

a COLOMBIA

COUNTRY REPORT

IMMIGRATION DETENTION IN COLOMBIA: AT THE CROSSROADS OF THE AMERICAS

DECEMBER 2020



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GLOBAL **DETENTION** PROJECT

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 images: Venezuelan migrants depart Colombia during the COVID-19 pandemic, April 2020 © El Tiempo

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GLOSSARY

CMU	Colombian Migration Unit (<i>Unidad Administrativa Especial Migración Colombia</i>) (“ <i>Migración Colombia</i> ”)
CMW	UN Committee on Migrant Workers
DAS	Administrative Department of Security
GDP	Global Detention Project
ICBF	Colombian Family Welfare Institute
OPCAT	Optional Protocol to the UN Convention against Torture
SPT	UN Subcommittee on the Prevention of Torture
STM	Temporary Immigration Holding Facilities



KEY FINDINGS

- In 2013, Colombia opened its first migration-related detention centres (temporary immigration holding facilities, *salas transitorias de migración*); as of 2018, 11 such facilities were reportedly in operation.
- A foreigner subject to deportation or expulsion may be held in preventive detention for up to 36 hours.
- Civil society groups say that Colombia employs immigration detention measures “frequently,” though it is challenging to establish the actual frequency because of the lack of official data on immigration procedures. In 2018, the country reported that it had confined 2,911 non-nationals in its detention centres.
- As of mid-2019, Colombia hosted an estimated 1.3 million Venezuelan migrants and refugees. However, after the onset of the COVID-19 pandemic, large numbers sought to return home but became stranded in makeshift border camps after borders were closed.
- Venezuelan President Nicolas Maduro has called his own citizens “biological weapons” and accused Colombia and other governments of infecting returning migrants with COVID-19 to spread the pandemic across Venezuela.



1. INTRODUCTION

Historically, Colombia has been a country of emigration as interminable conflict, poor infrastructure, and persistent economic turmoil drove many to leave the country and dissuaded foreigners from settling there. As recently as 2005, the country's census revealed that non-citizens comprised a meagre 0.26 of the population.¹

More recently however, the country's geographic location as the only land gateway between South and Central America has resulted in it becoming a critical transit point for many migrants and asylum seekers wishing to reach North America. Colombia has also received people from Africa and Asia who have flown to countries with lax visa policies such as Ecuador, before travelling overland through Colombia.² And since 2004, the country has become a destination for large numbers of Venezuelan migrants and refugees. According to UNHCR, approximately 1.3 million Venezuelans were reported to be in the country in mid-2019.³

The country's evolving migratory profile was acknowledged by the Minister of Foreign Affairs in July 2019, when he introduced a new immigration policy (*Proyecto de ley por medio del cual se establece la política migratoria del Estado Colombiano*), saying: "Colombia remains primarily a migrant issuing country. However, it is also a recipient and transit place for thousands of foreign citizens, including Venezuelan citizens who in recent years have entered Colombia in search of better economic conditions, assistance and protection from the political and social situation in their country."⁴

Against this backdrop, authorities implemented a national development plan (*Prosperidad para todos*) during 2010-2014, which was intended to "strengthen immigration control in Colombia through the creation of a specialised agency with technological, financial and budgetary tools for better management, coverage and results."⁵ Established in 2011, the new migration agency—the *Unidad Administrativa Especial Migración Colombia* ("Migración Colombia") (Colombian Migration Unit, CMU)—took over immigration control functions previously overseen by the Administrative Department of Security (*Departamento*

¹ B.E.S. Mojica, "In Transit: Migration Policy in Colombia," in *A Liberal Tide? Immigration and Asylum Law and Policy in Latin America*, School of Advanced Study, University of London, 2015, https://sas-space.sas.ac.uk/6155/1/08.%20ALT_Ch4_Sanchez%20Mojica.pdf

² D. Carvajal, "As Colombia Emerges from Decades of War, Migration Challenges Mount," *Migration Policy Institute*, 13 April 2017, <https://www.migrationpolicy.org/article/colombia-emerges-decades-war-migration-challenges-mount>

³ UNHCR, "Refugees and Migrants from Venezuela Top 4Mmillion: UNHCR and IOM," 7 June 2019, <https://www.unhcr.org/news/press/2019/6/5cfa2a4a4/refugees-migrants-venezuela-top-4-million-unhcr-iom.html>

⁴ La Opinión, "Presentan el proyecto de política migratoria," 25 July 2019, <https://www.laopinion.com.co/colombia/presentan-el-proyecto-de-politica-migratoria-181151#OP>

⁵ República de Colombia, "Bases del Plan Nacional de Desarrollo 2010-2014, *Prosperidad para Todos: Capítulo V, Consolidación de la paz*," Departamento Nacional de Planeación, 13 April 2011,

Administrativo de Seguridad, DAS), whose responsibilities also included espionage and intelligence.

Shortly after the CMU's establishment, Colombian media reported in 2013 that new temporary immigration holding facilities (*salas transitorias de migración*, STMs) would be established in the country. Reports indicated that a total of seven STMs would be opened: one each in Guajira, Cartagena, Medellín, Bogotá, Cúcuta, and two in Pasto. These facilities, it was reported, would detain foreigners for up to 36 hours while authorities decide on deportation or other immigration measures.⁶ In 2019, the country reported that it was operating 11 STMs.⁷

To-date, the GDP has been unable to independently verify the location and status of these facilities. However, reports have highlighted the detention of migrants in the country, with some observers claiming that immigration detention measures are used “frequently.”⁸ In 2015 there were several cases of Cuban migrants being detained,⁹ and in March 2016, following the apprehension of 17 undocumented migrants, the CMU's director announced that “there is no way the Cubans can stay in Colombia. ... What we are going to do is to receive them and keep them in temporary migrant holding facilities for 36 hours, where accommodation and food will be provided.”¹⁰ More recently, in 2019, Colombia reported to the UN Committee on Migrant Workers (CMW) that its STMs had confined 2,911 foreign nationals in 2018.¹¹

In 2020, the Colombian government took steps to regularise the status of migrants. One of the first measures adopted was the creation of a new Special Permanence Permit (*Permiso Especial de Permanencia*, PEP), which would benefit an estimated 200,000 Venezuelans. Another measure adopted was the creation of the “Special Permanence Permission for the Promotion of Formalisation” (*Permiso Especial de Permanencia para el Fomento de la Formalización*), a work permit that would be granted to Venezuelan citizens in Colombia with a job offer.¹²

Nevertheless, during the COVID-19 pandemic, large numbers of Venezuelan migrant workers—many of whom lost their sources of employment amidst the economic downturn—

⁶ Redacción Justicia, “En un año, red movió a mil migrantes ilegales,” *El Tiempo*, 17 August 2013, <https://www.eltiempo.com/archivo/documento/CMS-13000551>

⁷ UN Committee on Migrant Workers (CMW), “Replies of Colombia to the List of Issues, CMW/C/COL/Q/3/Add.1,” 17 June 2019, <https://bit.ly/2Les04a>

⁸ E. C. Marquez, G. Bonnici, and V. Martinez, “Que esperamos del futuro? Detención migratoria y alternativas a la detención en las Américas,” *International Detention Coalition*, 2017, <https://idcoalition.org/wp-content/uploads/2017/04/INFORME-REGIONAL-AMERICAS-2017.pdf>

⁹ Redacción Nacional, “Detienen a 10 cubanos en aeropuerto de Cali,” *El Espectador*, 23 April 2015, <https://www.elespectador.com/noticias/nacional/detienen-10-cubanos-aeropuerto-de-cali-articulo-556684>; L. Sanchez, “Inmigrantes ilegales detenidos en el mar Caribe,” *Noticias Colombia*, 28 April 2015, <http://co.noticias.com/actualidad/inmigrantes-ilegales-detenidos-en-mar-caribe.html>

¹⁰ Frontera, “Autoridades endurecen controles en la frontera,” *La Opinión*, 17 March 2016, <https://www.laopinion.com.co/frontera/autoridades-endurecen-controles-en-la-frontera-108614#OP>

¹¹ UN Committee on Migrant Workers (CMW), “Replies of Colombia to the List of Issues, CMW/C/COL/Q/3/Add.1,” 17 June 2019, <https://bit.ly/2Les04a>

¹² Unidad Administrativa Migración Colombia, Ministerio de Relaciones Exteriores, “Gobierno Nacional lanza paquete de medidas para regularización de ciudadanos Venezolanos,” 29 January 2020, <https://www.migracioncolombia.gov.co/noticias/246-enero-2020/gobierno-nacional-lanza-paquete-de-medidas-para-regularizacion-de-ciudadanos-venezolanos>

sought to return to their country of origin. But with borders closed, and Venezuela permitting only 400 people to return three days a week (according to UNHCR, 100 per day via the Arauca border crossing, and 300 per day in Cucuta),¹³ large groups were left stuck in makeshift migrant camps in border areas. There were reports of migrants, including children, being exposed to severe overcrowding, inadequate sanitation and medical provision, and raw sewage and waste.¹⁴ Venezuelan President Nicolas further aggravated the situation when he wildly claimed that Venezuelans returning from abroad were being used as “biological weapons,” deliberately infected by foreign governments in an effort to spread COVID-19 across Venezuela. Colombia categorically rejected these accusations, calling them deplorable.¹⁵

¹³ UNHCR, “Donor Update on UNHCR Covid-19 Response in Colombia (3-24 June 2020),” 24 June 2020, <https://reliefweb.int/report/colombia/donor-update-unhcr-covid-19-response-colombia-8-3-24-june-2020>

¹⁴ S. Pozzebon, “Venezuelan Migrants Fleeing Covid-19 Get Stuck at Border,” *CNN*, accessed on 14 July 2020, <https://edition.cnn.com/videos/world/2020/07/13/venezuela-migrants-covid19-stuck-border-colombia-pozzebon-pkg-vpx.cnn>

¹⁵ S. Pozzebon, “Venezuelan Migrants Fleeing Covid-19 Get Stuck at Border,” *CNN*, accessed on 14 July 2020, <https://edition.cnn.com/videos/world/2020/07/13/venezuela-migrants-covid19-stuck-border-colombia-pozzebon-pkg-vpx.cnn>



2. LAWS, POLICIES, PRACTICES

2.1 Key norms.

Core pieces of national legislation providing a framework for immigration detention

- Decree 4.000 of 2004
- Decree 834 of 2013
- Decree 1.067 of 2015

Key legal norms relating to immigration detention are provided in the following pieces of legislation: Decree 4.000 of 2004, by which provisions on the issuance of visas, control of foreigners and other migration related matters are issued (*Decreto 4.000 de 2004, por el cual se dictan disposiciones sobre la expedición de visas, control de extranjeros y se dictan otras disposiciones en materia de migración*); Decree 834 of 2013, by which provisions relating to immigration matters of the Republic of Colombia are established (*Decreto 834 de 2004, por el cual se establecen disposiciones en materia migratoria de la Republica de Colombia*), which derogated and replaced several provisions of Decree 4.000 of 2004; and Decree 1.067 of 2015, through which the Single Regulatory Decree of the External Relations Sector is issued (*Decreto 1067 de 2015, por medio del cual se expide el Decreto Reglamentario Único del Sector de Relaciones Exteriores*).

The Colombian Constitution of 1991 (“*Constitución Política de Colombia 1991*”) provides several “fundamental rights” for individuals (Articles 11-41). Article 28 provides the right to liberty and protection against arbitrary detention and also guarantees that those individuals detained preventively will be brought before a competent judge within thirty-six hours. Yet, while the fundamental rights provided in the Constitution apply to “all individuals,” Article 24, guaranteeing freedom of movement throughout the Colombian territory, explicitly mentions “any Colombian citizen.”

2.2 Covid-19 response.

Did authorities issue a moratorium on new detention orders?

Unknown

Were deportations ceased?

Unknown

The COVID-19 pandemic accentuated many of the vulnerabilities experienced by migrants, refugees, and asylum seekers around the world. In Colombia, large numbers of Venezuelan migrants—facing lock-down restrictions and limited employment opportunities—sought to

return to Venezuela. According to the Colombian Migration Unit (CMU), more than 90,000 Venezuelans had voluntarily returned as of 21 July 2020.¹⁶

However, in comments immediately rebutted by Colombia, Venezuelan President Nicolás Maduro accused Colombian authorities of facilitating Venezuelans' return in order to "contaminate" his country with the virus. Venezuela introduced caps on the numbers permitted to cross the border each week: on three days a week, 100 were permitted to enter via the Arauca border crossing, and 300 per day via Cucuta.¹⁷ As such, many returnees faced no other option but to stay in makeshift border camps—some of which were reported to subject migrants to overcrowding, inadequate sanitation and medical provision, and exposure to raw sewage and waste.¹⁸

Like several other countries in the Americas, Colombia received hundreds of deportees from the United States during the pandemic. Between 1 January and 2 May, 604 people were reportedly deported to the country,¹⁹ despite the dangers that such removals pose during the pandemic. Indeed, following the return of 64 people on a 30 March flight from Louisiana, at least 24 returnees later tested positive for COVID-19.²⁰

According to the Children's Delegate of the Ombudsperson's Office, 54 unaccompanied and separated Venezuelan children in North Santander, 129 in Arauca, and 107 in Guajira were identified during the COVID-19 crisis. Between 16 March and 12 June, UNHCR registered 2,206 cases of children at risk and 90 cases of unaccompanied and separated children.²¹

2.3 Grounds for administrative migration-related detention.

Are grounds for administrative migration-related detention provided in law?	Yes
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Decree 4.000 and Decree 1.067 detail several grounds justifying the detention of non-nationals. According to Article 109 of Decree 4.000 and Article 2.2.1.13.3.2. of Decree 1.067, a foreigner may be detained upon the following grounds:

- To verify their identity
- To verify their immigration status

¹⁶ France24, "Más de 90.000 venezolanos han retornado a Venezuela desde Colombia durante la pandemia," 22 July 2020, <https://www.france24.com/es/20200721-venezuela-migrantes-colombia-retorno-coronavirus>

¹⁷ UNHCR, "Donor Update on UNHCR Covid-19 Response in Colombia (3-24 June 2020)," 24 June 2020, <https://reliefweb.int/report/colombia/donor-update-unhcr-covid-19-response-colombia-8-3-24-june-2020>

¹⁸ S. Pozzebon, "Venezuelan Migrants Fleeing Covid-19 Get Stuck at Border," *CNN*, accessed on 14 July 2020, <https://edition.cnn.com/videos/world/2020/07/13/venezuela-migrants-covid19-stuck-border-colombia-pozzebon-pkg-vpx.cnn>; A. Rampiotti, "Venezuelan Migrants Stranded After Border With Colombia Closed," *Al-Jazeera*, 6 June 2020, <https://www.aljazeera.com/videos/2020/06/06/venezuelan-migrants-stranded-after-border-with-colombia-closed/>

¹⁹ Palabra, "Air COVID-19," 1 July 2020, <https://www.palabranahj.org/archive/volume-2/aircovid>

²⁰ Reuters, "Two Dozen People Deported to Colombia on U.S Flight Found to Have Coronavirus – Sources," 29 April 2020, <https://uk.reuters.com/article/uk-health-coronavirus-usa-colombia/two-dozen-people-deported-to-colombia-on-u-s-flight-found-to-have-coronavirus-sources-idUKKBN22B3DI?rpc=401&>

²¹ UNHCR, "Donor Update on UNHCR Covid-19 Response in Colombia (3-24 June 2020)," 24 June 2020, <https://reliefweb.int/report/colombia/donor-update-unhcr-covid-19-response-colombia-8-3-24-june-2020>

- When an administrative procedure is initiated against a foreigner and their appearance is necessary
- To effect removal

Article 28 of Decree 834 and Article 2.2.1.11.3.1. of Decree 1.067 provide that the relevant immigration authority may prevent a foreigner's entry into Colombian territory and process their immediate return to their country of origin or a third country, if any of several grounds (described in Article 29 of Decree 834 and Article 2.2.1.11.3.2. of Decree 1.067) are met, including:

- Failure to present a visa when required
- If the individual has previously been deported from Colombia
- If the individual has a criminal record for drugs, drug trafficking or other related crimes.

2.4 Criminalisation.

Does the country provide specific criminal penalties for immigration-related violations?

No

Article 22 on civil and political rights of the [Colombian Penal Code of 2000](#) establishes that any person who has entered the territory legally has the right to movement and residence. While the code does not provide criminal sanctions if a person is found to be in Colombian territory irregularly, it does state that those in such a situation may be subject to administrative sanctions such as fines, or at worst, deportation or expulsion measures. In its response to a questionnaire submitted to the Committee on the Protection of the Rights of all Migrant Workers' Draft General Comment No. 5 on Migrants' Rights to Liberty and Freedom from Arbitrary Detention, Colombia indicated that immigration infractions do not constitute crimes.²²

According to Article 2.2.1.13.1.2 of Decree 1.067 of 2015 and Article 101 of Decree 4.000 of 2004, a non-national may be deported if the person is found to be in an irregular immigration situation, "as long as there are no special circumstances that justify a financial sanction." Thus, people found in an irregular situation will be deported, save where specific circumstances justify commuting the deportation measure by a fine. To test for special circumstances, Article 16 of Resolution 2357 of 2020 ([Resolución 2357 de 2020, 29 de Septiembre 2020](#)) requires the immigration authority to consider whether the person in an irregular situation: a) has a proven family unit; b) has a special medical situation; or c) is employed, brings foreign investment, or is part of an academic programme at undergraduate or postgraduate level.

People who are found to have committed trafficking offences can, however, face criminal sanctions. Specifically, they face prison sentences of 13 to 23 years, and fines ranging from

²² Government of Colombia, "Response to the UN Committee on Migrant Workers General Comment No. 5 on Migrants' Human Right to Liberty and their Protection from Arbitrary Detention Questionnaire," March 2019, <https://www.ohchr.org/EN/HRBodies/CMW/Pages/GC5.aspx>

800 to 1500 “monthly minimum wages” (Article 3 of Law 985 of 2005,²³ which amended Article 188A of Law 599 of 2000²⁴).

2.5 Asylum seekers.

Does the country provide the right to asylum?	Yes
Are asylum seekers protected from detention?	Yes

The right to asylum is enshrined in the Colombian Constitution under Article 36.

According to Article 2 of Decree 2840 of 2013 by which the Procedure for the Recognition of Refugee Status is established (*Decreto 2840 de 2013 por el cual se establece el Procedimiento para el Reconocimiento de la Condición de Refugiado, se dictan normas sobre la Comisión Asesora para la Determinación de la Condición de Refugiado y otras disposiciones*), the Advisory Commission for the Determination of Refugee Status (*Comisión Asesora para la Determinación de la Condición de Refugiado*) is responsible for receiving and processing asylum applications, and for making a recommendation to the Minister of Foreign Affairs.

Article 9 of Decree 2840 further provides that when the Advisory Commission considers an asylum application, it will also request that the Colombian Migration Unit (CMU) issue a permit (*salvoconducto*) which grants the asylum seeker leave to remain for three months, though it may limit the person to staying a specific region of the country. This may be extended a further three months if necessary. The issuance of this document may protect the non-national from arbitrary detention and/or removal.²⁵

2.6 Children.

Is the detention of unaccompanied children provided in law?	No
Is the detention of accompanied children provided in law?	No

According to Colombian authorities, migrant children may not be detained on account of their migration status.²⁶ However, civil society groups have claimed that unaccompanied minors are often placed in conditions that restrict or deprive them of freedom.²⁷

²³ Ley 985 de 2003 por medio de la cual se adoptan medidas contra la trata de personas y normas para la atención y protección de las víctimas de la misma

²⁴ Ley 599 de 2000 por la cual se expide el Código Penal

²⁵ E. C. Marquez, G. Bonnici, and V. Martinez, “Que esperamos del futuro? Detención migratoria y alternativas a la detención en las Américas,” International Detention Coalition, 2017, <https://idcoalition.org/wp-content/uploads/2017/04/INFORME-REGIONAL-AMERICAS-2017.pdf>

²⁶ Special Rapporteur on the Human Rights of Migrants, “Ending Immigration Detention of Children and Providing Adequate Care and Reception for Them, A/75/183,” UN General Assembly, 20 July 2020, <https://undocs.org/A/75/183>

²⁷ E. C. Marquez, G. Bonnici, and V. Martinez, “Que esperamos del futuro? Detención migratoria y alternativas a la detención en las Américas,” International Detention Coalition, 2017, <https://idcoalition.org/wp-content/uploads/2017/04/INFORME-REGIONAL-AMERICAS-2017.pdf>

Migration guidelines provide that unaccompanied migrant children should be referred to the Colombian Family Welfare Institute (*Instituto Colombiano de Bienestar Familiar*) (ICBF), which places the child in a temporary home while their immigration situation is resolved.²⁸ The same process takes place in cases where minors request asylum as described under Article 2.2.3.1.6.5. of Decree 1067 of 2015. In its reply to the list of issues raised by the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW) in 2019, Colombia explained that “children and adolescents may not be held in temporary migrant holding facilities. When an incident involving a child or adolescent occurs, the immigration authority always communicates with the Police for Children and Adolescents and/or the Colombian Family Welfare Institute so that these bodies may take charge of the minor until his or her migration status has been settled.”²⁹

According to provisions in a handbook on immigration control as regards minors, issued by the Colombian Migration Unit (CMU) (adopted by decision No. 0760 of 2016), unaccompanied minors who enter the country without necessary documentation must be provided with an SC-2 permanency permit (“*salvoconducto*”), inform the ICBF of the case, and transfer the minor to the Police for Children and Adolescents (Section 5.10). The CMU has also implemented procedures for handing over children or adolescents to other authorities in cases where, during migration formalities, the rights of a minor are found to be at risk and the intervention of a competent authority is required for the restoration of his or her rights.³⁰

In August 2019, as part of the country’s “Primero la Niñez” (Childhood First) Campaign, Colombia granted nationality to Venezuelan children born inside the country since 19 August 2015—helping to prevent a statelessness crisis, and ensuring easier access to health and education. According to Colombia, more than 36,000 children have benefitted from this scheme.³¹

2.7 Other vulnerable groups.

Does the country’s legislation provide any protections for other vulnerable groups?	Yes
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According to Article 2.2.3.1.1.1.(c) of Decree 1067 of 2015, “where there are well-founded reasons to believe that a person would be in danger of being subjected to torture or other cruel, inhuman or degrading treatment or punishment in case of expulsion, return or extradition to his or her country of origin,” the person will fall under the definition of “refugee”—and as a consequence will be granted protection.

²⁸ E. C. Marquez, G. Bonnici, and V. Martinez, “*Que esperamos del futuro? Detención migratoria y alternativas a la detención en las Américas*,” International Detention Coalition, 2017, <https://idcoalition.org/wp-content/uploads/2017/04/INFORME-REGIONAL-AMERICAS-2017.pdf>

²⁹ UN Committee on Migrant Workers (CMW), “Replies of Colombia to the List of Issues, CMW/C/COL/Q/3/Add.1,” 17 June 2019, <https://bit.ly/2Les04a>

³⁰ UN Committee on Migrant Workers (CMW), “Consideration of the Third Periodic Report Submitted by Colombia Under Article 73 of the Convention, Due in 2018, CMW/C/COL/3,” 19 July 2018, https://www.ecoi.net/en/file/local/1449190/1930_1541590519_g1822219.pdf

³¹ ³¹ Special Rapporteur on the Human Rights of Migrants, “Ending Immigration Detention of Children and Providing Adequate Care and Reception for Them, A/75/183,” *UN General Assembly*, 20 July 2020, <https://undocs.org/A/75/183>

Decree 1036 of 2016 (*Decreto 1036 de 2016, por el cual se adiciona un capítulo al Libro 2, Parte 2, Título 3 del Decreto No. 1066 de 2015, Decreto Único Reglamentario del Sector Interior, con el fin de adoptar la Estrategia Nacional para la Lucha Contra la Trata de Personas, 2016-2018*) established the Observatory for the Offence of Trafficking (*Observatorio del Delito de la Trata de Personas*) which, *inter alia*, functions as a mechanism for investigation, collection, and analysis of information related to human trafficking.³²

2.8 Length of detention.

Maximum length for administrative immigration detention in law	Unlimited
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According to Article 109 of Decree 4.000 of 2004 and Article 2.2.1.13.3.2 of Decree 1067, a foreigner subject to deportation or expulsion may be held in preventive detention for up 36 hours and/or be subject to monitoring or custody by the immigration authorities until the measure is executed. The law appears to imply that detention could be potentially unlimited in duration. (*“El extranjero que sea objeto de un trámite de deportación o expulsión, podrá ser retenido preventivamente hasta por treinta y seis (36) horas y/o sometido a vigilancia o custodia por las autoridades migratorias hasta que la medida se haga efectiva”*).

In addition to this, Article 28 of Decree 834 of 2013 and Article 2.2.1.11.3.1. of Decree 1067 of 2015 provide that when the immigration authority refuses the entry of a non-citizen for reasons cited in Articles 29 of Decree 834 and 2.2.1.11.3.2. of Decree 1067 of 2015 (see 2.3 Grounds for administrative migration-related detention), the foreigner will be “immediately” returned to the country they are arriving from, their country of origin, or a third country that is willing to admit them. The same provisions state that “no appeals against this decision are possible” and that the immigration authority will liaise with a transport company to ensure that the non-citizen is immediately removed.

2.9 Procedural standards.

What basic procedural standards are required by law?	<ul style="list-style-type: none"> • Right to appeal some, but not all, expulsion proceedings • Right to legal counsel • Access to interpretation • Access to consular assistance
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Colombia says that non-nationals deprived of their liberty are entitled to free legal advice, interpretation services, and access to consular assistance.³³ Colombia’s Constitution also provides various relevant guarantees, such as the right to liberty and protection from arbitrary detention (Article 28). It also provides for the right to due process (Article 29) and the right for individuals who believe they are detained illegally to invoke *habeas corpus* before a legal authority (Article 30). Article 13 explicitly provides for equality before the law, and prohibits discrimination on grounds of sex, race, nationality or family origin, language,

³² Ministry of the Interior, “*Observatorio del Delito Trata de Personas*,” accessed on 12 February 2020, <https://www.mininterior.gov.co/observatorio-del-delito-trata-de-personas>

³³ Government of Colombia, “Response to the UN Committee on Migrant Workers General Comment No. 5 on Migrants’ Human Right to Liberty and their Protection from Arbitrary Detention Questionnaire,” March 2019, <https://www.ohchr.org/EN/HRBodies/CMW/Pages/GC5.aspx>

religion, and political or philosophical opinion; and Article 44 provides, *inter alia*, a child's right to education, health, and physical integrity.

Some people who are issued expulsion orders may lodge administrative appeals against such measures (Article 2.2.1.13.2.1. of Decree 1067; Code of Administrative Litigation Procedures (Act No.1437 of 2011)). Appeals have a suspensive effect—in that once they are presented, non-citizens are provided with a permit (“*salvoconducto*”) allowing them to remain in the country until their administrative situation is resolved.³⁴ However, given that Colombia orders some expulsions and returns “immediately,” several observers have noted that “people may often not have enough time or the necessary means to defend themselves against removal from the country.”³⁵ Similarly, people who are refused entry may not lodge appeals (Article 28 of Decree 834 and Article 2.2.1.11.3.1. of Decree 1067).

Following its review of Colombia's second periodic report, the Committee on Migrant Workers (CMW) expressed concern that there was a lack of information on the actual exercise of the right to appeal expulsion orders.³⁶ The committee also highlighted the fact that when an individual is issued with an expulsion order based on national security considerations, administrative appeals will not be accepted (Article 2.2.1.13.2.2. of Decree 1067); and that either the Ministry of Foreign Affairs or the Colombian Migration Unit (CMU) can “cancel a visa at any time, in writing, against which no appeal is possible” (Article 16 of Decree 834 and Article 2.2.1.11.1.7. of Decree 1067). The CMW thus encouraged Colombia to ensure that all people “have the right to submit the reasons why they should not be deported or expelled.”³⁷

2.10 Non-custodial measures (“alternatives to detention”).

Does the law require consideration of non-custodial measures as part of detention procedures?	No
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Colombian law does not specifically mention a requirement to assess “alternatives to detention” or non-custodial measures before issuing a detention order. However non-custodial measures appear to be applied in specific situations. People who have appealed deportation or expulsion orders are not required to remain confined in temporary migrant holding facilities (STMs). Instead, they are permitted to leave, but are required to appear when requested by the Colombian Migration Unit (CMU) or any other relevant authority.³⁸

³⁴ UN Committee on Migrant Workers (CMW), “Consideration of Reports Submitted by States Parties Under Article 73 of the Convention: Second Periodic Report: Colombia, CMW/C/COL/2,” 13 January 2012, <https://www.refworld.org/docid/506033282.html>

³⁵ E. C. Marquez, G. Bonnici, and V. Martinez, “*Que esperamos del futuro? Detención migratoria y alternativas a la detención en las Américas*,” *International Detention Coalition*, 2017, <https://idcoalition.org/wp-content/uploads/2017/04/INFORME-REGIONAL-AMERICAS-2017.pdf>

³⁶ UN Committee on Migrant Workers (CMW), “Concluding Observations on the Second Periodic Report of Colombia, Adopted by the Committee at its Eighteenth Session (15-26 April 2013) CMW/C/COL/CO/2,” 27 May 2013, <https://bit.ly/37SO38n>

³⁷ UN Committee on Migrant Workers (CMW), “Concluding Observations on the Second Periodic Report of Colombia, Adopted by the Committee at its Eighteenth Session (15-26 April 2013) CMW/C/COL/CO/2,” 27 May 2013, <https://bit.ly/37SO38n>

³⁸ Unidad Administrativa Migración Colombia, “*Estudio Técnico: Salas transitorias de migración (STM)*,” *Ministerio de Relaciones Exteriores*, 19 April 2013, <https://bit.ly/3ol9vnn>

2.11 Detaining authorities and institutions.

What authorities are responsible for detention and other migration-control measures?

- Colombian Migration Unit (CMU)

The Colombian Migration Unit (CMU) is responsible for surveillance and monitoring of immigration control, as well as verifying the identity of non-citizens and their immigration status in the country (Article 4(2)-(3) Decree 4062 of 2011). It oversees: 1) centres for facilitating migration services, which are responsible for processing visas, permits, and other documentation related to immigration; 2) areas of administrative control, whose functions are focused on immigration control and verification procedures 3) immigration checkpoints; and 4) temporary migrant holding facilities (*salas transitorias de migración* - STMs).³⁹ In 2013, it was reported that the CMU operated 35 immigration checkpoints and 27 centres for facilitating migration services.⁴⁰

2.12 Domestic monitoring.

Colombia has an Ombudsperson (*Defensoría del Pueblo*) who is presumably empowered to monitor immigration detention activities. However, efforts by the Global Detention Project (GDP) to correspond with this office to investigate immigration detention policies have not produced a substantive result. On 3 October 2020, the GDP wrote to the Ombudsperson requesting information regarding the domestic monitoring of immigration detention practices. The Ombudsman transferred our request to the CMU on 7 October and a second time on 27 October. However, it reported to the GDP on 11 November 2020 that it had not received a response from the CMU within the necessary legislative timeframe.

2.13 International monitoring.

Have international monitoring bodies reviewed immigration detention practices?	Yes
Does the country receive monitoring visits from the UN Subcommittee on the Prevention of Torture (SPT)?	No
Have any relevant recommendations been issued by the UN Universal Periodic Review?	No

Colombia has not signed or ratified the Optional Protocol to the UN Convention against Torture (OPCAT), and as such, the country does not receive visits from the UN Subcommittee on the Prevention of Torture (SPT). However, some human rights bodies have addressed comments and recommendations regarding Colombia's immigration and asylum practices. In 2020, the UN Committee on Migrant Workers (CMW) recognised that the State party had taken steps to protect children and adolescents in the context of migration, but remained concerned about the vulnerability of their situation. It thus urged Colombia to ensure that all procedures involving unaccompanied migrant children take into account the best interests of the child, "with a view to adopting short- and long-term

³⁹ Unidad Administrativa Migración Colombia, "Estudio Técnico: Salas transitorias de migración (STM)," Ministerio de Relaciones Exteriores, 19 April 2013, <https://bit.ly/3oI9vnn>

⁴⁰ Unidad Administrativa Migración Colombia, "Garantías y servicios para el migrante en Colombia," Ministerio de Relaciones Exteriores, November 2013, http://www.migracioncolombia.gov.co/old_site/phocadownload/cartilla_red_migrante.pdf

solutions, such as family reunification or resettlement in a third country.”⁴¹ Previously in 2013, the CMW recommended “that the State party take the necessary steps to ensure that migration status checks are conducted in a way that does not violate the rights of the persons concerned” and invited “the State party to make sure that conditions in temporary migrant holding centres meet international standards.”⁴²

Other committees have also noted concerns. In 2015 for example, the UN Committee against Torture (CAT) highlighted several instances of refoulement in 2014, and recommended that authorities “rescind or amend provisions that bar people in transit at border checkpoints from submitting asylum applications to migration authorities.”⁴³

⁴¹ UN Committee on Migrant Workers (CMW), “Concluding Observations on the Third Periodic Report of Colombia, CMW/C/COL/CO/3,” 27 January 2020, <https://bit.ly/3qFILWd>

⁴² Committee on Migrant Workers (CMW), “Concluding Observations on the Second Periodic Report of Colombia, Adopted by the Committee at its Eighteenth Session (15-26 April 2013), CMW/C/COL/CO/2,” 27 May 2013, <https://bit.ly/37SO38n>

⁴³ UN Committee against Torture (CAT), “Concluding Observations on the Fifth Periodic Report of Colombia, CAT/C/COL/CO/5,” 29 May 2015, <https://bit.ly/33Z4hvt>



3. DETENTION INFRASTRUCTURE

3.1 Summary.

As of 2019, Colombia operated 11 temporary immigration holding facilities (*salas transitorias de migración*, STMs), which in 2018 confined 2,911 foreign nationals.⁴⁴ There have also been reports of people being detained for immigration purposes in police stations and airports, although the Global Detention Project has been unable to obtain further information on the use of these facilities.

STM's are defined as "physical spaces equipped with the necessary conditions for the temporary preventive retention of foreigners to whom the measure of inadmissibility, deportation or expulsion is applied."⁴⁵ The Colombian government has explained that these facilities are intended to accommodate migrants during verification and immigration control procedures.⁴⁶ The facilities reportedly provide medical diagnostic services, legal assistance, consular representation, space for family visits, interpretation services (where possible), and access to sanitary facilities and food.⁴⁷

According to the Colombian Migration Unit (CMU), the STMs have dedicated medical area (*Área de diagnóstico médico y psicológico*) where detainees receive individual physical and mental health assessments.⁴⁸ An administrative and immigration verification area (*Área administrativa y de verificación migratoria*) is utilised for entry processing of foreign or national citizens subject to preventive detention, as well as for fingerprinting and identity verification. Detainees may also use the telephone, fax, or computer (email) in this area in order to contact a lawyer, consular representatives, or their family, and are to have access to interpreters when speaking with immigration officers and other people. Four people can be received and processed in this area at once.⁴⁹

⁴⁴ UN Committee on Migrant Workers (CMW), "Replies of Colombia to the List of Issues, CMW/C/COL/Q/3/Add.1," 17 June 2019, <https://bit.ly/2Les04a>

⁴⁵ Unidad Administrativa Migración Colombia, Ministerio de Relaciones Exteriores, "*Estudio Técnico: Salas transitorias de migración (STM)*," Ministerio de Relaciones Exteriores, 19 April 2013, <https://bit.ly/3ol9vnn>

⁴⁶ UN Committee on Migrant Workers (CMW), "Replies of Colombia to the List of Issues, CMW/C/COL/Q/3/Add.1," 17 June 2019, <https://bit.ly/2Les04a>

⁴⁷ UN Committee on Migrant Workers (CMW), "Consideration of the Third Periodic Report Submitted by Colombia Under Article 73 of the Convention, Due in 2018, CMW/C/COL/3," 19 July 2018, https://www.ecoi.net/en/file/local/1449190/1930_1541590519_g1822219.pdf

⁴⁸ Unidad Administrativa Migración Colombia, Ministerio de Relaciones Exteriores, "*Estudio Técnico: Salas transitorias de migración (STM)*," Ministerio de Relaciones Exteriores, 19 April 2013, <https://bit.ly/3ol9vnn>

⁴⁹ Unidad Administrativa Migración Colombia, Ministerio de Relaciones Exteriores, "*Estudio Técnico: Salas transitorias de migración (STM)*," Ministerio de Relaciones Exteriores, 19 April 2013, <https://bit.ly/3ol9vnn>

STMs also have waiting areas (*Áreas de espera*), where detainees are to wait while their situation is resolved. A television, newspapers, magazines, and books are available, and detainees can speak with their lawyers. A maximum of ten people may be placed in such an area at once.⁵⁰ Elsewhere, a designated space for dining (*Área de comedor*) is available for up to ten detainees to use at one time.⁵¹ Finally, sleeping quarters are provided for people held for more than 12 hours. These are split into men's quarters and women's quarters, and gender-segregated bathrooms with showers are also available. An additional bathroom for children and disabled people is also provided.⁵²

According to a 2013 report published by the Colombian Migration Unit (CMU), the legal framework under which STM's have been established encompasses Articles 4(2)-(4); Article 10(4) and (6); Article 16(2), (5) and (6); Article 18(2); Article 23(2), (5), (7) and (10) and Article 27 of Decree 4062 of 2011 and mostly concern the CMU's functions to control borders and verify the immigration status of non-citizens.⁵³

3.2 List of detention facilities.

The Global Detention Project has been unable to obtain a definitive list of the facilities used in Colombia. According to a report published in 2013, seven STM's were being built: one each in Guajira, Cartagena, Medellín, Bogotá, Cúcuta, and two in Pasto.⁵⁴

⁵⁰ Unidad Administrativa Migración Colombia, Ministerio de Relaciones Exteriores, "*Estudio Técnico: Salas transitorias de migración (STM)*," Ministerio de Relaciones Exteriores, 19 April 2013, <https://bit.ly/3ol9vnn>

⁵¹ Unidad Administrativa Migración Colombia, Ministerio de Relaciones Exteriores, "*Estudio Técnico: Salas transitorias de migración (STM)*," Ministerio de Relaciones Exteriores, 19 April 2013, <https://bit.ly/3ol9vnn>

⁵² Unidad Administrativa Migración Colombia, Ministerio de Relaciones Exteriores, "*Estudio Técnico: Salas transitorias de migración (STM)*," Ministerio de Relaciones Exteriores, 19 April 2013, <https://bit.ly/3ol9vnn>

⁵³ Unidad Administrativa Migración Colombia, Ministerio de Relaciones Exteriores, "*Estudio Técnico: Salas transitorias de migración (STM)*," Ministerio de Relaciones Exteriores, 19 April 2013, <https://bit.ly/3ol9vnn>

⁵⁴ Redacción Justicia, "*En un año, red movió a mil migrantes ilegales*," *El Tiempo*, 17 August 2013, <https://www.eltiempo.com/archivo/documento/CMS-13000551>



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