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April 24, 2019

Mr. Ahmadou Tall

Chairperson

Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families

Submission of Questionnaires for General Comment No. 5

Your Excellency,

On behalf of the University of Virginia School of Law, we want to commend the efforts of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families on bringing about the principles and values of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The University shares the honorable mission of the Committee to “bring about the international protection of the rights of all migrant workers and members of their families, reaffirming and establishing basic norms” of fundamental human rights, as stated in the Convention.

        The International Human Rights Law Clinic at the University of Virginia School of Law is a practical clinic that promotes international human rights advocacy, allowing law students to build the knowledge and skills to be effective advocates while exploring the opportunities of human rights institutions and practice. Based on these principles, the students in the clinic engage with distinguished human rights organizations to aid in their work.

        The Concept Note for General Comment No. 5 calls for submissions from various stakeholders to actively support the Committee in the drafting process. In this issue of the utmost importance, the International Human Rights Law Clinic at the University of Virginia School of Law wishes to assist the Committee by submitting completed questionnaires regarding the domestic law of six selected states: Australia; Canada; Germany; the United States of America; Nigeria; and Turkey. We hope that providing this information furthers the Committee’s knowledge of existing legal standards in both non-party states and states party to the Convention. The clinic primarily focused on migrant-receiving states to explore whether the Convention could be applied in non-party states. We hope our research can be of service of the Committee’s mission to protect the fundamental human rights of migrant workers and all membersof their families.

        We would like to express our gratitude to the Committee for the opportunity to assist in furthering this mission.

Please accept, Excellency, the assurances of our highest consideration.

Table of Contents

[Australia Immigration Detention 3](#_Toc7012556)

[Canada Immigration Detention 12](#_Toc7012557)

[Germany Immigration Detention 20](#_Toc7012558)

[United States Immigration Detention 32](#_Toc7012559)

[Nigeria Immigration Detention 40](#_Toc7012560)

[Turkey Immigration Detention 53](#_Toc7012561)

# **Australia Immigration Detention**

International Human Rights Law Clinic, University of Virginia School of Law

By Christopher Spadaro

**Part A: General Information**

1. **Please describe the process by which migrants are detained in your country. Which authorities are tasked with this responsibility? Who or what body oversees these authorities?**

An unlawful non-citizen must be detained. Migration Act 1958 Part 2 Division 7 § 189.

An unlawful non-citizen is not a lawful non-citizen. A lawful non-citizen is a non-citizen in the migration zone who holds a valid visa. Migration Act 1958 Part 2 Division 1 §§ 13-14.

The Australian Border Force (ABF) is responsible for immigration detention in Australia. They are subject to the authority of the Commissioner of ABF and the Secretary of the Australian Public Service (APS). Australian Border Force Act of 2015 Part 1 Division 1.

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.)?**

Arrests and detentions take place inside and outside of the migration zone. Migration Act 1958 Part 2 Division 7 § 189.

The migration zone includes the area that consists of the states and territories of Australia, but does not include the sea, except for in a port. Migration Act 1958 Part 1 § 5.

Officers are permitted to use force if the non-citizen is required to allow an identification test and does not allow it, if all reasonable measures have been exhausted, and if an authorization of force has been granted by a senior authorizing officer. Migration Act 1958 Part 2 Division 13AA § 261AE.

Detainees must be told of the consequences of detention as soon as reasonably practicable after detention. The officer detaining them must ensure that the detainee is aware that they can apply for a visa and the duration of their detention. Migration Act 1958 Part 2 Division 7 § 195.

1. **Who are the personnel that staff facilities that hold people in detention (corrections officers, law enforcement, social workers, etc.)? What are the professional qualifications of staff at these detention facilities? Who oversees staff at detention facilities?**

Australian Border Force officers staff the facilities. Additionally, the ABF contracts with Serco for services including security, detainee welfare, and detainee engagement. ABF also contracts with International Health and Medical Services to provide health services to detainees. <https://www.abf.gov.au/about-us/what-we-do/border-protection/immigration-detention/detention-management>

1. **Who owns the facilities used to house migrants who are detained? Who operates the facilities used to house detained migrants? Are facilities that house detained migrants public or private?**

Detention facilities are owned and run by the Australian government. The Australian Border Force currently operates the following seven facilities:

Adelaide Immigration Transit Accommodation (Kilburn, SA)

Brisbane immigration Transit Accommodation and Fraser Compound (Pinkenba, QLD)

Melbourne Immigration Transit Accommodation (Broadmeadows, VIC)

Northern Alternative Place of Detention (Eaton, NT)

Perth Immigration Detention Centre (Redcliffe, WA)

Villawood Immigration Detention Centre (Villawood, NSW)

Yongah Hill Immigration Detention Centre (Northam, WA)

The Australian Border Force keeps an updated list of facilities here:

<https://www.abf.gov.au/about-us/what-we-do/border-protection/immigration-detention/detention-facilities>

In some circumstances, detainees can reside at a specified place other than a detention center. This applies to a person who can be detained under § 189. Under this section, the Minister may make a residence determination if it is in the public interest to do so. The residence determination will state the location at which the persons detained under § 189 are to reside and will state any other conditions with which they must comply. Migration Act 1958 Part 2 Division 7 § 197AB.

1. **Does your country monitor detention facilities? Who monitors detention facilities? What are the standards that detention facilities must adhere to?**

The ABF provides statistics about detention: <https://www.homeaffairs.gov.au/research-and-statistics/statistics/visa-statistics/live/immigration-detention>

The Department of Home Affairs conducts internal inspections of the ABF’s detention facilities. Independent agencies conduct external inspections of detention facilities, including: the Commonwealth Ombudsman, the Australian Human Rights Commission, and the Australian Red Cross. <https://www.abf.gov.au/about-us/what-we-do/border-protection/immigration-detention/detention-management>

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?**

Detainees can have visitors. <https://www.abf.gov.au/about-us/what-we-do/border-protection/immigration-detention/visit-detention>

1. **Are the particular needs of women and other groups of people met? Is consideration given to the status of asylum seekers, victims of torture and trafficking, and other migrants who are particularly vulnerable?**

Could not determine.

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

Australia is a party to the Convention on the Rights of the Child, requiring Australia to make decisions in the best interests of the child and to only detain children as a last resort. Migration Act 1958 Part 1 Division 4 4AA.

The Australian government currently claims there are no children in detention. <https://www.theguardian.com/australia-news/2019/jan/02/government-shuts-maribyrnong-immigration-detention-centre-citing-fall-in-numbers>

**Part B: Legal Treatment**

1. **What is the legal basis for detaining migrants in your country? What purpose does detention of irregular migrants serve? How has this purpose been articulated through legislation and through the judicial system and public policies? Please identify any relevant cases in your country’s court system.**

In Australia, the Migration Act of 1958 forms the legal basis for detaining migrants. “The object of this Act is to regulate, in the national interest, the coming into, and presence in, Australia of non-citizens.” Migration Act 1958 Part 1 § 4.

In 1992, the High Court of Australia ruled on the constitutionality of immigration detention. *Chu Kheng Lim v Minister for Immigration* [1992] HCA 64 (detention is constitutional because it is not penal or punitive and therefore does not invoke Australia’s constitutional provisions regarding punitive actions).

In keeping with the ruling in *Chu Kheng Lim v. Minister for Immigration*, Australia publicizes that immigration detention is not penal or punitive. The Australia Border Force webpage states that, “In Australia, immigration detention is administrative not punitive.”

<https://www.abf.gov.au/about-us/what-we-do/border-protection/immigration-detention/overview>

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

See above.

1. **Does the immigration detention proceed *ex officio* or there is an individualized analysis of its pertinence and proportionality?**

Could not determine.

1. **Does legislation establish a maximum amount of time for immigration detention? What is the maximum amount of time that someone can be detained? Are there any exceptions or extensions allowed by law?**

Detainees must stay in detention until they receive a valid visa or are removed. There is no time limit on immigration detention. Migration Act 1958 Part 2 Division 7 § 196. *Al-Kateb v. Godwin*, [2004] HCA 37. *Minister for Immigration and Multicultural and Indigenous Affairs v Al Khafaji*, [2004] HCA 38.

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

Yes. See Migration Act 1958 Part 8 Division 1.

1. **Is there any national legislation that guarantees legal representation or interpreters in immigration proceedings? Is there a guarantee of access to free legal representation?**

Could not determine.

1. **Is there any legislation that establishes the right to consular assistance for migrants? Is this right guaranteed in practice?**

Could not determine.

1. **Does your country recognize the due process rights of non-citizens to the extent that it recognizes the due process rights of citizens? If not, what are the differences?**

Could not determine.

1. **Is information available to detainees regarding the processes of requesting asylum or applying for refugee status?**

A detainee may apply for a visa within 2 working days of being told the consequences of detention, or within 5 working days if he or she informs an officer within those 2 working days of his or her intention to apply for a visa. If a detainee does not apply within the allotted time, he or she may only apply for a bridging visa or a protection visa. Migration Act 1958 Part 2 Division 7 § 195.

1. **What do proceedings that determine migration status look like? Who is the decision-maker or decision-makers? What are the qualifications of the decision-makers? Are they appointed or elected?**

Could not determine.

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

Could not determine.

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 is not a specific time. If a person is detained under § 189 of the Migration Act, then they must be considered an unlawful non-citizen or they must be released. If they are detained under § 189, then § 195 allows them to apply for a Visa within two working days of their detention, or within five working days if they have submitted in writing their intention to apply within the first two days. There is not a statutorily set Visa processing time. Current Visa processing times are available here:

<https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-processing-times/global-visa-processing-times>

1. **If families are involved, are their cases determined separately or together? Is consideration given to the special circumstances of children?**

Australia has obligations under international treaties to protect and assist the family and cannot subject people to arbitrary or unlawful interference with their family. Applications for reunifications should be dealt with in a positive, humane and expeditious manner. ICCPR articles 17(1) and 23(1); ICESCR article 10(1); CRC articles 10(1) and 16(1).

1. **What are the consequences of a finding of irregular migration? Is an individual who is found to have entered the country in an irregular manner returned to detention or moved to a different facility? Are the conditions different for individuals found to be irregular migrants? Are irregular migrants eligible to be released on bond/bail until a final determination has been made?**

Not applicable because non-citizens in Australia are unlawful if they do not have a valid visa. See Part A, 1 above.

1. **Is there a right to appeal of finding of irregular migration status? What does the appeal of a finding of irregular migration status look like? How much time elapses from a judgment of irregular migration status to an appeal? What due process guarantees are given during the appeal process of a finding of irregular migration status? Does the appeal process have suspensive effect regarding deportations?**

Decisions to not grant visas can be reviewable decisions under Migration Act 1958 Part 5. Additionally, decisions to cancel or revoke visas can be reviewable under this section. Decisions relating to protection visas or temporary safe haven visas, or decisions in which the Minister gave a conclusive certificate, are not reviewable under this section.

Migration Act 1958 Part 7 allows for review of decisions relating to the grant or cancellation of protection visas, not including decisions in which the Minister has given a conclusive certificate. Some decisions may be reviewable by the Administrative Appeals Tribunal in its General Division, including: some decisions to cancel business visas, some decisions relating to migration agents, and some decisions relating to deportation, protection visas and the refusal or cancellation of visas on character grounds.

**Part C: Impact on Detainees**

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

There are high rates of mental health problems among people in immigration detention in Australia. Problems include depression, anxiety, sleep disorders, post-traumatic stress disorder, suicidal ideation, self-harm, and other mental health problems. Research has found that bringing groups of people together who experience frustration, distress, or mental illness can result in a “contagion” effect. Australian Human Rights Commission, *Asylum seekers, refugees and human rights*, Snapshot Report 2nd Edition 19-22 (2017).

1. **Please describe the varying impacts on particularly vulnerable groups, including racial and ethnic minorities. What systems or practices are in place to prevent discrimination in both proceedings and detention?**

Could not determine.

1. **Please describe the way in which detention of migrants in your country particularly affects children who are detained. How does the detention affect education? Are educational resources available in the facilities in which they are held? Please describe any of these programs.**

The effects of detention on children in Australia are particularly severe. Detention has a “profoundly negative impact on the mental and emotional health and development of children.” Children in detention in Australia were in “the two highest risk categories – higher than any published results anywhere in the world” for developmental risk. Australian Human Rights Commission, *Asylum seekers, refugees and human rights*, Snapshot Report 2nd Edition 20 (2017).

Although Australia has duties to provide education to non-citizens under ICESCR article 13, CRC article 28, CRPD article 24(1), and Refugee Convention article 22, there has been a documented lack of educational facilities. Australian Human Rights Commission, *Asylum seekers, refugees and human rights*, Snapshot Report 2nd Edition 15 and 35 (2017).

1. **Is consideration given to keeping families together?**

Could not determine.

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

The number of children in detention has been drastically reduced since 2013, and there may currently be no children in detention. Australian Human Rights Commission, *Asylum seekers, refugees and human rights*, Snapshot Report 2nd Edition 14 (2017).

1. **How does the detention of migrants in your country particularly affect women? Are health resources for women made available to women in detention? How can women in detention access health resources? Are resources available for pregnant women in detention? How are pregnant women accommodated with respect to the conditions of detention?**

Could not determine.

**Part D: Alternatives to Detention**

1. **What alternatives to detention exist in your country? Please describe these alternatives to detention and how they are generally perceived and implemented in your country.**

There are alternatives to detention, such as release on Bridging Visas, and movement of people to community arrangements. Australian Human Rights Commission, *Asylum seekers, refugees and human rights*, Snapshot Report 2nd Edition 22 (2017).

There are six “bands” of alternatives to detention, including placing unaccompanied children in detention, community detention, transitional support, community assistance support, and an asylum seeker assistance scheme. Australian Human Rights Commission, *Asylum seekers, refugees and human rights*, Snapshot Report 2nd Edition 24 (2017).

1. **Have all detainees access to alternatives to detention? How many persons get an alternative to detention in comparison with the number of detainees?**

In 2016, there were over 23,000 people in alternatives to detention compared to under 5000 in detention. Australian Human Rights Commission, *Asylum seekers, refugees and human rights*, Snapshot Report 2nd Edition 23-24 (2017).

1. **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? Are proposals for alternatives to detention generally met with favor or have they been rejected? Please describe the criticisms of the policies for alternatives to detention by the general public. If these proposals have been rejected, what was the rationale for rejecting them?**

Could not determine.

**Part E. Additional information**

**Please add any other information that you consider to be relevant for the CMW to take into account in the elaboration of this general comments.**

The number of detention facilities in Australia has drastically reduced since 2013.

<https://www.theguardian.com/australia-news/2019/jan/02/government-shuts-maribyrnong-immigration-detention-centre-citing-fall-in-numbers>

There are now only 7 detention facilities listed on the ABF website.

<https://www.abf.gov.au/about-us/what-we-do/border-protection/immigration-detention/detention-facilities>

# **Canada Immigration Detention**

International Human Rights Law Clinic, University of Virginia School of Law

By Scott Harman-Heath

**Part A: General Information on Canadian Immigration System**

1. **Please describe the process by which migrants are detained in your country. Which authorities are tasked with this responsibility? Who or what body oversees these authorities?**

Enforcement of immigration law is conducted the Canada Border Services Agency (CBSA) and Immigration, Refugees and Citizenship Canada (IRCC).[[1]](#footnote-1) Both departments are headed by elected members of the Canadian Legislature. The CBSA is headed by The Honourable Ralph Goodale.[[2]](#footnote-2) Similarly, IRCC is headed by The Honourable Ahmed D. Hussen.[[3]](#footnote-3) The departments work in tandem to enforce immigration law in Canada.

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.)?**

Migrants, like other individuals are protected by constitutional limits on the use of force.[[4]](#footnote-4) Detainees are often held in provincial or federal jails.[[5]](#footnote-5) When a migrant is arrested for a violation of immigration law, their rights under § 10 of the Canadian Charter of Rights and Freedoms is implicated. That section of the Charterguarantees “everyone” the right to be promptly informed of the basis for their detention.[[6]](#footnote-6) Additionally, detainees can only be held for 48 hours before they must face an Immigration Board to determine whether their detention is initially lawful and whether they can continue to be held, or not.[[7]](#footnote-7) In *R. v. Mann*, the Supreme Court of Canada held that § 10 applies to “any” detention.[[8]](#footnote-8)

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

Because a majority of detainees are housed in prisons, the staff at most detention facilities are corrections officers.[[9]](#footnote-9) In some jurisdictions, corrections officers are not informed of the immigration statute of detainees which means that criminal removals, asylum seekers, and other classes of migrants are lumped together in detention.[[10]](#footnote-10) Canada has equally been criticized for detaining individuals with mental health issues in facilities that are ill-equipped to handle their conditions.[[11]](#footnote-11) Some private companies also provide security staff.[[12]](#footnote-12)

1. **Who owns the facilities used to house migrants who are detained? Who operates the facilities used to house detained migrants? Are facilities that house detained migrants public or private?**

Detainees are housed in a range of locations including both public and private facilities.[[13]](#footnote-13)

1. **Does your country monitor detention facilities? Who monitors detention facilities? What standards must detention facilities adhere to?**

Yes, migrants are detained according to guidelines set out in the IRCC’s manual “Enforcement Manual on Detention.”[[14]](#footnote-14) However, the guidelines are “non-binding” and the government of Canada has been accused of failing to comply with the principles set out in ENF 20.[[15]](#footnote-15)

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

Detainees are permitted to be represented by a lawyer, but their relative ability to access information necessary to their detention is not apparent from documents and reports.

1. **Are the particular needs of women and other groups of people met? Is consideration given to the status of asylum seekers, victims of torture and trafficking, and other migrants who are particularly vulnerable?**

Asylum seekers are sometimes detained if they are designated as “irregular arrivals” by the Minister of Public Safety.[[16]](#footnote-16) The Minister of Citizenship has the power to designate certain countries as presumptively safe, which greatly curtails access to refugee claims.[[17]](#footnote-17) Claimants from countries that have been designated as presumptively safe are called “DCO Nationals” and they are not allowed to appeal board determinations nor are they allowed to apply for a work permit after arrival.[[18]](#footnote-18) Moreover, the detention system does not take proper account of the needs of the elderly, survivors of trauma, women, and minors.[[19]](#footnote-19)

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

Yes, per § 60 of the Immigration and Refugee Protection Act, children can only be detained as a “last resort.”[[20]](#footnote-20) However, a 2017 report suggests that once a child is in fact detained, the conditions are not substantially different from those of adults and are essentially carceral in nature.[[21]](#footnote-21)

**Part B: Legal Treatment in Canadian Immigration System**

1. **What is the legal basis for detaining migrants in your country? What purpose does detention of irregular migrants serve? How has this purpose been articulated through legislation and through the judicial system? Please identify any relevant cases in your country’s court system.**

In Canada, the legal authority for detention of migrants is the Immigration and Refugee Protection Act of 2001. The Act details what constitutes a removable offense, what procedural protections detainees are afforded, and particular determinations the government must make about a detainee.[[22]](#footnote-22) There are four Supreme Court decisions of interest. The first, *R. v. Mann*, is a Supreme Court of Canada decision that held § 10 of the Canadian Charter of Rights and Freedoms applies to “any” detention.[[23]](#footnote-23) It secures the right to be free from “arbitrary” detention. The second case, *Charkaoui v. Canada*, addressed a large number of relevant issues. Of particular importance, the Supreme Court of Canada held that detention of a migrant without review for more than 120 days violated the Canadian constitution.[[24]](#footnote-24) The third, *Németh v. Canada*, articulates how the Minister of Justice’s discretion is cabined in the decision to surrender a person in Canada to a foreign government for return.[[25]](#footnote-25) Finally, *B010 v. Canada* was one of the few instances in which the Supreme Court of Canada interpreted the actual scope and text of the IRPA, holding that the board of immigration had applied it too broadly.[[26]](#footnote-26) The Court noted that the board of immigration had applied too broad a definition of “people smuggling” in their denial of judicial process.[[27]](#footnote-27)

1. **How has the right to liberty in the context of non-citizens been interpreted by your country’s judicial system?**

Because § 9 of the Canadian Charter of Rights and Freedoms guarantees the right to be free from arbitrary detention for “everyone,” non-citizens have a right to liberty.[[28]](#footnote-28)

1. **Is there any national legislation that guarantees legal representation in immigration proceedings? Is there a guarantee of access to free legal representation?**

Yes and no. The IRPA guarantees detainees the right to be represented by legal counsel.[[29]](#footnote-29) However, § 167 does not guarantee representation to adults. If a detainee is under the age of 18, legal counsel will be appointed.[[30]](#footnote-30)

1. **Does your country recognize the due process rights of non-citizens to the extent that it recognizes the due process rights of citizens?**

Yes, much like the right to not be arbitrarily detained, § 7 of the Canadian Charter of Rights and Freedoms affords “everyone” the right to life, liberty and security of the person.[[31]](#footnote-31)

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

Immigration is governed by administrative law and is a civil proceeding.[[32]](#footnote-32)

1. **What do proceedings that determine migration status look like? Who is the decision-maker or decision-makers? How are the decision-makers qualified? Are they appointed or elected?**

When the CBSA requests an admissibility hearing, it generates a report to explain why it believes the person should not be allowed to enter or remain in Canada.[[33]](#footnote-33) A member of the board will hear case according to the process specified by regulation.[[34]](#footnote-34) During a public hearing, the government and the detainee present their respective cases why the detainee should or should not be removed.[[35]](#footnote-35) After the parties complete their submissions to the board, the board member decides whether the person should be removed.[[36]](#footnote-36) A determination of removal may allow for self-removal, or if the person is being detained, the person will be removed by the government.[[37]](#footnote-37)

All determinations are made by the Immigration and Refugee Board, which is staffed by a Chairperson and several board members.[[38]](#footnote-38) Members of the board are appointed for a seven-year term by the Governor in Council, and hold office during good behavior on a regional basis.[[39]](#footnote-39)

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

Yes, the IRPA requires that determinations be made in compliance with the law and states in its “Purpose” section that it is designed to further compliance with the Canadian Constitution and international human rights.[[40]](#footnote-40) The Act uses categorical language to *require* particular action on the part of board members.[[41]](#footnote-41) Additionally, board members are subjected to a strict code of ethics which requires compliance “with the provisions of the Act, all applicable regulations and rules established under the Act, and all other relevant legislation and policy instruments.”[[42]](#footnote-42)

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?**

An initial determination must be made within 48 hours.[[43]](#footnote-43) A detainee will only be held when continuing detention is necessary to protect the public.[[44]](#footnote-44) There is no required speed for the board to make a determination of a detainee’s specific case. However, if a ruling is delivered and the ruling is appealed, the appeals division must return their findings within 120 days.[[45]](#footnote-45)

1. **If families are involved, are their cases determined separately or together? Is consideration given to the special circumstances of children?**

Yes, per a federal court decision in *BB and Justice for Children and Youth v. Minister of Citizenship and Immigration*, a child’s interests must be considered even if the statute does not require it.[[46]](#footnote-46) When a parent is detained with a child, the interests of the child must be taken into account when assessing whether to continue detaining the parent.[[47]](#footnote-47) Children may only be detained as a “last resort.”[[48]](#footnote-48) Additionally, it is the Canadian government’s policy to keep children with their parents “as much as humanly possible.”[[49]](#footnote-49)

1. **What are the consequences of a finding of irregular migration? Is an individual who is found to have entered the country in an irregular manner returned to detention or moved to a different facility? Are the conditions different for individuals found to be irregular migrants? Are irregular migrants eligible to be released on bond/bail until a final determination has been made?**

If a detainee is found to have entered Canada under irregular fashion, the remedy is removal.[[50]](#footnote-50) However, the determination that a detainee is an irregular migrant is not made until after extensive process. Initially a detainee is typically brought into custody by immigration authorities. Within 48 hours, the detainee is brought before a review board.[[51]](#footnote-51) The board makes a determination whether the person should be detained while a determination of their removability is pending. The detainee can only be continuously detained if they: are a danger to the public, are unlikely to reappear for future hearings, have previously violated human or international rights, or the government is not satisfied of the detainee’s identity.[[52]](#footnote-52) Detainees who do not meet these narrow criteria must be released, though the government can place conditions such as bail or bond upon that release.[[53]](#footnote-53)

1. **Is there a right to appeal of finding of irregular migration status? What does the appeal of a finding of irregular migration status look like? How much time elapses from a judgment of irregular migration status to an appeal? What due process guarantee are given during the appeal process of a finding of irregular migration status?**

Yes. Both the government and detainee are permitted to appeal either legal or factual determinations that the Board arrived at.[[54]](#footnote-54) The IRPA does restrict an appeal in some instances, mainly when the Board has made a particular factual determination.[[55]](#footnote-55) But these are narrow exceptions to the general rule of reviewability. Detainees must submit their appeal within 15 days of the determination, at which point the appeals division has 120 days to render a decision.[[56]](#footnote-56) The IRPA seeks to preserve due process by also allowing decisions to be appealed to federal courts. [[57]](#footnote-57) The only limit on this protection is that a detainee must exhaust their remedies under the IRPA.[[58]](#footnote-58)

1. **What is the maximum amount of time that a person may be detained?**

Initially, a detainee must be afforded a hearing within 48 hours.[[59]](#footnote-59) However, after a reviewing board makes the determination that a detainee should continue to be detained, there is no maximum term for detention of migrants under Canadian law.[[60]](#footnote-60) The longest known detention of a migrant was 11 years.[[61]](#footnote-61)

# **Germany Immigration Detention**

International Human Rights Law Clinic, University of Virginia School of Law

By Cosi Piehler

**Part A: General Information**[[62]](#footnote-62)

1. **Please describe the process by which migrants are detained in your country. Which authorities are tasked with this responsibility? Who or what body oversees these authorities?**

In Germany, detention can only be ordered by a judge.[[63]](#footnote-63) The reason for this is the right to personal liberty that is guaranteed in Art. 104 (2) 1 and Art. 2 of the German Basic Law (*Grundgesetz*). Under certain circumstances a person can be detained without a judicial order, but in that case, the administrative authority has to seek a judicial decision concerning the order promptly.[[64]](#footnote-64) If the judicial order is not given by the end of the following day, the person concerned has to be released.[[65]](#footnote-65) The relevant Section 428 (1) FamFG reads: “As to each administrative measure associated with a deprivation of liberty that is not based upon a judicial order, the competent administrative authority shall promptly seek a judicial decision regarding the measure. If a deprivation of liberty has not been ordered through a judicial decision by the end of the following day, the person concerned shall be released.”

Detention cannot be ordered *ex officio*, but only on request by the competent authority.[[66]](#footnote-66)

The process of detaining migrants lies within the authority of the states (*Länder*). Federal provisions provide only the general framework for migrant detention.[[67]](#footnote-67) According to Section 71 (1) Residence Act[[68]](#footnote-68), the Foreigner’s Registration Office (*Ausländerbehörde*) in the state is the competent authority. Therefore, both the types of accommodation and its conditions vary across the country.[[69]](#footnote-69) In January 2019, eight out of the 16 states had passed legislation concerning migrant detention.[[70]](#footnote-70)

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.)?**

Section 62a (1) 1 Residence Act states that detention shall take place in specialized detention facilities. However, it also states, that custody may be enforced in other custodial institutions, where the migrant shall be accommodated separately from criminal prisoners if there are no specialized detention facilities in the federal territory. Until rulings by the ECJ in 2014, Germany widely used prisons as detention center for migrants.[[71]](#footnote-71) According to the latest available data from July 2017, Germany has six facilities for immigration detention, five of which have been dedicated as long-term immigration detention facilities and one police station.[[72]](#footnote-72) Furthermore, there are five medium-term detention centers at airports.[[73]](#footnote-73)

Migrants are entitled to the same treatment during their arrest as citizens. All regular procedural guarantees apply.

Furthermore, Section 62a (5) Residence Act states that “detainees awaiting deportation shall be informed of their rights and obligations and the rules applied in the facility.”

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

Generally, the facilities are staffed with law enforcement and correction officers. In some facilities, they are supported by private firms. All states that have passed a law further regulating the detention conditions provide for the care of social workers.[[74]](#footnote-74) In some cases, social workers are permanently employed at the detention centers, in others they are only asked to come on a case-by-case basis.[[75]](#footnote-75)

In 2014, Germany’s Committee for the Prevention of Torture found that neither the staff provided by the state nor by some of the private contractors were trained in prison services.[[76]](#footnote-76) There is an open investigation against one of the private contractors for assault and abuse of asylum-seekers.[[77]](#footnote-77)

Detainees have a right to complain about the staff to the director of the facility according to most state laws.[[78]](#footnote-78)

1. **Who owns the facilities used to house migrants who are detained? Who operates the facilities used to house detained migrants? Are facilities that house detained migrants public or private?**

The facilities in which the migrants are detained are owned by the Länder, thus public facilities. They are also operated by the Länder. In some facilities, private security firms are employed to help with supervision and other aspects.[[79]](#footnote-79) But in general, privatization of these facilities never fully proceeded in Germany.[[80]](#footnote-80)

1. **Does your country monitor detention facilities? Who monitors detention facilities? What standards must detention facilities adhere to?**

Germany does not comprehensively monitor the detention facilities. The regulatory authority depends on the state, but is mostly located with the state ministry of the interior or the state department of justice.[[81]](#footnote-81) There do not seem to be any general standards for detention facilities, though some general standards are contained in the state laws. They provide, inter alia, that “that detainees should be informed, if possible in their language, about their rights and obligations; men and women should be confined separately; family members should be accommodated together or at the least have the possibility to spend time together; detainees should be able to file complaints with the facility management and have access to recreational activities, receive visits, and have access to mail.”[[82]](#footnote-82)

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

Section 62a (2) Residence Act states that “detainees awaiting deportation shall be permitted to contact legal representatives, family members, the competent consular authorities and the relevant aid and support organizations.” Section 62a (4) Residence Act continues “upon application, staff of relevant support and assistance organizations shall be permitted to visit detainees awaiting deportation if the latter so requests.” However, information about the practical application of this provision is not available.[[83]](#footnote-83)

Detainees are entitled to contact their consular authorities. According to Art. 36 (1) (b) WÜK[[84]](#footnote-84) detainees have to be informed without delay that they are entitled to contact their consulate. Upon request by the detainee, the consular mission of his/her home country has to be informed of the detention without delay.[[85]](#footnote-85) If the detainee is not provided with the necessary information, the detention order as such is procedurally flawed and therefore unlawful.[[86]](#footnote-86) Furthermore, if the information of the consular mission is not documented in the case file, this is also a procedural flaw.[[87]](#footnote-87) If the detainee is not proficient in German, there is an obligation to translate.[[88]](#footnote-88)

According to Section 421 FamFG the detention order has to contain information on available legal remedies.

1. **Are the particular needs of women and other groups of people met? Is consideration given to the status of asylum seekers, victims of torture and trafficking, and other migrants who are particularly vulnerable?**

In 2014, after its visit to Germany, the Working Group on Arbitrary Detention expressed its concern that persons of particularly vulnerable groups are not identified in Germany.[[89]](#footnote-89) It was particularly concerned about the lack of identification procedures for particularly vulnerable asylum seekers, such as unaccompanied minors or asylum seekers.[[90]](#footnote-90)

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

German law does not prohibit the detention of minors.[[91]](#footnote-91) According to Section 62 (1) Residence Act, “minors and families with minors may be taken into custody awaiting deportation only in exceptional cases and only for as long as is reasonable taking into account the well-being of the child.” There are big differences between states when it comes to the detention of minors. Some states do not impose any age limits on detention, while others require that the detainee is at least 16 years old. Some states provide special youth facilities and others distinguish between the detention of unaccompanied and accompanied minors.[[92]](#footnote-92) In general, the number of detained children is relatively low (in 2013, only 15 minors were detained).[[93]](#footnote-93)

According to Section 61a (3) Residence Act “in the case of minors in detention awaiting deportation, the needs of persons their age shall be taken into account in accordance with” Art. 17 of the EU Returns Directive.[[94]](#footnote-94) Art. 17 requires that “minors in detention shall have the possibility to engage in leisure activities, including play and recreational activities appro­priate to their age, and shall have, depending on the length of their stay, access to education.”

**Part B: Legal Treatment**

1. **What is the legal basis for detaining migrants in your country? What purpose does detention of irregular migrants serve? How has this purpose been articulated through legislation and through the judicial system? Please identify any relevant cases in your country’s court system.**

The legal framework for detaining migrants in Germany can be found in the Residence Act. It contains several grounds for detaining migrants: Detention pending exit from the federal territory (Section 15 (5), (6)), custody to prepare deportation (Section 62 (2)), custody to secure deportation (Section 62 (3)) and custody to secure departure (Section 62b). In general, detention is a coercive measure to ensure compliance with the deportation order, not a punishment.[[95]](#footnote-95)

Detention pending exit from the federal territory (*Zurückweisungshaft*) concerns migrants who are refused entry at a port of entry, Section 15 (5) Residence Act. This is the only border-related ground for detention.

Custody to prepare deportation (*Vorbereitungshaft*) is applied to enable the preparation of deportation, if a decision on deportation cannot be reached immediately and deportation would be much more difficult or impossible without such detention (Section 62 (2) Residence Act). “It is only permissible if the adoption of an expulsion order is legally possible and highly probable, yet the expulsion cannot be decided directly.”[[96]](#footnote-96)

Custody to secure deportation (*Sicherungshaft*) can be ordered in a variety of cases: If 1) the migrant is enforceably required to leave the federal territory due to his illegal entry, 2) a deportation order has been issued pursuant to Section 58a Residence Act but is not immediately enforceable, 3) the period allowed for departure has expired and the migrant has changed his place of residence without notification to the authorities, 4) he has failed to appeared to his deportation and is responsible for the reasons for this, 5) he has evaded deportation by other means or 6) there is, in the individual case, a risk of absconding. (Section 62 (3) Residence Act).

Custody to secure departure (*Ausreisegewahrsam*) can be ordered to ensure that the deportation of a migrant can be carried out, if the period allowed for departure has expired or the migrant has displayed behavior which leads to an expectation that he will make deportation harder by continually violating his statutory obligation to cooperate or because he has deceived the authorities regarding his identity or nationality (Section 62b (1) Residence Act). It is to be enforced in the transit area of an airport or in another accommodation from which the migrant’s departure is possible, Section 62b (2) Residence Act.

1. **How has the right to liberty in the context of non-citizens been interpreted by your country’s judicial system?**

Generally, the right to liberty is guaranteed by Art. 2 (2) 2 GG. It reads: “Freedom of the person shall be inviolable.” Since the law talks about a “person”, there is no difference between the right to liberty for citizens and non-citizens.[[97]](#footnote-97) It is interpreted to concern physical movement and to be mainly concerned with the freedom of arrest and detention by the state.[[98]](#footnote-98) It only applies if the physical possibility to move is practically and legally restricted in all directions through state measures.[[99]](#footnote-99)

1. **Is there any national legislation that guarantees legal representation in immigration proceedings? Is there a guarantee of access to free legal representation?**

According to Section 419 (1) FamFG, “the court shall appoint a guardian ad litem [*Verfahrenspfleger*] for the person concerned when this is necessary for the assertion of his interest.” If the appointment is necessary for the assertion of the detainee’s interests, the court does not have discretion, but has a duty to appoint the guardian.[[100]](#footnote-100) The necessity depends on the ability of the detainee to exercise his right to be heard.[[101]](#footnote-101) The guardian is paid by the government. He does not have to be an attorney, however.[[102]](#footnote-102) According to Section 185 GVG[[103]](#footnote-103) there is also a right to an interpreter.[[104]](#footnote-104)

Since detainees are not prisoners, they are not legally entitled to counsel.[[105]](#footnote-105) However, “in 2013, the Federal Court of Justice ruled that a person in pre-deportation detention must be provided with the means necessary to legally defend him- or herself against the detention order, including by the appointment of a lawyer, if a person in his or her position would reasonably hire a lawyer but does not have the financial means to pay for one him- or herself.”[[106]](#footnote-106) There is a possibility to apply for legal aid in appeals against deprivation of liberty, Sections 76 ff. FamFG. In order to be able to apply for it, the appeal must be likely to succeed.[[107]](#footnote-107) In practice, legal aid is not frequently granted.[[108]](#footnote-108)

1. **Does your country recognize the due process rights of non-citizens to the extent that it recognizes the due process rights of citizens?**

Yes. The due process rights can be found in Art. 19 (4) and Art. 103 (1) GG and both provisions are applicable to “anyone” (*Jedermann*). Art. 19 (4) 1 states: “Should any person’s rights be violated by public authority, he may have recourse to the courts.” Art. 103 (1) states: “In the courts every person shall be entitled to a hearing in accordance with law.” Since both provisions talk about a “person”, there is no distinction between citizens and non-citizens.

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

Immigration is covered by administrative law.

1. **What do proceedings that determine migration status look like? Who is the decision-maker or decision-makers? How are the decision-makers qualified? Are they appointed or elected?**

Decisions about the determination of migrations status are made by the Foreigner’s Registration Offices, which are municipal authorities. Therefore, no general information is available about their qualifications. Generally, as administrative staff, they are appointed.

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

No information available.

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?**

No data available.

1. **If families are involved, are their cases determined separately or together? Is consideration given to the special circumstances of children?**

It’s not clear how those cases are handled in practice. However, legally speaking the cases are closely linked if part of the family bases their migration on dependency of the first migrant (subsequent immigration of dependents), Section 27 Residence Act. In this case, the immigration status of the subsequent applicant is dependent on the legal status of the earlier immigrant (Section 27 (4) Residence Act).

In detention facilities, families have to be accommodated together and separate from other detainees, so that they have adequate privacy, Section 62a (1) Residence Act. This has not been adhered to in practice.[[109]](#footnote-109) Multiple cases have been reported, where family members were scheduled to be deported at different times.[[110]](#footnote-110)

1. **What are the consequences of a finding of irregular migration? Is an individual who is found to have entered the country in an irregular manner returned to detention or moved to a different facility? Are the conditions different for individuals found to be irregular migrants? Are irregular migrants eligible to be released on bond/bail until a final determination has been made?**

Anyone who resides in Germany without the necessary residence permit is required to leave the country, Section 50 Residence Act.If public bodies become aware of the illegal stay of a foreigner and whose deportation has not been suspended, they have to notify the competent Foreigner’s Registration Office immediately, so that measures to end the stay can be initiated, Section 87 (2) No. 1 Residence Act.

First, the migrant is given to chance to comply with the obligation to leave the federal territory. If the migrant does not comply with the obligation, deportation proceedings start. According to Section 58 (1) Residence Act, a “foreigner shall be deported if the requirement to leave the federal territory is enforceable, no period has been allowed for departure or such a period has expired, and voluntary fulfilment of the obligation to leave is not assured or supervision of departure appears necessary on grounds of public security and order.”

Next, a deportation order is issued according to Section 58a Residence Act. A deportation warning in the form of a notice of the intention to deport shall be served, specifying a reasonable period of between 7 and 30 days for voluntary departure (Section 59 (1) Residence Act). Only in exceptional cases specified in Section 59 (1) 2 Residence Act, can a shorter period be set or no period at all. Only if all others options are exhausted, the migrant can be taken into custody/detention, Section 62 (1) Residence Act.[[111]](#footnote-111)

In case of arrival by air, the migrant has to be taken to an airport transit area or another place of accommodation, from where exit from Germany is possible, if detention pending exit from the federal territory is not applied, Section 15 (5), (6) Residence Act.

Bond or bail do not seem to be available.

1. **Is there a right to appeal of finding of irregular migration status? What does the appeal of a finding of irregular migration status look like? How much time elapses from a judgment of irregular migration status to an appeal? What due process guarantee are given during the appeal process of a finding of irregular migration status?**

Any measures that lead to a termination of stay can be challenged in court. The available remedy depends on the state in charge, it can either be an objection (*Widerspruch*) or a legal action (*Klage*).[[112]](#footnote-112) Which option is applicable in this case, can be gathered from the statement about available legal remedies that is part of the decision of the agency. The appeal process is subject to the same due process requirements as all other administrative proceedings.

1. **What is the maximum amount of time that a person may be detained?**

The maximum amount of time that a person may be detained depends on the type of detention:

For custody to prepare deportation, the maximum duration is 6 weeks, Section 62 (2) Residence Act.

For custody to secure deportation and detention pending exit from federal territory, the maximum duration is generally 6 months, Section 62 (4) 1 Residence Act. This period can be extended up to a total of 18 months, if the migrant hinders his/her deportation (Sections 62 (4), 15 (5) Residence Act), e.g. by destroying documents.[[113]](#footnote-113)

For custody to secure departure, the maximum duration is 10 days (Section 62b (1) 1 Residence Act).

# **United States Immigration Detention**

International Human Rights Law Clinic, University of Virginia School of Law

By Genevieve Khuong

**Part A: General Information**[[114]](#footnote-114)

1. **Please describe the process by which migrants are detained in your country. Which authorities are tasked with this responsibility? Who or what body oversees these authorities?**

The Department of Homeland Security was created in 2003. DHS has many bureaus that are involved in immigration. Within DHS, there is the Citizenship and Immigration Services (USCIS) which processes the applications for residency, naturalization, asylum, work permits, and other immigration/citizenship benefits, Customs and Border Protection (CBP) which is the federal law enforcement agency that is in charge of Border Patrol and ports of entry, Immigration and Customs Enforcement (ICE) which is responsible for the enforcement of immigration laws within the United States, and the Office of Detention and Removal Operations (DRO) which administers the detention infrastructure and oversees deportations.[[115]](#footnote-115)

The Department of Justice (DOJ) handles immigration legal proceedings, and within DOJ there is The Executive Office for Immigration Review (EOIR) which has immigration judges that oversee legal proceedings.[[116]](#footnote-116)

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.)?**

ICE can detain both people who are awaiting on a decision of whether they are to be removed from the country and migrants who have received a final order of removal prior to that removal being out in effect. Grounds for detention include: national security considerations; attempting to enter unlawfully; violating immigration laws; overstaying or violating the conditions of their immigration status; or being convicted in certain criminal proceedings and/or being found to be involved in certain criminal acts enumerated under section 236(c) of the Immigration and Nationality Act, which is the federal statutes governing immigration law in the United States.[[117]](#footnote-117)

There are guidelines for detention that were introduced in 2000 by immigration authorities and provide detailed non-binding standards for facilities holding immigration detainees, including issues such as access to attorneys and conditions of detention. In 2008, ICE announced the publication of 41 new performance-based detention standards, which were to be fully implemented by January 2010. These performance-based standards were also not legally binding.[[118]](#footnote-118)

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

Enforcement and Removal (ERO) detention and deportation officers are staffed at facilities. The qualifications include U.S. citizenship, eligibility to carry a firearm, previous experience in a primary law enforcement position, and completion of basic law enforcement training. Officers are not required to take a pre-employment exam or have a post-secondary degree.[[119]](#footnote-119)

1. **Who owns the facilities used to house migrants who are detained? Who operates the facilities used to house detained migrants? Are facilities that house detained migrants public or private?**

There are four types of facilities that can be used for long-term detention purposes: Service Processing Centers (SPCs), which are owned by Immigration and Customs Enforcement and operated by private companies; Contract Detention Facilities (CDFs), which are owned and operated by private companies; state and county jails contracted by the Department of Homeland Security through Intergovernmental Service Agreement (IGSAs); and Federal Bureau of Prisons (BOP) facilities.[[120]](#footnote-120)

1. **Does your country monitor detention facilities? Who monitors detention facilities? What standards must detention facilities adhere to?**

It does not appear that the United States monitors detention facilities.

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

Detainees do have access to communication with their families, legal counsel and their own consular activities. There is no information on whether detainees are provided with the information on the processes, but it is unlikely.

1. **Are the particular needs of women and other groups of people met? Is consideration given to the status of asylum seekers, victims of torture and trafficking, and other migrants who are particularly vulnerable?**

Under the Violence against Women Act (VAWA) passed by Congress in 1994, the spouses and children of U.S. citizens or lawful permanent residents may self-petition to obtain lawful permanent residency. The immigration provisions of VAWA allow certain battered immigrants to file for immigration relief without the abuser's assistance or knowledge in order to seek safety and independence from the abuser. The U.S. government holds the position that a victim of trafficking should not be held in immigration detention or any other type of detention facility. However, Human Rights Watch has reported a number of cases in which victims of trafficking have been detained.[[121]](#footnote-121)

Asylum seekers are subject to mandatory detention and can be detained for months or even years as they await an asylum hearing in immigration court. Asylum seekers “may be released on parole on a case-by-case basis for ‘urgent humanitarian reasons’ or for ‘significant public benefit’ where the individual presents neither a security risk nor a risk of absconding.” However, for such persons, there is no possibility of appeal from either the decision to detain or the denial of a request for parole.[[122]](#footnote-122)

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

Children may be detained in immigration proceedings. The Homeland Security Act of 2002 transferred the responsibility for the care and placement of unaccompanied children from the now-defunct Immigration and Naturalization Service to the U.S. Department of Health and Human Services (HHS), Office of Refugee Resettlement (ORR). ORR created the Division of Unaccompanied Children’s Services (DUCS) to provide care and services to unaccompanied non-citizen children. If an unaccompanied alien child (UAC) is apprehended by CBP, ICE, or local law enforcement, he or she is immediately transferred to a Department of Homeland Security (DHS) facility and then transferred to ORR within 3 to 5 days.[[123]](#footnote-123)

While in DHS custody, the child is held separately from adults in a detention facility. However, if a UAC has been issued a final order of removal or has a criminal record, DHS may directly place the UAC in expedited removal. If placed in expedited removal, DHS will transfer the UAC to ORR; in this case, ORR must maintain custody of the child in a child-friendly shelter facility. If the UAC is issued a deportation order, ORR will transfer the UAC back into DHS custody where the UAC will remain detained and await deportation. Frequently, such removals take more than a month.[[124]](#footnote-124)

**Part B: Legal Treatment**

1. **What is the legal basis for detaining migrants in your country? What purpose does detention of irregular migrants serve? How has this purpose been articulated through legislation and through the judicial system? Please identify any relevant cases in your country’s court system.**

The Immigration and Nationality Act contains federal statutes describing the immigration laws of the United States. Grounds for detention include: national security considerations; attempting to enter unlawfully; violating immigration laws; overstaying or violating the conditions of their immigration status; or being convicted in certain criminal proceedings and/or found to be involved in certain criminal acts enumerated under INA section 236(c).[[125]](#footnote-125) § 236(c) also requires the detention of a subset of non-citizens with a prior criminal background. In general, the statute lists the following grounds for mandatory detention: a crime or conspiracy to commit a crime of “moral turpitude”; a violation of a U.S controlled substance law, unless committed before the alien turned eighteen and more than five years prior to applying for a visa; an aggravated felony; a terrorist activity.[[126]](#footnote-126)

1. **How has the right to liberty in the context of non-citizens been interpreted by your country’s judicial system?**

The Constitution states that no person will be “deprived of life, liberty, or property, without due process of law.”[[127]](#footnote-127) Once non-citizens have entered the country, they are granted protection against deprivation of liberty without due process regardless of their immigration status.[[128]](#footnote-128)

1. **Is there any national legislation that guarantees legal representation in immigration proceedings? Is there a guarantee of access to free legal representation?**

Immigration proceedings are “civil” and not “criminal”. Therefore, there is no Sixth Amendment right to counsel as there would be in a criminal proceeding. Typically, persons in immigration proceedings may be represented by counsel as long as there is no cost to the government. There are no government provided defense attorneys for immigrants.[[129]](#footnote-129)

1. **Does your country recognize the due process rights of non-citizens to the extent that it recognizes the due process rights of citizens?**

As early as 1903, the Supreme Court ruled that an alien could not be deported without an opportunity to be heard that met constitutional due process standards, although this did not mean an opportunity for a judicial proceeding. Today, the Due Process Clause applies to citizens and non-citizens alike. Thus, once foreign nationals (or “aliens”) have entered the country, they are granted protection against deprivation of liberty without due process regardless of their immigration status.[[130]](#footnote-130)

As the Supreme Court ruled in 1982: “Whatever his status under the immigration laws, an alien is surely a ‘person’ in any ordinary sense of that term. Aliens, even aliens whose presence in this country is unlawful, have long been recognized as ‘persons’ guaranteed due process of law by the Fifth and Fourteenth Amendments.” Many changes to U.S. immigration law have been introduced since the mid-1990s that point to a trend toward restricting the rights of non-citizens. Among the more recent changes have been the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA).[[131]](#footnote-131)

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

Immigration is governed by administrative law.[[132]](#footnote-132)

1. **What do proceedings that determine migration status look like? Who is the decision-maker or decision-makers? How are the decision-makers qualified? Are they appointed or elected?**

Decisions about determination of migration status are made by the Executive Office for Immigration Review (EOIR) under the Department of Justice (DOJ). Appeals are handled by another department within the DOJ called the Board of Immigration Appeals (BIA).

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

No information available.

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?**

No data available.

1. **If families are involved, are their cases determined separately or together? Is consideration given to the special circumstances of children?**

From April 2018 - June 2018, the Trump administration implemented a family separation policy across the U.S.-Mexico border. Under the policy, federal authorities separated children from parents or guardians with whom they had entered the US. The adults were prosecuted and held in federal jails, and the children placed under the supervision of the U.S. Department of Health and Human Services. By early June 2018, it emerged that the policy did not have measures for eventual reunification. On June 20, 2018, President Trump signed an executive order ending the policy after drawing strong international criticism. At this point, there are still children who have not been reunited with their parents.

1. **What are the consequences of a finding of irregular migration? Is an individual who is found to have entered the country in an irregular manner returned to detention or moved to a different facility? Are the conditions different for individuals found to be irregular migrants? Are irregular migrants eligible to be released on bond/bail until a final determination has been made?**

Once a person has a final removal order, DHS can legally remove the person from the United States at any time. However, a country must accept the person in order for DHS to deport them. Therefore, not everyone who has a removal or deportation order is actually deported from the United States. It may take a long time to arrange transportation to the person’s country of citizenship because of limited DHS resources or the complexity of travel to that particular country.[[133]](#footnote-133)

If ICE cannot physically deport a person from the United States, it has three options: (1) Detain the person while ICE arranges to physically deport them, (2) Release the person while ICE arranges to physically deport them, (3) Delay deportation for humanitarian reasons.[[134]](#footnote-134)

1. **Is there a right to appeal of finding of irregular migration status? What does the appeal of a finding of irregular migration status look like? How much time elapses from a judgment of irregular migration status to an appeal? What due process guarantee are given during the appeal process of a finding of irregular migration status?**

In 2001, the Supreme Court held in *Zadvydas v. Davis* that habeas corpus may be used to bring statutory and constitutional challenges to post-removal order detention.[[135]](#footnote-135) Then, in 2003, the Supreme Court held in *Demore v. Kim* that habeas corpus may be used to bring a constitutional challenge to pre-removal order detention.[[136]](#footnote-136) In 2005, the Supreme Court held in *Clark v. Martinez* that its decision in *Zadvydas* applied to government detention of persons found to be inadmissible.[[137]](#footnote-137) Regarding the situation of asylum seekers, Human Rights First observes that “while a few asylum seekers have tried to file federal habeas petitions, it often takes months or years for federal courts to decide a petition, making the effort pointless for many asylum seekers.”[[138]](#footnote-138) The Board of Immigration Appeals (BIA) hears the appeals of immigration decisions. They are the highest administrative body for interpreting and applying immigration laws. You can appeal an unfavorable BIA decision to the Federal Circuit Court.

1. **What is the maximum amount of time that a person may be detained?**

There is no limitation set for the length of a detention for a non-citizen held in immigration detention to be found in statute or regulation. Very often, people are detained for years.[[139]](#footnote-139) The INA does specify that after a removal order is issued against an alien, the person concerned must be removed within 90 days unless otherwise specified by a judge.[[140]](#footnote-140)

The same law also provides that the “removal period shall be extended beyond a period of 90 days and the alien may remain in detention during such extended period if the alien fails or refuses to make timely application in good faith for travel or other documents necessary to the alien’s departure or conspires or acts to prevent the alien’s removal subject to an order of removal.”[[141]](#footnote-141) The Supreme Court held in *Zadvydas* that once removal is no longer reasonably foreseeable, continued detention of a lawful permanent resident in a post-removal setting is not authorized under the INA.[[142]](#footnote-142)

# **Nigeria Immigration Detention**

International Human Rights Law Clinic, University of Virginia School of Law

By Clare Meyers

**Part A: General Information**

1. **Please describe the process by which migrants are detained in your country. Which authorities are tasked with this responsibility? Who or what body oversees these authorities?**

Migrants who are denied entry may be detained.[[143]](#footnote-143) Upon entry into or departure from Nigeria, all persons are subject to examination by an immigration officer, who has power to refuse entry.[[144]](#footnote-144) The immigration officer has power to determine whether the conditions of entry are met, and the Comptroller-General of Immigration (CGI) has broad power to determine additional grounds on which entry can be denied.[[145]](#footnote-145)

The Immigration Act of 2015 grants very broad power to the Immigration Service, a body the act created to control Nigeria’s borders and the movement of people across them.[[146]](#footnote-146) The Immigration Service is a para-military body that is tasked with border security and the issuance of travel documents, among other duties.[[147]](#footnote-147) It is a service of the Ministry of the Interior. Its head is the Comptroller-General of Immigration (CGI), who is appointed by the President of the Federal Republic of Nigeria on recommendation of the Civil Defence, Fire, Immigration and Prisons Services Board. The CGI is subject to policy decisions made by the Minister of the Interior. The President also appoints Deputy Comptrollers-General on the Board’s recommendation. The Board itself appoints Assistant Comptrollers-General, Comptrollers of Immigration, and “such other officers as may from time to time be employed to assist the [CGI] . . .”[[148]](#footnote-148)

A person may only be admitted if he has a valid passport; has a valid visa or other permit; is not a “prohibited immigrant”; and is not considered to pose a risk to public health, public interest, or national security.[[149]](#footnote-149) An immigration officer can also refuse entry on the advice of a medical inspector.[[150]](#footnote-150) The Immigration Act of 2015 permits deportation of “prohibited immigrants,” and such persons may be detained where a recommendation for deportation is in force and the offender is neither detained as part of a court sentence nor released on bail. In such cases, the individual is generally detained until the Minister either orders deportation, notifies him that no such order will be made, or releases him.[[151]](#footnote-151)

It is of note that the Immigration Act of 2015 also establishes a Directorate of Migration and within it, Divisions for Regular and Irregular Migration.[[152]](#footnote-152) The Division for Irregular Migration has the power, inter alia, to arrest and detain anyone who commits an offense under the Immigration Act of 2015.[[153]](#footnote-153) The Division for Irregular Migration appears to be primarily tasked with combating smuggling of persons into Nigeria; therefore, it seems that the primary concern of the Division is preventing the smugglers.[[154]](#footnote-154)

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.)?**

Upon entry into Nigeria, persons are to report to immigration officers for examination. At this point, the immigration officer may search an individual, any baggage he carries, or any document that appears to be relevant. The officer may refuse admission. A person who is refused admission or otherwise deemed to have committed an offense under the Immigration Act may be detained. “A person required or authorised to be detained under [the Immigration Act of 2015] may be detained in such places as the Minister may direct.” (32(1)).

[No information is available as to whether, in reality, force is typically used during arrest or detention. There also do not appear to be domestic standards for treatment of migrants during an arrest. Nigeria has, of course, signed on to the Migrant Workers Convention, but it has not yet complied with its reporting obligations. Nigeria also adopted a National Migration Policy in 2015. These policy objectives include “measures to ensure fair and non-discriminatory treatment of migrants, regardless of status.”[[155]](#footnote-155) This is merely a policy, though, and does not have the force of law.]

The Constitution provides, “Any person who is arrested or detained shall be informed in writing within twenty-four hours (and in a language that he understands) of the facts and grounds for his arrest or detention.”[[156]](#footnote-156)

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

[There are reports of human rights violations by military and police, including arbitrary detentions; civilian detentions in military facilities; and violence and denial of basic rights while in detention.[[157]](#footnote-157) However, these are not specific to migrants.]

1. **Who owns the facilities used to house migrants who are detained? Who operates the facilities used to house detained migrants? Are facilities that house detained migrants public or private?**

[No data is available. Human rights reports[[158]](#footnote-158) suggest that at least some civilian detainees are detained in military facilities, but migrant-specific data is not available. With respect to detainees in general, Amnesty International estimates, “The military arbitrarily arrested and held thousands of young men, women and children in detention centres around the country,” including in military barracks.[[159]](#footnote-159)]

1. **Does your country monitor detention facilities? Who monitors detention facilities? What standards must detention facilities adhere to?**

[No data is available with respect to monitoring.]

Nigeria does not appear to have enacted standards to which facilities in which migrants are detained must adhere. Its Constitution contains a general guarantee of humane treatment: “Every individual is entitled to respect for the dignity of his person, and accordingly no person shall be subject to torture or to inhuman or degrading treatment.”[[160]](#footnote-160) It also contains the following provision: “The State shall direct its policy towards ensuring that . . . there are adequate facilities for leisure and for social, religious and cultural life; the health, safety and welfare of all persons in employment are safeguarded and not endangered or abused; there are adequate medical and health facilities for all persons.”[[161]](#footnote-161)

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

The Constitution requires that any person arrested or detained on the grounds that he has committed a criminal offense must be brought before a court within forty-eight hours.[[162]](#footnote-162) In practice, “[p]olice routinely detained suspects [of criminal offenses] without informing them of the charges against them or allowing access to counsel and family members; such detentions often included solicitation of bribes.”[[163]](#footnote-163)

It should be emphasized that the Constitutional protections apply to those arrested for criminal offenses. The Immigration Act of 2015 establishes a number of criminal offenses under the Act, including, for example, the failure of a non-citizen to secure the consent of the CGI to enter Nigeria.[[164]](#footnote-164)

1. **Are the particular needs of women and other groups of people met? Is consideration given to the status of asylum seekers, victims of torture and trafficking, and other migrants who are particularly vulnerable?**

The Constitution provides that the State promote policies ensuring that “there is equal pay for equal work without discrimination on account of sex, or on any other ground whatsoever”[[165]](#footnote-165); no citizenship requirement is mentioned. It also prohibits “discrimination on the grounds of place of origin, sex, religion, status, ethnic or linguistic association or ties.”[[166]](#footnote-166) This Article elsewhere refers to “the various people of the Federation” and “every citizen,” which may indicate that Article 15 applies only to citizens.[[167]](#footnote-167) The Constitutional protection against all forms of discrimination (including sex discrimination) appears to apply only to citizens.[[168]](#footnote-168)

In practice, women and children often face inhumane treatment in detention facilities. “In general, prisons had no facilities to care for pregnant women or nursing mothers. Although the law prohibits the imprisonment of children, minors--many of whom were born in prison--lived in the prisons. The NGO Citizens United for the Rehabilitation of Errants (CURE)-Nigeria reported children in some cases remained with their inmate mothers up to at least age six. While the total number of children living in prison with their mothers was unknown, CURE-Nigeria’s April survey of 198 of the country’s approximately 1,225 women inmates found more than 30 women with children in just three prisons. Approximately 10 percent of survey respondents reported they were pregnant. Results of surveys of women and children in prisons conducted by CURE-Nigeria revealed many children in custody did not receive routine immunizations, and authorities made few provisions to accommodate their physical needs, to include hygiene items, proper bedding, proper food, and recreation areas. According to its March 2016 report, female inmates largely relied on charitable organizations to obtain hygiene items. Generally prisons made few efforts to provide mental health services or other accommodations to prisoners with mental disabilities.”[[169]](#footnote-169)

Provisions for the treatment of asylum seekers and refugees are noticeably absent from the Immigration Act of 2015. The lone provision mentioning these vulnerable migrants is Article 103, which provides that the CGI “shall issue any relevant immigration document in respect of a refugee in Nigeria” upon the recommendation of the National Commission for Refugees.[[170]](#footnote-170)

The Immigration Act of 2015 does, however, include provisions for the treatment of trafficked persons. Trafficked persons are immune to detention or prosecution solely based on their status as trafficked persons.[[171]](#footnote-171) The Act also provides for non-discriminatory treatment of trafficked persons; access to health and social services; and access to consular authorities, inter alia.[[172]](#footnote-172) Trafficked persons also have the right to civil remedies regardless of whether the persons accused of trafficking are convicted in a criminal proceeding.[[173]](#footnote-173)

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

[There is a lack of information available with respect to this question. In its Report, the Committee on Migrant Workers expressed concern “that migrant children might be placed in detention along with their parents,” and recommended that Nigeria “[c]ease the detention of children on the basis of their or their parents’ immigration status and adopt alternatives to detention that allow children to remain with family members and/or guardians in non-custodial, community-based contexts while their immigration status is being reviewed, in line with the principles of the best interests of the child and the child’s right to family life.”[[174]](#footnote-174)]

**Part B: Legal Treatment**

1. **What is the legal basis for detaining migrants in your country? What purpose does detention of irregular migrants serve? How has this purpose been articulated through legislation and through the judicial system? Please identify any relevant cases in your country’s court system.**

Migrants who are denied entry into Nigeria may be deported or detained. A person may only be granted entry if he has a valid passport; has a valid visa or other permit; is not a “prohibited immigrant”; and is not considered to pose a risk to public health, public interest, or national security.[[175]](#footnote-175) An immigration officer can also refuse entry on the advice of a medical inspector.[[176]](#footnote-176) The Immigration Act of 2015 permits deportation of “prohibited immigrants,” and such persons may be detained where a recommendation for deportation is in force and the offender is neither detained as part of a court sentence nor released on bail. In such cases, the individual is generally detained until the Minister either orders deportation, notifies him that no such order will be made, or releases him.[[177]](#footnote-177)

A “prohibited immigrant” is defined as someone who falls within the following categories: “a person who is without visible means of support or is likely to become a public charge; mentally ill or mentally severely subnormal person; a person trafficking in persons or smuggling migrants; a person convicted of any crime wherever committed, which is an extradition crime within the provisions of the Extradition Act; a person whose admission would in the opinion of the Minister be contrary to national interest or security; a person against whom an order of deportation from Nigeria is in force; a person who – (i) has not in his possession a valid passport or (ii) being a person under the age of eighteen years, has not in his possession a valid passport or visa, and is unaccompanied by an adult whose valid passport, his particulars are appearing; a person who – (i) is a prostitute, (ii) is a person who has been convicted of the offence of rape, defilement or any other sexual offence, (iii) is a brothel keeper or a person permitting the defilement, or seduction of a child or young person on his premises or on any other premises under his control, (iv) encourages the seduction of a child or a young person, or (v) is trading in prostitution, or is a procurer, is deemed to have committed an offence and is liable on conviction to imprisonment for ten years.”[[178]](#footnote-178) The Minister of the Interior may add to or amend any category of prohibited immigrants for the purpose of “public interest.”[[179]](#footnote-179) This language was not further specified. The Minister also has the authority to classify a person as a prohibited immigrant at any time after his entry into the country.[[180]](#footnote-180)

1. **How has the right to liberty in the context of non-citizens been interpreted by your country’s judicial system?**

The domestic court system has interpreted the constitutional right to liberty broadly. The Constitution provides, “Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law . . . .”[[181]](#footnote-181) In Adewole v. Jakande, the court held that “Personal liberty’ means privileges, immunities, or rights enjoyed by prescription or by grant. It denotes not merely freedom from bodily restraint, but rights to contact, to have an occupation, to acquire knowledge, to marry, have a home, children, to worship, enjoy and have privileges recognized at law for happiness of free men.”[[182]](#footnote-182) This right applies to non-citizens as well as citizens.[[183]](#footnote-183)

1. **Is there any national legislation that guarantees legal representation in immigration proceedings? Is there a guarantee of access to free legal representation?**

The Constitution provides, “Every person who is charged with a criminal offence shall be entitled to . . . defend himself in person or by legal practitioners of his own choice.”[[184]](#footnote-184) “Any person” who alleges that he has suffered a violation of the Constitution may pursue a claim in the High Court of the State where the violation occurred; with respect to this claim, the National Assembly “shall make provisions . . . for the rendering of financial assistance to any indigent citizen of Nigeria where his right . . . has been infringed . . . .”[[185]](#footnote-185) From this language, it appears that there is no guarantee of access to free legal representation to non-citizens.

The Legal Aid Act of 2011, the most recent act governing the Legal Aid Council, contains general language providing a service “for the purpose of assisting indigent persons to access such advice, assistance, and representation in court where the interest of justice demands, to secure, defend, enforce, protect or otherwise exercise any right, obligation, duty, privilege interest or service to which that person is ordinarily entitled under the Nigerian legal system.”[[186]](#footnote-186) Aid is also provided “in respect of any breach or denial of any such right . . .”[[187]](#footnote-187) Although the Act uses the word “persons,” the Explanatory Memorandum at the beginning of the Act states that the Act provides for a fund for financial assistance “on behalf of the indigent *citizens*.”[[188]](#footnote-188)   
[It does not appear that there is national legislation that guarantees legal representation in immigration proceedings specifically. There is no provision for such in the Immigration Act of 2015.]

The National Migration Policy articulates a goal to ensure that both Nigerian citizens detained abroad and migrants within Nigeria are granted “access to legal protection, including the assistance of counsel and competent interpreter services as available to citizens of that country,” regardless of immigration status.[[189]](#footnote-189) This is, however, a statement of policy and has not yet been enacted into law.

1. **Does your country recognize the due process rights of non-citizens to the extent that it recognizes the due process rights of citizens?**

The Nigerian Constitution recognizes the due process rights of “every person.”[[190]](#footnote-190) Other Articles in the Constitution refer specifically to “all citizens,” such as Article 17, which provides that the State promote policies that ensure that “all citizens . . . have the opportunity for securing adequate means of livelihood as well as adequate opportunity to secure suitable employment.”[[191]](#footnote-191) This could indicate that Article 35 covers all individuals, and not just all citizens.

The Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families has noted, inter alia, the lack of information regarding due process for migrant workers in criminal proceedings.[[192]](#footnote-192)

It should be noted, and has been remarked on in human rights contexts[[193]](#footnote-193) that the Nigerian Constitution does not extend guarantees of rights to non-citizens in other contexts (relating to privacy, freedom of movement, and protection against racial discrimination).[[194]](#footnote-194)

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

Immigration is regulated by the Nigerian Immigration Service, which was created by the Immigration Act of 2015.[[195]](#footnote-195)The day-to-day administration of the Immigration Act is the responsibility of the Comptroller-General of Immigration (CGI), who is appointed by the President. The Immigration Act of 2015 defines various immigration-related offenses. Violations of the statute are punishable by fines or imprisonment.[[196]](#footnote-196)

1. **What do proceedings that determine migration status look like? Who is the decision-maker or decision-makers? How are the decision-makers qualified? Are they appointed or elected?**

Determination of nationality is to be made by “the Minister,” (that is, the Minister of the Interior, who technically has oversight of the Immigration Service, and presumably any immigration officer to whom he delegates this authority) and the burden of proof to establish nationality rests upon the person asserting his own nationality.[[197]](#footnote-197) The Immigration Service has extremely wide discretion to make decisions. For instance, immigration officers may deem someone a “prohibited immigrant,” which encompasses irregular migrants.[[198]](#footnote-198) The Minister has discretion to add to or amend any category of prohibited immigrants, “and if he deems it to be in the public interest, may prohibit the entry into or stay in Nigeria of any other person or category of persons.”[[199]](#footnote-199)

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

The broad discretion of the Minister is limited only sometimes by a requirement that an action be “in the public interest”; for instance, the Minister may make a deportation order against a person as a prohibited immigrant “if satisfied that it is in the public interest.”[[200]](#footnote-200) However, in other instances he must only be “of the opinion that any person in Nigeria ought, at any time after his entry to be classed as a prohibited immigrant” in order to make an order accordingly.[[201]](#footnote-201) While there is no migrant-specific data available, it appears that authorities in Nigeria widely abuse this sort of discretion.[[202]](#footnote-202)

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?**

The Constitution provides, “Any person who is arrested or detained shall be informed in writing within twenty-four hours (and in a language that he understands) of the facts and grounds for his arrest or detention.”[[203]](#footnote-203) Further, “Any person who is arrested or detained in accordance with subsection (1) (c) of this section shall be brought before a court of law within a reasonable time.”[[204]](#footnote-204) The same Article defines a “reasonable time” as twenty-four hours in a place where there is “a court of competent jurisdiction” within forty kilometers, and in any other case, “a period of two days or such longer period as in the circumstances may be considered by the court to be reasonable.”[[205]](#footnote-205) In practice, in “many instances government security officials did not adhere to this regulation without being bribed . . . Police routinely detained suspects without informing them of the charges against them or allowing access to counsel and family members; such detentions often included solicitation of bribes.”[[206]](#footnote-206) The foregoing applies to all detainees, and not specifically migrants.

1. **If families are involved, are their cases determined separately or together? Is consideration given to the special circumstances of children?**

[No information is available with regard to this question.]

1. **What are the consequences of a finding of irregular migration? Is an individual who is found to have entered the country in an irregular manner returned to detention or moved to a different facility? Are the conditions different for individuals found to be irregular migrants? Are irregular migrants eligible to be released on bond/bail until a final determination has been made?**

A person who has entered Nigeria under irregular circumstances can be classified as a “prohibited immigrant.” The definition of “prohibited immigrant” under Immigration Act includes a person who – (i) has not in his possession a valid passport or (ii) being a person under the age of eighteen years, has not in his possession a valid passport or visa, and is unaccompanied by an adult whose valid passport, his particulars are appearing.”[[207]](#footnote-207) Prohibited immigrants are denied entry into Nigeria may be deported or detained, and detention is allowed where a recommendation for deportation is in force and the offender is neither detained as part of a court sentence nor released on bail. In such cases, the individual is generally detained until the Minister either orders deportation, notifies him that no such order will be made, or releases him.[[208]](#footnote-208)

[With respect to the facilities or conditions of irregular migrants as opposed to other detainees, there is no available information. There also does not appear to be information regarding bond or bail. The Immigration Act does not provide for it.]

1. **Is there a right to appeal of finding of irregular migration status? What does the appeal of a finding of irregular migration status look like? How much time elapses from a judgment of irregular migration status to an appeal? What due process guarantee are given during the appeal process of a finding of irregular migration status?**

When a court orders deportation of an individual who has violated the Immigration Act, the individual has the right to appeal the recommendation as if it were a criminal sentence.[[209]](#footnote-209)

1. **What is the maximum amount of time that a person may be detained?**

[No information is available with regard to this question.]

**Miscellaneous**

Privacy Concerns: Non-citizens are not protected by the constitutional guarantee of privacy.[[210]](#footnote-210) A person detained under the Immigration Act is subject to “reasonably necessary” processes for “photographing, measuring or otherwise identifying him and . . . obtain[ing] his biometric data.”[[211]](#footnote-211)

# **Turkey Immigration Detention**

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Common abbreviations:

LFIP: The Law on Foreigners and International Protections of 2013

DGMM: Ministry of Interior Directorate General of Migration Management

**Part A: General Information**

1. **Please describe the process by which migrants are detained in your country. Which authorities are tasked with this responsibility? Who or what body oversees these authorities?**

The decision to detain an international protection applicant is issued by the governorate of the satellite city in which the applicant resides. That being said, administrative detention of international protection applicants must be an “exceptional measure”. (Article 68(2) LFIP; Article 96(1) LFIP Implementing Regulation). Persons “may not be detained for the sole reason of having submitted an international protection application.” (Article 68(1) LFIP).

Law enforcement units can apprehend people for immigration-related reasons (Article 57 LFIP). It shifts all implementation regarding migration and international protection, including the issuing of deportation decisions and oversight of removal centers, from the police to the local offices of the Directorate General for Migration Management in each provincial governate. According to Article 103 of the law, the Directorate General is to implement migration policies and strategies; ensure coordination among relevant institutions and organizations; and carry out the tasks and procedures related to foreigners’ entry into, stay in, and exit from Turkey as well as their deportation.

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.)?**

Persons who are apprehended outside their designated province (“satellite city”) may be detained in order to be transferred thereto. It appears that detention is imposed on applicants who violate residence restrictions with varying rigor, often depending on different factors such as the nationality of the individual. Others, namely those readmitted from Greece under the EU-Turkey statement, have been detained in Removal Centers even though many sought to apply for international protection.(Council of Europe Special Representative for Migration and Refugees, Report of the fact-finding visit to Turkey, 10 August 2016, para XI. 2.)

Persons arriving at international airports are also held under a regime of detention, even though this occurs *de facto*. Turkey does not consider holding in transit zones as a form of detention, on the basis that “at any time inadmissible passengers can leave holding areas to travel to a country where they would like to go.” (Council of Europe, Response of the Turkish Government to the report of the CPT on its visit to Turkey from 16 to 23 June 2015, CPT/Inf (2017) 33, 17 October 2017, available at: http://bit.ly/2G8tjL7, 3). In practice, it is widely reported that applicants of the international protection are held in facilities at the airport. In conformity with the law, the duration of assessment of the applications in the accelerated procedure does not exceed 2-3 days. However, even though this is not formally regarded as a form of detention, as stated in the recent judgment of the Constitutional Court in *B.T.*, any detention beyond 48 hours is unlawful and constitutes a violation of the right to liberty (Constitutional Court, *B.T.,* Decision 2014/15769, 30 November 2017).

1. **Who are the personnel that staff facilities that hold people in detention (corrections officers, law enforcement, social workers, etc.)? What are the professional qualifications of staff at these detention facilities? Who oversees staff at detention facilities?**

In Izmir (Harmandalı), a recent monitoring visit of the Human Rights Commission of the Grand National Assembly of Turkey noted that there is one psychologist and two social workers present in the center, as well as four health staff. A doctor is available on weekdays and one health staff member is available permanently, while a pediatrician visits twice a week. A social worker and the psychologist are present during the processing of applications for international protection. Aydın, on the other hand, only has one staff member responsible for health care (Grand National Assembly, İzmir-Aydın Geri Gönderme Merkezleri İnceleme Raporu, November 2017.)

1. **Who owns the facilities used to house migrants who are detained? Who operates the facilities used to house detained migrants? Are facilities that house detained migrants public or private?**

All Removal Centers in Turkey are under the authority of the Ministry of Interior Directorate General of Migration Management (DGMM) and are currently managed by the National Police. The LFIP authorizes the agency to delegate operation of the centers to public institutions and organizations, the Turkish Red Crescent Society, or associations working for public interest with expertise in the area of migration. (Article 58).

1. **Does your country monitor detention facilities? Who monitors detention facilities? What are the standards that detention facilities must adhere to?**

The LFIP makes no explicit provision on conditions of detention of applicants for international protection. However, Article 4 of the Regulation on Accommodation Centers and Removal Centers provides, “The establishment, operation and operation of the Centers and the fulfilment of the services to be provided under this Regulation shall be carried out according to the following principles and procedures:

1. Protection of the right to life;
2. Human-centered approach;
3. Observing the best interests of the unaccompanied child;
4. Priority to applicants having special needs;
5. Confidentiality of personal information;
6. Informing the persons concerned about the operations to be performed;
7. Social and psychological strengthening of the housing;
8. Respect for the freedom of beliefs and worship of the people
9. Providing services to the residents without discrimination based on language, race, color, sex, political thought, philosophical belief, religion, sect and similar reasons.”

In 2017, DGMM instructed all the mayoralties managing a Removal Center to set up dedicated commissions comprising of experts, academics, civil society, officials from health and education institutions and municipality representatives, tasked with regular visits to the centers. The composition of the commission depends entirely on each mayoralty: for example, ASAM is a member of the commission in Izmir, whereas another NGO participates in the commissions of Kayseri and Hatay. Generally, however, the Turkish Red Crescent is present in these commissions.

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?**

Under Article 68(8) LFIP, detained applicants for international protection will be provided opportunities to meet with their legal representatives, UNHCR officials and notaries. The provision, however, fails to make explicit reference to the right of detained applicants to meet with NGO representatives. It is considered that this deliberate absence is meant to limit or deny detained applicants’ access to NGO legal counsellors, which must be seen as an arbitrary reduction of the safeguard in Article 68 LFIP. Request for visiting a detained applicant may be turned down where the “applicant’s condition and the general circumstances are not suitable.” This extremely vague formulation raises concerns that arbitrary restrictions may be imposed on visitors’ access to the centers.

Regarding visits by lawyers, UNHCR, and notaries, detention authorities should “present the opportunity” for such meetings to take place, but the meetings will take place subject to permission by the detention authority. In practice, however, access of these actors to detention places seems to vary from one Removal Center to another. According to an unpublished DGMM Circular of 17 December 2015, lawyers are only granted access to Removal Centers on the basis of written requests, and can only request a copy of documents deemed not to be confidential, provided they have a power of attorney. In practice, lawyers report difficult and arbitrary access to Removal Centers.

The decision to detain an international protection applicant during the processing of his or her claim must be communicated in writing. The notification letter must provide the reasons justifying detention and the length of detention. The applicant must also be notified of the legal consequences of the detention decision and available appeal procedure. However, the LFIP does not impose a requirement to provide this information in writing.

1. **Are the particular needs of women and other groups of people met? Is consideration given to the status of asylum seekers, victims of torture and trafficking, and other migrants who are particularly vulnerable?**

The following information was obtained through Being A Migrant in Turkey, Migrant Worker Survey (Human Resource Development Foundation, 2015):

Women were not informed about their rights or how to claim these rights. One of the main problems, mentioned frequently, was the deportation decision of women with children. Some women were about to be deported together with their children and others have been separated from their children and children stayed with fathers. These were the problems encountered mainly by undocumented migrant women with children born out of wedlock and migrant women with children who have become undocumented as a result of divorce from a Turkish citizen. Women are generally not able to pay lawyer fees to take their case to court and there are no civil initiatives to provide legal services to migrants.

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

The LFIP provides that the best interest of children shall be respected. However, it also provides that families and unaccompanied children can be detained for removal purposes but that they should be given separate accommodation arrangements at removal centers and that children are to have access to education (Article 59). Unaccompanied minors who apply for international protection, on the other hand, are not supposed to be detained. Those aged below 16 years ought to be placed in government-run shelters. Those over 16 can be placed in “reception and accommodation centers provided that favorable conditions are ensured” (Article 66).

**Part B: Legal Treatment**

1. **What is the legal basis for detaining migrants in your country? What purpose does detention of irregular migrants serve? How has this purpose been articulated through legislation and through the judicial system and public policies? Please identify any relevant cases in your country’s court system.**

LFIP provides several grounds for pre-removal administrative detention. Article 57 stipulates that detention can be ordered for “those who may abscond or disappear, who violate rules for entry into and exit from Turkey, who use fraudulent or unfounded documents, who do not leave Turkey in the granted period without an acceptable excuse, who constitute a threat to public order and security or public health” (Article 57(2)). The law specifies that the detention of persons seeking protections should be an exceptional measure (Article 68).

Article 68(2) LFIP identifies four grounds that may justify detention of international protection applicants:

1. In case there is serious doubt as to the truthfulness of identity and nationality information submitted by the applicant for the purpose of verification of identity and nationality;
2. At border gates, for the purpose of preventing irregular entry;
3. Where it would not be possible to identify the main elements of the applicant’s international protection claim unless administrative detention is applied;
4. Where the applicant poses a serious danger to public order or public security.

“Risk of absconding” is not listed in Article 68(2) LFIP as a justifiable ground for detaining international protection applicants.

The wording in Article 68(2) is optional, meaning that the identification of one of the four justifiable grounds listed above does not create a duty on the part of authorities to impose administrative detention.

Article 68(3) LFIP requires a personal assessment of the need to detain and the consideration of less coercive Alternatives to Detention, before an administrative detention decision is issued.

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

Immigration is governed by administrative law, namely the Ministry of Interior Directorate General of Migration Management (DGMM).

People who violate immigration-related laws can be subject to fines (Article 102 LFIP). The 2013 LFIP does not include provisions that were found in previous laws providing for criminal prosecution and prison sentences, showing a trend in Turkey towards decriminalizing immigration violations.

1. **Does the immigration detention proceed *ex officio* or there is an individualized analysis of its pertinence and proportionality?**

[No information was found on the subject.]

1. **Does legislation establish a maximum amount of time for immigration detention? What is the maximum amount of time that someone can be detained? Are there any exceptions or extensions allowed by law?**

Administrative detention of international protection applicants may not exceed thirty days under any circumstances and “shall be ended at once” where the initial ground justifying detention no longer applies. (Article 68(5) LFIP). The competent authority may end detention at a later time following the detention order and put in place less coercive alternative measures. (Article 68(6) LFIP.)

The Constitutional Court has recently clarified in its *B.T*. judgment that a person can only be detained in a police station for a maximum of forty-eight hours before being transferred to a Removal Center. (Constitutional Court, *B.T.,* Decision 2014/15769, 30 November 2017). Nevertheless, persons falling under the “YTS89” code (the foreign terrorist fighter code) are generally arrested and detained in police stations for a period of one to four days, pending their transfer to a Removal Center.

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

The decision to detain can be challenged at the competent Magistrates’ Court through a non-suspensive appeal.(Article 68(7) LFIP; Article 96(6) LFIP Implementing Regulation). The law does not set out a time limit for appealing detention, whereas the deadline to appeal a removal decision is fifteen days. (Article 53(3) LFIP). In practice, Magistrates’ Courts in Hatay and Adana do not interpret these requirements strictly and have accepted appeals lodged after the lapse of the fifteen-day time limit. (Information from Antakya Bar Association, February 2018; Adana Bar Association, February 2018).

1. **Is there any national legislation that guarantees legal representation or interpreters in immigration proceedings? Is there a guarantee of access to free legal representation?**

All international protection applicants and status holders have a right to be represented by an attorney in regards to “all acts and decisions within the scope of the International Protection section of the LFIP” but must pay for the lawyer’s fees themselves. (Article 81(1) LFIP).

Persons who do not have the financial means to pay a lawyer are to be referred to the state-funded Legal Aid Scheme in connection with “judicial appeals” pertaining to any acts and decisions within the international protection procedure. (Article 81(2) LFIP)

It is very difficult for a detained asylum seeker to access the legal aid mechanism by him or herself, especially since the authorities do not provide information on the right to legal assistance in a language understood by the individual.

According to the Helsinki Citizens Assembly Turkey (HCA), in most cases, either an NGO or UNHCR will alert the bar association and seek to ensure the appointment of a legal aid lawyer to the person. However, no NGO has direct access to Removal Centers for the purpose of providing legal assistance.

1. **Is there any legislation that establishes the right to consular assistance for migrants? Is this right guaranteed in practice?**

Consular officials, along with relatives, UNHCR, and NGOs are permitted to visit detainees (Article 59 LFIP).

1. **Does your country recognize the due process rights of non-citizens to the extent that it recognizes the due process rights of citizens? If not, what are the differences?**

Article 19 of the Turkish Constitution provides basic procedural safeguards to anyone deprived of his or her liberty, including cases of “apprehension or detention of a person who enters or attempts to enter illegally into the country or for whom a deportation or extradition order has been issued.”

1. **Is information available to detainees regarding the processes of requesting asylum or applying for refugee status?**

The decision to detain an international protection applicant during the processing of his or her claim must be communicated in writing. The notification letter must provide the reasons justifying detention and the length of detention. The applicant must also be notified of the legal consequences of the detention decision and available appeal procedure. However, the LFIP does not impose a requirement to provide this information in writing.

In practice, due to limited familiarity with the rights of lawyers on the part of Removal Centers’ staff, applicants and their legal representatives rarely receive a copy of the removal decision and/or the detention order so as to know when the time limit for appeal starts running. Applicants and legal representatives may also receive documents without official signatures and seals. In other cases, lawyers are prevented from examining the case files of their clients.

1. **What do proceedings that determine migration status look like? Who is the decision-maker or decision-makers? What are the qualifications of the decision-makers? Are they appointed or elected?**

Article 101 LFIP authorizes Turkey’s High Council of Judges and Prosecutors to determine which Magistrates’ Court chamber in any given local jurisdiction shall be responsible for appeals against detention decisions within the scope of LFIP. In November 2015, the Council passed a decision to designate the 2nd Chamber of each Magistrates’ Court responsible for appeals against administrative detention decisions within the scope of LFIP. Thereby, there is an implicit intention for one designated chamber in each local jurisdiction to specialize in matters of LFIP. That said, these competent chambers will continue to deal with all types of caseloads and will not exclusively serve as asylum and immigration appeal bodies.

The competent Magistrates’ Court judge must decide on the judicial review application within 5 days. The decision of the Magistrates’ Court is final; it cannot be appealed by either side before a higher court of law. However, there are no limitations on new appeals by the applicant to challenge his or her ongoing detention.(Article 68(7) LFIP; Article 96(6) LFIP Implementing Regulation).

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

[No information was found on the subject.]

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?**

Under the LFIP, detention can last up to one year (six initial months plus a maximum of six additional months) (Article 57(3)).

1. **If families are involved, are their cases determined separately or together? Is consideration given to the special circumstances of children?**

According to the Economic Center on Refugees and Exile’s 2017 Report on Turkey, families have been shown to be detained together, showing a lack of individualized assessment prior to ordering detention.

1. **What are the consequences of a finding of irregular migration? Is an individual who is found to have entered the country in an irregular manner returned to detention or moved to a different facility? Are the conditions different for individuals found to be irregular migrants? Are irregular migrants eligible to be released on bond/bail until a final determination has been made?**

A positive decision against detention was issued by the Magistrates’ Court of Kirklareli on the application of Rida Boudraa, the first applicant who obtained an interim measure from the Constitutional Court. The lawyer of the applicant appealed again against the administrative detention decision after the issuance of the judgment of the Constitutional Court and the Magistrates’ Court accepted the application on the ground that “the applicant has a legal domicile and family life in Turkey and there is no risk of fleeing the country.” (Magistrates’ Court of Kirklareli, Decision 2016/2732, 24 October 2016.).

1. **Is there a right to appeal of finding of irregular migration status? What does the appeal of a finding of irregular migration status look like? How much time elapses from a judgment of irregular migration status to an appeal? What due process guarantees are given during the appeal process of a finding of irregular migration status? Does the appeal process have suspensive effect regarding deportations?**

The applicant must also be notified of the legal consequences of the detention decision and available appeal procedure. (Article 68(4) LFIP). However, the LFIP does not impose a requirement to provide this information in writing.

Due to limited familiarity with the rights of lawyers on the part of Removal Centers’ staff, applicants and their legal representatives rarely receive a copy of the removal decision and/or the detention order so as to know when the time limit for appeal starts running, (according to the Izmir Bar Association) or receive documents without official signatures and seals. In other cases, lawyers are prevented from examining the case files of their clients.  In Hatay and Adana, access to those documents is only possible after an appeal has been filed and the PDMM has been requested to submit the documents before the court. (Information provided by the Antakya Bar Association, February 2018; Adana Bar Association, February 2018). Lawyers understand this as a measure to prevent them from quickly intervening in detention cases.

1. *Immigration Detention in Canada: Important Reforms, Ongoing Concerns*, Global Detention Proj. 9 (2018). [↑](#footnote-ref-1)
2. Canadian Border Services Agency, Gov. Can. (as accessed Feb. 25, 2019), https://www.cbsa-asfc.gc.ca/menu-eng.html. [↑](#footnote-ref-2)
3. Immigration, Refugees and Citizenship Canada, Gov. Can. (as accessed Feb. 25, 2019), https://www.canada.ca/en/immigration-refugees-citizenship.html. [↑](#footnote-ref-3)
4. Canadian Charter of Rights and Freedoms [Constitution] Apr. 17, 1982, § 7 (Can.). [↑](#footnote-ref-4)
5. *Immigration Detention in Canada: Important Reforms, Ongoing Concerns*, Global Detention Proj. 17-18 (2018). [↑](#footnote-ref-5)
6. Canadian Charter of Rights and Freedoms [Constitution] Apr. 17, 1982, § 10 (Can.). [↑](#footnote-ref-6)
7. Immigration & Refugee Protection Act, S.C. 2001, c. 27, § 58(1) (2018) (Can.) [↑](#footnote-ref-7)
8. *R. v. Mann*, [2004] 3 SCR 59 (Can. 2004). [↑](#footnote-ref-8)
9. *Immigration Detention in Canada: Important Reforms, Ongoing Concerns*, Global Detention Proj. 7 (2018). [↑](#footnote-ref-9)
10. *Id.* at 34-35. [↑](#footnote-ref-10)
11. *Rights Violations Associated with Canada’s Treatment of Vulnerable Persons in Immigration Detention*, Int’l Human Rights Proj. (Univ. Toronto) 82 (2017), https://ihrp.law.utoronto.ca/utfl\_file/count/media/Canada%20UPR%20Final.pdf. [↑](#footnote-ref-11)
12. *Immigration Detention in Canada: Important Reforms, Ongoing Concerns*, Global Detention Proj. 26 (2018). [↑](#footnote-ref-12)
13. *Id.* at 18, 26. [↑](#footnote-ref-13)
14. *See generally* ENF 20, Gov. Can. (last updated Feb. 2018), https://www.canada.ca/content/dam/ircc/migration/ircc/english/resources/manuals/enf/enf20-det-en.pdf. [↑](#footnote-ref-14)
15. *Immigration Detention in Canada: Important Reforms, Ongoing Concerns*, Global Detention Proj. 24 (2018). [↑](#footnote-ref-15)
16. Stephanie J. Silverman, *In the Wake of Irregular Arrivals: Changes to the Canadian Immigration Detention System*, 30(2) Refuge 27, 31 (2009). [↑](#footnote-ref-16)
17. *Id.* at 28-29. [↑](#footnote-ref-17)
18. *Id.* [↑](#footnote-ref-18)
19. *Id.* at 29. [↑](#footnote-ref-19)
20. Immigration & Refugee Protection Act, S.C. 2001, c. 27, § 60 (2018) (Can.). [↑](#footnote-ref-20)
21. *Rights Violations Associated with Canada’s Treatment of Vulnerable Persons in Immigration Detention*, Int’l Human Rights Proj. (Univ. Toronto) 1 (2017), https://ihrp.law.utoronto.ca/utfl\_file/count/media/Canada%20UPR%20Final.pdf. [↑](#footnote-ref-21)
22. Immigration & Refugee Protection Act, S.C. 2001, c. 27, § 18 (2018) (Can.). [↑](#footnote-ref-22)
23. *R. v. Mann*, [2004] 3 SCR 59 (Can. 2004). [↑](#footnote-ref-23)
24. *Charkaoui v. Canada*, Supreme Court of Canada, [2007] 1 S.C.R. 350 (Can. 2007). [↑](#footnote-ref-24)
25. *Németh v. Canada*, [2010] 3 S.C.R. 281 (Can. 2010). [↑](#footnote-ref-25)
26. *B010 v. Canada*, [2015] 3 SCR 704 (Can. 2015). [↑](#footnote-ref-26)
27. *Id.* [↑](#footnote-ref-27)
28. Canadian Charter of Rights and Freedoms [Constitution] Apr. 17, 1982, § 9 (Can.). [↑](#footnote-ref-28)
29. Immigration & Refugee Protection Act, S.C. 2001, c. 27, § 167 (2018) (Can.). [↑](#footnote-ref-29)
30. *Id.* § 167(2). [↑](#footnote-ref-30)
31. Canadian Charter of Rights and Freedoms [Constitution] Apr. 17, 1982, § 7 (Can.). [↑](#footnote-ref-31)
32. *Immigration Detention in Canada: Important Reforms, Ongoing Concerns*, Global Detention Proj. 7 (2018). [↑](#footnote-ref-32)
33. *Admissibility Hearing Process*, Immigration and Refugee Bd. Can. (July 5, 2018), https://irb-cisr.gc.ca/en/legal-policy/procedures/Pages/ProcessAdmEnq.aspx. [↑](#footnote-ref-33)
34. *Id.* [↑](#footnote-ref-34)
35. *Id.* [↑](#footnote-ref-35)
36. *Id.* [↑](#footnote-ref-36)
37. *Id.* [↑](#footnote-ref-37)
38. Immigration & Refugee Protection Act, S.C. 2001, c. 27, §§ 151-153 (2018) (Can.). [↑](#footnote-ref-38)
39. *Id.* § 153(1). [↑](#footnote-ref-39)
40. *Id.* § 3. [↑](#footnote-ref-40)
41. *E.g.*, *id.* § 58(1) (“The Immigration Division shall order the release of a permanent resident . . .”). [↑](#footnote-ref-41)
42. *Code of Conduct for Members of the Immigration and Refugee Board of Canada*, Immigration & Refugee Bd. of Canada § 13 (Dec. 15, 2012), https://irb-cisr.gc.ca/en/members/Pages/MemComCode.aspx#Toc343154610. [↑](#footnote-ref-42)
43. Immigration & Refugee Protection Act, S.C. 2001, c. 27, § 57 (2018) (Can.). [↑](#footnote-ref-43)
44. *Id.* § 58. [↑](#footnote-ref-44)
45. *Immigration Detention in Canada: Important Reforms, Ongoing Concerns*, Global Detention Proj. 20 (2018). [↑](#footnote-ref-45)
46. *BB and Justice for Children and Youth v. Minister of Citizenship and Immigration*, IMM-5754-15 (2016). [↑](#footnote-ref-46)
47. *Id.* [↑](#footnote-ref-47)
48. Immigration & Refugee Protection Act, S.C. 2001, c. 27, § 60 (2018) (Can.). [↑](#footnote-ref-48)
49. *Press Release: Minister Goodale Issues New Direction on Keeping Children out of Canada’s Immigration Detention System and Keeping Families Together*, Newswire (Nov. 6, 2017), https://www.newswire.ca/news-releases/minister-goodale-issues-new-direction-on-keeping-children-out-of- canadas-immigration-detention-system-and-keeping-families-together-655621173.html. [↑](#footnote-ref-49)
50. Immigration & Refugee Protection Act, S.C. 2001, c. 27, § 4(2)(b) (2018) (Can.) (“The Minister of Public Safety and Emergency Preparedness is responsible for the administration of this Act as it relates to . . . the enforcement of this Act, including arrest, detention and removal.). [↑](#footnote-ref-50)
51. *Id.* § 57. [↑](#footnote-ref-51)
52. *Id.* § 58(1). [↑](#footnote-ref-52)
53. *Id.* § 58(3). [↑](#footnote-ref-53)
54. *Id.* § 110(1). [↑](#footnote-ref-54)
55. Immigration & Refugee Protection Act, S.C. 2001, c. 27, § 110(2) (2018) (Can.). [↑](#footnote-ref-55)
56. *Immigration Detention in Canada: Important Reforms, Ongoing Concerns*, Global Detention Proj. 20 (2018). [↑](#footnote-ref-56)
57. Immigration & Refugee Protection Act, S.C. 2001, c. 27, § 71(1) (2018) (Can.). [↑](#footnote-ref-57)
58. *Id.* [↑](#footnote-ref-58)
59. *Id.* § 57. [↑](#footnote-ref-59)
60. *See* *Rights Violations Associated with Canada's Treatment of Vulnerable Persons in Immigration Detention*, Univ. Toronto (2017), https://ihrp.law.utoronto.ca/utfl\_file/count/media/Canada%20UPR%20Final.pdf. [↑](#footnote-ref-60)
61. Geoffrey York, *Freed from Canadian Detention, South African Man Left in Limbo*, Globe & Mail (June 14, 2016), https://beta.theglobeandmail.com/news/world/freed-from-canadian-detention-south-african-man-left-in-limbo/article30462108/?ref=http://www.theglobeandmail.com&. [↑](#footnote-ref-61)
62. Note: In general, obtaining information on detention of migrants in Germany is challenging. Because detention is mainly under the authority of the states (*Länder*), federal authorities are not able to provide the information needed. While the Federal Statistical Office does collect data on prisoners, it does not collect data on their immigration status (See Global Detention Project, *Germany Immigration Detention Profile*, 3 (https://www.globaldetentionproject.org/immigration-detention-in-germany-2) (October 2017) (hereinafter Global Detention Project)). [↑](#footnote-ref-62)
63. Section 428(1) Act on Proceedings in Family Matters and in Matter of Non-contentious Jurisdiction (FamFG); Global Detention Project, *supra* note 1, at 9. [↑](#footnote-ref-63)
64. Section 428(1) FamFG [↑](#footnote-ref-64)
65. *Id.*  [↑](#footnote-ref-65)
66. *Id.* [↑](#footnote-ref-66)
67. Global Detention Project, *supra* note 1, at 3. [↑](#footnote-ref-67)
68. Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet [AufenthG] *[Residence Act], Feb. 25, 2008,* (BGBl. I p. 162), last amended by Act of Oct. 20, 2017 (BGBl. at 3618). [↑](#footnote-ref-68)
69. Janne Grote, *The use of detention and alternatives to detention in Germany,* Study by the German National Contact Point for the European Migration Network, 32 (http://www.bamf.de/SharedDocs/Anlagen/EN/Publikationen/EMN/Studien/wp59-emn-abschiebungshaft.pdf?\_\_blob=publicationFile). [↑](#footnote-ref-69)
70. Stefan Keßler, *Abschiebungshaft*, *socialnet Lexikon.*, (Jan. 14, 2019) https://www.socialnet.de/lexikon/Abschiebungshaft. [↑](#footnote-ref-70)
71. See Global Detention Project, supra note 1, at 18-19 (*citing* joint cases C‑473/13 and C‑514/13 *Bero & Bouzalmate*, ECLI:EU:C:2014:2095; C-474/13) *Pham*, ECLI:EU:C:2014:2096). [↑](#footnote-ref-71)
72. *Id.* at 18 (data as of July 2017). [↑](#footnote-ref-72)
73. *Id.* [↑](#footnote-ref-73)
74. Section 11 Abschiebungshaftvollzugsgesetz Baden-Württemberg; Section 6 Gesetz über den Vollzug der Abschiebungshaft in Nordrhein-Westfalen; Section 9 Gesetz über den Abschiebungsgewahrsam iVm Gewahrsamsordnung 3.8.3 (Bremen); Section 6 (1) Gesetz über den Vollzug der Abschiebungshaft außerhalb von Justizvollzugsanstalten (Brandenburg); Section 11 Gesetz über den Abschiebungsgewahrsam im Land Berlin; Section 11 Gesetz über den Vollzug der Abschiebungshaft (Hamburgisches Abschiebungshaftvollzugsgesetz); Section 15 Gesetz über den Vollzug ausländerrechtlicher Freiheitsentziehungsmaßnahmen (Hessen); Section 4 Gesetz über den Vollzug der Abschiebungshaft und des Ausreisegewahrsams im Freistaat Sachsen. [↑](#footnote-ref-74)
75. Marei Pelzer & Uli Sextro, Pro-Asyl e.V., *Schutzlos hinter Gittern - Abschiebungshaft in Deutschland*, 22 (https://www.proasyl.de/wp-content/uploads/2015/12/PRO\_ASYL\_Bericht\_Abschiebungshaft\_Juli\_2013-1.pdf) (2013) (hereinafter ProAsyl). [↑](#footnote-ref-75)
76. Global Detention Project, *supra* note 1, at 15. [↑](#footnote-ref-76)
77. Global Detention Project, *supra* note 1, at 16. [↑](#footnote-ref-77)
78. Section 12 Abschiebungshaftvollzugsgesetz Baden-Württemberg, Section 12 Gesetz über den Abschiebungsgewahrsam im Land Berlin; Section 10 Gesetz über den Vollzug der Abschiebungshaft außerhalb von Justizvollzugsanstalten (Brandenburg); Section 11 Gesetz über den Abschiebungsgewahrsam (Bremen); Section 12 Gesetz über den Vollzug der Abschiebungshaft (Hamburgisches Abschiebungshaftvollzugsgesetz); Section 32 Gesetz über den Vollzug der Abschiebungshaft in Nordrhein-Westfalen; Section 33 Gesetz

    über den Vollzug der Abschiebungshaft und des Ausreisegewahrsams im

    Freistaat Sachsen. [↑](#footnote-ref-78)
79. *See* ProAsyl, *supra* note 14, at 33, 45. [↑](#footnote-ref-79)
80. Global Detention Project, *supra* note 1, at 13. [↑](#footnote-ref-80)
81. For an overview see Pro-Asyl, Situation in den bundesdeutschen Abschiebegefängnissen, 1 (April 2013), http://archiv.proasyl.de/fileadmin/proasyl/12-04-13\_A-Haftbedingungen\_-\_PRO\_Asyl\_2\_\_Quartal\_2013\_01.pdf. [↑](#footnote-ref-81)
82. Global Detention Project, *supra* note 1, at 17. [↑](#footnote-ref-82)
83. Informationsverbund Asyl und Migration, *Country Report: Germany*,Asylum Information Database (http://www.asylumineurope.org/reports/country/germany/detention-asylum-seekers/procedural-safeguards/judicial-review-detention). [↑](#footnote-ref-83)
84. Vienna Convention on Consular Relations, Apr. 24, 1963, 596 U.N.T.S. 261. [↑](#footnote-ref-84)
85. Winfried Kluth, *§ 62 AufenthG*, in: BeckOK Ausländerrecht, Mn. 27 (Andreas Heusch & Winfired Kluth eds. 2019) (citing Bundesgerichtshof [BGH] [Federal Court of Justice], May 6, 2010, Praxis der Freiwilligen Gerichtsbarkeit (FGPrax), 212, 2010 (Ger.)). [↑](#footnote-ref-85)
86. *Id*. [↑](#footnote-ref-86)
87. *Id*. [↑](#footnote-ref-87)
88. *Id.* (citing BGH, beck-online.RECHTSPRECHUNG [BeckRS] 21389, 2016). [↑](#footnote-ref-88)
89. Follow-up mission to German, Rep. of the Working Group on Arbitrary Detention, Addendum, ¶ 63, U.N. Doc. A/HRC/30/36/Add.1 (Jul. 10, 2015) (hereinafter: Working Group) [↑](#footnote-ref-89)
90. *Id*. [↑](#footnote-ref-90)
91. Global Detention Project, *supra* note 1, at 7. [↑](#footnote-ref-91)
92. *Id.* (citing Jesuit Refugee Service (JRS) Europe, *From Deprivation to Liberty: Alternatives to detention in Belgium, Germany and the United Kingdom,* Dec. 2011, (http://www.refworld.org/docid/4f0c10a72.html);Hendrik Cremer, *Detention and human rights: The duration of the detention and the detention of unaccompanied minors in Germany*, German Institute for Human Rights, Mar. 2011, www.institut-fuermenschenrechte.de/publikationen/detailansicht.html.). [↑](#footnote-ref-92)
93. *Id*. (citing EU Fundamental Rights Agency, *European legal and policy framework on immigration detention of*

    *children*, 2017, http://fra.europa.eu/en/publication/2017/child-migrant-detention) [↑](#footnote-ref-93)
94. Directive 2008/115/EC, of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in member states for returning illegally staying third-country nationals, 2008 O.J. (L 348) 98. [↑](#footnote-ref-94)
95. Kluth, *supra* note 24, at Mn. 5, 6. [↑](#footnote-ref-95)
96. Allgemeine Verwaltungsvorschrift zum Aufenthaltsgesetz [General Administrative Regulation to the Residence Act], Oct. 26, 2009, Section 62.1.1 (http://www.verwaltungsvorschriften-im-internet.de/pdf/BMI-MI3-20091026-SF-A001.pdf). [↑](#footnote-ref-96)
97. Udo di Fabio, *GG Art. 2 Abs. 2 Nr. 2 Freiheit der Person*, in: Grundgesetz Kommentar, Mn. 21 (Theodor Maunz, Günter Dürig eds., Aug. 2018) (with further references). [↑](#footnote-ref-97)
98. *Id*. Mn. 22 (citing Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court], ENTSCHEIDUNGEN DES BUNDESVERFASSUNGSGERICHTS, [BVERFGE] 105, 239 (247); 94, 166 (198) and others). [↑](#footnote-ref-98)
99. *Id.* (Citing BVerfGE 94, 166 (198); 105, 239 (248)). [↑](#footnote-ref-99)
100. Peter Günter, *FamFG § 419 Verfahrenspfleger*, in: BeckOK FamFG, Mn. 5 (Meo-Micaela Hahne, Jürgen Schlögel, Rolf Schlünder eds., 29th ed., Jan. 2019). [↑](#footnote-ref-100)
101. *Id.* [↑](#footnote-ref-101)
102. Peter Günter, *FamFG § 276 Verfahrenspfleger*, in: BeckOK FamFG, Mn. 17 (Meo-Micaela Hahne, Jürgen Schlögel, Rolf Schlünder eds., 29th ed., Jan. 2019). [↑](#footnote-ref-102)
103. Gerichtsverfassungsgesetz [GVG] [Courts Constitution Act], Sept. 12 1950, repromulgated May 9, 1975 (BGBl. I at 1077), last amended by Gesetz, Oct. 30, 2017 [BGBl. I at 3618]. [↑](#footnote-ref-103)
104. Günter, *supra* note 39, at 5. [↑](#footnote-ref-104)
105. Grote, *supra* note 8, at 30. [↑](#footnote-ref-105)
106. Working Group, *supra* note 28 at ¶ 48 (citing BGH, Feb. 28, 2013, FGPrax 132 (2013). [↑](#footnote-ref-106)
107. Grote, *supra* note 8, at 31. [↑](#footnote-ref-107)
108. Asylum Information Database, *Country Report Germany* (2016 Update) 31, http://www.asylumineurope.org/sites/default/files/report-download/aida\_de\_2016update.pdf. [↑](#footnote-ref-108)
109. Global Detention Project, *supra* note 1, at 8. [↑](#footnote-ref-109)
110. Id. (Global Detention Project, *supra* note 1, at 8.) [↑](#footnote-ref-110)
111. Bundesamt für Migration und Flüchtlinge, *Migrationsbericht 2015*, 156 (https://www.bmi.bund.de/SharedDocs/downloads/DE/publikationen/themen/migration/migrationsbericht-2015.pdf;jsessionid=17122382D4ED6A99E3BE33E707519946.2\_cid364?\_\_blob=publicationFile&v=5). [↑](#footnote-ref-111)
112. Informationsverbund Asyl und Migration, Rechtsmittel gegen Aufenthaltsbeendigung, https://www.asyl.net/themen/aufenthaltsbeendigung/abschiebung-und-freiwillige-ausreise/rechtsmittel/ (last visited Mar. 2, 2019). [↑](#footnote-ref-112)
113. BGH BeckRS 101860 (2017). [↑](#footnote-ref-113)
114. Global Detention Project, *Immigration Detention and the Law: U.S. Policy and Legal Framework*, (https://www.globaldetentionproject.org/immigration-detention-and-the-law-us-policy-and-legal-framework) (August 2010) (hereinafter Global Detention Project)). [↑](#footnote-ref-114)
115. *Id.* at 6. [↑](#footnote-ref-115)
116. *Id.* at 7. [↑](#footnote-ref-116)
117. *Id.* at 8. [↑](#footnote-ref-117)
118. *Id.* at 13. [↑](#footnote-ref-118)
119. Immigration and Customs Enforcement, Detention and Deportation Officers (<https://www.ice.gov/careers/ddo>). [↑](#footnote-ref-119)
120. Global Detention Project, *supra* note 1, at 13. [↑](#footnote-ref-120)
121. Global Detention Project, *supra* note 1, at 20. [↑](#footnote-ref-121)
122. *Id.* at 19. [↑](#footnote-ref-122)
123. *Id.* at 20. [↑](#footnote-ref-123)
124. *Id.* [↑](#footnote-ref-124)
125. *Id.* at 8. [↑](#footnote-ref-125)
126. *Id.* [↑](#footnote-ref-126)
127. U.S. Const. amend. V. [↑](#footnote-ref-127)
128. Global Detention Project, *supra* note 1, at 8. [↑](#footnote-ref-128)
129. *Id.* at 6. [↑](#footnote-ref-129)
130. *Id.* at 8. [↑](#footnote-ref-130)
131. *Id.* [↑](#footnote-ref-131)
132. *Id.* at 6. [↑](#footnote-ref-132)
133. Immigrant Legal Resource Center, *Overview of the Deportation Process: A Guide for Community Members and Advocates,* 6-7. (<https://www.ilrc.org/sites/default/files/resources/overview_deport_process-20181221.pdf>). [↑](#footnote-ref-133)
134. *Id.* [↑](#footnote-ref-134)
135. *Zadvydas v. Davis*, 533 U.S. 678 (2001). [↑](#footnote-ref-135)
136. *Demore v. Kim*, 538 U.S. 510 (2003). [↑](#footnote-ref-136)
137. *Clark v. Martinez*, 543 U.S. 371 (2005). [↑](#footnote-ref-137)
138. Human Rights First. *Background Briefing Note: Detention of Asylum Seekers in the United States: Arbitrary Under the ICCPR*, at 6 n.24 (Jan. 2007) available at http://www.humanrightsfirst.info/pdf/061206-asy-bac-un-arbdet-asy-us.pdf (last visited June 11, 2010). [↑](#footnote-ref-138)
139. Global Detention Project, *supra* note 1, at 11. [↑](#footnote-ref-139)
140. Immigration and Nationality Act of 1952, Pub. L. No. 82-414, 66 Stat. 163, § 241(1)(A). [↑](#footnote-ref-140)
141. Id. at § 241(1)(C) [↑](#footnote-ref-141)
142. *Zadvydas v. Davis*, 533 U.S. 678 (2001). [↑](#footnote-ref-142)
143. Immigration Act, 2015 (Act. No. 8 of 2015), 50 (2015). [↑](#footnote-ref-143)
144. Immigration Act, 2015 (Act. No. 8 of 2015), 15-19 (2015). [↑](#footnote-ref-144)
145. Immigration Act, 2015 (Act. No. 8 of 2015), 18(1)(e), 19(6) (2015). [↑](#footnote-ref-145)
146. Immigration Act, 2015 (Act. No. 8 of 2015), 1-2 (2015). [↑](#footnote-ref-146)
147. Immigration Act, 2015 (Act. No. 8 of 2015), 2 (2015). [↑](#footnote-ref-147)
148. Immigration Act, 2015 (Act. No. 8 of 2015), 3 (2015). [↑](#footnote-ref-148)
149. Immigration Act, 2015 (Act. No. 8 of 2015), 18(1) (2015). [↑](#footnote-ref-149)
150. Immigration Act, 2015 (Act. No. 8 of 2015), 19(6)(d) (2015). [↑](#footnote-ref-150)
151. Immigration Act, 2015 (Act. No. 8 of 2015), 50(1) (2015). [↑](#footnote-ref-151)
152. Immigration Act, 2015 (Act. No. 8 of 2015), 61 (2015). [↑](#footnote-ref-152)
153. Immigration Act, 2015 (Act. No. 8 of 2015), 62-63 (2015). [↑](#footnote-ref-153)
154. Immigration Act, 2015 (Act. No. 8 of 2015), 62 (2015). [↑](#footnote-ref-154)
155. International Organization for Migration, *National Migration Policy for the Federal Government of Nigeria, 2015* 4.5.2 (c) (2015). [↑](#footnote-ref-155)
156. Constitution of the Federal Republic of Nigeria, Act No. 24, 5 May 1999, article 35(3) (1999). [↑](#footnote-ref-156)
157. United States Department of State, Bureau of Democracy, Human Rights and Labor, *Nigeria 2017 Human Rights Report* (2017). [↑](#footnote-ref-157)
158. Id. [↑](#footnote-ref-158)
159. Amnesty International, *Amnesty International Report 2016/17 – Nigeria* (accessed February 22, 2019). https://www.amnesty.org/en/countries/africa/nigeria/report-nigeria/ [↑](#footnote-ref-159)
160. Constitution of the Federal Republic of Nigeria, Act No. 24, 5 May 1999, article 34(a)(a) (1999). [↑](#footnote-ref-160)
161. Constitution of the Federal Republic of Nigeria, Act No. 24, 5 May 1999, article 17(3)(b) -(d) (1999). [↑](#footnote-ref-161)
162. Constitution of the Federal Republic of Nigeria, Act No. 24, 5 May 1999, article 35(5) (1999). [↑](#footnote-ref-162)
163. United States Department of State, Bureau of Democracy, Human Rights and Labor, *Nigeria 2017 Human Rights Report*, 11 (2017). [↑](#footnote-ref-163)
164. Immigration Act, 2015 (Act. No. 8 of 2015), 36(2) (2015). “Any person desirous of entering Nigeria for any of the purposes in sub-section (1) of this Section, shall produce the consent of the Comptroller-General of Immigration to an Immigration officer: and the failure to so shall be an offence, and any person who commits such an offence shall be liable on conviction to a fine of one million Naira or deportation or both as a prohibited Immigrant.” [↑](#footnote-ref-164)
165. Constitution of the Federal Republic of Nigeria, Act No. 24, 5 May 1999, article 17(3)(e) (1999). [↑](#footnote-ref-165)
166. Constitution of the Federal Republic of Nigeria, Act No. 24, 5 May 1999, article 15(2) (1999). [↑](#footnote-ref-166)
167. Constitution of the Federal Republic of Nigeria, Act No. 24, 5 May 1999, article 15 (1999). [↑](#footnote-ref-167)
168. Constitution of the Federal Republic of Nigeria, Act No. 24, 5 May 1999, article 42(1) (1999). “A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person:- (a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions are not made subject; or (b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions.” [↑](#footnote-ref-168)
169. United States Department of State, Bureau of Democracy, Human Rights and Labor, *Nigeria 2017 Human Rights Report*, 9 (2017). [↑](#footnote-ref-169)
170. Immigration Act, 2015 (Act. No. 8 of 2015), 103 (2015). [↑](#footnote-ref-170)
171. Immigration Act, 2015 (Act. No. 8 of 2015), 99 (2015). [↑](#footnote-ref-171)
172. Immigration Act, 2015 (Act. No. 8 of 2015), 98 (2015). [↑](#footnote-ref-172)
173. Immigration Act, 2015 (Act. No. 8 of 2015), 95 (2015). [↑](#footnote-ref-173)
174. Committee on the Protection of All Migrant Workers and Members of Their Families, *Concluding observations on Nigeria in the absence of a report*, 34(c) (23 May 2017). [↑](#footnote-ref-174)
175. Immigration Act, 2015 (Act. No. 8 of 2015), 18(1) (2015). [↑](#footnote-ref-175)
176. Immigration Act, 2015 (Act. No. 8 of 2015), 19(6)(d) (2015). [↑](#footnote-ref-176)
177. Immigration Act, 2015 (Act. No. 8 of 2015), 50(1) (2015). [↑](#footnote-ref-177)
178. Immigration Act, 2015 (Act. No. 8 of 2015), 44(1) (2015). [↑](#footnote-ref-178)
179. Immigration Act, 2015 (Act. No. 8 of 2015), 44(3) (2015). [↑](#footnote-ref-179)
180. Immigration Act, 2015 (Act. No. 8 of 2015), 45(3) (2015). [↑](#footnote-ref-180)
181. Constitution of the Federal Republic of Nigeria, Act No. 24, 5 May 1999, article 35(1) (1999). [↑](#footnote-ref-181)
182. (1981] 1 N.C.L.R. 264. [Editor’s Note: We were not able to access this document in their primary form, so we were not able to substantiate the citation.] [↑](#footnote-ref-182)
183. Enahoro v IGP [1976] 7 CCHCJ 1879, cited in Yink Olomojobi, *Right to Personal Liberty in Nigeria* (October 31, 2017). [Editor’s Note: We were not able to access this document in their primary form, so we were not able to substantiate the citation.] [↑](#footnote-ref-183)
184. Constitution of the Federal Republic of Nigeria, Act No. 24, 5 May 1999, article 36(6)(c) (1999). [↑](#footnote-ref-184)
185. Constitution of the Federal Republic of Nigeria, Act No. 24, 5 May 1999, article 46(4)(b)(i) (1999). [↑](#footnote-ref-185)
186. Legal Aid Act CAP L9, 2011, 8(3). [↑](#footnote-ref-186)
187. *Id.* at 8(4). [↑](#footnote-ref-187)
188. *Id.* at Explanatory Memorandum (emphasis added). [↑](#footnote-ref-188)
189. International Organization for Migration, *National Migration Policy for the Federal Government of Nigeria, 2015* 4.6.1.(f) (2015). [↑](#footnote-ref-189)
190. Constitution of the Federal Republic of Nigeria, Act No. 24, 5 May 1999, article 35(1)(a) (1999). [↑](#footnote-ref-190)
191. Constitution of the Federal Republic of Nigeria, Act No. 24, 5 May 1999, article 17(3)(a) (1999). [↑](#footnote-ref-191)
192. Committee on the Protection of All Migrant Workers and Members of Their Families, *Concluding observations on Nigeria in the absence of a report*, 33 (23 May 2017).

     Immigration Act, 2015 (Act. No. 8 of 2015), 18(1) (2015). [↑](#footnote-ref-192)
193. David Weissbrodt, *Final report on the rights of non-citizens -- Examples of practices in regard to non-citizens*, U.N. Doc. E/CN.4/Sub.2/2003/23/Add. 3, para. 2 (2003) (“Constitutions in some countries, however, inappropriately distinguish between the rights granted to persons who obtained their citizenship by birth and other citizens,” and citing to Nigeria.) See also Committee on the Protection of All Migrant Workers and Members of Their Families, *Concluding observations on Nigeria in the absence of a report*, 27(a) (23 May 2017). [↑](#footnote-ref-193)
194. Constitution of the Federal Republic of Nigeria, Act No. 24, 5 May 1999, articles 15, 37, 41 (1999). [↑](#footnote-ref-194)
195. Immigration Act, 2015 (Act. No. 8 of 2015), 1 (2015). [↑](#footnote-ref-195)
196. See, e.g. Immigration Act, 2015 (Act. No. 8 of 2015), 36(2) (2015). “Any person desirous of entering Nigeria for any of the purposes in sub-section (1) of this Section, shall produce the consent of the Comptroller-General of Immigration to an Immigration officer: and the failure to so shall be an offence, and any person who commits such an offence shall be liable on conviction to a fine of one million Naira or deportation or both as a prohibited Immigrant.” [↑](#footnote-ref-196)
197. Immigration Act, 2015 (Act. No. 8 of 2015), 28(1) (2015). [↑](#footnote-ref-197)
198. Immigration Act, 2015 (Act. No. 8 of 2015), 44 (2015). [↑](#footnote-ref-198)
199. Immigration Act, 2015 (Act. No. 8 of 2015), 44(3) (2015). [↑](#footnote-ref-199)
200. Immigration Act, 2015 (Act. No. 8 of 2015), 45(2) (2015). [↑](#footnote-ref-200)
201. Immigration Act, 2015 (Act. No. 8 of 2015), 45(4) (2015). [↑](#footnote-ref-201)
202. United States Department of State, Bureau of Democracy, Human Rights and Labor, *Nigeria 2017 Human Rights Report*, 11 (2017). “Police and other security services have the authority to arrest individuals without first obtaining warrants if they have reasonable suspicion a person committed an offense, a power they often abused.” [↑](#footnote-ref-202)
203. Constitution of the Federal Republic of Nigeria, Act No. 24, 5 May 1999, article 35(3) (1999). [↑](#footnote-ref-203)
204. Constitution of the Federal Republic of Nigeria, Act No. 24, 5 May 1999, article 35(4) (1999). [↑](#footnote-ref-204)
205. Constitution of the Federal Republic of Nigeria, Act No. 24, 5 May 1999, article 35(5) (1999). [↑](#footnote-ref-205)
206. United States Department of State, Bureau of Democracy, Human Rights and Labor, *Nigeria 2017 Human Rights Report*, 11 (2017). [↑](#footnote-ref-206)
207. Immigration Act, 2015 (Act. No. 8 of 2015), 44(1) (2015). [↑](#footnote-ref-207)
208. Immigration Act, 2015 (Act. No. 8 of 2015), 50(1) (2015). [↑](#footnote-ref-208)
209. Immigration Act, 2015 (Act. No. 8 of 2015), 46 (2015). The rules governing appeals of criminal sentence are procedural in nature, relating to issues like notice and service. The Constitutional due process guarantees do not distinguish between trial proceedings and appellate proceedings. The U.S. State Department report on Nigeria notes that the right to an interpreter continues throughout all appeals. It also notes that delays in the court system due can lengthen proceedings (including pretrial, trial, and appellate procedures) for as long as ten years. This would indicate that at least some criminal defendants utilize the appeals process. It is unclear what proportion of these are appeals of violations of the Immigration Act. The U.S. State Department notes that the Nigerian authorities “did not always respect these [due process] rights, most frequently due to a lack of capacity and resources.” [↑](#footnote-ref-209)
210. Constitution of the Federal Republic of Nigeria, Act No. 24, 5 May 1999, article 37 (1999). [↑](#footnote-ref-210)
211. Immigration Act, 2015 (Act. No. 8 of 2015), 28(3) (2015). [↑](#footnote-ref-211)