pt/site/public/archive/doc/Cidadaos estrangeiros e o direito a um tratamento digno.pdf

⁴⁹ Provedor de Justica, "Tratamento dos cidadãos estrangeiros em situação irregular ou requerentes de asilo nos centros de instalação temporária ou espaços equiparados," 2017, https://www.provedorjus.pt/site/public/archive/doc/Cidadaos estrangeiros e o direito a um tratamento digno.pdf

⁵⁰ SEF Immigration and Borders Service, "The Use of Detention and Alternatives to Detention in the Context of Immigration Policies, Synthesis Report for the EMN Focussed Study 2014," 2014, https://bit.ly/2nmXvYy

⁵¹ SEF Immigration and Borders Service, "The Use of Detention and Alternatives to Detention in the Context of Immigration Policies, Synthesis Report for the EMN Focussed Study 2014, "2014, https://bit.ly/2nmXvYy

⁵² Joao Portugal (Provedor de Justica), Email Correspondence with Michael Flynn (Global Detention Project), 25-26 October, 2017.

⁵³ Eurostat, "Third Country Nationals Found to be Illegally Present – Annual Data (Rounded)," Enforcement of Immigration Legislation, 1 May 2019,

http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_eipre&lang=en

⁵⁴ Eurostat, "Third Country Nationals Ordered to Leave – Annual Data (Rounded)," *Enforcement of Immigration* Legislation, 29 April 2019, http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_eiord&lang=en

⁵⁵ Eurostat, "Third Country Nationals Returned Following an Order to Leave – Annual Data (Rounded)," Enforcement of Immigration Legislation, 29 April 2019, http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_eirtn&lang=en

Border Service on information and counselling for irregular migrants, and upgrading knowledge and capacities of staff working at detention facilities for migrants."56
56 International Organisation for Migration (IOM), "Council 108th Session: Programme and Budget for 2018
C/108/6," 9 October 2017, https://governingbodies.iom.int/system/files/en/council/108/C-108-6%20-%20Programme%20and%20Budget%20for%202018.pdf

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3. DETENTION INFRASTRUCTURE

3.1 Summary. The legal basis for operating immigration detention facilities in Portugal was first established in 1994.⁵⁷ Law 34/94 regulates the reception of non-citizens in detention centres, the so-called *centros de instalação temporária* (CIT). To date, the country has opened only one such centre, the Unidade Habitacional de Santo António (UHSA), which is located in Porto and began operations in 2006.⁵⁸

In addition, the country operates detention facilities at three airports—Lisbon, Porto, and Faro. Following Decree 85/2000, airport facilities were "equated" to CITs,⁵⁹ and are considered transit detention facilities because some people detained at them have been denied entry to the country and are not considered to be on Portuguese territory.

The Global Detention Project (GDP) also includes on its list of detention sites airport detention facilities located in the Azores and Madeira (Funchal Airport Detention Facility, Madeira, and Ponta Delgada Airport Detention Facility on São Miguel Island, Azores). The Portuguese Ombudsman informed the GDP that although these facilities are intended for use for the shortest time possible before detainees are transferred to Lisbon, factors such as weather can delay transfers, leaving detainees at these facilities for "a few days." 60

In its "Strategic Plan for Migration 2015-2020," the government foresees the establishment of a new dedicated detention centre in 2016-2018.⁶¹ One news outlet reported that this centre is to be located in Caia, Elvas, near the border with Spain.⁶² Another report stated that the UHSA would be closed and replaced with a new centre allegedly located in

⁵⁷ Provedor de Justica, "A instalação temporária de cidadãos estrangeiros não admitidos em Portugal ou em processo de afastamento do território nacional," Relatório, 2011, http://www.provedorjus.pt/archive/doc/Relatorio_CIT_Marco2011.pdf

⁵⁸ European Parliament, "The Conditions in Centres for Third Country National (Detention Camps, Open Centres as Well as Transit Centres and Transit Zones) with a Particular Focus on Provisions and Facilities for Persons with Special Needs in the 25 EU Member States," December 2007, https://www.schipholwakes.nl/Europarlement-vr-detentie-EN.pdf

⁵⁹ Portuguese Refugee Council (CPR), "Country Report: Portugal", *Asylum Information Database (AIDA), European Council on Refugees and Exiles (ECRE)*, April 2019, http://www.asylumineurope.org/sites/default/files/report-download/aida_pt_2018update.pdf

⁶⁰ Joao Portugal (Provedor de Justica Portugal), Emails to Michael Flynn (Global Detention Project), 6 October 2017 and 25 October 2017; Provedor de Justica, "*Tratamento dos cidadãos estrangeiros em situação irregular ou requerentes de asilo nos centros de instalação temporária ou espaços equiparados*," 2017, https://www.provedor-jus.pt/site/public/archive/doc/Cidadaos_estrangeiros_e_o_direito_a_um_tratamento_digno.pdf

⁶¹ Governo de Portugal, "*Plano Estratégico para as Migrações 2015-2020*," http://www.pofc.gren.pt/ResourcesUser/2015/Noticias/PlanoEstrategicoMigracoes.pdf

⁶² R. Coelho, "Aumento de detenções de ilegais deixa os centros do SEF no limite," Diário de Notícias, 17 December 2015, http://www.dn.pt/portugal/interior/aumento-de-detencoes-de-ilegais-deixa-os-centros-do-sef-no-limite-4940137.html

Almoçageme, in the municipality of Sintra, which would have a larger capacity.63

Following heated debate concerning the detention of children in the summer of 2018, the Interior Ministry announced in July that year that the government would prioritise the establishment of a centre in Almoçageme (Sintra), but it remains unclear whether the centre will operate as an open-door facility or as a secure detention centre.⁶⁴ As of May 2019, no new facility has been opened and there is little available public information about its status. However, the ombudsman informed the GDP that Almoçageme facility may begin operations as soon as summer 2019.⁶⁵

3.2 List of detention facilities. Unidade Habitacional de Santo António (UHSA), Lisbon Airport Detention Facility, Porto Airport Detention Facility, Faro Airport Detention Facility, Funchal Airport Detention Facility, and Ponta Delgada Airport Detention Facility.

3.3 Conditions and regimes in detention centres.

3.3a Overview. Reports indicate that conditions in Portugal's sole dedicated immigration detention facility are adequate, although it does lack sufficient recreational activities. However, airport pre-removal and transit facilities have been found to be inadequately equipped for "longer periods of detention," and are not suitable spaces for confining families.

3.3b Unidade Habitacional de Santo António (UHSA). The Unidade Habitacional de Santo António (UHSA) has a total capacity of 36 (30 adults and six children). It is managed by the SEF in coordination with other non-state entities, in particular the Jesuit Refugees Service (JRS). Volunteer doctors and nurses from Doctors of the World (*Médicos del Mundo*) provide health care. ⁶⁶ The IOM is also present at the centre, in order to provide detainees with information on current Portuguese immigration legislation, options for "safe migration," and monitoring. ⁶⁷ The JRS is responsible for the DEVAS project (Detention of Vulnerable Asylum Seekers) aimed at identifying vulnerabilities of detainees and providing psychological support. ⁶⁸

In its capacity as Portugal's NPM, the country's ombudsman has visited the facility on several occasions, highlighting inadequacies where and when they are present.

⁶³ Provedor de Justicia, "A instalação temporária de cidadãos estrangeiros não admitidos em Portugal ou em processo de afastamento do território nacional," Relatório, 2011, http://www.provedor-jus.pt/archive/doc/Relatorio_CIT_Marco2011.pdf

⁶⁴Asylum Information Database (AIDA), "Portugal: Persisting Detention of Children at the Airport", 4 September 2018, http://www.asylumineurope.org/news/04-09-2018/portugal-persisting-detention-children-airport; Portuguese Refugee Council (CPR), "Country Report: Portugal," *Asylum Information Database (AIDA), European Council on Refugees and Exiles (ECRE)*, April 2019, http://www.asylumineurope.org/sites/default/files/report-download/aida pt 2018update.pdf

⁶⁵ Joao Portugal (Provedor de Justica Portugal), Letter to Michael Flynn (Global Detention Project), 6 October 2017.

⁶⁶ Medicos Do Mundo, "Projectos Nacionais: Apoio à população excluída - Unidade Habitacional de Santo António," http://www.medicosdomundo.pt/pt/go/unidade-habitacional-santo-antonio

⁶⁷ SGMAI, "FAMI aprova candidaturas no domínio da política de retorno," 21 March 2017, http://www.sg.mai.gov.pt/Noticias/Paginas/FAMI-aprova-candidaturas-no-dom%C3%ADnio-da-pol%C3%ADtica-de-retorno.aspx

⁶⁸ Servicio Jesuita aos Refugiados (JRS), "DEVAS (Detention of Vulnerable Asylum Seekers)," 2017, http://www.jrsportugal.pt/devas-detention-of-vulnerable-asylum-seekers/

In its 2017 report, the ombudsman gave UHSA high marks in terms of accommodation and services. It reported that the facility was the only centre adequately equipped to house families, as it includes a room for children to use during the day. In addition, detainees reported that food is satisfactory and appropriate in terms of "quality as well as quantity."

Earlier, in a 2011 report, the ombudsman stated that the facility includes an outdoor green space; a common area with tables, sofas, and two televisions; a child-friendly zone equipped with toys and cribs; and a canteen.⁶⁹ Sanitary facilities—including three toilets, urinals, and a sink—are located on the same floor as the canteen, the common room, and the infant space. Rooms for males and females are located on separate floors. On each floor there are 14 single rooms, a solitary confinement section, and sanitary facilities. The women's floor also has a private room for family use.⁷⁰

These findings were largely confirmed by the 2017 report, which found conditions at the centre to be adequate overall. Recent improved had also been made to allow for religious expression, and there were no complaints regarding washing facilities, hygiene, or cleanliness. Detainees may access the internet if they can pay for it, and they may also purchase telephone cards. At certain times, detainees can also use personal phones.⁷¹ However, the report did note that the centre lacks adequate recreational facilities, including books in foreign languages and physical exercise equipment, and that employees do not receive adequate training and lack necessary language skills.⁷²

3.3c Airport pre-removal and transit facilities. Airport detention facilities are located in Lisbon, Porto, Faro, Funchal, and Ponta Delgada. Although information on their total capacity is unavailable, the SEF reports that the CIT in Lisbon has 30 places for asylum seekers, and the centres in Porto and Faro airports have 14 places each.⁷³

⁶⁹ Provedor de Justicia, "A instalação temporária de cidadãos estrangeiros não admitidos em Portugal ou em processo de afastamento do território nacional," Relatório, 2011, http://www.provedorjus.pt/archive/doc/Relatorio_CIT_Marco2011.pdf

⁷⁰ Provedor de Justicia, "A instalação temporária de cidadãos estrangeiros não admitidos em Portugal ou em processo de afastamento do território nacional," Relatório, 2011, http://www.provedorjus.pt/archive/doc/Relatorio_CIT_Marco2011.pdf

⁷¹ Provedor de Justica, "*Tratamento dos cidadãos estrangeiros em situação irregular ou requerentes de asilo nos centros de instalação temporária ou espaços equiparados*," 2017, https://www.provedor-jus.pt/site/public/archive/doc/Cidadaos estrangeiros e o direito a um tratamento digno.pdf

⁷² Provedor de Justica, "*Tratamento dos cidadãos estrangeiros em situação irregular ou requerentes de asilo nos centros de instalação temporária ou espaços equiparados*," 2017, https://www.provedor-jus.pt/site/public/archive/doc/Cidadaos_estrangeiros_e_o_direito_a_um_tratamento_digno.pdf

⁷³ Portuguese Refugee Council (CPR), "Country Report: Portugal," *Asylum Information Database (AIDA), European Council on Refugees and Exiles (ECRE)*, April 2019, http://www.asylumineurope.org/sites/default/files/report-download/aida_pt_2018update.pdf



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