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**International Social Service’s submission to**

**UN Committee on Migrant Workers General Comment No. 5 on**

**Migrants’ Human Right to Liberty and their Protection from Arbitrary Detention**

**Part I focuses on global aspects - Part E of the questionnaire sent in December 2018. Part II complements Part I with responses from our ISS partners in Spain, the Red Cross and in the UK, Children and Families Across Borders covering national practices Part A to D.**

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# PART 1: GLOBAL OVERVIEW

# Organization information

Name of Organization Completing Form: International Social Service

Country:Global, Spain and UK

Date: 1 April 2019

Established in 1924, [International Social Service](https://www.iss-ssi.org/index.php/en/home/mission) (ISS) is an international federation of interconnected NGOs and partners that works towards re-establishing links within a family separated by borders. The ISS network covering over 100 countries strives to find solutions that enhance the protection of children in vulnerable situations. Our key priorities are to protect the best interest of the child above all other considerations and to provide socio-legal counsel and psychological support. ISS strives to protect, defend, and support children, families, and individuals separated as a consequence of cross border migration. Whilst different countries will provide its responses based on their national frameworks, this submission is based on a global overview of the use of alternatives to detention, particularly in the case of children on the move. The term ‘children on the move’ (COM) refers to children moving for a variety of reasons, voluntarily or involuntarily, within or between countries, with or without their parents or other primary caregivers. (FXB Harvard).

# Section 1: ISS’ experience

This submission is based, on ISS’ proven experience working with children on the move with

* 100 years of cross-border case management on child protection matters
* technical assistance to different actors on the [eight steps to achieve quality sustainable solutions](https://www.iss-ssi.org/images/Childrenonthemove_Guide.pdf) based on ISS case work
* establishment of regional cross-border mechanism in West Africa covering 15 ECOWAS countries plus Mauritania
* advocacy and policy work in the implementation of the [Guidelines of Alternative Care of Children](https://www.iss-ssi.org/index.php/en/advocacy#4-1-guidelines-for-the-alternative-care-of-children) and [1996 Hague Convention](https://www.iss-ssi.org/images/advocacy/Tab1-ISSAdvocacy/Fiches_Advocacy/ISS_1996HagueConvention_casework_ANG.pdf) at global, regional and national levels

# Section 2: ISS’ observed challenges for children on the move and their families

Based on this experience (section 1), ISS has noted among others, the following challenges.

## 2.1 Limited options for children who are separated from their families and over-reliance on detention.

The Committee on the Rights of the Child has urged States to ‘expeditiously and completely cease the detention of children on the basis of their immigration status’[[1]](#footnote-1), arguing that such detention violates the UNCRC and is never in the child’s best interests. This approach is invariably reflected in the policies of humanitarian bodies while, according to Farmer, ‘States are increasingly resorting to the use of immigration detention’[[2]](#footnote-2) for unaccompanied and separated children as well as those travelling with their parents.

As rightly noted “the role that front-line humanitarian workers are allowed to play in relation to children on the move deprived of their liberty – including in the guise of ‘protective custody’ – varies greatly, from de facto reliance on their services to blunt refusal of access. In all cases, however, it is difficult to foresee how humanitarian workers are to be advised on an appropriate response to this phenomenon. […] The ‘disappearance’ of a significant proportion of unaccompanied children in any given transit or destination country has yet to be addressed in a fully candid manner. The immediate and longer-term risks that this may imply for the children concerned have to be identified, as do proven successful alternatives to measures tantamount, in themselves or in their effects, to deprivation of liberty.” [[3]](#footnote-3)

As a result, approximately 2.7 million children could be living in institutional care worldwide according to 2017 data on children living in formal care arrangements involving a competent body decision.[[4]](#footnote-4) This number is likely to be significantly higher as it does not include the many children living in non-regulated or privately run institutions. The damaging impact of institutionalisation on children is proven.[[5]](#footnote-5) Whilst, institutional care is generally considered harmful for all children, particular risks for certain such as those with disabilities[[6]](#footnote-6) and from certain ethnic groups exist due to the additional barriers they face. The need for alternatives is clear (see section 3.1).

## 2.2 Frontline professionals face difficult realities on the ground

One of the first priorities for responding to COM, irrespective of the reasons behind their displacement, is to ensure that they are in an appropriate care setting. Whilst international standards including the UN Guidelines for the Alternative Care of Children, address the rights and needs of COM in detail, their practical implementation can be less straightforward. For example, it is noted the many challenges in implementing the best interest determination (ID) of the child by third parties as follows “gathering necessary information and ensuring its proper analysis and deliberation, in accordance with full determinations, is a lengthy and labour-intensive task that needs to be carried out by suitably qualified personnel. Simplification of these processes has therefore been envisaged, but reducing procedural safeguards carries its own dangers. Putting the resulting recommendations into practice obviously requires functioning mechanisms, structures and services effectively in place and available, which is not the case in many of the countries concerned.” [[7]](#footnote-7) Without effective child protection measures in place, this creates result in obstacles for the full and meaningful participation of children in such decisions. Often in such situations well-intentioned volunteers are often providing services, lacking the capacity to provide comprehensive attention to the individual need of COM, as required by the BID. The need for capacity building is clear (see section 3.2).

# Section 3: ISS’ proposed solutions to improve responses for children on the move

In the context of the above challenges (section 2), ISS respectfully makes the following recommendations with a view of improving responses for children and their families that aligned with international standards, such as the Guidelines for the Alternative Care of Children (Guidelines, parts VIII and IX). Implementing the Guidelines requires dedicated processes to determine the best interest of an individual child, provision of a range of suitable care options and a collaborative multi-sectoral process within national child protection and care systems (see section 3.1). To consolidate such responses however, the expertise of all individuals and professionals in contact with children is essential. There is wide agreement among stakeholders about the urgent need to build the knowledge, competences and skills of this important group of people. (see section 3.2)

## 3.1 Alternatives to detention

The Guidelines set the benchmark for children on the move as follows:

*141. Unaccompanied or separated children already abroad should, in principle, enjoy the same level of protection and care as national children in the country concerned.*

*142. In determining appropriate care provision, the diversity and disparity of unaccompanied or separated children (such as ethnic and migratory background or cultural and religious diversity) should be taken into consideration on a case-by-case basis.*

*143. Unaccompanied or separated children, including those who arrive irregularly in a country, should not, in principle, be deprived of their liberty solely for having breached anylawgoverning access to and stay within the territory.*

Following these UN Guidelines and other international standards, COM should have access to the range of quality care options offered to children habitually resident in the country concerned, whenever it is not possible to remain with the family of origin. Based on an individualised assessment, family based care should be prioritised such as kinship care (see 3.1.1) and foster care (see 3.1.2) as well as community based care (see 3.1.3). In the provision such care placements, effective gatekeeping mechanisms should be in place to ensure that reintegration is not possible and that the quality care is provided, including evaluation, preparation and follow up of carers/service providers (see UN Guidelines Parts I to VII). The following examples illustrate alternatives to detention.

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| **3.1.1 ISS promotes international family kinship care**  In situations where a child can no longer be cared for by their parents, the form of alternative care which should be prioritised is the possibility of the children remaining within their extended family, as this respects the child’s right to family life and maintain family links (article 3, 8 and 20 of the Convention on the Rights of the Child and in the UN Guidelines). This gives the child an opportunity to maintain their identity. In applying these principles, social workers should explore all possible options that allow a child to remain within their extended family, including any potential family placements overseas. As such ISS members undertake daily casework in this field by way of facilitation international kinship assessments working with Authorities in 1996 Hague Convention contracting states or relevant structures in non contracting States, conducting international kinship assessments, assisting and participating in the development of a transition plan, post placement visits, support and reports as well as through counselling and referrals to specialised services can be provided. For further information, see: ISS factsheet on [international kinship care](https://www.iss-ssi.org/images/advocacy/Tab1-ISSAdvocacy/Fiches_Advocacy/InternationalKinship_CareAdvocacy_ANG.pdf) |

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| **3.1.2 Mexico: Launch of pilot foster care programmes for migrant children**[[8]](#footnote-8)  In the framework of the cooperation agreement aimed at strengthening alternative care policies in the country, and the development of pilot foster care programmes for the progressive deinstitutionalisation of children and adolescents, the Latin-American Foster Care Network (RELAF) and UNICEF Mexico are providing technical cooperation to Mexico, at federal level and in some of its states. This project aims to develop the guidelines and tools needed, as well as train the relevant teams, to design and implement foster care policies and programmes. The pilot foster care programme at federal level is the first in the region to have been designed to care, in particular, for unaccompanied migrant children, asylum-seeking children and child refugees.  These programmes are an important step forward towards the establishment of public policies that ensure the right of migrant children and adolescents in Mexico to live in a family environment. RELAF and UNICEF Mexico hope to replicate Mexico’s experience on the basis of the results of these pilot programmes, and to offer technical assistance to other countries that are interested in improving their policies aimed at offering alternative care to migrant children and adolescents, at preventing the separation of migrant families and at reintegrating and reuniting their members. For further information, see: RELAF, <http://www.relaf.org/coop_mexico.html>. |

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| **3.1.3 Malaysia: Pilot project in community-based care for unaccompanied and separated children**[[9]](#footnote-9)  In Malaysia, out of the approximately 1,196 children detained in immigration facilities in 2014, 43% were under the age of 12 and 10% were children UASC. Given the limited support within communities, children struggle to find safe placements and access basic services, and are at high risk of abuse or exploitation. SUKA Society therefor estarted its advocacy efforts for alternatives to detention in 2010, and launched a pilot project in 2015. The programme has implemented a holistic case management system outlining processes, systems, reporting and follow-up mechanisms for case management, to address the challenges faced by UASC. The programme has three main goals: safety (e.g. protection against abuse), permanency (e.g. long-term care arrangements) and wellbeing (e.g. safe housing, food, education and health). SUKA Society advocates mainly for community placement, and our case managers works with the community to provide informal foster care arrangements for UASC. Families are screened for suitability, trained on our care standards and briefed on the required care arrangements. A minimal rental and food support is provided to the family as an incentive to care for the minor. For cases where all other placement options have been exhausted, particularly for older male UASC, group home or independent living is explored. The case management programme can be seen as a preventive tool against arrest and detention. Those who might be aging out before obtaining resettlement, the programme has a six and three-months follow-up programmes that assist the young people, who are now above 18 years old, to secure employment and preparation for independent living. Finally, we need to prepare the UASC for an indefinite stay in Malaysia such as independent living. For further information, see: <http://www.sukasociety.org/what-do-we-do/>. |

## 3.2 Capacity building

Faced with the multitude of stakeholders and countries involved[[10]](#footnote-10), the care of children affected by migration requires increased training and cooperation within a country and across borders. This cooperation is still failing, and impacts considerably on the continuity and quality of care. Overwhelmed by the complexity and diversity of migratory situations, the majority of current responses offered by countries focus on immediate protection, certainly essential, but not exclusive to the development of appropriate long-term solutions. In this respect, ISS has developed an international handbook aimed at promoting a harmonised and comprehensive approach to the care of children affected by migration (see 3.2.1). This approach is in several stages, and relies on cross-border collaborative mechanisms, essential to ensure supervision and monitoring of the chosen protection measure. In addition to this international handbook, ISS with IFRC with the leading organizations working in this field is developing of massive open online course for children travelling alone, which will be launched on 27 May 2019 (see 3.2.2).

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| **3.2.1 ISS promotes quality sustainable solutions**  In considering alternatives to detention, ISS notes the need for greater collaboration between States and their respective child protection agencies and organisations. States need to place every child at the centre of the decision-making process, and tackle the challenges with the following commitments: provide Children on the move with individualised, child-centred, sustainable and quality solutions; develop and follow harmonized care standards to ensure quality and continuity of transnational care; establish adequate case monitoring and follow-up mechanisms across borders. For the development of a well-connected, transnational network of child protection professionals, the guide proposes an eight-step procedure.  For further information, see https://www.iss-ssi.org/images/advocacy/Tab1-ISSAdvocacy/Fiches\_Advocacy/COM\_factsheet\_ANG.pdf |
| **3.2.2 ISS works leading international organisations to provide worldwide free training**  In response to concerns for UASC migrating across borders or forcibly displaced, leading international organisations have partnered to initiate an on-line training tool “’Moving Alone: Alternative Care and the Protection of Unaccompanied and Separated Children on the Move’. The MOOC in Arabic, English, French and Spanish aims to support capacity building of thousands of frontline professionals, semi-professionals, decision makers, volunteers and individuals working worldwide with children on the move from across different professions. The training will help workers adopt a child rights approach to supporting unaccompanied and separated children on the move ensuring the principles of do no-harm, best interests and a gender sensitive approach. It will explore the provision of suitable alternative care by which children can also be provided protection and access to multi-sectoral services options, in line with international standards. This MOOC can help governments to achieve elements of the Global Compacts. This Massive Open Online Course (MOOC) will be accessible free of charge to anyone who wants to participate. The MOOC will be an interactive 6 week step-by-step course of approximately 2 hours online learning and 2 hours self-study per week. The MOOC allows for flexible participation and can fit around anyone’s own life and commitments i.e. they can go in and out of the each weekly module when they have time. Anyone with internet access across the world will be able to study, along with thousands of other world-wide learners. The MOOC allows participants 24:7 access to learning materials such as teaching videos and polls. Most importantly, the MOOC allows learners all around the world to communicate and learn from each other through inter-active discussion and information sharing. For further information, see [www.childrenonthemovemooc.com](http://www.childrenonthemovemooc.com) |

# PART 2: NATIONAL OVERVIEW OF ISS PARTNERS (SPAIN AND UK)

## Part A: General Information

1. Please describe the process by which migrants are detained in your country. Etc.

*“The Government has wide powers to detain people for reasons of immigration control. Those who are subject to immigration controls may be held whilst they wait for permission to enter the UK or before they are deported or removed from the country. Immigration detention is an administrative process and is not to be confused with any criminal justice procedure. Powers to detain are exercised by Home Office officials, rather than judges.”[[11]](#footnote-11)*

La detención puede llevarse a cabo por las Fuerzas y Cuerpos de Seguridad (estatales o autonómicas donde existan). La persona detenida migrante, al igual que sucedería con la no migrante, deberá ser puesta a disposición judicial de forma inmediata (plazo máximo 72 horas). La persona migrante podrá ser puesta en libertad o si se encuentra de manera no legal será el juez quien podrá dictar una orden (auto) de ingreso en un centro de internamiento de extranjeros (CIE). Contra dicha orden se puede presentar el correspondiente recurso. Durante dicho ingreso en el CIE (plazo máximo de 60 días) la administración podrá dictar un Decreto de expulsión del país. En caso de no ser así, la persona deberá ser puesta en libertad. En el caso de que sea detenida y tenga un previo Decreto de expulsión será conducida a un CIE para dar cumplimiento a dicha orden. En el caso de que la detención sea consecuencia de un ilícito penal se seguirá el mismo procedimiento que con las personas nacionales del país en la misma situación.

1. Where do arrests and detentions take place? Is force typically used during arrest or detention? Are there standards for treatment of migrants during an arrest? To what extent are migrants informed of what is going on during an arrest (why they are being detained, possible charges against them, etc.)?

“*The UK Government has discretionary power to detain at any point of someone’s immigration process: upon arrival in the UK; upon presentation to an immigration office within the country; during a check-in with immigration officials; once a decision to remove has been issued; and after a prison sentence or following arrest by a police officer.”[[12]](#footnote-12)*

Las detenciones pueden producirse en el momento de la entrada en el territorio nacional por cualquier puesto fronterizo o cuando se detecta una entrada ilegal (costas), o bien en la vía pública puede requerirse la documentación por las fuerzas del orden para verificar la situación legal de una persona en el país (en la actualidad esto no es habitual). Comprobados los datos en la comisaría competente si tiene toda la documentación legal deberá ser puesta en libertad, en caso contrario deberá ponerse a disposición judicial de manera inmediata que será quien podrá dictar, en su caso, la orden (auto) de ingreso en un CIE mientras la administración acuerda lo pertinente respecto a la expulsión de esa persona (Decreto de expulsión).

1. Who are the personnel that staff facilities that hold people in detention (corrections officers, law enforcement, social workers, etc.)? Etc.

El personal que custodia los Centros de internamiento de extranjeros (CIE) es la Policía Nacional y los Mossos de Escuadra (policía autonómica en el CIE de Cataluña). La Policía Nacional depende del Ministerio del Interior y los Mossos de escuadra de la Consejería autonómica competente. En cualquier caso, la actuación de ambos cuerpos puede ser objeto de reclamación ante los tribunales.

1. Who owns the facilities used to house migrants who are detained? Etc.

There are 11 detention centers in the UK. *“Some are run by private security companies, others by the Prison Service. People in detention cannot leave and have very limited freedom of movement within the centres. Security levels are similar to prisons.”[[13]](#footnote-13)* “*Detainees are held in Immigration Removal Centres (IRCs) which are separate to prisons and short-term holding facilities. There are 11 IRCs across the UK. Most are managed by private sector companies; two are operated by the Prison Service. Foreign national offenders held for immigration purposes may be detained in prison.”[[14]](#footnote-14)*

1. Does your country monitor detention facilities? Etc.

*“Independent oversight is provided by HM Inspectorate of Prisons, Independent Monitoring Boards, the Prisons and probation Ombudsman and the Independent Chief Inspector of Borders and Immigration.”[[15]](#footnote-15)*

Los fiscales pueden visitar en cualquier momento los centros de detención y dar cuenta a la Fiscalía General como prevé su Estatuto Orgánico; la Instrucción 6/1991 y varias Circulares (1/1994, 3/2001) han concretado el deber de los Fiscales de visitarlos periódicamente. También pueden visitar los centros la autoridad judicial y las fuerzas y cuerpos de seguridad. Por otro lado, las personas detenidas en un CIE, las ONG… pueden presentar quejas ante el Juzgado de Control (Juzgado de Instrucción que también tiene competencia para recibir esas quejas). Todo ello sin perjuicio de la supervisión que puedan realizar el Defensor del Pueblo y el Sindic de Greuges (también en Cataluña) en su función de vigilancia del respeto de los derechos humanos por la Administración pública.

1. During detention, do detainees have access to communication with their families, legal counsel, and their own consular authorities? Are detainees provided with information on the process they are going through?

“*At every IRC (Immigration Removal Central) there are regular legal advice surgeries funded under legal aid – every detainee is entitled to 30 minutes of free legal advice. There are libraries stocked with materials that allow detainees to access basic information that might help them work on their immigration case. Detainees are permitted mobile phones to communicate with loved ones and legal advisors alike. None of these rights offset the impact of or justify the use of administrative detention in the UK. But even these basic rights are denied to those unfortunate enough to be detained in prison. In January 2017, while carrying out a legal advice surgery at HMP Wandsworth, BID encountered an individual who had been held at the prison, in immigration detention, for 2 years. He had been subject to the same restrictions as those serving their criminal sentences – 23 hours of lockdown included. He was unaware of any actions he might take to end this limbo, unable to access proper legal advice to help secure his release. Sadly his situation is far from unique.*”

*“****Impact of Cuts to Legal Aid*** *BID’s Autumn 2016 Legal Advice Survey found that, even among detainees held in IRCs, just one in four were able to secure a legal aid solicitor…. Detainees strongly felt that not being able to access immigration advice harmed their chances of leaving detention, and simultaneously increased the likelihood that they would ultimately be deported. Indeed, among those without a current solicitor, there was complete agreement that the lack of legal advice meant that, not only were they not able to apply for bail, but they were unaware that applying for bail was even an option open to them”[[16]](#footnote-16)*

Si, tienen acceso a toda comunicación e información con sus familiares, con las autoridades consulares de su país, con su abogado etc.

1. Are the particular needs of women and other groups of people met? Etc.

“*People in detention cannot leave and have very limited freedom of movement within the centres. There is currently no time-limit on adult detention in the UK – you can be detained indefinitely (with the exception of pregnant women, who can only be detained for up to 72 hours unless extended by ministerial approval).” “The Home Office’s “Adults at Risk in Immigration Detention” policy, which was brought into force in September 2016, sets out the conditions or experiences which will indicate that a person may be “particularly vulnerable to harm in detention” [[17]](#footnote-17)*To be released from detention as a survivor of torture, you will need to provide independent evidence of this.

Los hombres y las mujeres están separados. En el caso de una persona solicitante de asilo se suspende la resolución de expulsión, devolución o regreso hasta que se haya inadmitido a trámite o resuelto la solicitud. En el caso de las posibles víctimas de trata, existe un acuerdo entre nuestra organización y la Fiscalía General del Estado para cuando personal de nuestra organización que realiza alguna actividad en el CIE tenga fundadas sospechas de que una persona ingresada pudiera ser víctima de trata lo pueda poner en conocimiento del Ministerio Fiscal de forma que se saque a esa persona del CIE y pueda recibir atención de entidades especializadas para determinar si situación y, en su caso, el acompañamiento que necesite.

1. Does the detention process look any different if minors are involved?

“…*unaccompanied minors should also not be detained, apart from in exceptional circumstances (though sometimes children are wrongly detained by the Home Office, because the Home Office classify them as adults)*”[[18]](#footnote-18)

Las personas menores de edad no pueden ser objeto de detención e ingreso en el CIE. Las personas extranjeras menores de edad que entran de manera no legal en España, sin el referente de una persona adulta, se les considera en situación de desamparo y la Administración asume la tutela de manera automática. De manera general la ley prevé teniendo en cuenta el interés superior del niño y conforme al principio de reagrupación familiar, que la Administración resolverá lo que proceda sobra la repatriación al país de origen, o a aquel donde se encuentren sus familiares, o, en su defecto, sobre su permanencia en España. Cuando la reagrupación no fuera procedente o fuera imposible, se ha de otorgar al menor de edad la autorización de residencia (art. 35 LOEX y arts. 139, 146, 189 y ss., y 215 REX. y arts. 46 a 48 Ley 12/2009, de 30 de octubre, reguladora del derecho de asilo y de la protección subsidiaria).

## Part B: Legal Treatment

1. What is the legal basis for detaining migrants in your country? Etc.

“*Home Office policy states detention may be used in the following circumstances:*

* *The person is likely to abscond if given temporary admission or release;*
* *There is insufficient reliable information to decide whether to grant temporary admission or release;*
* *The person’s removal from the UK is imminent;*
* *Detention is needed whilst alternative arrangements are made for the person's care; and*
* *Release is not considered conducive to the public good.”[[19]](#footnote-19)*

La base legal se encuentra principalmente en la Ley Orgánica 4/2000 como una de las medidas cautelares previstas. En concreto prevé la posibilidad de que en un procedimiento administrativo sancionador en el que puede proponerse la expulsión de una persona extranjera, el instructor puede acordar, como medida cautelar, “el internamiento preventivo, previa autorización judicial en los centros de internamiento” (art. 61.1 e) LOEX).

También se prevé que se pueda solicitar autorización al juez para internar a la persona extranjera cuando proceda su regreso (art.60 LOEX), devolución (art. 58 LOEX) o expulsión (art. 64 LOEX) y la ejecución de tales resoluciones administrativas fuera a retrasarse más de 72 horas.

1. Is immigration governed by criminal law or administrative law?

Immigration detention is an administrative process in the UK.

Se regula por el derecho administrativo. En concreto podemos señalar Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social (LOEX), ley que ha sufrido diversas reformas (LO 8/2000, LO 11/2003; LO 14/2003, LO 2/2009, LO 10/2011), así como el Reglamento de Extranjería (Real Decreto 557/2011, de 20 de abril.

Y, por otro lado, no podemos dejar de citar el Real Decreto 162/2014, de 14 de marzo, del “Reglamento de funcionamiento y régimen interior de los centros de internamiento de extranjeros” (RCIE).

1. Does the immigration detention proceed *ex officio* or there is an individualized analysis of its pertinence and proportionality?
2. Does legislation establish a maximum amount of time for immigration detention? Etc. “*Case law on length of detention has established that people can only be detained for a “reasonable” period of time, and the power to detain only exists when there is a “realistic prospect of removal*. *The Home Office must undertake regular detention reviews to justify a continued detention. To request release from detention, a request can be made for temporary admission or bail*.”[[20]](#footnote-20)

72 horas para puesta disposición judicial, 60 días en un CIE, pasado dicho plazo deberá ser puesta en libertad.

1. Does legislation provide any mechanism to challenge the legality of the detention?

En la regulación se contemplan todas las garantías y derechos legales propios de un estado de derecho (derecho al debido proceso, tutela judicial, derecho a la defensa, asistencia consular, intérprete…).

1. Is there any national legislation etc.
2. Is there any legislation that establishes the right to consular assistance for migrants? Etc,
3. Does your country recognize the due process rights of non-citizens etc.
4. Is information available to detainees ..? Etc.
5. What do proceedings that determine migration status look like? Etc.

With regards to refugee status/asylum applications, a person must first claim asylum. They will then have a meeting with an immigration officer and then later an asylum interview with a Home Office caseworker.

Corresponde la decisión a la administración. Recae sobre personal funcionario.

1. Is there a duty to ensure that decisions are duly motivated by legal reasoning? How is that ensured in practice?

La ley determina que toda decisión administrativa deberá estar motivada.

1. How much time elapses after arrest before a determination of migration status is made? How long does the initial determination of status process take?

There are no consistent time-scales for this.

1. If families are involved, are their cases determined separately or together? Etc.

Please see this report - Fractured Childhoods: The separation of families by immigration detention (April 2013) Bail for Immigration Detainees (BID) <https://www.biduk.org/pages/62-bid-research-reports>.

Ya hemos dicho que una persona menor de edad no puede ser objeto de expulsión. Por otro lado, podemos señalar la previsión de que la persona extranjera sometida a internamiento en un CIE tiene derecho a “tener en su compañía a sus hijos menores, siempre que el Ministerio Fiscal informe favorablemente tal medida y existan en el centro módulos que garanticen la unidad e intimidad familiar” (art. 62 bis 1º i) LOEX (y el art. 16. 2º K) RCIE). Es decir, es posible el internamiento de menores de edad, pero no como medida cautelar para asegurar la expulsión, sino como medida de protección adoptada en interés del menor en aquellos casos en que sus padres o tutores estuviesen internados en dichos centros. Según la última información consultada no existen en la actualidad tales módulos en los CIE.

1. What are the consequences of a finding of irregular migration? Etc.

El ingreso se realiza en el CIE. La regla general en el ingreso en el CIE

1. Is there a right to appeal of finding of irregular migration status? Etc.

Si, existe el derecho de recurso y todas las garantías legales propias de un estado de Derecho. La existencia de un recurso conlleva el deber de suspensión de cualquier la orden de expulsión de la persona a la que afecte.

## Part C: Impact on Detainees

1. Please describe the impact that detention has on detainees’ physical and mental health.

Las personas a su llegada a costas se encuentran físicamente muy cansadas y con un gran estrés emocional debido al periplo migratorio que arrastran y a la incertidumbre de qué se van a encontrar al llegar a España. Vienen con expectativas o historias contadas que en muchos casos no se corresponden con la realidad. En muchas ocasiones, las familias son sujetas a interrogatorios por la policía, en las que los referentes adultos deben de poder demostrar que son padres de los niños que les acompañan, siendo en muchos casos imposible por no haber un vínculo biológico sino figuras referentes o cuidadores permanentes de los niños y niñas, por motivos diversos. Por tanto, se producen separaciones muy traumáticas que dejan tanto al adulto como al niño en una situación de gran estrés y angustia que se prolonga en el tiempo pues es necesario cumplir con ciertos procesos como pruebas de ADN, recopilación de documentación en el país de origen, etc, que se demoran mucho en el tiempo, siendo imposible el contacto entre el adulto y el niño mientras tanto. Por otro lado, las personas que llegan han dejado en el trayecto migratorio a familiares y amigos, han vivido situaciones de terror (maltrato, violaciones, chantajes, separaciones forzosas) unido al desgarro de abandonar sus pueblos.

1. Please describe the varying impacts on particularly vulnerable groups etc?
2. Please describe the way in which detention of migrants in your country particularly affects children who are detained. Etc.

Los niños en nuestro país no están detenidos, solo retenidos durante un breve periodo de tiempo mientras se produce la identificación por parte de las autoridades policiales. Al igual que el resto de niños y niñas de nuestro país tienen derecho a la educación y son integrados en el sistema educativo español. En el caso de menores no acompañados, las propias entidades de protección que ejercen la tutela velan por su derecho a la educación procurando adaptar el contenido curricular a la edad del niño y a sus necesidades. Recordemos que en España la escolarización es obligatoria a partir de los cuatro años.

1. Is consideration given to keeping families together?

Home Office Policy document ‘*Family separations: Guidance and the operational process for the separation of family members who no longer have any right to remain in the UK and are liable to be removed’* sets out:

“*You must not separate family members in the following circumstances:*

* *nursing mothers must not be separated from the child they are nursing, for immigration purposes*
* *a child must not be separated from both adults for immigration purposes (or from one, in the case of a single-parent family, if the consequence of that decision is that the child is taken into care)” [[21]](#footnote-21)*p. 6.

Bail for Immigration Detainees (BID) represented 155 parents in 2018 who were separated from a child or children while in immigration detention in the UK. The charity usually handles about 170 cases a year. While current Home Office guidelines state that children should not be separated from a parent if that results in the child being taken into care, Bid says that this does happen to the families they support.

Según los protocolos establecidos por las autoridades españolas, los adultos de la unidad familiar o el adulto que acompañe a cualquier niño o niña debe demostrar la filiación con éstos. Esto resulta muy complejo y produce rupturas de unidades familiares que bien no cuentan con documentación que lo acredite o bien tiene con el niño una relación de cuidador principal desde hace mucho tiempo por diversas causas y no puede demostrarlo. Nuestra entidad tiene entre sus cometidos ayudar a la reintegración del niño con su referente adulto ya sea biológico o no, asesorando, auxiliando y apoyando tanto a los Servicios de Protección de Menores como a los emigrantes para llevar a cabo todos los requisitos que establecen desde Fiscalía de Menores para la reintegración: Prueba de ADN, informes sociales, recurso de alojamiento para la familia etc. Desde nuestro punto de vista, las autoridades actúan con una excesiva rigidez y separa por defecto a aquellas unidades familiares que no estén vinculadas estrictamente por filiación biológica sin entender que un tío, un primo (no primera línea de consanguinidad) o un vecino puede ser la figura de referencia del niño.

1. Are children typically kept in detention? How long?

Los niños son llevados junto a sus padres a un recurso seguro y donde tengan sus necesidades básicas cubiertas. La Autoridad local, asume la guarda o si fuese necesario la tutela de los niños y niñas que llegan no acompañados ubicándolos en familias de acogida o centros residenciales según la edad y circunstancias. Los niños de mayor edad (entre 14-18 años) son el colectivo más preocupante ya que la mayoría de estos niños llegan a España sin ningún documento que pueda acreditar su edad y existe la duda si deben ser considerados como adultos o como niños. El tratamiento y la protección que se les dé a estos niños depende de pruebas óseas- que hoy en día ofrecen poca fiabilidad-según los expertos.

1. How does the detention of migrants in your country particularly affect women? Etc

Las mujeres junto con los niños y enfermos, son considerados colectivos vulnerables por lo que reciben una atención diferenciada. Dentro de los protocolos de actuación existe uno orientado a identificar a aquellas mujeres víctimas de trata mediante una entrevista con profesionales que las atienden a su llegada a costas. Reciben una atención médica especializada y derivadas a un hospital si están embarazadas. Reciben apoyo psicosocial y derivadas a un recurso como por ejemplo un albergue temporal. Existe el mismo recurso que para los hombres detenido. Hace años nuestra organización proporcionaba servicio médico. Si bien en la actualidad lo presta una empresa contratada por la Administración. En el caso de que se requiera una atención especializada como puede ser el caso de las mujeres embarazadas podrán derivarlas al hospital que corresponda para la consulta o atención que necesiten.

## Part D: Alternatives to Detention

1. What alternatives to detention exist in your country?

“*The Home Office argues that alternatives to detention exist in the form of reporting, electronic monitoring, and release on bail*” Please see this article which talks about why these ‘alternatives’ do not result in a reduction in detention: The Detention Forum (2018), Alternatives to Detention <http://www.detentionforum.org.uk/wp-content/uploads/2019/02/AlternativestoDetention_A4_5.pdf>

Desde nuestra entidad se colabora en la gestión de albergues temporales y aquellos centros de emergencia y derivación por los que pasan las personas emigrantes llegadas a costas, que la policía determina que no vayan a un CIE, con el fin de que puedan recibir asesoramiento, solicitar asilo o restablecer el contacto con familiares y amigos que estén en otros lugares de Europa.

1. Have all detainees access to alternatives to detention?
2. Have there been any policies proposed in your country that could achieve the same objectives as detention? How have these proposals for alternatives to detention been received in your country? Etc.

There is a government pilot scheme (December 2018) to prevent vulnerable women being detained, information about which can be found here <https://www.gov.uk/government/news/new-pilot-schemes-to-support-migrants-at-risk-of-detention>

1. Committee on the Rights of the Child, *Report of the 2012 Day of General Discussion on the Rights of All Children in the Context of International Migration*, Para. 78; available at: <http://www.ohchr.org/Documents/HRBodies/CRC/Discussions/2012/DGD2012ReportAndRecommendations.pdf>. [↑](#footnote-ref-1)
2. Farmer, A (2013). ‘The impact of immigration detention on children’, in *Forced Migration Review* 44; available at: <http://www.fmreview.org/detention/farmer.html> [↑](#footnote-ref-2)
3. See Nigel Cantwell, ISS/IRC Monthly Review April 2017 [↑](#footnote-ref-3)
4. Nicole Petrowskia; Claudia Cappa and Peter Gross, Estimating the number of children in formal alternative care: Challenges and results, Child Abuse & Neglect, Volume 70, August 2017, Pages 388-398, [https://www.sciencedirect.com/science/article/pii/S0145213416302873#](https://www.sciencedirect.com/science/article/pii/S0145213416302873)! [↑](#footnote-ref-4)
5. For example <https://resourcecentre.savethechildren.net/library/keeping-children-out-harmful-institutions-why-we-should-be-investing-family-based-care> and <https://www.openingdoors.eu/key-facts/> [↑](#footnote-ref-5)
6. <https://www.hrw.org/news/2017/03/07/children-disabilities-deprivation-liberty-name-care-and-treatment> [↑](#footnote-ref-6)
7. See Nigel Cantwell, ISS/IRC Monthly Review April 2017 [↑](#footnote-ref-7)
8. See ISS/IRC Monthly Review April 2017 [↑](#footnote-ref-8)
9. See ISS/IRC Monthly Review April 2017 [↑](#footnote-ref-9)
10. See ISS/IRC Monthly Review April 2017 [↑](#footnote-ref-10)
11. Immigration detention in the UK: an overview - <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7294>) [↑](#footnote-ref-11)
12. The Migration Observatory <https://migrationobservatory.ox.ac.uk/resources/briefings/immigration-detention-in-the-uk/> [↑](#footnote-ref-12)
13. [Detention Action - https://detentionaction.org.uk/about-detention/what-is-immigration-detention/](file:///C:/Users/katyt/AppData/Local/Microsoft/Windows/Temporary%20Internet%20Files/Content.Outlook/SWSUB27I/Detention%20Action%20-%20https:/detentionaction.org.uk/about-detention/what-is-immigration-detention/) [↑](#footnote-ref-13)
14. Immigration detention in the UK: an overview - <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7294> [↑](#footnote-ref-14)
15. Immigration detention in the UK: an overview - <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7294> [↑](#footnote-ref-15)
16. Bail for Immigration Detainees (BID), (2017), Mind the Gap: Immigration Advice for Detainees in Prisons - <https://hubble-live-assets.s3.amazonaws.com/biduk/redactor2_assets/files/143/Mind_the_Gap.pdf> [↑](#footnote-ref-16)
17. Right to Remain - <https://righttoremain.org.uk/toolkit/detention/> [↑](#footnote-ref-17)
18. Right to Remain - <https://righttoremain.org.uk/toolkit/detention/> [↑](#footnote-ref-18)
19. <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7294> [↑](#footnote-ref-19)
20. Right to Remain - <https://righttoremain.org.uk/toolkit/detention/> [↑](#footnote-ref-20)
21. <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/666491/family_separations.pdf> [↑](#footnote-ref-21)