

# UNCOMFORTABLE DATA

ENDING DEPRIVATION OF LIBERTY OF MIGRANT CHILDREN THROUGH IMPROVED DATA



FACULTY OF LAW  
AND ADMINISTRATION



Global Study on Children  
Deprived of Liberty



Global Campus  
of Human Rights

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## SUMMARY

At least 330,000 children are deprived of their liberty for migration related reasons every year worldwide. Because of the limited data available publicly, little is known about the characteristics of these children. This study aims to verify the existence, accessibility, and quality of data on immigration detention of children. In order to verify what categories of data are recorded by the public authorities, the authors approached 37 states requesting statistics under Freedom of Information regulations. Migration authorities were asked for historical and up-to-date statistics disaggregated by basic demographic features such as gender, nationality and accompanied status. Although the findings confirm the scarcity of data, several data-related promising practices were identified. Their implementation can significantly improve data capabilities of migration authorities and contribute to better policy making, particularly in measuring the progress toward ending immigration detention of children. This report builds on the experience of the UN Global Study on Children Deprived of Liberty (2019) which was the first scientific attempt to assess the magnitude of the situation of children deprived of liberty, including migrant children.

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# 1. BACKGROUND

Although immigration detention of children<sup>1</sup> is rarely or never practiced in some states, there is a **concerning number of states who have taken the more securitised approach to detention of migrant children.**<sup>2</sup> Despite states having legitimate reason for regulating the terms of entry and residency into their territories, it is still important that international human rights obligations are considered in policymaking. International and regional human rights bodies have repeatedly concluded that detention of migrant children is never in the best interests of the child.<sup>3</sup> The emerging international consensus is also that detention of children can significantly damage children's physical, developmental, emotional and psychological health, 'depriving them of their fundamental rights and their childhood.'<sup>4</sup> For this reason, UN Global Study on Children Deprived of Liberty ('UNGS') highlighted that **detention of children is always unnecessary and disproportionate, and states should eliminate this practice.**

Progress toward ending immigration detention of children is a drawn-out process that requires a systemic change. **Informed policymaking should be rooted in evidence, meaning that for better protection of migrant children, a robust data collection framework is needed.**<sup>5</sup> A frequently raised argument is the lack of data on immigration detention of children. However, such a statement is true only to a certain extent. Although data on immigration detention is much more limited than data on migratory flows or international protection, the UNGS has demonstrated that sufficiently reliable data is available for at least 80 countries,<sup>6</sup> and therefore provided a global estimate on the scale of this phenomenon – **at least 330,000 children are deprived of liberty for migration related reasons every year.**

Some categories of data are more available than others such as information on the prevalence of unaccompanied children being relatively frequently recorded while records on the percentage of detained migrant children with disabilities are nearly non-existent. The **activity of international mechanisms and NGOs is gradually but irregularly increasing the availability of data.** Data on the immigration detention of children is regularly asked for by the UN Committee on the Rights of the Child,<sup>7</sup> as well as the European Council on Refugees and Exiles ('ECRE').<sup>8</sup> The International Data Alliance for Children on the Move, a cross-sectoral global coalition of states, international and regional organisations, NGOs, academia, and others was launched in 2020 and aims to develop and improve data collection.<sup>9</sup> In this study, we propose that in a significant number of countries, **statistics on immigration detention of children can be extracted through Freedom of Information ('FOI') requests.**

<sup>1</sup> This report follows the terminology used in the UNGS as well as by the UN treaty bodies. Therefore, the term 'immigration detention' will be used in reference to any facility where children are deprived of liberty for migration related reasons. See: Manfred Nowak, 'UN Global Study on Children Deprived of Liberty', Geneva 2019, p. 434.

<sup>2</sup> Ibid., p. 454-466.

<sup>3</sup> UNGA, 'Report of the Special Rapporteur on the Human Rights of Migrants: Ending immigration detention of children and providing adequate care and reception for them' (2020), 20 July 2020, A/75/183, para. 13.

<sup>4</sup> Ibid. See also: Nowak (2019), p. 433.

<sup>5</sup> Günter Schumacher, Jan Löschner and Francesco Sermi, 'Data on Children in Migration', Ispra 2019, p. 5 and 30.

<sup>6</sup> Nowak (2019), p. 455.

<sup>7</sup> Information on children in administrative detention for migration related reasons is frequently requested by the CRC Committee under the List of Issues. See for instance: Germany in 2021 (CRC/C/DEU/Q/5-6, para. 13b), Canada in 2020 (CRC/C/CAN/Q/5-6, para. 18d), Zambia in 2020 (CRC/C/ZMB/QPR/5-7, para. 47c), Greece in 2020 (CRC/C/GRC/Q/4-6, para. 17i).

<sup>8</sup> AIDA/ECRE, Asylum Information Database.

<sup>9</sup> UNICEF, 'International Data Alliance for Children on the Move', March 2020.

Our aim is to assess the **quality of the data, which is determined primarily by its timeliness and level of disaggregation**. For the same reason, we decided not to publish actual figures indicating the scale immigration detention of children in respective states, as the overarching goal of this study is to assist and support policymakers in improving data collection framework as well as highlighting promising practices implemented worldwide and to encourage other states to adopt them.

### 1.1. HOW CHILDREN CAN BENEFIT FROM THIS STUDY

The UNGS concluded that **detaining children for migration reasons violates international human rights obligations** – namely Articles 3, 6 and 37(b) of the Convention on the Rights of the Child of 1989 ('CRC').<sup>10</sup> Because of the significant harm that detention can do to children, along with the availability of non-custodial alternatives, immigration detention of children can therefore never be in the best interests of the child or considered lawful grounds for detention under international human rights law.<sup>11</sup> Both this report, and the UNGS, advocate for **a child-centred approach to data** in which data serves as a tool for improving children's rights through:



#### Identification of vulnerable individuals and providing them with adequate care

Migrant children on the move are obliged to disclose vast amounts of personal data at various stages of migration procedures, including at border crossings, identity screenings, admission to detention centres, and others. The scope of data collected from them is primarily dictated by the needs of national security and includes, among others, fingerprints, iris scans or verification of identity documents. This perspective pushes other categories of information on the margins, such as data on disability, languages spoken, or health needs. These are either not collected or recorded incomprehensively, making public datasets of questionable value in determining the needs of children on the move and providing them with adequate care, in particular adequate alternatives to detention. For this reason, this study advocates for a child-centred data collection system that allows for the disaggregation of data by vulnerable status.

<sup>10</sup> The detention of children for migration reasons is inconsistent with the best interests of the child (Article 3), a child's right to develop (Article 6) and the right of the child to not be deprived of liberty unlawfully or arbitrarily. This position is further supported by the Report of the Special Rapporteur on the Human Rights of Migrants (2020). See: UNGA (2020), para. 13.

<sup>11</sup> Nowak (2019), p. 451.



### Disclosure and proving the systemic and structural character of immigration detention of children

Accessing statistical information is one of the primary means of controlling the exercise of government power and can often contribute to uncover human rights abuses. In the United States, the data released from an FOI request led to the discovery of the 'no-release policy' adopted by the Immigration and Customs Enforcement ('ICE').<sup>12</sup> Statistical data plays an important role in front of international mechanisms. For instance, based on the administrative data, the European Committee of Social Rights has recently assessed the scale of immigration detention of children in Greece and determined that there have been violations of the right of children to social protection along with the right to adequate shelter.<sup>13</sup>



### Monitoring and measuring progress in eliminating migration detention of children

The widespread nature of immigration detention of children around the world indicates that the practice is systematic. At the same time, a variety of alternatives to detention are being applied in various regions. An appropriate data collection framework is therefore essential to assess the efficiency of legislative and policy measures, document promising practices and support their implementation in other countries, as well as to monitor global progress in ending immigration detention of children.<sup>14</sup>

The implementation of a child-centred approach to data requires development of an adequate legal and technical environment to ensure **that data is available (i.e. collected) and accessible (i.e. released publicly)**, the quality of this data is maintained to as high a standard as possible, and also allows to identify vulnerable individuals through **functional disaggregation**. This report intends to assess the extent to which 37 selected UN member states have effectively implemented this approach which was operationalised in the following recommendation of the UN Global Study:

*States should collect and make publicly available anonymised data, disaggregated to the greatest extent possible while ensuring confidentiality. At a minimum this should be done by age, gender (ideally reflecting, in addition to only 'female' and 'male', numbers for those whose gender identity does not match the sex assigned at birth or on identity documents), unaccompanied/accompanied status, nationality and migration status, disability, length of stay (including cumulative length of detention for individuals released and immediately re-detained), and place of detention. It should also reflect the numbers of children deprived of their liberty on the*

<sup>12</sup> NYCLU, *Jose L. Velesaca v. Chad Wolf et al*, 1:20-cv-01803.

<sup>13</sup> European Committee of Social Rights, *International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece*, complaint no. 173/2018.

<sup>14</sup> UNGA (2020), para. 86(k).

*basis of their own or their parents' migration status. These data should be made available at least annually.*<sup>15</sup>

Despite the practice of immigration detention of children being inconsistent with international human rights obligations, there is still a long way to go to ensure the practice is eliminated globally, meaning that effective data collection to assess the changes in the area is crucial. Effective data collection policies for migrants will assist in achieving Target 10.7 of the 2030 Agenda for Sustainable Development that aims to facilitate orderly, safe, regular and responsible migration and mobility of people, through the implementation of planned and well-managed migration policies. This report aims to push for progress and follow on **from the findings and recommendations of the UNGS focussing specifically on the data on immigration detention of children collected by states.**

## 1.2. DEVELOPMENTS FROM THE UN GLOBAL STUDY

Following the findings of the UNGS in 2019, there have been some key developments in the international effort to eliminate the deprivation of liberty of children and their families. In parallel with the UNGS, the **Special Rapporteur on the Human Rights of Migrants, Felipe González Morales**, developed a report on 'Ending immigration detention of children and providing adequate care and reception for them.'<sup>16</sup> The recommendations of the report are coherent with those in the UNGS, recommending, among other things, the implementation of domestic legislation prohibiting immigration detention of children, releasing detained migrant children and their families to the appropriate alternative care or non-custodial reception facilities, and favouring solutions like case management.<sup>17</sup> There were a significant number of countries that made submissions to the UNGS, with the Morales report also receiving additional submissions from Indonesia, Hungary, Cyprus and twelve other states. The report highlighted promising practices adopted by many of the Central and South American states and African states.<sup>18</sup> The report also referred to developments in Thailand in early 2019 where measures were put in place for children to have access to social services and non-custodial alternative care arrangements.<sup>19</sup>

In 2020, the **Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW Committee)** made a call for comments for their Draft General Comment No. 5 on migrants' rights to liberty and freedom from arbitrary detention.<sup>20</sup> It sets out a **principle of non-detention of migrant children** underlining that the detention of children due to their migratory status is never in the best interests of the child and constitutes cruel, inhuman, or degrading treatment. In addition, the CMW Committee stressed that places intended for providing care and protection to unaccompanied children 'do not in reality result in material deprivation of liberty, even if they are not formally detention centres'.<sup>21</sup>

<sup>15</sup> Nowak (2019) p. 490.

<sup>16</sup> UNGA (2020).

<sup>17</sup> Ibid para. 83.

<sup>18</sup> Ibid para. 36-38.

<sup>19</sup> Ibid para. 39.

<sup>20</sup> CMW-Committee, General comment No. 5 (2020) on migrants' rights to liberty and freedom from arbitrary detention (draft), 14 August 2020, CMW/C/32/R.2, para. 46-51.

<sup>21</sup> Ibid.

In 2020, the Parliamentary Assembly of the **Council of Europe** adopted a resolution ensuring ‘reception conditions and care for child migrants and refugees fulfil basic rights and needs, taking into account the special requirements for the protection of children; on no account should children be placed in detention.’<sup>22</sup>

The **European Commission** adopted the EU Strategy of Rights of the Child stating, in reference to the findings of the UNGS, that it supports ‘Member States in the development of effective and viable alternatives to the detention of children in migration procedures.’<sup>23</sup> The CJEU has delivered a landmark judgment at the beginning of 2021 concerning the interpretation of provisions of the EU Return Directive and the best interests of the child.<sup>24</sup> In the case, the Court ruled that the deportation of a 15-year-old child was inconsistent with the child’s best interests and fundamental rights of the child with predicted potential implications for detained migrant children as well.<sup>25</sup>

The **European Union Agency for Fundamental Rights** (‘FRA’) released a report in 2020 on children in migration providing updated data for France, Greece, Italy, Malta, Netherlands, Poland and North Macedonia, showing some increasing trends in immigration detention of unaccompanied children.<sup>26</sup>

The international discussion on immigration detention is ongoing. International human rights bodies have expressed concern over the detention of unaccompanied migrant children in Greece, with the **#FreeTheKids** campaign gaining attention worldwide – particularly the effect of sanitary conditions in these detention facilities during COVID-19.<sup>27</sup> In Central and South America, immigration detention of children remains considerably less present than in other regions.<sup>28</sup> In January 2021, **Mexico** implemented legislation to require **migrant children be held in child-welfare shelters** rather than immigration detention centres, to better protect children.<sup>29</sup>

The **COVID19 pandemic had significant effects on global migration trends**. The near-complete halt of global travel and the closure of most international borders in 2020 has had **a significant impact on detention numbers in some countries**. In Canada, the number of children detained decreased 92%<sup>30</sup> while in the United Kingdom 59%<sup>31</sup> (between the end of 2019 and 2020). Therefore, when analysing the data on children in immigration detention, we refrained from making statistical comparisons with the data collected in 2018-2019 under the Global Study questionnaire.<sup>32</sup>

<sup>22</sup> Council of Europe/PACE, Resolution 2324: Missing Refugee and Migrant Children in Europe, 30 January 2020.

<sup>23</sup> European Commission, ‘EU Strategy on the Rights of the Child’, 2021.

<sup>24</sup> Court of Justice of the European Union, *TQ v Staatssecretaris van Justitie en Veiligheid* (C-441/19), 14 January 2021.

<sup>25</sup> R. O’Donnell, ‘Spotlight on the Best Interests of the Child in Returns of Unaccompanied Children & Reflections for the New Pact on Migration and Asylum – EU Immigration and Asylum Law and Policy’, *EU Immigration and Asylum Law and Policy*, 13 April 2021.

<sup>26</sup> European Union Agency for Fundamental Rights, ‘Children in Migration in 2019’, Vienna 2020, pp. 18-19.

<sup>27</sup> Hetal Doshi and Ritika Goyal, ‘The Plight of Unaccompanied Migrant Minors in Greek Detention System: A National and International Perspective’, *European Law Blog*, 8 July 2020.

<sup>28</sup> Nowak (2019), p. 462.

<sup>29</sup> Amnesty International, ‘USA and Mexico deporting thousands. Of unaccompanied migrant children into harm’s way’, 11 June 2021.

<sup>30</sup> Canada Border Services Agency, ‘Quarterly detention statistics: First and second quarter (Q1-Q2), fiscal year 2020 to 2021’.

<sup>31</sup> UK Home Office, ‘National Statistics: How many people are detained or returned?’, Table Det\_02b (Number of occurrences of children entering detention).

<sup>32</sup> For methodology of the Global Study questionnaire see: Nowak (2019), pp. 33-56. On the other hand, in some countries detention numbers did not decrease, e.g. Australia or Bosnia and Herzegovina.

At the same time, due to the novelty and unexpectedness of the crisis, **states have responded differently to preventing the spread of infections in detention centres.**<sup>33</sup> The CMW Committee has expressed concern for the often unsanitary and overcrowded conditions in immigration detention facilities and have called upon states to release detainees and use non-custodial alternatives.<sup>34</sup> Although in some countries vulnerable groups, including children, were **released from detention,**<sup>35</sup> others introduced **suspension of administrative hearings, restrictions on freedom of movement, and temporary closures of previously open facilities** (see case studies on Mexico as well as Bosnia and Herzegovina).<sup>36</sup> The latter has likely influenced the number of children *de facto* deprived of liberty, although statistically these people are not classified as detained.

<sup>33</sup> United Nations Network on Migration, 'COVID-19 & Immigration Detention: What Can Governments and Other Stakeholders Do?', 29 April 2020, p. 4.

<sup>34</sup> CMW-Committee, 'General Comment No. 5 on Migrants' Rights to Liberty and Freedom from Arbitrary Detention', 2020, CMW/C/32/R.2, para. 7.

<sup>35</sup> For instance, in Mexico unaccompanied children were released due to the order of the federal court. Migrants were also released in Norway, Spain, and Zambia. See: UN Working Group on Alternatives to Immigration Detention, 'COVID-19 & Immigration Detention: What Can Governments and Other Stakeholders Do?', p. 9.

<sup>36</sup> UNICEF/The Alliance for Child Protection in Humanitarian Action, 'Technical Note: COVID-19 and Children Deprived of their Liberty', 9 September 2020.

## 2. RESEARCH PROCESS

This report is primarily based on **research conducted primarily through the Freedom of Information requests**. Taking this approach allowed to **extract primary data** on children deprived of liberty for migration related reasons, frequently more detailed than statistics released publicly or reported to the UN treaty bodies. At the same time, this approach allowed us to **obtain comparable data** (states were requested to share the same scope of information for the same period) and assess which states record cases on immigration detention of children according to the UNGS recommendations. The collected data led us to develop the **Data Maturity Index** which integrates the most important recommendations of the UNGS, in particular, migration- and data-related sections.

The **Data Maturity Index** served as an analytical tool to measure the robustness of domestic data collection frameworks, including their legal framework, public accessibility, timeliness and level of disaggregation.<sup>37</sup> The index scored the countries on the **scale of 0-20** and therefore provided a **basis for the selection of case studies**. The selection of the abovementioned four components was guided by four main core research questions (as indicated on the infographic on p.14). Their selection was based on the findings from the UNGS,<sup>38</sup> taking into account also recent developments in the field of data governance<sup>39</sup> and the impact of data-based solutions on the enjoyment of human rights by migrant children.<sup>40</sup>

### 2.1. COMPOSITION OF DATA MATURITY INDEX

The **legal framework** integrates in particular definitional clarity (i.e. which settings amount to deprivation of liberty; exclusion of certain groups from immigration detention) as well as data rights (e.g. the legal catalogue of data collected by the authorities or right to access one's data). Legal information was extracted mainly from the legislation regulating the status of foreigners, refugees and asylum-seekers as well as immigration enforcement.<sup>41</sup> The assessment of the level of protection and enforcement of data rights was extracted from the database '*Data Protection Laws of the World*' compiled by DLA Piper.<sup>42</sup> This was due to the fact that migration related regulations usually either referred to regular data protection laws or did not mention privacy laws at all which are, nevertheless, applicable. Therefore,

<sup>37</sup> The codebook and coding instructions are included in the Annex I.

<sup>38</sup> Nowak (2019), pp. 32-55.

<sup>39</sup> Releasing public data is considered to be one of the vehicles of development in the digital age. See: Łukasz Szoszkiewicz, 'Open Data: Toward Achieving and Measuring the Sustainable Development Goals'. In: Walter Leal Filho et al. (eds) Industry, Innovation and Infrastructure. Encyclopedia of the UN Sustainable Development Goals, Springer 2021. See also: IEAG, 'A World That Counts: Mobilising The Data Revolution for Sustainable Development', 2014. For this reason, the UN Statistical Commission created a subgroup on open data in 2018. See: UN Statistical Commission, decision 49/105, E/2018/24-E/CN.3/2018/37. The potential conflicts of open data with the right to privacy were analysed by the UN Special Rapporteur on the right to privacy Joseph A. Cannataci in 2017. See: UNGA, 'Report of the Special Rapporteur on the right to privacy', 19 October 2017, A/72/43103, para. 77-87.

<sup>40</sup> Petra Molnar and Lex Gill, 'Bots at the Gate: A Human Rights Analysis of Automated Decision Making in Canada's Immigration and Refugee System', 2018.

<sup>41</sup> In Anglophone countries relevant acts typically include term 'immigration' in the title while in other jurisdictions words 'aliens' and 'foreigners' are more prevalent. At the same time, in some of the former Soviet countries, relevant laws indicate in their titles that regulations are applicable also to stateless persons.

<sup>42</sup> DLA Piper, 'Data Protection Laws of the World'.

limiting analysis to the fragmented provisions included in the regulations on foreigners could lead to erroneous conclusions on the low level of protection of data rights.

The **public accessibility** refers to the accessibility of data to the general public (e.g. whether data is published by default, released on request, or never disclosed). To assess this perspective, the methodology of data collection included submission of individualised FOI requests to the relevant authorities. The implementation of FOI-based methodology indicates that the accessibility of public data is related, to certain extent, to the existing FOI regulations. For this reason, the Data Maturity Index integrates the selection of FOI-related features extracted from the largest existing database Global Right to Information Rating (RTI) developed by Access Info and Centre for Law and Democracy.<sup>43</sup> In some countries allowed statistics on immigration detention of children have been, recently subject to either FOI requests or parliamentary inquiries and responses were subsequently released to the public (e.g. Austria, Czech Republic). In these cases, no new FOI requests were submitted.<sup>44</sup>

The **longitudinal characteristics (time trends)** allows, us to track fluctuations throughout the time and measure the implementation of migration policies. In the context of deprivation of liberty, regular and coherent statistics allows us to document progress towards ending immigration detention of children.

Data diversity is measured by the **level of disaggregation**, particularly for the following features: age, gender, nationality, disability and accompanied status. Whenever possible, additional information was extracted, in particular on the length of detention as well as the cost of detention, however this took place in individual cases only. The level of disaggregation allowed us to reflect on certain characteristics in migration policies, such as the necessity to provide certain services (e.g. interpretation in the language of certain national group or addressing needs of persons with disabilities) while, at the same time, to hold authorities accountable to human rights standards (e.g. monitoring whether children are not detained).

<sup>43</sup> Access Info and Centre for Law and Democracy, 'Global Right to Information Rating' (accessed 31 July 2021). The Data Maturity Index includes one 'FOI regulations' variable that consists of the following indicators: I2 (The legal framework creates a specific presumption in favour of access to all information held by public authorities, subject only to limited exceptions); I4 (Everyone, including non-citizens and legal entities, has the right to file requests for information); I6 (Requesters have a right to access both information and records/documents); I7 (The right of access applies to the executive branch with no bodies or classes of information excluded); and I29 (The exceptions to the right of access are consistent with international standards).

<sup>44</sup> The rationale behind this decision is that previous requests were submitted by the citizens of the respective countries who exercised their right to information (which is frequently limited to the citizens only). Therefore, the analysis of the potential impact of FOI regime on the accessibility of detention related statistics could be best assessed when the applicant is a citizen of a given country.

## COMPOSITION OF THE DATA MATURITY INDEX

**LEGAL FRAMEWORK**

Is data collection, protection and access regulated?

**Definitional clarity of deprivation of liberty for migration related reasons**

Whether regulations indicate which settings amount to deprivation of liberty or use euphemisms, in particular restrictions of freedom of movement

**Clear prohibition of immigration detention of children**

Whether regulations prohibit detention of children or only certain groups such as unaccompanied children and children below certain age threshold

**Robustness of personal data protection regime**

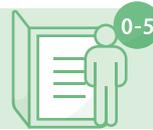
Regulation and enforcement of data protection regulations – variable based on the database of Data Protection Laws of the World by DLA Piper

**Scope of personal data collected**

Whether regulations indicate which data, including personal and biometric data, are allowed to be collected and processed by migration authorities

**Data rights of individuals**

Whether regular data protection regime is applicable to data of foreigners, e.g. right to access one's personal data or maximum data retention periods

**PUBLIC ACCESSIBILITY**

Is data collected and publicly released?

**Robustness of Freedom of Information regime**

To what extent legal framework facilitates access to data collected by the authorities – variable based on the Global Right to Information Rating

**Data shared on FOI request or previous inquiries**

Whether data was shared on FOI requests submitted within the project or in response to the previous FOI requests and/or parliamentary inquiries

**Responsiveness of migration authorities**

How much time did it take for an authority to complete the submitted FOI request

**Statistics published by default**

Whether statistics on the immigration detention of children are released publicly by default, e.g. in the annual reports compiled by the migration authority or published on Open Data portals

**Data shared with the UN**

Whether data on children in immigration detention has been shared either within the UNGS; under the last periodic review before CRC or CMW Committees; or with the UN agencies, in particular UNHCR within the last 5 years

**TIME TRENDS**

Is data collected on a regular basis?

**Last update**

Whether data from 2019 or 2020 is available – either publicly or extracted through FOI request

**Annual data on immigration detention of children**

Whether data is compiled on annual basis

**Longitudinal data**

Whether longitudinal data is available – either for 5 or 10 last years

**Regularity**

Whether data is compiled on a regular basis, for instance annually, quarterly or daily, or compiled ad hoc, for instance when a FOI request is submitted

**LEVEL OF DISAGGREGATION**

Is data properly disaggregated?

**Age**

Whether age group 0-18 is distinguished in the statistics

**Gender**

Whether data is disaggregated by gender

**Nationality**

Whether data is disaggregated by nationality

**Disability**

Whether information on disability is recorded

**Accompanied status**

Do the statistics indicate whether a child was detained unaccompanied or with a family/legal guardian

**Privacy protection**

Whether released data is duly anonymised, in particular whether small numbers that could lead to the re-identification of an individual are not made public

## 2.2. PROCESS OF DATA COLLECTION

### 2.2.1. Scope of the study

The **scope of the study included 37 states and territories** from all regions of the world.<sup>45</sup> The selection of the countries was guided with the four criteria that included: 1) the practice of immigration detention of children; 2) significant migrant and/or refugee population;<sup>46</sup> 3) geographical location; and 4) the robustness of freedom of information regulations.

The states covered under the research are shown on a map. The **prevalence of European countries** is due to several reasons. First, European countries, in particular EU Member States, are **continuously applying detention measures towards children**<sup>47</sup> (contrary to, for instance, Latin American states). In 2015-2016 immigration detention of children was allowed in 19 EU Member States and the numbers were increasing in some of them, particularly in France, Greece, and Malta.<sup>48</sup> Secondly, **Europe remains one of the main destinations for migrants** which, in the context of **harsh immigration policies in many countries**, results in significant numbers of migrants placed in various settings euphemistically named 'temporary accommodation' that sometimes amount to deprivation of liberty. The selection of European countries was additionally guided by the migratory trends and included Balkan states (e.g. Bosnia and Herzegovina, Serbia, and North Macedonia), Nordic states (e.g. Denmark, Finland, Norway) as well as Eastern Europe (Poland, Russia, Ukraine).

At the same time, research included two countries that did not practice immigration detention of children at the time of the UN Global Study (2018-2019), namely Brazil and Ireland. In both cases, our assessment was aiming to verify whether there are no records on children in detention. In both cases, no data on the cases of detention of children were observed.<sup>49</sup>

<sup>45</sup> Mayotte was treated as a separate territory for the purpose of data collection (as it was the case under the UNGS).

<sup>46</sup> World Bank, 'International migrant stock - total (ID: SM.POP.TOTL)' and 'Refugee population by country or territory of asylum (SM.POP.REFG)'.  
<sup>47</sup> Nowak (2019), p. 463.

<sup>48</sup> European Union Agency for Fundamental Rights, 'Children in Migration in 2019', Vienna 2020, pp. 18-19.

<sup>49</sup> In Brazil detention of migrant children is allowed in exceptional cases of deportation and extradition, however, the UNGS found that no children are detained in practice. The FOI requests submitted under this project through the 'Fala.BR - Integrated Ombudsman and Information Access Platform' were promptly answered indicating that the requested data are not collected.

## SCOPE OF THE STUDY

Selection of the countries was guided by the following criteria:



Focus on the countries where **immigration detention of children** was observed within the UN Global Study (approx. 2/3 of the sample) and countries where data could not be extracted at that time (approx. 1/3 of the sample).



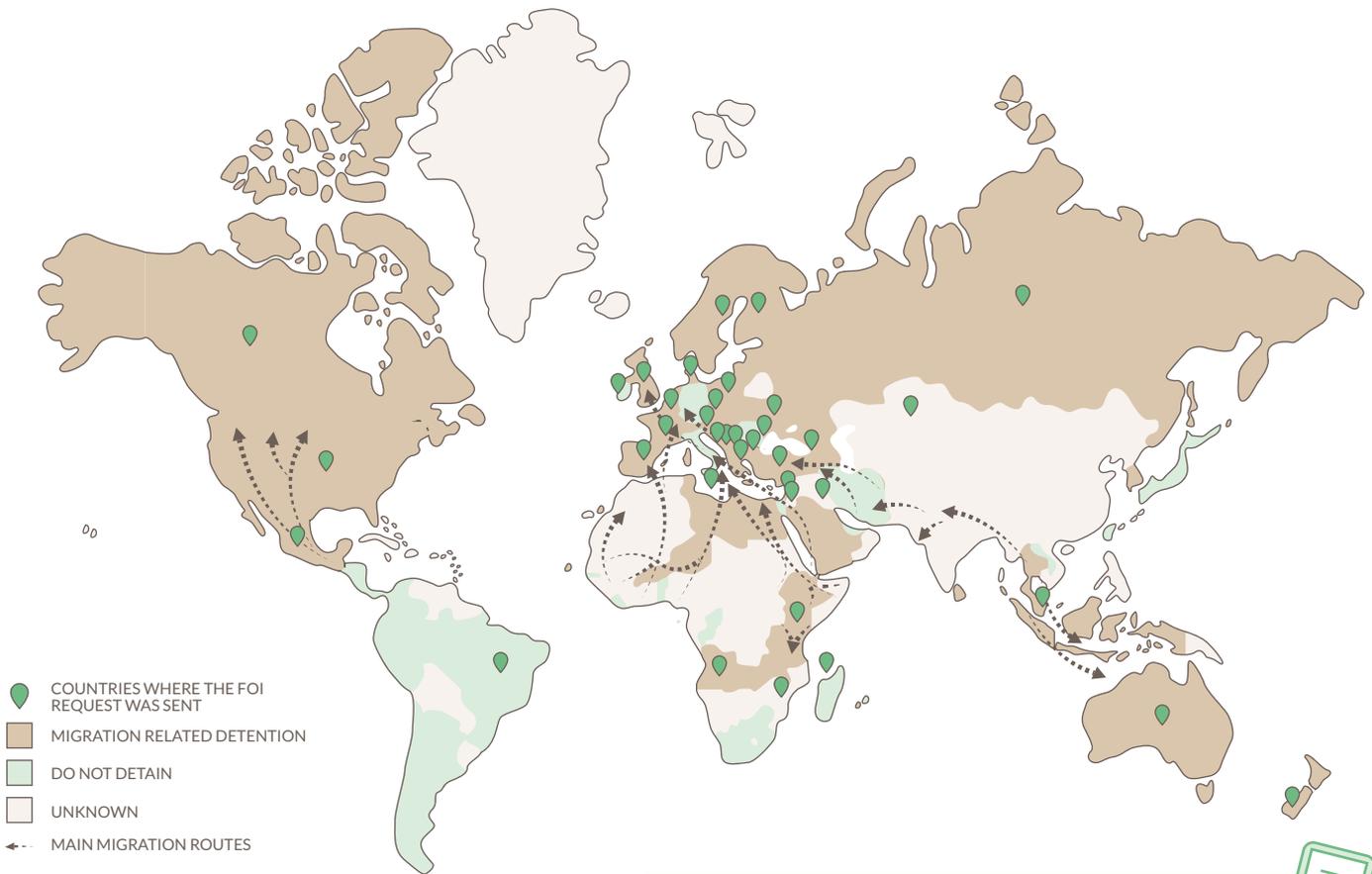
Priority given to countries with significant international **migrant stock and refugee population** since 2015.



A **regional balance** while taking into account major **migratory routes** like the Mexican-American route, the Eastern Mediterranean route, and the Balkan route.



Balance between the countries with both robust and also weak **freedom of information (FOI) regulations** (seven countries from the top 30 and bottom 30 according to the Global Right to Information Rating).



Source: National Geographic, 2015 (for migratory routes)

### COUNTRIES THAT DO NOT DETAIN:

Anguilla (United Kingdom), Argentina, Benin, Brazil, Chile, Congo, Colombia, Costa Rica, Cyprus, Germany, Ecuador, Gambia, Honduras, Ireland, Iran, Israel, Italy, Laos, Liberia, Luxembourg, Madagascar, Mauritius, New Zealand, Nicaragua, Romania, Panama, Peru, Qatar, El Salvador, São Tomé and Príncipe, Taiwan, South Africa

Source: M. Nowak, 'UN Global Study on Children Deprived of Liberty' Geneva 2019, p. 463.

### COUNTRIES WHERE THE FOI REQUEST WAS SENT:

REPLIED		NO REPLY	REJECTED
Australia*	Malaysia	Angola	Kazakhstan
Austria	Mayotte (France)	Belgium	Malta
Brazil	Mexico	Denmark	Sweden
Bulgaria	New Zealand	Iraq	
Canada	North Macedonia	Jordan	
Croatia	Norway	Kenya	
Czech Republic*	Poland	Lebanon	
Bosnia and Herzegovina	Romania	Mozambique	
Finland	Russia	Spain	
France	Serbia	Turkey	
Georgia	United Kingdom*	Ukraine	
Ireland*		United States	

\* Responses to historical requests were accessed instead of submitting a new request.

### 2.2.2. Information extraction

The composition of the Data Maturity Index was developed within an **iterative process of consultation**, feedback and gradual adjustment of the dataset. Several variables that were identified at the beginning as potentially informative were excluded due to the scarcity of data, in particular the average length of detention<sup>50</sup> and the cost of detention.<sup>51</sup> A separate variable was dedicated to the content of house rules for detention settings, however subsequently abandoned due to its low accessibility.<sup>52</sup> At the same time, information on disability was kept as a separate variable even though only three countries record his data.<sup>53</sup> This was due to the fact that the collection of data on disability within migrants was explicitly recommended under the UNGS due to the invisibility of persons with disabilities in the statistics.<sup>54</sup>

The data collection process was implemented by the team of **seven researchers with either sociological or legal background** that, in addition, completed a dedicated MA programme in human rights. The selection criteria for coding positions included also linguistic skills to secure access to official sources in French- and Portuguese-speaking regions of Africa, Spanish- and Portuguese-speaking regions of Americas as well as Arabic-speaking regions of Middle East. Therefore, all data collected within the project was extracted from **primary sources**, in particular **Official Gazettes** (for legal regulations) or **statistical reports of immigration authorities** (for immigration statistics). In addition, **FOI requests** were submitted to the relevant authorities to extract comparable information, in particular disaggregation by the most common features.

All researchers were provided with a proper training and coding instructions (codebook and guidelines) and were consulted on a regular basis by the Project Lead to resolve any data related issues. The project ensured the diversity of researchers (particularly in terms of gender and nationality) to integrate perspectives that could have been overlooked at the initial stages of the research process.

### 2.2.3. Freedom of Information requests

To maximise the response rate, most of the individualised FOI requests were drafted in one of the official languages of the country.<sup>55</sup> Researchers were provided with a draft FOI request as well as Letter of Authorisation highlighting the scientific purpose of accessing the data. Requests were submitted accor-

<sup>50</sup> Only five countries shared data on the length of detention, namely Australia (disaggregated data with periods varying from 1 to 730 days between 2019 and 2020) Canada (average between 11.5 and 16.3 days in 2020), France (20 hours in 2019), New Zealand (disaggregated data with periods varying from 3 to 6 days between 2011 and 2018), Norway (between 2019-2020, there were 34 stays with a duration of less than one day; 8 stays with a duration 1-3 days; 4 days with a duration 3-7 days), and the United Kingdom (between 2-3 months in Q1 of 2021).

<sup>51</sup> This data is publicly released only by the United Kingdom (97.54 GBP in 2020).

<sup>52</sup> In some countries house rules for detention settings are adopted in the ministerial decrees (e.g. Belgium, Poland) or in the form of internal documents issued by the central authorities (e.g. United Kingdom) while in others this is left to the discretion of the directors of respective facilities – either with some minimum conditions indicated in the legal act (e.g. Kazakhstan) or without any guidance (e.g. Iraq, Lebanon, Mozambique).

<sup>53</sup> Bosnia and Herzegovina, Finland, and Serbia.

<sup>54</sup> Nowak (2019), p. 490. Due to a lack of reliable global data, disaggregated by disability, it is difficult to estimate the prevalence of children with disabilities among children in immigration detention. See: Ibid., pp. 191-192.

<sup>55</sup> Languages spoken by the research team included: Arabic, Danish, English, Farsi, French, German, Macedonian, Polish, Portuguese, Russian, Serbian, Spanish, and Ukrainian.

ding to the domestic FOI regulations, internal guidelines<sup>56</sup> and, if available, through electronic forms<sup>57</sup> or Open Data portals.<sup>58</sup> The initial FOI request included the following questions:

1

Annual data on children accommodated in the facilities that have been previously identified and classified as places of deprivation of liberty (in 2019 or 2020). When drafting FOI requests, terms such as 'detention' or 'deprivation of liberty' were avoided and replaced with the official names of the respective settings (extracted from the domestic legislation). If various types of facilities were in operation (e.g. open, semi-open and closed institutions), FOI request focused on these settings that were classified as having the highest degree of confinement (i.e. closed facilities). The degree of confinement was assessed during the data collection process by researchers (scale 0-5).

2

Disaggregation by age (if publicly accessible statistics did not distinguish between adults and children), gender, nationality, disability, accompanied status and average length of detention.

In total, **FOI requests were submitted in 33 countries and replied in 20 of them (response rate: 61%)**, although in three cases there were refusals (Kazakhstan, Malta, and Sweden). If the authority replied substantively to the initial request, a follow-up request was submitted (replied in 10 cases). In the latter, authorities were asked to provide longitudinal data (2011-2018) disaggregated by gender, nationality, disability, and accompanied status.

Some authorities followed domestic FOI regulations strictly and, therefore, refused to disclose data due to the applicant not being a citizen.<sup>59</sup> At the same time, the approach of some other authorities was more liberal. In the latter cases, the data was released based on the exception for research purposes, even if the applicant was a foreigner.<sup>60</sup> In one case, replies to our requests were subsequently released publicly on the website of the respective authority, however, one without anonymising the applicant.<sup>61</sup> The detailed log of FOI requests is included in the Annex II (p.62).

<sup>56</sup> For instance, Norway requires very detailed information on the purpose of requested data, brief description of the project etc. See: Norwegian Directorate of Immigration, 'Innsyn og tilgang til data' [Access and access to data].

<sup>57</sup> FOI requests were submitted through the electronic form for Bulgaria (replied), Georgia (replied), Jordan (not replied), and Turkey (not replied).

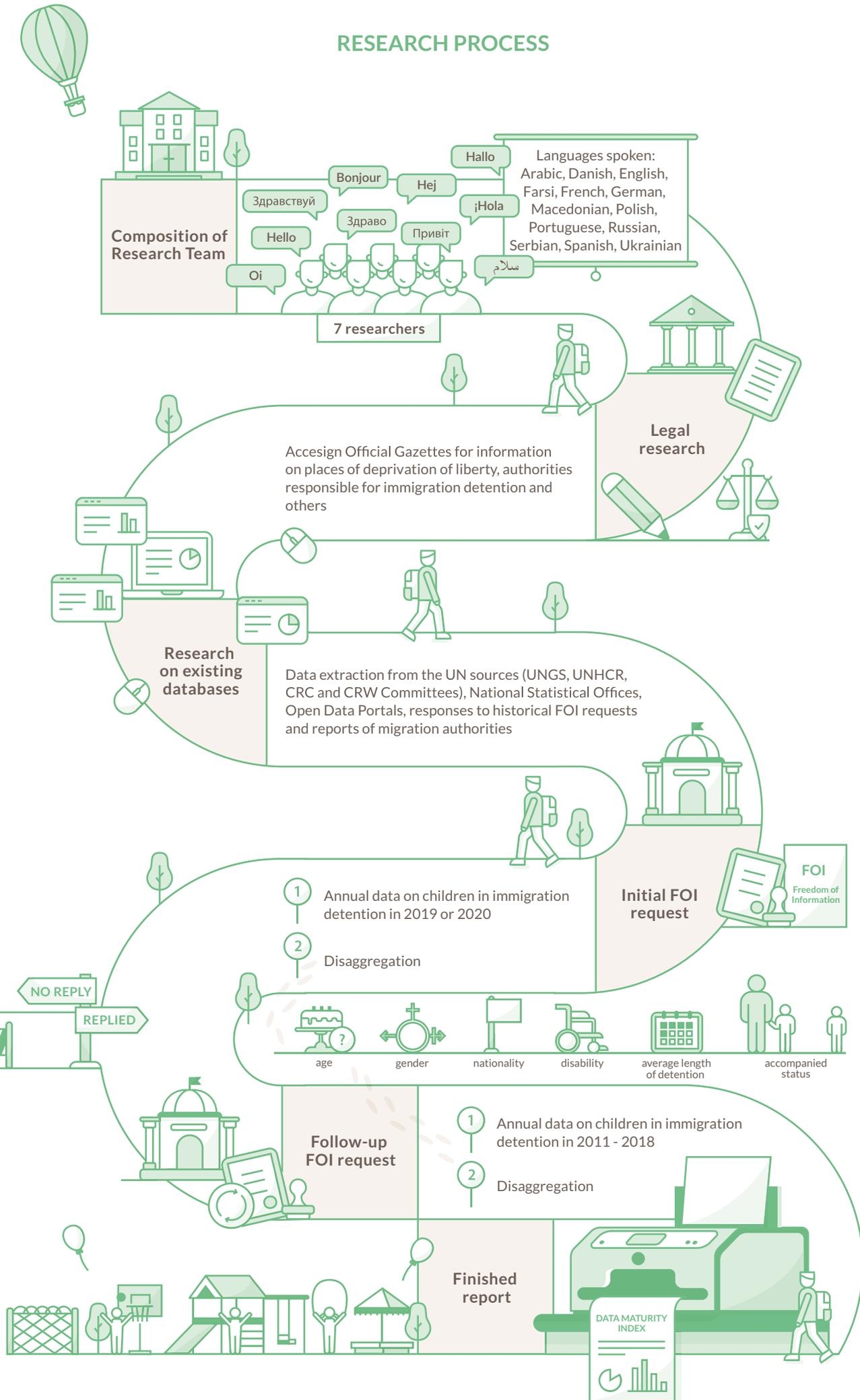
<sup>58</sup> FOI requests were submitted through the Open Data portals for Canada (replied) and Mexico (replied).

<sup>59</sup> Canada (disclosed data on the initial request but declined the follow-up request) and Malta. At the same time in Jordan and Spain it was not possible to submit FOI request via electronic form due to the lack of national ID (required field). The FOI requests sent on the general e-mail of the respective ministries were not replied.

<sup>60</sup> E.g. New Zealand.

<sup>61</sup> North Macedonia (Ministry of Interior), Response to FOI request no 1612-199/1 from 10 February 2021 (for data from 2019) ; Response to FOI request no 1612-804/1 from 16 June 2021.

# RESEARCH PROCESS



#### 2.2.4. Scarcity of data

Due to the scarcity of data, it was impossible to calculate the Data Maturity Index for some countries. These were cases where there were neither statistics on immigration detention of children publicly available, nor the authority replied to the FOI request. In Sweden, the FOI request was answered, however, indicating that ‘the requested information is classified as confidential and cannot be disclosed to private individuals.’<sup>62</sup> In these cases, only information on legal framework could be extracted, frequently with significant difficulties. For this reason, **seven countries were excluded from further analysis** (Angola, Jordan, Kazakhstan, Kenya, Mozambique, Sweden, and Turkey). In addition, Romania was excluded due to conflicting data released in response to FOI request (declaring no children detained) and reported by ECRE earlier in 2020 (between 5 and 43 children were placed in detention according to various sources).<sup>63</sup>

At the same time Malta, although not releasing official statistics and refusing to share data in the reply to FOI request, was included in the analysis due to the availability of data in other UN sources, in particular from the UNHCR. The latest annual data on immigration detention of children in Malta comes from 2017 and was shared by the Immigration Police.<sup>64</sup> The FOI request submitted to this institution was rejected because the applicant lacked Maltese citizenship, despite the Letter of Authorisation clearly indicating scientific purpose.

<sup>62</sup> Sweden (Swedish Migration Agency), Response to FOI request from 8 July 2021.

<sup>63</sup> Felicia Nica, Country Report: Romania, ECRE 2020, pp. 130-131.

<sup>64</sup> In 2017 there were 213 children in immigration detention in Malta. See: UNHCR, ‘Global Strategy Beyond Detention 2014-2019: Progress Report 2018’, 2019.

## DATA MATURITY INDEX - INDIVIDUAL SCORES (SCALE 0-20)

COUNTRY	 0-5	 0-5	 0-4	 0-6	 0-20
	LEGAL FRAMEWORK	PUBLIC ACCESSIBILITY	TIME TRENDS	LEVEL OF DISAGGREGATION	DATA MATURITY INDEX
Australia	3,5	4,1	3,5	5,0	16,1
Austria	3,0	4,0	4,0	3,5	14,5
Belgium	4,0	2,3	2,0	2,0	10,3
Bosnia and Herzegovina	2,5	4,9	3,5	3,0	13,9
Bulgaria	4,0	3,3	2,0	3,5	12,8
Canada	2,0	4,7	3,5	3,0	13,2
Croatia	3,5	4,0	4,0	4,0	15,5
Czech Republic	3,5	3,8	2,0	3,5	12,8
Denmark	4,0	2,8	2,0	1,0	9,8
Finland	4,3	3,0	3,5	5,0	15,8
France	4,5	2,9	4,0	1,5	12,9
France (Mayotte)	4,5	1,7	1,0	1,5	8,7
Georgia	2,0	4,5	3,0	3,0	12,5
Iraq	0,5	1,0	1,0	3,0	5,5
Lebanon	1,0	1,8	0,0	1,0	3,8
Malta	3,0	1,7	0,0	1,0	5,7
Mexico	3,5	5,0	4,0	4,0	16,5
New Zeland	3,8	3,8	2,0	1,0	10,6
North Macedonia	3,9	2,0	1,5	4,0	11,4
Norway	4,0	3,2	3,5	4,0	14,7
Poland	3,0	4,0	3,0	4,0	14
Russia	3,0	1,8	1,0	1,0	6,8
Serbia	4,8	1,0	1,5	4,0	11,3
Spain	3,5	2,0	3,0	1,5	10,0
Ukraine	3,0	2,3	3,5	1,5	10,3
United Kingdom	3,5	4,8	4,0	3,0	15,3
United States	3,3	1,0	4,0	2,5	11,8

**Not enough data:** Angola, Jordan, Kazakhstan, Kenya, Mozambique, Romania, Sweden, Turkey

**No detention:** Brazil, Ireland

## 3. MAJOR FINDINGS

The methodology of Data Maturity Index guided qualitative research into legislation and data collection practices on immigration detention of children. For this reason, major findings are discussed according to the framework presented in the previous chapter.

### 3.1. LEGAL FRAMEWORK

Immigration laws are becoming increasingly complex and intertwined with regulations on national security, administrative procedure, data protection laws and others. This often involves the difficulty of reconstructing legal norms, including such basic norms as the prohibition of child detention. For this reason, a significant challenge during the research was the **definitional vagueness**. Another challenge was to determine the obligation to maintain the database as well as the scope of stored data. Interestingly, data-related provisions became a significant part of immigration laws (in some cases leading to the introduction of entire chapters devoted to personal data processing, e.g. Croatia, Czech Republic, France, New Zealand). This phenomenon of **'datafication' of immigration laws** is likely to further develop which poses both challenges and opportunities for the protection of human rights. If regulated appropriately, through ensuring data rights of individuals, this can lead to the increasing data availability and accessibility.

#### 3.1.1. Definitional vagueness

The comparative review of legislative framework indicates that most of the countries avoid using the term 'detention' (its equivalents in official languages) and use terms such as 'accommodation' (e.g. Angola), 'temporary accommodation' (e.g. Bulgaria), 'restriction of freedom of movement' (e.g. Croatia), 'custody' (e.g. Norway), 'stopping' (e.g. Poland, Ukraine, Russia), 'internment' (e.g. Spain), or 'presentation' (e.g. Mexico). There is also a wide variety of terms used for the settings where detainees are placed, e.g. 'immigration centres' (e.g. Bosnia and Herzegovina), 'guarded centres for foreigners' (e.g. Poland), 'reception centres for foreigners' (e.g. North Macedonia), or 'temporary detention centres' (e.g. Russia).<sup>65</sup> At the same time, certain terminological trends could be observed, e.g. the **term 'detention' is prevalent in Anglophone countries** (Australia, Canada, New Zealand, United Kingdom but also, for instance in Finland or Mozambique) while in the **Eastern European countries the most common term is 'stopping'**.<sup>66</sup> **These terms typically have criminal law connotations** (criminal procedure) which have a variety of implications. On the one hand, terminology is not only a technical aspect of drafting legislation, but also **affects the formation of attitudes in society**.<sup>67</sup> For this reason, the use of criminal law

<sup>65</sup> During the Global Study at least 40 various terms used to describe detention facilities have been identified. See: Nowak (2019), pp. 435-436.

<sup>66</sup> In the official languages: *zatrzymanie* (Polish), *затримання* (Ukrainian), *задержание* (Russian).

<sup>67</sup> Jelmer Brouwer, Maartje van der Woude and Joanne van der Leun, 'Framing migration and the process of crimmigration: A systematic analysis of the media representation of unauthorized immigrants in the Netherlands', *European Journal of Criminology*, vol. 14(1), 2017, pp. 100-119. See also: Harald Bauder, 'Why We Should Use the Term 'Illegalized' Refugee or Immigrant: A Commentary', *International Journal of Refugee Law*, vol. 26(3), 2014, pp. 327-332.

terms to describe the situation of migrants (so called ‘crimmigration’ process) may contribute to the perpetuation of prejudices and the image of the migrant as a person committing a criminal act. On the other hand, unambiguous terminology can hinder application of protective measures, in particular alternatives to detention.<sup>68</sup>

The terminological diversity poses a challenge for comparative research and requires a case-by-case assessment that takes into account circumstances under which an individual could be placed in a certain settings (for instance removal centres are typically closed settings) as well as the general conditions (usually established in law). Although inaccessible in most cases, **house rules are the most appropriate documents to determine whether certain place amounts to the deprivation of liberty** as they practically determine whether a person is allowed to leave facility at his or her will (alternatively, what is the procedure of leaving such place), whether facility is guarded by armed personnel, whether it is wire-fenced etc. Often, it is only by evaluating the house rules that it is possible to determine whether persons placed in certain facility are subject to the restriction of movement or deprived of their liberty.<sup>69</sup>

One of the well-established principles of constitutional law is that the limitations on rights shall be established in law, which is intended to **limit the arbitrariness of decisions** concerning, among other things, deprivation of liberty. According to this principle, the greater the interference with a given liberty, the more precisely it should be regulated in law, particularly at the statutory level. For this reason, it should be expected that the house rules of detention facilities will be established in law, and only certain technicalities will be delegated to subordinate acts (e.g. decrees issued by the competent minister). In fact, legal regulations of some countries clearly oblige competent ministers to adopt house rules (e.g. Poland, Georgia, Spain, Bulgaria, Serbia, North Macedonia) while in others directors of facilities are deemed responsible (e.g. Czech Republic). In France, adoption of house rules was subject to a joint action by the Minister of Immigration and the Minister of Interior.<sup>70</sup> The duty of cooperation between two state bodies could be one of the mechanisms to reduce the arbitrariness of the public authorities.

### 3.1.2. Datafication of immigration laws

The comparative assessment of immigration laws unveiled their increasing datafication, particularly in the following areas: 1) processing of personal data, including biometric data; and 2) maintenance of centralised databases. All these areas affect the data accessibility both for an individual as well as the general public as they, for instance, specify the scope of data that could be processed by public authorities.

<sup>68</sup> Interview with Luis Xavier Carranca Álvarez - representative of the Legal Clinic Alaïde Foppa in Mexico, 15 June 2021 (conducted by Carolina Canettieri).

<sup>69</sup> According to the European Court of Human Rights, “[t]he difference between deprivation of and restriction upon liberty is nonetheless merely one of degree or intensity, and not one of nature or substance.” See: European Court of Human Rights, *Guzzardi v. Italy*, Application no. 7367/76, 6 November 1980.

<sup>70</sup> Article 26 of the Code of Entry and Residence of Aliens and the Right to Asylum (CESEDA) of 2004, amended by the Ordinance no 2016-1457 of 28 October 2016.

### *Processing of personal data (incl. biometric data)*

Migration laws usually affirm the applicability of the general data protection regulations or do not include any reference to privacy laws at all. In the latter situation, the general data protection regulations usually remain applicable.<sup>71</sup> At the same time, migration laws frequently modify or restrain the applicability of certain data rights, in particular the right to access one's personal data, the right to object to the processing of personal data, and the right to erase personal data without undue delay. In some countries legislation specifically provides for the permanent retention of data on foreigners,<sup>72</sup> which remains in conflict with the international standards in this matter. In 2020, European Court of Human Rights ruled out that the indefinite retention of biometric data violates right to privacy (Article 8 of the Convention).<sup>73</sup> Excessive data retention periods have also recently raised concerns of Human Rights Committee.<sup>74</sup>

Most of the countries establish in law **the scope of personal data to be collected by immigration officers**. The catalogues can include more than 20 categories of data, including some basic demographic data (e.g. citizenship, gender, or age) but also highly detailed information on residence, employment, and education. In some countries, legislation provides a close catalogue of personal data while in others, legal framework leaves it open to interpretation (e.g. Australia, Mexico). Although the catalogues of personal data collected are excessive, aggregated statistics cannot be effectively extracted through FOI requests (see infographic below).

<sup>71</sup> One of the most careful legislative approach was taken by New Zealand. Section 31(2) of the Immigration Act of 2009 specifies that "Biometric information must be dealt with in accordance with the Privacy Act 2020" while the following subsection (3) specifies that "Subsection (2) is for the avoidance of doubt". At the same time, still only 128 out of 194 countries introduced legislation on the protection of personal data. See: UNACD, 'Data Protection and Privacy Legislation Worldwide'.

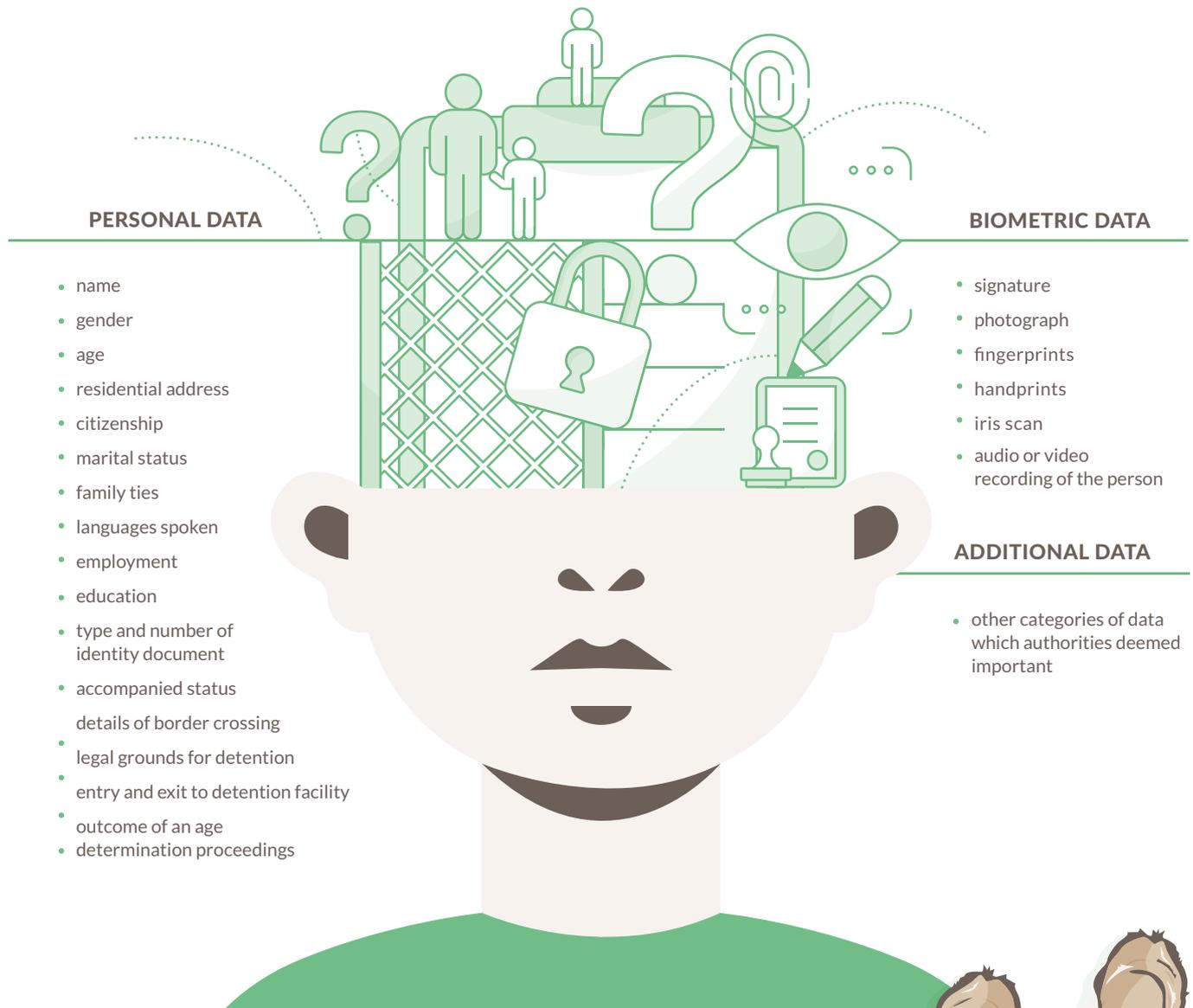
<sup>72</sup> For instance in Bosnia and Herzegovina biometric data of foreigners under surveillance are kept permanently.

<sup>73</sup> European Court of Human Rights, *Gaughran v. United Kingdom*, Application no. 45245/15, 13 June 2020.

<sup>74</sup> Human Rights Committee, 'Concluding observations from 2019 to the report of the Netherlands', CCPR/C/NLD/CO/5, para. 54; 'Concluding observations from 2017 to the report of Pakistan', CCPR/C/PAK/CO/1, para. 36; 'Concluding observations from 2017 to the report of Switzerland', CCPR/C/CHE/CO/4, para. 47.

## PERSONAL DATA COLLECTED FROM CHILD MIGRANTS

Categories of data collected from migrant children



### PERSONAL DATA

- name
- gender
- age
- residential address
- citizenship
- marital status
- family ties
- languages spoken
- employment
- education
- type and number of identity document
- accompanied status
- details of border crossing
- legal grounds for detention
- entry and exit to detention facility
- outcome of an age
- determination proceedings

### BIOMETRIC DATA

- signature
- photograph
- fingerprints
- handprints
- iris scan
- audio or video recording of the person

### ADDITIONAL DATA

- other categories of data which authorities deemed important

### Among the countries that shared data on immigration detention of children:

**9 in 10**  
 ●●●●●●●●●○  
 follow the definition of a child established in the CRC (below 18 years)

**7 in 10**  
 ●●●●●●●○●○  
 distinguish unaccompanied children

**6 in 10**  
 ●●●●●●●○●○  
 disaggregates data by gender

**5 in 10**  
 ●●●●●●●○●○  
 disaggregates data by nationality

**2 in 10**  
 ●●●●●●●○●○  
 provides information on the average length of detention

**1 in 10**  
 ●●●●●●●○●○  
 records information on disability of children placed in immigration detention

**1 in 10**  
 ●●●●●●●○●○  
 applies data anonymisation before releasing data publicly



Significant number of countries provide specific regulations on **biometric data** in immigration laws. In most cases the scope of biometric data that could be collected by the public authorities is defined in law and limited to **fingerprints** and **photograph** only (e.g. Canada, Croatia, France, Poland, Norway, United Kingdom, Bulgaria, North Macedonia). Nevertheless, in some countries additional data could be collected such as **iris scans** (Australia, New Zealand) or **audio or video recordings of a person** (Australia). Sometimes the meaning of 'biometric data' is either left to the scrutiny of law enforcement<sup>75</sup> or includes only exemplary categories of data falling into this concept.<sup>76</sup> The two latter situations could lead to the collection of excessive information on foreigners and unnecessary risks related, for instance, to future data breaches.

Some legislations provide specifically that **biometric data cannot be collected for certain groups**, e.g. for a child below 14 years of age (Bosnia and Herzegovina,<sup>77</sup> Canada<sup>78</sup>) or 12 years of age (Croatia<sup>79</sup>). Another approach was taken by France where the collection of biometric data is allowed, however, for a period strictly necessary for providing 'care and guidance', and taking into account the individual situation of a child.<sup>80</sup> These limitations are supported by the recent findings that most of data-based technologies such as iris recognition are primarily designed to work with adults and, therefore, underperform when applied to children.<sup>81</sup> Recent studies indicate that the accuracy of facial recognition systems decreases significantly for children below 13 years of age.<sup>82</sup> Therefore, processing of biometric data on children should be subject to stricter proportionality test compared to adults.<sup>83</sup>

In some countries **automated decision-making systems** (e.g. visa processing, customs clearance) have been recently deployed which required adjustment of immigration acts.<sup>84</sup> In France and New Zealand, separate chapters on automated data processing were introduced<sup>85</sup> while in Canada and Australia the introduction of an automated system was left to the authorisation by the competent ministers.<sup>86</sup> In the latter cases, details on the performance of the system, including rights of individuals subject to data processing were subdelegated to the executive orders which provides more space for arbitrary government intervention.

<sup>75</sup> For instance, in Ukraine legislation on immigration does not specify which categories of data fall into the concept of 'biometric data'. See: Ukraine, Law on the legal status of foreigners and stateless persons of 2012, O.J. no. 19-20, p. 179.

<sup>76</sup> For instance, in Australia the legislation specifies the scope of biometric data collected (i.e. fingerprints, handprints, photograph, audio or a video recording of a person, iris scan, signature) but also allows to collect any other personal data. See: Australia, Migration Act of 1958, section 5A. In other countries legislation specifies exact categories, e.g. Canada (photograph and fingerprints), France (photograph and fingerprints), New Zealand (photograph, fingerprints, iris scan), Poland (photograph and fingerprints).

<sup>77</sup> In Bosnia and Herzegovina, fingerprints and signature cannot be taken from a child below 14 years of age. See: Bosnia and Herzegovina, Law on Aliens of 2015, Article 122(4).

<sup>78</sup> Canada, Immigration and Refugee Protection Regulations, SOR/2002-227, Section 12.2(1)(a).

<sup>79</sup> Croatia, Immigration Act of 2021, Article 22(4).

<sup>80</sup> France, Code for the entry and stay of foreigners and the right to asylum (CESEDA) of 2004 (amended by the Ordinance no 2020-1733 of 16 December 2020), Article L142-3. For New Zealand see: Immigration Act of 2009, Sections 28-32.

<sup>81</sup> UNICEF, 'Faces, Fingerprints & Feet', July 2019.

<sup>82</sup> Joint Research Centre of the European Commission and Institute for the Protection and Security of the Citizen, 'Fingerprint Recognition for Children', Luxemburg 2013.

<sup>83</sup> European Union Agency for Fundamental Rights, 'Facial recognition technology: fundamental rights considerations in the context of law enforcement', Vienna 2020, p. 26.

<sup>84</sup> Grażyna Baranowska and Łukasz Szoszkiewicz, 'New International Migration Management Technologies and Their Impact on Sustainability', Walter Leal Filho et al. (eds) *Reduced Inequalities. Encyclopedia of the UN Sustainable Development Goals*, Springer 2021.

<sup>85</sup> For France see: Code for the entry and stay of foreigners and the right to asylum (CESEDA) of 2004 (amended by the Ordinance no 2020-1733 of 16 December 2020), Articles L142-1 to L142-5. For New Zealand see: Immigration Act of 2009, Sections 28-32.

<sup>86</sup> For Australia see: the Migration Act 1958, Section 5(1). For Canada see: Immigration and Refugee Protection Act of 2001, Section 186(5).

### Maintenance of centralised databases

Although several domestic legislations include provisions on the purposes and scope of collected data, regulations related to the maintenance of databases and their operation remain limited. At least two countries stand out for their more precise regulations. In Spain, the law obliges public authorities to maintain a **dedicated registry of unaccompanied children**, including the scope of data included. At the same time, services responsible for the protection of unaccompanied children are obliged to share updated information on the status of these children. In Norway legislation provides additional safeguards through the **imposition of limitations on search algorithms** by listing features which can be used for a search function.<sup>87</sup>

In some jurisdictions legal frameworks specify an obligation to **compile certain statistical information for policy-making purposes**, including features by which such data shall be disaggregated (e.g. in Mexico regulations require collection and release of statistics on the protection of migrants, disaggregated, among others, by undertaken measures)<sup>88</sup>. Subjecting personal data of foreigners to the legal regime of public statistics can be a reasonable **compromise between data confidentiality and accessibility**. This is because statistical service is typically independent from the executive agencies and its officers shall fulfil the statistical secrecy obligations laid down in domestic regulations. As raw data collected for statistical purposes may not be re-used for other purposes, information on individuals that is shared with statistical service and subsequently deleted from databases of immigration authorities is likely to be appropriately protected from third party access while aggregated statistics are released for the general public.<sup>89</sup>

Subjecting data collection to the regime of public statistics can be particularly beneficial for obtaining country-level data in states with decentralised administration (e.g. federal states). Regionalisation of data collection can lead to discrepancies in methodologies as well as limited transparency (as in Germany and Switzerland)<sup>90</sup> **while centralised statistical programmes aim to harmonise information inflow**. In Spain, immigration regulations obligation to compile country-level statistics on migration and international protection and share data for policy-making purposes although no information on detention of children is released.<sup>91</sup> In the European Union, comparable data on asylum applications and migration from outside the EU are aggregated by Eurostat, although with no particular focus on children.<sup>92</sup> Harmonisation with EU standards is likely to play an important factor in potential candidates. It was one of the reasons for the inclusion of immigration statistics (including on asylum seekers and irregular migration) in the national statistical programme 2021-2024 for Bosnia and Herzegovina.<sup>93</sup> Information on irregular migration and measures undertaken toward migrants were also included in the statistical programme of North Macedonia 2018-2022.<sup>94</sup> Never-

<sup>87</sup> Norway, Immigration Act of 2008, Section 102e.

<sup>88</sup> Mexico, Federal Law on Transparency and Access to Public Information of 2021, Article 69(IV)c.

<sup>89</sup> In the European Union, the General Data Protection Regulation allows for re-use of (pseudonymized) personal data for statistical purposes. See: European Union, General Data Protection Regulation, 2016/679, Article 89.

<sup>90</sup> Global Detention Project and Access Info Europe, 'The Uncounted: Detention of Migrants and Asylum Seekers in Europe', 2015, p. 20.

<sup>91</sup> Spain, Organic Law 4/2000 on the rights and freedoms of foreigners in Spain and their social integration of 2000, fifth additional provision.

<sup>92</sup> Schumacher, Löschner and Sermi (2019), p. 8.

<sup>93</sup> One of the reasons for this planned statistical development is to improve the harmonisation with Eurostat standards. See: Bosnia and Herzegovina, 'Statistički program Bosne i Hercegovine 2021-2024' [Statistical programme of Bosnia and Herzegovina 2021-2024], pp. 7 and 13.

<sup>94</sup> North Macedonia, 'ПРОГРАМА ЗА СТАТИСТИЧКИ ИСТРАЖУВАЊА ЗА ПЕРИОДОТ 2018-2022 ГОДИНА' [Statistical programme for 2018-2022], Skopje 2018, p. 20.

theless, there is no obligation within these statistical programmes to collect data on immigration detention disaggregated by age.



### UTILISING PUBLIC STATISTICS FOR IMPROVING DATA QUALITY

In the United Kingdom, immigration statistics are developed in **partnership between the Home Office** responsible for internal affairs and **the Office for National Statistics**.<sup>95</sup> The statistics on immigration detention are released quarterly and undergo a compliance check against the Code of Practice for Statistics to ensure trustworthiness, high quality and public value of published data.<sup>96</sup> The dataset is accompanied by the **detailed methodological user guide** indicating the scope of data collected (e.g. list of detention facilities) and data quality assessment. The document informs also on the **limitations of statistics**, e.g. exclusion of persons detained for less than 24 hours in short-term holding rooms at airports and ports as well as persons detained in police cells. In addition, the document describes changes to the **data affecting the statistics**, for instance, the reason behind a significant decrease in the number of children detained following 2010 (change of legal framework) or fluctuations in the share of children among detainees (revisions due to the age determination procedure). Overall, the approach taken by the UK authorities facilitates both the quality as well as interpretation of produced data.

## 3.2. DATA ACCESSIBILITY

Accessibility of data on immigration detention is slowly improving yet remains far from satisfying. This is mainly due to the following factors: 1) adoption and/or strengthening FOI regulations; 2) benefits of Open Data portals. At the same time, there are several factors that could undermine accessibility of data, namely: national security regulations (or exemptions in these); and opaque interpretation of data protection or FOI regulations.

The slow but gradual improvement is supported by the finding that we managed to extract primary data (i.e. directly from public authorities) on the number of children in immigration detention for three additional countries<sup>97</sup> (in the UN Global Study secondary sources were used instead). In some cases, we managed to extract more detailed data than within the UNGS, particularly information on nationality of detainees<sup>98</sup> or length of detention.<sup>99</sup> In some cases, regular data collection and/or release has only started recently (Poland in 2014, Georgia in 2019). There was no single case, in which the state that shared data under the UNGS questionnaire, claimed not to collect the same data under FOI request.

<sup>95</sup> UK Home Office, 'Home Office Statistical Work Programme 2019/20', October 2019.

<sup>96</sup> UK Home Office, 'User Guide to: Immigration Statistics' (updated 27 May 2021.) See also: Office for Statistics Regulation, 'Code of Practice for Statistics', February 2018.

<sup>97</sup> New Zealand, North Macedonia, and Serbia replied to FOI requests and released requested data.

<sup>98</sup> The following countries released data disaggregated by nationality: Australia, Austria, Bulgaria, Bosnia and Herzegovina, Czech Republic, Georgia, Mexico, North Macedonia, Norway, Poland, Serbia, and United Kingdom.

<sup>99</sup> See: footnote n 50.

At the same time, France (Ministry of Interior) indicated that the data on children detained in Mayotte is not available, although such data was extracted by NGO in 2017.<sup>100</sup>

### 3.2.1. Impact of Freedom of Information regulations

To assess the relevance of FOI regulations, our sample included seven states from the top and bottom 30 states of the Global Right to Information Rating. From the countries with the highest score, five replied to both initial and follow-up requests and shared detailed statistics (Brazil, Croatia, Mexico, North Macedonia, and Serbia). On the other side of spectrum were Kenya and Ukraine which neither publish data on immigration detention, nor replied to our FOI requests. At the same time, from the countries with the lowest scores, only one replied and only to the initial request (France) and another one released data to a previous inquiry (Austria). The remaining countries did not reply to FOI requests (Belgium, Denmark, Jordan, Lebanon, and Mozambique). This indicates that **there is room for improvement for FOI regulations in these states to ensure data accessibility in the area of immigration detention**. One should note that this goes against the usually applied criteria of income level or data-related indicators (applied for instance, by the Open Data Watch).<sup>101</sup>

FOI requests are a powerful yet neglected research tool.<sup>102</sup> The advantage of FOI-based framework for data collection is a legal obligation of public authority to answer and, if no exemptions are applicable, disclose the public information.<sup>103</sup> This obligation is typically implemented to ensure effective government accountability. Previous studies that involved FOI requests concluded that due to the system of internal reviews and appeals, **public authorities are careful when arbitrarily refusing to share data**.<sup>104</sup> Recent studies demonstrated the value of FOI requests as a tool for collecting data also in relation to terrorist research.<sup>105</sup>

Nevertheless, some FOI regimes do distinguish between the categories of 'document' (written or electronic file), 'information' (processed data) and 'data' (raw data). In the latter cases, an applicant could be refused to access certain data due to two reasons. Firstly, raw data could be perceived as an 'internal information' necessary for the operation of certain authorities but not amounting to public information as defined in FOI regulations. Secondly, legislation could limit the right of access only to the existing documents and/or administrative records without the necessity to engage any additional organisational resources (e.g. to extract and merge information from two or more datasets). Neverthe-

<sup>100</sup> Assfam-groupe SOS solidarités, Forum réfugiés-Cosi, France terre d'asile, La Cimade, Ordre de Malte France & Solidarité 'Mayotte, Centres et locaux de rétention administrative: 2017 rapport', 2018, p. 16.

<sup>101</sup> Open Data Watch, Report 2020.

<sup>102</sup> Kevin Walby and Mike Larsen, 'Access to Information and Freedom of Information requests: Neglected Means of Data Production in the Social Sciences', *Qualitative Inquiry*, vol. 18(1), 2012, pp.31-42.

<sup>103</sup> Nevertheless, in some countries, public authorities are not obliged to respond to FOI requests, e.g. France. See: Yseult Marique and Emmanuel Slautsky, 'Freedom of Information in France: Law and Practice'. In: D. Dragos, P. Kovač, A. Marseille (eds) *The Laws of Transparency in Action. Governance and Public Management*, Palgrave Macmillan 2018, pp. 73-118.

<sup>104</sup> This conclusion was formulated in the studies conducted in the United Kingdom which has moderate FOI regulations (According to the Global Right to Information Rating, the UK is classified as 42nd out of 128 countries). See: Kevin J. Brown, 'COUNTERBLAST: Freedom of Information as a Research Tool: Realising its Potential', *The Howard Journal of Criminal Justice*, vol. 48(1), 2009, pp. 88-91. See also: Joanna Clifton-Sprigg, Jonathan James, Sunčica Vujić, 'Freedom of Information (FOI) as a data collection tool for social scientists', *PLOS ONE*, vol. 15(2), 2020. This methodology was also found valuable in Canada and the US. See: Alex Luscombe, Kevin Walby and Randy K. Lippert, 'Brokering Access Beyond the Border and in the Wild: Comparing Freedom of Information Law and Policy in Canada and the United States', *Law & Policy*, vol. 39, 2017, pp. 259-279.

<sup>105</sup> Colin Atkinson, Donna Yates and Nick Brooke, 'Researching a Risky Business? The Use of Freedom of Information to Explore Counterterrorism Security at Museums in the United Kingdom', *Studies in Conflict & Terrorism*, pp. 1-19.

less, our research indicates that the practice is complex and is **arguably evolving toward increasing openness**. Out of six countries which limit access only to certain categories of sources, three released the requested data.<sup>106</sup> In Norway, we followed a dedicated procedure for accessing data for scientific purpose which required submission of relatively detailed information on the project, however, resulted in granting access to very detailed statistics.<sup>107</sup> The same procedure was foreseen in Denmark, but turned out unsuccessful.

The **response rate to our FOI requests reached 61%** (20 out of 33 states replied) that indicates the **usefulness of this method in the extraction of data on immigration detention**. This is arguably because aggregated statistics are not sensitive either for national security or privacy and, at the same time, are compiled on the central level for policy-related and enforcement purposes. For this reason, there is low probability of state's refusal due to, for instance, the necessity to involve excessive organisational or technical resources, confidentiality, or secrecy. In some states, processing of the voluminous requests could be subject to additional fees, however, the scope of data collected within this project remained within the reasonable expectations for public authorities.<sup>108</sup>

Previous studies distinguished two common approaches of authorities when handling FOI requests. The first one could be described as 'all-or-nothing' while another one as 'informal negotiations'.<sup>109</sup> In the case of accessing statistics on immigration detention, the latter approach was prevalent and **most of the authorities shared only selected data**. At the same time, the reasons for not releasing the remaining information were either not specified or limited to the statement that 'the data is not collected/not available'.

The most discouraging barrier in applying FOI requests in comparative research is **restricting right to access public information to citizens only**. There are **between 19 and 73 countries worldwide that expressly recognise the right to information of everyone, including non-nationals**. The exact number is hard to determine due to the ambiguous language which is differently classified by the Global Investigative Journalism Network (19 countries confirmed)<sup>110</sup> and Global Right to Information Rating (73 countries confirmed).<sup>111</sup> In the context of the EU-wide research, holding the EU citizenship can further improve the enjoyment of the right to information. Nevertheless, even in some countries with the right to information restricted to citizens only, we managed to obtain the requested data without the necessity to prove nationality.<sup>112</sup> Overall, the right to information appears to be particularly efficient method for data collection in **Europe (both EU and non-EU countries)** as well as **Latin America**. The

<sup>106</sup> Australia and Norway released a very detailed information that required involving some resources in data retrieval. The data was also released by France, however, only to certain extent (public authorities replied substantially to initial FOI request only). Three countries did not reply to FOI request (Denmark, Jordan, and Ukraine).

<sup>107</sup> We were required to provide the following information: 1) title of the project; 2) purpose of the project; 3) expected date of publication of research findings; 4) affiliation; 5) personal details of the applicant; 6) description of requested data; 7) statement whether the requested data refer to children; 8) statement whether project involves personal data; 9) statement whether any requested data amounts to 'sensitive data'; 10) how the data will be utilized; 11) how data will be anonymized; 12) who will get access to data.

<sup>108</sup> In two cases, Australia and New Zealand, we were informed on the possibility of additional fees which were, however, not charged.

<sup>109</sup> Luscombe, Walby and Lippert (2017), pp. 259-279.

<sup>110</sup> We submitted FOI requests to ten such countries and received requested data from seven of them. Sweden was the only one that refused data due to confidentiality while Ukraine and the United States did not reply to our requests. Information on the scope of the right to information was extracted from the Global Investigative Journalism Network. See: Global Investigative Journalism Network, GIJN's Guide to National Rules on Where Foreigners Can Make FOI Requests (updated as of September 2019).

<sup>111</sup> Access Info and Centre for Law and Democracy, 'Indicator 4 of the Global Right to Information Rating'.

<sup>112</sup> For instance Canada and New Zealand. At the same time, two countries refused releasing data: Malta (specifically indicating on the lack of citizenship) and Spain.

Inter-American system is recognised as a global leader among regional organisations promoting the right to information.<sup>113</sup>

Another obstacle in successful implementation of the FOI-based approach to data collection could be the 'data granularity threshold'. It is likely that if more detailed data would be requested, the response rate would decrease significantly (e.g. information on the cost of detention, daily occupancy rates of immigration facilities). As **most of the migration laws do not specify the content of the registries maintained by the public authorities, it is challenging to determine the limits of FOI approach to data collection.**



### HARNESSING FOI REGULATIONS FOR COLLECTING DATA ON HEALTH

The systematic literature review conducted under the UN Global Study identified only 31 scientific publications that reliably addressed the **health of children in immigration detention** (published between 1980 and 2018).<sup>114</sup> Therefore, WHO warns that significantly more evidence is needed to shed light on this topic and advocate for ending immigration detention. Together with health data, public authorities should also collect basic demographic data, in particular gender, age, and disability which are essential for the identification of health needs.<sup>115</sup> So far, **one of the most comprehensive primary data on mental health of detained asylum seekers, including children, was made publicly available by the Australian Human Rights Commission.** The dataset was **released under FOI regulations** on the request submitted by the Guardian newspaper and includes data collected on 191 children.<sup>116</sup>

#### 3.2.2. Benefits of Open Data portals

The increasing popularity of Open Data is gradually shifting the mindset of public sector bodies from 'disclosure-on-request' to '**disclosure-by-default**'. The idea to allow everyone to access publicly held data and re-use it freely has various motivations, in particular economic growth, social inclusion (e.g. informing social policies and services) as well as strengthening governmental accountability.<sup>117</sup> To ensure findability, Open Data portals typically serve as a one-stop shop for data collected by various public authorities, including ministries, law enforcement agencies, national statistical offices and others.

Although still in its early stages, the Open Data movement is already **impacting the accessibility of information on immigration detention** too. Firstly, there is **no need to identify the relevant public authorities** (nor to navigate through their websites) as all datasets are stored in an Open Data portal. Secondly, the **datasets are typically described in an intuitive and comprehensive manner**, in particu-

<sup>113</sup> Bill Orme, Supporting Access to Information: A Practical Guide for EU Delegations, Brussels 2018, p. 38. In 2010, the OAS approved a Model Inter-American Law on Access to Public Information that influenced legislation in the region and beyond, in particular in Africa. See: Organization of American States, Model Law and Guide for Implementation.

<sup>114</sup> Nowak (2019), p. 128.

<sup>115</sup> WHO, 'Policy Brief: Health Concerns among Children Deprived of Liberty', 2021, p. 12.

<sup>116</sup> Sarah Mares, 'The Mental Health of Children and Parents Detained on Christmas Island: Secondary Analysis of an Australian Human Rights Commission Data Set', Health Hum Rights, vol. 18(2), 2016, pp. 219-232.

<sup>117</sup> Szoszkiewicz (2021).

lar with metadata, brief descriptions of their content (e.g. the level of disaggregation) and sometimes even tags. For this reason, identifying statistics on children in immigration detention in the countries with the most advanced Open Data portals was particularly easy.<sup>118</sup> In some cases we managed to extract **historical data** which could be archived or removed if published on the websites of the relevant public authorities.<sup>119</sup> In addition, Open Data portals of Canada and Mexico are **integrated with the database of historical FOI requests** that facilitates access to the data previously released. In Bulgaria, on the other hand, the Platform for Free Access to Public Information facilitates the whole FOI request process (from submitting the application and forwarding it to the relevant authority to providing the requested information).<sup>120</sup>

The advantages of Open Data portals do not limit to searchability only. The lack of awareness on the scope of data collected by the public bodies is frequently indicated as one of the most significant obstacles in utilising administrative records for social sciences. Open Data portals provide the **overview of available data, typically organised into categories and/or tagged** (e.g. migration, administration of justice). Some of the Open Data portals have dedicated Application Programming Interfaces (APIs) that allow applications for accessing data in a machine-readable way.<sup>121</sup> This, in turn, make Open Data portals particularly useful for social scientists.

### 3.3. TIME TRENDS

The UNGS revealed numerous discrepancies in data collection methodologies across countries, one of which was the diversity of used timeframes. For this reason, one of the recommendations formulated within the Study was to aggregate data at least annually. Our research indicates that in majority of cases **extraction of annual data is feasible through FOI requests (65% of countries record annual data)**, even if statistics published by default use other timeframes (other common formats are: monthly, quarterly, and snapshot date at the end of calendar year). Annual data is particularly important for migration research and policy-making as the number of migrants placed in detention can increase in certain seasons (e.g. warm months in Europe) and, therefore, snapshot numbers or ad hoc statistics can be misleading. This refers specifically to countries where detention is applied systematically, however, for relatively short periods of time.<sup>122</sup> Another challenge for comparative research was methodological particularities in certain countries – for instance **in Denmark statistics are compiled by average weekly occupancy of detention facilities**<sup>123</sup> while **in Canada and the United States they are compiled in financial years** instead of calendar years.

<sup>118</sup> Canada, France, Mexico, United Kingdom.

<sup>119</sup> For instance, Open Data portal of France includes dataset on placements in administrative detention centres between 2008-2013 (disaggregated by age and unaccompanied/accompanied status). See: Dataset no 15065 (Placement in administrative detention centers). For Canada, information on the content of previous FOI requests allowed to extract data on children in detention between 2014 and 2016 (disaggregated by gender and age groups). See: Data package no. A-2018-11696 (released on the Request file number AI-2020-13283 on 3 September 2020).

<sup>120</sup> See: Platform for Free Access to Information of Bulgaria.

<sup>121</sup> See, for instance, terms of use for the APIs of the Open Data portal of UK: <https://www.api.gov.uk/#getting-in-touch> (accessed 12 June 2021). For France see: <https://doc.data.gouv.fr/api/reference/> (accessed 12 June 2021).

<sup>122</sup> Examples: France, Australia. To control for this practice, researchers can ask for the average length of detention.

<sup>123</sup> This methodology is particularly misleading as the capacity of immigration facilities fluctuate throughout in time, in particular due to the increasing inflow of migrants.

In addition to the most up-to date-statistics, FOI requests aimed at the extraction of statistics from the recent decade to assess the availability of longitudinal data. Only **six states managed to provide statistics for at least 10 years** (Austria, Bosnia and Herzegovina, Croatia, France,<sup>124</sup> Mexico, and the United Kingdom). On average, states record information on immigration detention starting from 2014.<sup>125</sup>

### 3.4. LEVEL OF DISAGGREGATION

In all countries covered in this study, **immigration laws follow the definition of a child of CRC** (individuals under 18 years of age) and do not create additional age-based categories (such as ‘young offenders’ in the administration of justice which usually includes individuals older than 18 years). This coherent approach significantly facilitates comparative research across countries, however, the factual number of children in immigration detention can be also **influenced by the outcomes of age assessment procedures**. For this reason, ad hoc data collection can exclude individuals that are to be classified as children afterward. For this reason, the statistical portal of the United Kingdom includes a disclaimer that data on the number of children entering detention is subject to change.<sup>126</sup>

The level of disaggregation differs significantly across countries. The **most accessible is information on the accompanied status (74% of countries that share data)** followed by **gender (56% of countries)** and **nationality (48%)**. These results can be significantly influenced by the EU statistical framework which requires disaggregation of various indicators for unaccompanied children. In addition, the standards developed by Eurostat are becoming a reference for the EU’s (potential) candidate countries what explains disaggregation by these features in Bosnia and Herzegovina, North Macedonia, Serbia, and Ukraine (see subsection 3.1.2 on datafication of immigration laws).

The **most detailed level of disaggregation** was observed in **Australia, Canada, and the United Kingdom**. In all these countries, information disaggregated by gender, nationality, accompanied status, as well as the average length of detention was extracted. **Finland**, although not providing information on the length of detention, was **the only country that released data on disability** and additionally keeps records on language and family ties. At the same time, **Australia, Finland, and the United States** were the only three countries that **did not disclose small numbers due to privacy protection concerns** (<5 numbers were released instead). The release of small numbers can lead to the re-identification of individuals, particularly when information on their stories is available either in media outlets or social media. The cautious attitude of public authorities in Australia may be attributed to 2014 massive data breach. In Finland, privacy concerns are not specific to migration statistics, but to all demographic data (due to the low population density).

<sup>124</sup> In France annual data on immigration detention of children is available at least since 2008, however not for every years. In response to the follow-up FOI request, annual statistics from 2019 was released.

<sup>125</sup> Median: 2014; mean: 2013,5.

<sup>126</sup> UK Home Office, ‘How many people are detained or returned?’, 25 February 2021.



## MIGRATION DATA BREACH IN AUSTRALIA

In 2014, the Department of Immigration and Border Protection (now the Department of Home Affairs) published a report on its website in error that contained embedded personal information of all 9,258 people who were being held in immigration detention at the time. The information disclosed in the report contained the names, gender, citizenship, date of birth, period of immigration detention, location, boat arrival details, and the reasons which lead them to becoming an unlawful non-citizen under the Migration Act 1958.<sup>127</sup> Asylum seekers feared that **the disclosure of their information would subject them to retribution in their countries of origin** should they be forced to return.<sup>128</sup> The data breach also included the details of **many children in detention facilities** and community detention.<sup>129</sup> This data breach is considered one of the most serious privacy breaches in Australia's history, 'the most significant use of the representative complaint power in the Privacy Act to date, and appears to result in the largest compensation figure ever to be determined for a privacy claim in Australia'.<sup>130</sup>

<sup>127</sup> Office of the Australian Information Commissioner, 'Immigration Data Breach Privacy Complaint'.

<sup>128</sup> Christopher Kanus, 'Australian Government Ordered to Pay 1,300 Asylum Seekers Whose Details Were Exposed', *The Guardian*, 27 January 2021.

<sup>129</sup> *Ibid.*

<sup>130</sup> *Ibid.*

## SELECTION OF CASE STUDIES

The Data Maturity Index guided the selection of two countries for case studies. **Mexico** scored the highest individual score (16,5/20 points) while **Bosnia and Herzegovina** had a lower score (13,9/20), mostly due to the deficiencies in the legal framework. At the same time, Bosnia and Herzegovina demonstrated excellent public accessibility (scored 4,9/5) as well as quality of data (one out of only three countries that declared to record information on disability).

The selection of these two countries was also guided by their **geographical location**, as both are countries of transit located along the main migratory corridors (Latin America to the United States and the Middle East to Europe). Bosnia and Herzegovina has become one of the main transit countries on the Balkan migratory route in 2018 and since then witnessed a significant inflow of refugees and migrants. Although several European countries received higher individual scores than Bosnia and Herzegovina (e.g. Austria, Croatia, Finland), they have not been selected due to their advanced statistical capacities developed for the purpose of implementation of EU law (e.g. in the area of data protection and access to information) as well as EU statistics (i.e. standards developed by Eurostat). The unique nature of the EU makes the experiences of EU Member States more difficult to transpose in other regions of the world.

Lastly, the selected case studies are states that **have practiced immigration detention of children at least until 2020**. In November 2020, Mexico introduced prohibition of detention of children, however, this reform is still in progress. Even though we uphold the ending of immigration detention of children, as recommended by the UNGS, it is extremely relevant to track the progress toward reaching this goal, and high-quality data appears to be one of the main tools.

The **structure of case studies follows the methodology of Data Maturity Index**. Information extracted from publicly available sources and through FOI requests was **supplemented with information collected during the interviews** conducted with the governmental representatives of institutions overseeing migration in both countries as well as relevant NGOs.

## SELECTION OF CASE STUDIES

	 0-5 LEGAL FRAMEWORK	 0-5 PUBLIC ACCESSIBILITY	 0-4 TIME TRENDS	 0-6 LEVEL OF DISAGGREGATION	 0-20 DATA MATURITY INDEX
Bosnia and Herzegovina	2,5	4,9	3,5	3,0	13,9
Mexico	3,5	5,0	4,0	4,0	16,5
Average	3,2	3,0	2,5	2,5	11,4

For the codebook with detailed scoring instructions see Annex I (p. 60)

Central American Route



← - - - MAIN MIGRATION ROUTES

Source: caritas.eu (New Balkan Route Map),  
National Geographic (Central American Route)



New Balkan Route

## Documented promising practices



Bosnia and Herzegovina	Mexico
Annual reports of the immigration authority include statistics on immigration detention of children and are subject to <b>public consultations</b> through an online platform.	In November 2020 a <b>clear prohibition of detention of children for migration related reasons</b> was introduced to the Mexican legal framework.
<b>Cooperation with UN agencies</b> (IOM, UNFPA, UNHCR and UNICEF) in assisting refugees and migrants, including in the area of data collection.	There are currently three cases pending before the Supreme Court that can be <b>strategic litigation cases</b> leading ultimately to the abolishment of immigration detention for all persons in Mexico.
Bosnia and Herzegovina is one out of three countries that <b>claims to identify children with disabilities</b> in immigration detention facilities.	Even though the <b>information on 'disability' of detainees</b> is currently not recorded by the CEM, it is expected that this feature will be integrated into the statistical framework soon.

## 4. SELECTED CASE STUDY: BOSNIA AND HERZEGOVINA

In line with the Constitution of **Bosnia and Herzegovina**, the right to personal liberty and security applies to all individuals.<sup>131</sup> Bosnia and Herzegovina has a complex executive system and distribution of competencies<sup>132</sup> with migration and asylum matters falling within state-level competencies.<sup>133</sup> As of 2018, the number of refugees and migrants in Bosnia and Herzegovina increased considerably due to the change in the migratory routes used to reach the EU. This new influx of refugees and migrants exposed the weaknesses in providing an adequate response to the migrant and refugee situation stemming from, alongside other factors, a limited accommodation capacity.<sup>134</sup> It is estimated that around 70,000 refugees and migrants, some of whom were children,<sup>135</sup> reached Bosnia and Herzegovina between 2018 and 2021.<sup>136</sup>

Preventative **COVID-19** measures have had considerable implications on the refugee, asylum-seeking, and other migrant children.<sup>137</sup> These measures included the restriction on the freedom of movement that referred to all asylum-seekers and irregular migrants residing in the accommodation facilities in Bosnia and Herzegovina, **turning the previously open accommodation facilities into closed facilities**.<sup>138</sup> So far, there were no complaints concerning this measure received by the Ombudsperson, which **can suggest a relatively relaxed implementation**.<sup>139</sup> Nevertheless, the factual situation in facilities is largely unknown as due to the COVID-19 pandemic, none of the facilities, including immigration detention facilities, were visited by the Ombudsperson in 2020.<sup>140</sup>

<sup>131</sup> The General Framework Agreement for Peace in Bosnia and Herzegovina - Annex 4 (Constitution of Bosnia and Herzegovina), Art. II (3d, 4).

<sup>132</sup> Bosnia and Herzegovina comprises two Entities – the Federation of Bosnia and Herzegovina and the Republic of Srpska. In addition, Brčko District has administrative independence. The Federation of Bosnia and Herzegovina is further divided into 10 cantons. Each of these mentioned units has a high level of decentralization. See: The General Framework Agreement – Annex 4.

<sup>133</sup> The General Framework Agreement – Annex 4, Art. III (1f).

<sup>134</sup> Many challenges emerged in coordinating the response of Bosnia and Herzegovina, of which the most concerning ones are the lack of accommodation capacity, restriction of movement, the ineffectiveness of the asylum system.

<sup>135</sup> There were 1,182 children accommodated in different accommodation facilities, including state-run facilities, IOM-managed reception centres, shelters run by NGOs, and registered in private accommodation in Bosnia and Herzegovina as of December 2019. See: UNHCR, UNICEF and IOM, 'Refugee and Migrant Children in Europe Accompanied, Unaccompanied and Separated: Overview of Trends January to December 2019' p. 4.

<sup>136</sup> 'Bosnia and Herzegovina,' European Civil Protection and Humanitarian Aid Operations – European Commission, last modified 14 January 2021; 'UNHCR – South Eastern Europe – New Arrivals Tracking,' UNHCR Operational Data Portal.

<sup>137</sup> The Council of Ministers of Bosnia and Herzegovina (Vijeće ministara Bosne i Hercegovine) declared a state of emergency on 17 March 2020. The decision restricting the freedom of movement of foreigners followed on 17 April 2020. The state of emergency was lifted at the end of May 2020.

<sup>138</sup> *Odluka o ograničenju kretanja i boravka stranaca u Bosni i Hercegovini* [Decision on Restriction of Movement and Stay of Foreigners in Bosnia and Herzegovina], Official Gazette of BiH No. 26/20, Art. 3-5.

<sup>139</sup> Interview with Dr Jasminka Džumhur, BiH Ombudsman, 9 June 2021.

<sup>140</sup> Institution of Human Rights Ombudsman of Bosnia and Herzegovina, 'Annual Report on results of the activities of the Institution of Human Rights Ombudsman of BiH for 2020,' Banja Luka, March 2021, p. 12 and 38.

## 4.1. LEGAL FRAMEWORK

The core legislation that regulates the detention of migrants, including children, is the Law on Foreigners of 2015.<sup>141</sup> The Law on Asylum of 2016 contains provisions referring to the detention of asylum-seeking children during the asylum procedure.<sup>142</sup>

The Ministry of Security (MoS)<sup>143</sup> oversees immigration and asylum policies.<sup>144</sup> **The Service for Foreigner's Affairs (SFA)** is one of its units and is a state-level body with operational and administrative independence.<sup>145</sup> The SFA is the competent authority for administrative matters regarding immigration detention, including **data processing of detainees**. The SFA manages immigration detention during the removal procedure<sup>146</sup> and issues the administrative measure entailing detention when there are doubts that a foreigner will escape or the identity of a foreigner is unknown.<sup>147</sup> The legal framework also foresees usual national security grounds for detention of a foreigner pending removal in line with Article 12 of ICCPR.<sup>148</sup>

According to the Ombudsperson, the **majority of children placed in the Immigration Centre are on national security grounds when their parents pose a security risk**.<sup>149</sup> Irregular migrants and refugees are rarely placed in the Immigration Centre but rather referred to the reception centres for irregular migrants in transit.<sup>150</sup> Available data is not always reliable since the authorities depend on the migrant's statement, and some adults tend to declare themselves as children to benefit from child-related services.<sup>151</sup>

### 4.1.1. Places of deprivation of liberty

The Law on Foreigners of 2015 uses the terms 'to detain' (*zadržati*) and 'detention' (*zadržavanje*) in provisions covering the protection of children's rights and other foreigners.<sup>152</sup> The administrative measure entailing detention, when literally translated from the official Bosnian languages<sup>153</sup> to English is 'placing a foreigner under surveillance by accommodating a person in the Immigration Centre' (*sta-*

<sup>141</sup> *Zakon o strancima Bosne i Hercegovine* [Law on Foreigners of Bosnia and Herzegovina], Official Gazette of BiH No. 88/15, Art. 118 (4) (accessed 5 June 2021); The Law on Foreigners of 2015 incorporates special provisions protecting children's rights and prescribes compliance with the CRC. See: *Ibid.*, Art. 123 (2).

<sup>142</sup> *Zakon o azilu Bosne i Hercegovine* [Law on Asylum of Bosnia and Herzegovina], Official Gazette of BiH No 11/16, 16/16 Art. 33 (2) (accessed 5 June 2021); As stipulated in the Law on Asylum of 2016, the authorities should consider the best interests of the child in all their activities and decisions that impact children. See: *Ibid.*, Art. 11 (1).

<sup>143</sup> Ministry of Security, 'About Ministry,' 19 March 2009.

<sup>144</sup> *Ibid.*

<sup>145</sup> Service for Foreigner's Affairs, 'Competence'.

<sup>146</sup> Police officers are also authorized by the Law on Police Officers of Bosnia and Herzegovina of 2004 to apprehend (detain) and temporarily restrict the freedom of movement of an individual. Nevertheless, the Law on Foreigners stipulates that while determining the identity of a foreigner, the Border Police cannot detain the foreigner longer than 6 hours. The Border Police should inform the Service for Foreigner's Affairs to take over the procedure if the identity determination is longer than stipulated. See: *Zakon o strancima*, Art. 14 (2).

<sup>147</sup> *Ibid.*, Art. 118 (3b, 3c).

<sup>148</sup> *Ibid.*, Art. 118 (3a).

<sup>149</sup> Interview with Dr Jasminka Džumhur, BiH Ombudsman, 9 June 2021.

<sup>150</sup> *Ibid.*

<sup>151</sup> *Ibid.*

<sup>152</sup> Porodice sa maloljetnicima zadržavaju se u imigracionom centru samo kao posljednja mjera i na najkraće moguće vrijeme. [Families with minors are detained in the immigration centre only as a last resort and for the shortest possible time.] See: *Zakon o strancima*, Art. 123 (3); *Maloljetnici bez pratnje zadržavaju se u imigracionom centru izuzetno, samo kao posljednja mjera i na najkraće moguće vrijeme*. [Unaccompanied minors are detained in the immigration centre exceptionally, just like last resort and for the shortest possible time.] See: *Zakon o strancima* Art. 123 (4).

<sup>153</sup> Official languages of Bosnia and Herzegovina are Bosnian, Croatian, and Serbian.

*vljanje stranca pod nadzor smeštanjem u Imigracijski centar*).<sup>154</sup> On the other hand, the official English translation of the same law, available on a governmental website, uses the terms ‘to detain’ and ‘detention’ more often.<sup>155</sup>

To implement the measure of placing a foreigner under surveillance, the Law on Foreigners of 2015 establishes **Immigration Centres** (*Imigracijski centri*), specialised institutions for the reception and accommodation of foreigners managed by the SFA and monitored by the MoS.<sup>156</sup> There is **one official Immigration Centre**<sup>157</sup> located in Lukavica, East Sarajevo of the Republic of Srpska. This centre has been known to subject detainees to supervised time outdoors and solitary confinement.<sup>158</sup>

As Bosnia and Herzegovina uses the detention of children as a last resort, it is of great importance that special care is provided to these children where no alternative measure can be found. Therefore, despite the strict practices of the Immigration Centre, the treatment of children in the Immigration Centre should be given particular attention.<sup>159</sup>

#### 4.1.2. Prohibition of detention of children

The legal framework of Bosnia and Herzegovina **does not prohibit immigration detention of children**. The legislation allows for the detention of children as a last resort and for the shortest period of time.<sup>160</sup> The Law on Foreigners of 2015 allows placing unaccompanied children in the Immigration Centre only in exceptional cases if there is no available alternative. The same law further prescribes that an institution specialised for children is a preferable option for unaccompanied children.<sup>161</sup> However, **placement in institutions usually amounts to deprivation of liberty**, as stressed in the UNGS<sup>162</sup> and by the CRC Committee.<sup>163</sup>

The Law on Foreigners of 2015 only recommends unaccompanied children not to be placed in the Immigration Centre if there is an alternative option (e.g., an institution specialising in children). In practice,<sup>164</sup> all unaccompanied children are referred to the **NGO ‘IFS EMMAUS’** (International Forum of Solidarity EMMAUS) and are then moved to the Reception Centre ‘Duje,’ which specialises in the accommodation of vulnerable groups and provides child-friendly services.<sup>165</sup> The set-up of a

<sup>154</sup> *Zakon o strancima*, Art. 118 (3).

<sup>155</sup> Terms ‘to detain’ and ‘detention’ are used more often in the English translation of the law, e.g., ‘placing an alien under surveillance by his/her detention in the Immigration Center.’ See for example: Art. 118 (3).

<sup>156</sup> *Zakon o strancima*, Art. 117 (2, 4); *Pravilnik o standardima funkcionisanja i drugim pitanjima značajnim za rad Imigracionog centra* [Rulebook on functioning standards and other issues important for the work of the immigration centre], Official Gazette of BiH No. 55/16, Art. 3 (1).

<sup>157</sup> The initial period of detention (surveillance) can last up to 3 months. It can be extended so that the total period in the Immigration Centre does not exceed 18 months. For basic information on Immigration Centre see: Service for Foreigner’s Affairs, ‘Immigration Center’.

<sup>158</sup> *Pravilnik o standardima funkcionisanja*, Art 60-1, 76 (2c). For a more detailed description of conditions see the remaining provisions.

<sup>159</sup> Regulations on the accommodation of children include taking the best interests of the child into account, the separation between children and unrelated adults in the centre, and the provision of appropriate nutrition, rest, play, education, and supervision for children. See: *Pravilnik o standardima funkcionisanja*, Art. 29.

<sup>160</sup> *Zakon o strancima*, Art. 123 (3-4); *Zakon o azilu*, Art. 66 (7).

<sup>161</sup> *Zakon o strancima*, Art. 123 (4).

<sup>162</sup> Manfred Nowak, *United Nations Global Study on Children Deprived of Liberty*, Geneva: United Nations, 2019, p. 499-563.

<sup>163</sup> CRC-Committee, General Comment No. 24: Children’s rights in the child justice system, 18 September 2019, CRC/C/GC/24, para. 82.

<sup>164</sup> Replying to the FOI request submitted within this project, the Service for Foreigner’s Affairs confirmed that they refer unaccompanied children to the accommodation facility of IFS EMMAUS.

<sup>165</sup> MFS – EMMAUS, ‘The Reception Center “Duje,”’ 23 November 2018; See also: CMW-Committee, Replies of Bosnia and Herzegovina to the list of issues, 12 June 2019, CMW/C/BIH/Q/3/Add.1, para. 34.

child-friendly environment is aimed at providing tailored care.<sup>166</sup> However, according to the study conducted by the Council of Europe, even children accommodated in these centres are still deprived of their liberty.<sup>167</sup>

#### 4.1.3. Scope of personal data collected

The MoS manages the Central Database on Foreigners that contains data from the official records kept under the Law on Foreigners of 2015 and Law on Asylum of 2016.<sup>168</sup> The SFA stores all data from foreigners on this database, including the records on foreigners under surveillance.<sup>169</sup> The legal framework establishes the scope of data that can be collected, including **basic personal data on detained foreigners** (e.g. gender, date of birth, nationality) and **biometric data** (i.e. photograph, fingerprints, and signature).<sup>170</sup> Comparing with the elements covered by the Data Maturity Index, public authorities are obliged to keep only data on **nationality** and **date of birth** in the registry in the Immigration Centre.<sup>171</sup> In addition, they are obliged to record dates of entry and exit, that could allow compiling statistics on the **length of detention**. Nevertheless, data on the length of detention was not shared by the authorities in response to our FOI request. **The lack of an adequate legal framework hinders the production of high-quality statistical indicators** and leaves monitoring of migratory trends outside the obligations of public authorities.<sup>172</sup>

#### 4.1.4. Data rights of individuals

The Law on Protection of Personal Data of 2006 establishes the rights of data holders, regardless of their nationality or residency status<sup>173</sup> and applies also to children in immigration detention.<sup>174</sup> Nevertheless, other provisions provide significant limitations in exercising data rights by foreigners. For instance, certain categories of data, including biometric data, can be processed without the consent of the individual under certain circumstances (e.g. if it is otherwise prescribed by the law or required for the fulfilment of the requirements of the competent authority).<sup>175</sup> Due to national security and public safety reasons, further limitations can be imposed on the right to be informed of the processing of personal data and the right to access your own personal data.<sup>176</sup>

<sup>166</sup> In addition to unaccompanied children, IFS EMMAUS, as an alternative for the Immigration Centre, can accommodate other vulnerable individuals, including families, single mothers with children, and individuals with impaired intellectual abilities. Unaccompanied children are allowed to move outside of the centre only when permitted by their guardians. See: The Institution of Human Rights Ombudsman of Bosnia and Herzegovina, 'Special report on situation in the area of migrations in Bosnia and Herzegovina', Banja Luka, November 2018, p. 37. See also: S. A. Kinner et al, 'The health of children deprived of liberty: a human rights issue,' *The Lancet Child & Adolescent Health*, 2019.

<sup>167</sup> Council of Europe, A study of immigration practices and the use of alternatives to immigration detention of children, Strasbourg, 2017, p. 52.

<sup>168</sup> *Pravilnik o centralnoj bazi podataka o strancima* [Rulebook on the Central Database on Foreigners], Official Gazette of BiH No. 19/17, Art. 3.

<sup>169</sup> *Zakon o strancima*, Art. 128 (1ee,2); *Pravilnik o centralnoj bazi podataka*, Art. 14 (2c); *Pravilnik o sadržaju, načinu vođenja i korištenja službenih evidencija o strancima* [Rulebook on the content, manner of keeping and using official records on foreigners], Official Gazette of BiH No. 51/16, Art. 3 (2ee), 5 (b24); *Pravilnik o standardima funkcionisanja*, Art. 26.

<sup>170</sup> *Zakon o strancima*, Art. 129 (3); *Pravilnik o sadržaju*, Art. 49 (1).

<sup>171</sup> *Pravilnik o standardima funkcionisanja*, Art. 26 (3).

<sup>172</sup> Interview with Dr. Jasminka Džumhur, BiH Ombudsman, 9 June 2021.

<sup>173</sup> *Zakon o zaštiti ličnih podataka* [Law on Personal Data Protection], Official Gazette of BiH No 49/2006, 76/2011, 89/2011, Art. 1 (1).

<sup>174</sup> *Zakon o strancima*, Art. 129 (7); *Pravilnik o centralnoj bazi podataka*, Art. 57; *Pravilnik o standardima funkcionisanja*, Art. 14 (1).

<sup>175</sup> *Zakon o zaštiti ličnih podataka*, Art. 6a, 9c; See also: *Zakon o strancima*, Art. 122 (1); *Pravilnik o standardima funkcionisanja*, Art. 19b; *Pravilnik o registrowanju biometrijskih karakteristika stranaca* [Rulebook on registration of biometric characteristics of foreigners], Official Gazette of BiH No. 55/16, Art. 10 (1).

<sup>176</sup> *Zakon o zaštiti ličnih podataka*, Art. 28 (1).

Legislation facilitates the **processing of personal data for statistical and research purposes if information is duly anonymised** (i.e. re-identification of a person would require undertaking excessive technical, financial, or technological measures that are unlikely to be used).<sup>177</sup> Additional provisions for processing data of children refer only to **biometric data. Children under 14 years of age are exempt from providing signature and fingerprints**<sup>178</sup> whereas older children can have their fingerprints taken but in the presence of a parent or guardian.<sup>179</sup> **Biometric data of foreigners under surveillance is kept permanently.**<sup>180</sup>

#### 4.1.5. Freedom of Information regulations

According to the Constitution of Bosnia and Herzegovina, everyone, regardless of their nationality, has the right to information.<sup>181</sup> The universality of the right to information is operationalised in the Law on Freedom of Access to Information in Bosnia and Herzegovina of 2000.<sup>182</sup> All of the FOI requests submitted within the project were promptly and comprehensively addressed, even though the applicant was a non-national.

## 4.2. AVAILABILITY AND ACCESSIBILITY OF DATA

The availability and accessibility of data on children deprived of liberty for migration-related reasons were examined based on three major sources. The first one was **official statistics** compiled by the Agency for Statistics of Bosnia and Herzegovina.<sup>183</sup> Although migration-related statistics have not yet been covered under the national statistical programmes, the programme for the period 2021-2024 will include, for the first time, asylum and immigration-related data, including data on irregular migration.<sup>184</sup> The second group of sources included **reports published by migration authorities**, i.e. the MoS and SFA.<sup>185</sup> The latter institution was found to publicly release data on immigration detention, including statistics on children. The third group of sources included **monthly briefs published by the UN agencies**, in particular IOM, UNHCR, UNICEF, and UN Population Fund (UNFPA).

<sup>177</sup> Ibid., Art. 20 (2, 3).

<sup>178</sup> For signature see *Pravilnik o registrovanju biometrijskih karakteristika*, Art. 10 (2); For fingerprints see: *Zakon o strancima*, Art. 122 (4); *Pravilnik o registrovanju biometrijskih karakteristika*, Art. 10 (2).

<sup>179</sup> Ibid., Art. 6 (7).

<sup>180</sup> Ibid., Art. 15.

<sup>181</sup> The General Framework Agreement – Annex 4, Art. II (4).

<sup>182</sup> See: *Zakon o slobodi pristupa informacijama u Bosni i Hercegovini* [Law on Freedom of Access to Information in Bosnia and Herzegovina], Official Gazette No. 28/00, 45/06, 102/09, 62/11, 100/13.

<sup>183</sup> Agency for Statistics of Bosnia and Herzegovina is mandated to collect and make state-level statistical data. See: *Zakon o statistici Bosne i Hercegovine* [Law on Statistics of Bosnia and Herzegovina], Official Gazette of BiH No. 26/04, 42/04, Art. 8e.

<sup>184</sup> One of the reasons for this statistical data development is to improve the harmonization with European statistics (Eurostat) standards. See: Agency for Statistics, *Statistical program of Bosnia and Herzegovina 2021-2024*, 2020, p. 7, 13.

<sup>185</sup> Even though competencies for collecting and making the statistics in Bosnia and Herzegovina are shared between the state level and two Entity levels, this project focused on the statistical data at the state level since both the MoS and the SFA operate at the state level.



## IMPROVING QUALITY OF DATA THROUGH COOPERATION WITH UN AGENCIES

UN agencies, in particular IOM, UNHCR, UNICEF, and UNFPA, actively support the government of Bosnia and Herzegovina, assisting refugees and migrants. These agencies also significantly contribute to making the data on refugee and migrant children publicly accessible by including the number of children in the Immigration Centre in their monthly reports.

In 2018, public authorities in cooperation with UNICEF and NGOs issued *Guidelines for professionals on the assessment and determination of the best interests of the child* to clarify and support the application of one of the main principles protecting children's rights.<sup>186</sup> The Guidelines followed the recommendation of the Committee on the Rights of the Child to strengthen the implementation of the best interest of the child.<sup>187</sup>

The established cooperation between state and non-state actors presents a good model not only for improving the accessibility of data on children in immigration detention but also for strengthening the protection of children's rights.

The Sector for Immigration of the MoS publishes 'migration profiles' on a regular basis since 2009. The profiles include information on migratory trends and migration-related statistics as well as on irregular migration (e.g. illegal border crossings, expulsion decisions and forcible removals).<sup>188</sup> Following the decision adopted in 2009 by the MoS,<sup>189</sup> the SFA is responsible for submitting the annual statistical data on foreigners placed under surveillance for the production of these migration profiles.<sup>190</sup> According to this decision, data should be disaggregated by nationality, gender, and age groups (including individuals aged 0-17).<sup>191</sup> However, the **statistics available within these migration profiles are disaggregated only by nationality**, mostly disclosing only 'top nationalities'.<sup>192</sup> **No information on the prevalence of children or gender distribution is available within the migration profiles.**<sup>193</sup>

The annual number on children in immigration detention is included in the reports of the SFA that are

<sup>186</sup> Ministry of Human Rights and Refugees, 'Smjernice za procjenu i utvrđivanje najboljeg interesa djeteta: Vodič za profesionalce,' Sarajevo, June 2018.

<sup>187</sup> Ibid., p. 5; The Committee on the Rights of the Child welcomed the adoption of these Guidelines, stressing that BiH needs to commit to ensuring the proper implementation of these guidelines. See: CRC-Committee, Concluding observations on the combined fifth and sixth periodic reports of Bosnia and Herzegovina, CRC/C/BIH/CO/5-6, 5 December 2019, para. 19-20.

<sup>188</sup> Bosnia and Herzegovina Migration Profiles in English available at Ministry of Security, 'Strategic documents and Action plans'. In 2009, the first Migration profile was developed, fulfilling one of the conditions of the EU for visa liberalization. See: Ministry of Security, 'Migracioni profil Bosne i Hercegovine za 2019. godinu' [Migration profile of Bosnia and Herzegovina for 2019], Sarajevo, June 2020, p. 7; 'Roadmap on visa free travel opens EU doors to Bosnia and Herzegovina,' EU Delegation to BiH, 5 June 2008.

<sup>189</sup> Odluka o obavezi dostavljanja statističkih podataka o migracijama i međunarodnoj zaštiti Ministarstvu sigurnosti [Decision on the obligation to submit statistical data on migration and international protection to the Ministry of Security], Official Gazette of BiH No 83/09, Art. 3.

<sup>190</sup> Ibid., Art. 2 (1n, 2g, 3).

<sup>191</sup> Ibid., Tabela 14 - Mjere protiv stranaca [Measures against foreigners].

<sup>192</sup> The priority given to data on nationality can be attributed to the importance of this information in the context of the non-refoulement principle. Data on nationality allows assessing whether the country of origin is safe. See: Interview with Dr Jasminka Džumhur, BiH Ombudsman, 9 June 2021.

<sup>193</sup> Even though 'migration profiles' comprise the annual numbers of foreigners under surveillance in the Immigration centres, including the annual numbers covering previous years and the annual number for the reporting year disaggregated by nationality, it does not reveal the number of children deprived of liberty for migration-related reasons See: Ministry of Security, 'Migracioni profil Bosne i Hercegovine za 2019. godinu,' p. 40-41, p. 96 (Summary of Migration Trends - Annex 1), p. 112-114 (Measures imposed on foreign nationals in 2019 - Annex 8).

published on the official website on a regular basis.<sup>194</sup> The same website contains detailed instructions on the submission of FOI requests that further facilitate the accessibility of data collected by public authorities.<sup>195</sup> Although the SFA has limited human resources<sup>196</sup>, its responses to our FOI requests were timely and comprehensive. Both requests were replied to within the timeframe prescribed by the law (15 days) and included requested information.

The SFA **publishes annual reports by default**, releasing annual numbers of children in the Immigration Centre and the annual numbers of children referred to the IFS EMMAUS accommodation facility. Before publishing a report, the **draft of the report is available on the eConsultations platform** (*eKonsultacije*).<sup>197</sup> Nevertheless, there was no interest nor active participation by third parties so far.<sup>198</sup> Arguably, one of the reasons behind its limited usage is the lack of public awareness and training on how to use the platform.<sup>199</sup>

### E-CONSULTATIONS – PLATFORM FOR ADVOCACY IN THE AREA OF IMMIGRATION DETENTION



The eConsultations platform can facilitate constructive dialogue between public authorities and civil society organisations (CSOs). The practice of submitting draft reports of the SFA for consultation can provide a space for advocacy to share migration data, including data on children in immigration detention. The public consultations are open for 15 days, and other stakeholders, including CSOs, are invited to provide comments and recommendations.

The third source of information on children in immigration detention in Bosnia and Herzegovina is provided by the **UN agencies**. Interagency **monthly operational updates are regularly published**<sup>200</sup> and **most of them include information on the number of children in immigration detention** (placed in the Immigration Centre). However, monthly figures are not disaggregated by additional features but by accompanied status.

<sup>194</sup> Service for Foreigner's Affairs, 'Izveštaji o radu' [Reports on work activities].

<sup>195</sup> Instructions are only available in the official languages of Bosnia and Herzegovina. See: Service for Foreigner's Affairs, 'Vodič Službe za poslove sa strancima za pristup informacijama' [Guidelines of the Service for Foreigner's Affairs for Access to Information], Sarajevo, May 2010.

<sup>196</sup> Interview with Dr Jasminka Džumhur, BiH Ombudsman, 9 June 2021.

<sup>197</sup> 'EKonsultacije' [eConsultations].

<sup>198</sup> After checking the reports on previous consultations from 2017 until 2020, only one user participated in the consultations in 2018. Moreover, no comments nor recommendations were made.

<sup>199</sup> Interview with Dr Jasminka Džumhur, BiH Ombudsman, 9 June 2021.

<sup>200</sup> Monthly Operational Updates on Refugee/Migrant Situation available at United Nations Bosnia and Herzegovina, 'Publications in Bosnia and Herzegovina,' (accessed 8 June 2021).

### 4.3. TIME TRENDS

The data on children in immigration detention is released **annually** in the reports of the SFA.<sup>201</sup> These statistics have been **available since 2011** when the Immigration Centre was adapted to the needs of families with children.<sup>202</sup> Subsequently, all reports as of 2011 started including the number of children in the Immigration Centre. The draft of the report for 2020 was made available on the eConsultations platform.<sup>203</sup>

### 4.4. LEVEL OF DISAGGREGATION

Even though we supplemented the information extracted from the annual reports of the SFA with statistics obtained through the FOI requests, the level of disaggregation of data on immigration detention of children was moderate. **Statistics are disaggregated by nationality, accompanied status, and place of detention.** In replies to both requests, the public authorities confirmed that data disaggregated by gender is not collected.

Replying to the initial FOI request regarding 2019, the SFA only referred to children accommodated in the Immigration Centre stating that all children were accompanied and shared data disaggregated by nationality. Later in the same year, the annual report for 2019 was published and included the same statistics as released under the FOI request (i.e. number of accompanied children in the Immigration Centre). In addition, according to the annual report, there was no child referred to IFS EMMAUS in 2019.

The reply to the follow-up FOI request covering the period from 2011 until 2018 included the total number of children covering the whole period and **top nationalities**, which – if implemented appropriately – can be a measure for balancing data accessibility with the privacy of individuals.<sup>204</sup> The SFA disaggregated the data by accompanied status and place of detention, indicating that all accompanied children were placed in the Immigration Centre whereas unaccompanied children were referred to the IFS EMMAUS accommodation facility. Unlike in the annual report for 2019, we **observed statistical discrepancies between statistics retrieved through FOI request and the numbers published in the annual reports for 2011-2018.** The numbers provided in reply to our request were slightly higher for both accompanied children placed in the Immigration Centre (approx. 3% higher) as well as unaccompanied children referred to IFS EMMAUS (more than 20%; however, due to the small numbers reported this value should be viewed with caution).

Replying to the initial FOI request, the SFA informed there were **no children with disabilities identified in 2019.** However, it is not clear if a record of an identified disability would be kept since disability does not fall into one of the data categories regulated by law.

<sup>201</sup> In line with the establishment of the SFA in 2006, the website of the SFA contains annual reports from 2007 until 2019. See: Service for Foreigner's Affairs, 'Opening statement of director,' (accessed 20 June 2021); Service for Foreigner's Affairs, 'Izveštaji o radu.' The SFA started including the number of aliens in the Immigration Centre as of 2008 following the opening of the Immigration Centre the same year. See: Service for Foreigner's Affairs, 'Immigration Center.'

<sup>202</sup> Ibid.

<sup>203</sup> Public consultations were opened from 18 January to 2 February 2021.

<sup>204</sup> Reply to the follow-up FOI request: top nationalities 2011-2016 (Serbia, Turkey, Albania, Afghanistan and Kosovo); 2017-2018 (Turkey, Iran, Afghanistan, Pakistan, Algeria, Morocco, Bangladesh and Iraq).

The Law on Personal Data Protection does foresee that the data used for statistical purposes should be anonymised.<sup>205</sup> Nevertheless, there is no specific provision referring to the threshold of the number of individuals with the same characteristics that can be disclosed. In practice, public authorities apply the ‘top nationalities’ approach when compiling ‘migration profiles’, which can potentially lead to re-identification of individuals (if small numbers are released). In the replies to FOI requests data was not duly anonymised since the small number of children of specific nationality was released.

## 4.5. CONCLUSIONS

Although only in exceptional cases, Bosnia and Herzegovina is still practising the immigration detention of children. Faced with the influx of refugees and migrants as of 2018, the authorities of Bosnia and Herzegovina did not turn to increased detention of children under the excuse of a crisis. Still, **it is crucial that Bosnia and Herzegovina works towards establishing alternatives to detention and ending immigration detention of children.** Meanwhile, **timely and quality data is essential to monitor progress towards achieving this goal.**

### 4.5.1. Key takeaways

Data of children in immigration detention is released annually by the responsible public authority in Bosnia and Herzegovina, i.e. the SFA, and thus publicly accessible. The SFA is the main governmental body that contributes to the availability and accessibility of this data by releasing the number of children in immigration detention (placed in the Immigration Centre) in its annual reports. Furthermore, the FOI request channel proved to work efficiently since the SFA shared the requested data in a timely manner.

**Three key promising data-related practices were identified.** One of them is the **eConsultations platform** which can improve both transparency and quality of data produced by the public authorities. The platform could facilitate the participation of CSOs and other stakeholders specialised in migration and children’s rights. This tool can only have an impact if promoted more vigorously. Another practice that could increase the quality of data on children in immigration detention is **the participation of relevant international organisations in the process of increasing data availability and accessibility.** UN agencies publish the number of children in immigration detention (i.e. in the Immigration Centre) in their monthly operational updates. The established system of sharing the data between the authorities of Bosnia and Herzegovina and international organisations (in particular UN agencies) does not only have the potential to increase data accessibility but also could facilitate the promotion of children’s rights and ending immigration detention of children.

In addition, **Bosnia and Herzegovina remains one out of only three countries that declared to record data on disability.** Replying to the FOI request, the SFA informed that no child with disability was identified during the requested period. However, no details on the procedure of disability identification are available, therefore, it is impossible to verify its accuracy.

<sup>205</sup> *Zakon o zaštiti ličnih podataka*, Art. 20 (2).

#### 4.5.2. Room for improvement

**Publicly available and accessible data** on children in immigration detention is currently disaggregated by **nationality, accompanied status and place of detention**.<sup>206</sup> The quality of the publicly released data could be improved by the greater level of disaggregation while respecting the privacy. To improve the quality, as well as the accessibility of data, **the SFA could commit to developing a standardised reporting format** for the annual reports on its activities. These reports should include **duly anonymised data on children in immigration detention disaggregated by all relevant features** such as gender, nationality, accompanied status, place of detention, migration status, disability, and length of detention. One of the ways to ensure better privacy protection for small numbers of children is to properly implement aggregate statistics, e.g., releasing the ‘top nationalities’ of children. Both the SFA and MoS seem to practice data sharing, applying the ‘top nationalities’ approach to a certain extent.<sup>207</sup> This approach can thus be replicated in other migratory statistics.

Other public authorities dealing with migratory statistics could take part in improving the availability, accessibility, and quality of data on children in immigration detention. **The MoS could contribute to the better statistics of children in the immigration detention by releasing migratory statistics disaggregated by age within the migration profiles. The Agency for Statistics of Bosnia and Herzegovina could contribute to the accessibility of this data if it included immigration detention in migration-related statistics** compiled under the statistical programme 2021-2024.

Bosnia and Herzegovina is encouraged to continue processing the data of children in immigration detention. While putting an effort to end immigration detention of children, the authorities of Bosnia and Herzegovina could consider promoting greater accessibility and quality of realised data of children in immigration detention.

<sup>206</sup> Data extracted from the Annual reports of the Service for Foreigner’s Affairs supplemented by data received through replies to FOI requests.

<sup>207</sup> The SFA shared ‘top nationalities’ in the reply to FOI request while the MoS applies this approach in presenting some statistics within ‘migration profiles.’

## 5. SELECTED CASE STUDY: MEXICO

Mexico has seen a significant migratory influx as the country is situated in **one of the most used migration corridors in the world** that connects Latin America to the United States of America.<sup>208</sup> Due to its location between a very tight southwest border of the US and Latin American region and a significant population on the move, Mexico was described by one of our interviewees as an ‘uncomfortable sandwich’.<sup>209</sup>

Most migrants in Mexico come from the Northern Triangle of Central America (Guatemala, Honduras, El Salvador). They represented more than 90% of the migrant population registered in 2020.<sup>210</sup> Due to the danger of humanitarian crises in the Northern Triangle of Central America, **the number of migrant children arriving to Mexico has been increasing since 2014**,<sup>211</sup> especially those seeking international protection and of Honduran origin,<sup>212</sup> both accompanied and unaccompanied. The peak of 53,507 children on the move was reached in 2019.<sup>213</sup>

The Mexican borders were closed for several months in 2020 due to the COVID-19 pandemic, that resulted in a significant decrease in the number of incoming migrants.<sup>214</sup> Nevertheless, according to Human Rights Watch,<sup>215</sup> **detention of those who undertook a journey, including children, became arbitrary and higher in length, since deportations could not take place**. The Mexican National Human Rights Commission communicated that insalubrity and overcrowding in Migration Centres of the National Institute of Migration (Instituto Nacional de Migración – INM) expose personnel and migrants, including children, to a higher risk of being infected with COVID-19.<sup>216</sup>

<sup>208</sup> Comisión Nacional de los Derechos Humanos, ‘Personas Migrantes’.

<sup>209</sup> Interview with G.C. - Representative of the Centre for Migration Studies - CEM, 6 July 2021 (conducted by Carolina Canettieri).

<sup>210</sup> Unidad de Política Migratoria – SEGOB, ‘CEM | Boletines Estadísticos | III Extranjeros Presentados y Devueltos, 2020’, sec. 3.1.1.

<sup>211</sup> Amnesty International USA, ‘Fleeing for Our Lives: Central American Migrant Crisis’, 1 April 2016 ; G.C. - Representative of the Centre for Migration Studies - CEM, interview; Unidad de Política Migratoria - SEGOB, ‘CEM | Dirección de Estadística | Boletines Estadísticos’.

<sup>212</sup> For further information see: Alfredo Islas Colín, ‘Caravanas de migrantes y refugiados en México’ BARATARIA, Revista Castellano-Manchega de Ciencias Sociales, no. Esp.25 (n.d.), pp. 131–46.

<sup>213</sup> Unidad de Política Migratoria – SEGOB, ‘CEM | Boletines Estadísticos | III Extranjeros Presentados y Devueltos, 2019’, sec. 3.1.4.

<sup>214</sup> Interview with G.C. - Representative of the Centre for Migration Studies - CEM, 6 July 2021; Unidad de Política Migratoria - SEGOB, ‘CEM | Dirección de Estadística | Boletines Estadísticos’; Comisión Nacional de los Derechos Humanos, ‘Reitera CNDH Su Preocupación Por Las Personas En Contexto de Migración Varadas En Territorio Mexicano, En Estaciones Migratorias y Estancias Provisionales Del INM, Ante El Cierre de Fronteras Por COVID-19’, 16 April 2020.

<sup>215</sup> Human Rights Watch, ‘México debe liberar a los migrantes detenidos en el contexto de la pandemia’, 14 April 2020.

<sup>216</sup> Comisión Nacional de los Derechos Humanos, ‘Exige CNDH Acciones Urgentes Para Evitar Hacinamiento y Contagio Masivo de Coronavirus En Personas Migrantes Alojadas En Estaciones Del Instituto Nacional de Migración (INM)’.

## 5.1. LEGAL FRAMEWORK

The legal framework that regulates the immigration detention reasons is made up by the following instruments:

- ▶ Federal Constitution of 1917 – amended on 17 May 2021<sup>217</sup>
- ▶ Migration Law – amended on 4 May 2021<sup>218</sup>
  - Migration Law Regulation (subordinate legislation) – amended on 23 May 2014<sup>219</sup>
- ▶ Law on Refugees and Complementary Protection and Political Asylum – amended on 11 November 2020<sup>220</sup>
  - Law on Refugees and Complementary Protection Regulation (subordinate legislation) – amended on 21 February 2012<sup>221</sup>
- ▶ General Law on the Rights of Girls, Boys, and Youth – amended on 11 January 2021<sup>222</sup>
  - General Law on the Rights of Girls, Boys, and Youth Regulation (subordinate legislation) – amended on 2 December 2015<sup>223</sup>

Prior to November 2020, the immigration detention of children was allowed, although the euphemistic terms ‘shelter’ (*alojamiento*) and ‘presentation’ (*presentación*) were used.<sup>224</sup> According to specialists, this euphemistic language did not avoid destigmatisation of migrants and **precluded the application of protective measures of regulation of detention.**<sup>225</sup>



### BEST INTERESTS OF THE CHILD IN THE MIGRATORY PROCEDURES

The Article 4<sup>226</sup> of the Constitution and several provisions of the General Law on the Rights of Girls, Boys, and Youth<sup>227</sup> establish the principle of the **best interests of the child as a fundamental integrative element of the public policies, including migratory procedures.** It indicates, among others, that these procedures should be conducted by specialised personnel, and guarantees the right of a child to be heard and to participate at different stages of the migratory procedures.<sup>228</sup>

<sup>217</sup> Estados Unidos Mexicanos, ‘Leyes Federales de México’, sec. 001.

<sup>218</sup> *Ibid.*, sec. 077.

<sup>219</sup> Estados Unidos Mexicanos, ‘Reglamentos de Leyes Federales Vigentes’, sec. 034.

<sup>220</sup> Estados Unidos Mexicanos, ‘Leyes Federales de México’, sec. 304.

<sup>221</sup> Estados Unidos Mexicanos, ‘Reglamentos de Leyes Federales Vigentes’, sec. 129.

<sup>222</sup> Estados Unidos Mexicanos, ‘Leyes Federales de México’, sec. 194.

<sup>223</sup> Estados Unidos Mexicanos, ‘Reglamentos de Leyes Federales Vigentes’, sec. 92.

<sup>224</sup> According to the Mexican Supreme Court these terms imply deprivation of liberty. For further information see: Suprema Corte de Justicia de la Nación, ‘Protocolo de Actuación: Para Quienes Imparten Justicia En Casos Que Involucran a Personas Migrantes y Sujetas de Protección Internacional’, p. 97.

<sup>225</sup> Interview with Luis Xavier Carranca Álvarez - representative of the Legal Clinic Alaíde Foppa, 15 June 2021 (conducted by Carolina Cañetti); Comisión Nacional de los Derechos Humanos ‘Problemática de Niñas, Niños y Adolescentes Centroamericanos En Contexto de Migración Internacional No Acompañados En Su Tránsito Por México, y Con Necesidades de Protección Internacional’ (2018), 2018, para. 153, 154, 160, and 167.

<sup>226</sup> Art. 4 para. 9 of the Constitution states: ‘In all decisions and actions of the State, the principle of the best interest of children shall be ensured and complied with, fully guaranteeing their rights. Children have the right to the satisfaction of their needs for food, health, education and healthy recreation for their integral development. This principle shall guide the design, execution, follow-up and evaluation of public policies aimed at children’ [own translation].

<sup>227</sup> In particular Arts. 89 (para. 4) and 92 (II and IV) of the General Law on the Rights of Girls, Boys, and Youth. See: Estados Unidos Mexicanos, ‘Leyes Federales de México’, sec. 194.

<sup>228</sup> The legislation specifies that the principle of the best interests of the child applies also to migrant children. See in particular Arts. 89 (para. 4) and 92 (II and IV) of the General Law on the Rights of Girls, Boys, and Youth – Estados Unidos Mexicanos, ‘Leyes Federales de México’, sec. 194.

On 11 November 2020 the Migration Law was amended (hereafter referred to as 'reform of 11/2020') introducing the clear prohibition of detention of children for migration-related reasons.<sup>229</sup> A central element of the reform is the change in the application of the family unity principle. Previously, the law only of unaccompanied children, while accompanied children were detained with their family members in order to fulfil the family unity principle.<sup>230</sup> Conversely, and in line with UNGS recommendations, the amended provisions of the Migration Law enforce this principle of the non-detention of all children, together with accompanying family members.

The subordinate legislation aiming at the implementation of the reform of 11/2020 has not been adopted yet (as of July 2021).<sup>231</sup> This means that the current legislative framework remains fragmented and partly outdated which can significantly hinder the implementation of the reform and, therefore, detention alternatives for immigrant children and their families.<sup>232</sup>

According to CSOs,<sup>233</sup> the introduction of the reform of 11/2020 may produce concrete evidence that immigration detention is not the only way to avoid the collapse of the Mexican reception system as it is depicted by the public authorities.<sup>234</sup> In addition, the implementation of the reform can convey the message that migration is not a national security issue, therefore destigmatising immigration.



## PROHIBITION OF IMMIGRATION DETENTION OF CHILDREN

On 11 November 2020 the Migration Law was amended introducing the clear prohibition of immigration detention of children. Several state agencies have been cooperating to provide adequate open shelters to the children and their family members.

### 5.1.1. Places of deprivation of liberty

Prior to the reform of 11/2020, the legislative framework<sup>235</sup> prescribed the detention of accompanied children with their family members and the provisional detention of unaccompanied children<sup>236</sup> in Migration Centers and Provisional Centers for migrants<sup>237</sup> (*Estaciones Migratorias and Estancias*

<sup>229</sup> Estados Unidos Mexicanos, 'Leyes Federales de México', sec. 077 para. 6 and 11.

<sup>230</sup> Estados Unidos Mexicanos, 'Ley de Migración Vigente', Suprema Corte de Justicia de la Nación, sec. 4/14, Arts. 2 (para. 12) and 107 (nr. III and IV); Estados Unidos Mexicanos, 'Ley Sobre Refugiados, Protección Complementaria y Asilo Político - Antes - Ley Sobre Refugiados y Protección Complementaria', Suprema Corte de Justicia de la Nación, sec. 2/3, Arts. 5, 9, 20 and 54.

<sup>231</sup> For example, the Migration Law Regulation was last updated in 2014.

<sup>232</sup> Interview with G.C. - Representative of the Centre for Migration Studies - CEM.

<sup>233</sup> Interview with Luis Xavier Carranca Álvarez - representative of the Legal Clinic Alaíde Foppa.

<sup>234</sup> This was a ground for the maintenance of detention for migration related reasons exposed in the interview with G.C. - Representative of the Centre for Migration Studies - CEM.

<sup>235</sup> Estados Unidos Mexicanos, 'Ley de Migración Vigente', Suprema Corte de Justicia de la Nación, sec. 4/14, Arts. 2 (para. 12) and 107 (nr. III and IV); Estados Unidos Mexicanos, 'Ley Sobre Refugiados, Protección Complementaria y Asilo Político - Antes - Ley Sobre Refugiados y Protección Complementaria', Suprema Corte de Justicia de la Nación, sec. 2/3, Arts. 5, 9, 20 and 54.

<sup>236</sup> Estados Unidos Mexicanos, 'Ley de Migración Vigente', sec. 4/14 Arts. 29, 109 (nr. XIV) and 112; Unidad de Política Migratoria, 'Reglamento de la Ley sobre Refugiados y Protección Complementaria'.

<sup>237</sup> To understand the conditions of living provided in these facilities see: Comisión Nacional de Los Derechos Humanos, 'Situación de Las Estaciones Migratorias En México, Hacia Un Nuevo Modelo Alternativo a La Detención', 2019. Following the analysis of data collected from governmental and non-governmental organisations as well as UN bodies, we classified the level of detention in the INM Centres as very high (5 on a scale from 1 to 5).

*Provisionales*). These are maintained by the National Institute of Migration – a decentralised administrative body of the Ministry of the Interior (*Secretaría de Gobernación - SEGOB*).<sup>238</sup> According to the INM,<sup>239</sup> a total of 33 Migration Centres and 22 Provisional Centres (including 13 Centres for stays of max. 48 hours and 9 Centres for stays of max. 7 days) are currently active. In these facilities, accompanied children were detained with their family members to ensure family unity, whereas unaccompanied children could only be provisionally detained while waiting for their transfer to specialised facilities of the DIF.<sup>240</sup>

The law does not set out a maximum time for **provisional detention of unaccompanied children**. In 2015, Human Rights Watch reported **an alarming number of unaccompanied children in Migration Centers** (ca. 35,000, of which more than half were unaccompanied).<sup>241</sup> An issue that was also discussed in the 2019 special report of the National Human Rights Commission, that exposed the constant and recurrent lack of transfers of unaccompanied children sheltered in Migration Centers to DIF facilities, violating the principle of the best interests of the child.<sup>242</sup>

According to the Mexican National Human Rights Commission<sup>243</sup> as well as Human Rights Watch,<sup>244</sup> children who were transferred to DIF facilities may also be de facto deprived of their liberty. Lack of access to information and legal aid were reported on various occasions, and representatives of CSOs and of the Public Defender's Office, who could fill these gaps, have no free access to INM facilities.<sup>245</sup>

The reform of 11/2020 explicitly prohibited accommodation of all children in Migration or Provisional Centres.<sup>246</sup> The reform also positively reaffirmed the principle of family unity, stating that children and their existing family members shall be immediately transferred to specialised facilities of the DIF.

Several state agencies have been then cooperating to provide adequate open shelters under the auspices of the DIF to the children and their family members.<sup>247</sup> Nevertheless national experts<sup>248</sup> also indicate that it is still too soon to assess if these DIF facilities will in practice protect and not detain. This impossibility of assessment is due to the restrictive conditions imposed on facilities by COVID-19 pandemic; if they will remain closed doors facilities in a non-pandemic scenario is still to be determined.

<sup>238</sup> Diario Oficial de la Federación, 'Manual de Organización General del Instituto Nacional de Migración', 11 February 2020.

<sup>239</sup> Response of the INM to the FOI request nr. 0411100022921 from 16 April 2021.

<sup>240</sup> Estados Unidos Mexicanos, 'Ley de Migración Vigente', sec. 4/14 Arts. 29, 109 (nr. XIV) and 112; Unidad de Política Migratoria - SEGOB, 'Marco Jurídico', vol. Reglamento de la Ley sobre Refugiados y Protección Complementaria, Chapter III.

<sup>241</sup> Human Rights Watch, 'Puertas cerradas: El fracaso de México en la protección de niños refugiados y migrantes de América Central', 31 March 2016 [own translation].

<sup>242</sup> Comisión Nacional de los Derechos Humanos, 'Situación de Las Estaciones Migratorias En México, Hacia Un Nuevo Modelo Alternativo a La Detención | Resumen Ejecutivo', p. 24 and 31.

<sup>243</sup> Comisión Nacional de los Derechos Humanos, 'Informe Especial. La Problemática de Niñas, Niños y Adolescentes Centroamericanos En Contexto de Migración Internacional No Acompañados En Su Tránsito Por México, y Con Necesidades de Protección Internacional', para. 154, 332, and 434.

<sup>244</sup> Human Rights Watch (2016).

<sup>245</sup> Interview with Luis Xavier Carranca Álvarez - representative of the Legal Clinic Alaíde Foppa; Comisión Nacional de los Derechos Humanos, 'Informe Especial. La Problemática de Niñas, Niños y Adolescentes Centroamericanos En Contexto de Migración Internacional No Acompañados En Su Tránsito Por México, y Con Necesidades de Protección Internacional', para. 210 and 255.

<sup>246</sup> Art. 99 reads as follows: 'In no case shall the Institute present or shelter migrant children or adolescents in Migration Centers or in places authorized for this purpose' [own translation], see: Estados Unidos Mexicanos, 'Leyes Federales de México', sec. 077 Art. 99 (para. 3).

<sup>247</sup> Instituto Nacional de Migración, 'Tema Migratorio 230121', 23 January 2021.

<sup>248</sup> Interview with Luis Xavier Carranca Álvarez - representative of the Legal Clinic Alaíde Foppa.

### 5.1.2. Prohibition of detention of children

The reform of 11/2020 has explicitly prohibited deprivation of liberty of children for migration related reasons.<sup>249</sup> Before the reform, the Migration Law prescribed the detention of accompanied children with their family members and unaccompanied children in exceptional cases. Despite the recent reform as well as several previous amendments of the migration-related laws,<sup>250</sup> the official websites of the Migration Unit of the Ministry of Interior<sup>251</sup> and the Mexican Senate<sup>252</sup> provide outdated information on the legal framework that can be misleading for migrants and other stakeholders. As of July 2021, the information available on these websites indicate that the detention of children for migration related reasons is still lawful, even though it was explicitly abolished under the reform of 11/2020.<sup>253</sup>

#### STRATEGIC LITIGATION CASES – ON THE WAY TO THE PROHIBITION OF IMMIGRATION DETENTION FOR ALL PERSONS



In April 2021 the District Court in Administrative Matters of Mexico City deemed the detention of persons for migration related reasons over the 36 hours threshold as unconstitutional.<sup>254</sup> Implementation of this decision will require amending the Migration Law that currently allows for longer periods of detention for adults not accompanied by children (up to 60 days).<sup>255</sup>

There are currently three cases pending before the Supreme Court that can be strategic litigation cases that ultimately lead to the abolishment of immigration detention for all persons in Mexico.<sup>256</sup> They are related to the development of non-discriminatory and non-punitive migration related proceedings (App. 275/2019), the review of the constitutionality of the application of automatic detention of migrants (App. 282/2019), and the *prima facie* recognition of the refugee status of children in migration *Caravanas* (App. 07/2020).

### 5.1.3. Scope of personal data collected

The obligation of migrants to provide personal data for the regularisation of their status is established by the Migration Law and the Law on Refugees and Complementary Protection and Political Asylum.<sup>257</sup> The National Institute of Migration collects personal data from the migrants presented and sheltered in the Migration Centres and Provisional Centres. This data is then registered in a central

<sup>249</sup> Estados Unidos Mexicanos, 'Leyes Federales de México', sec. 077, para. 6 and 11.

<sup>250</sup> Estados Unidos Mexicanos, 'Ley de Migración Vigente'.

<sup>251</sup> Unidad de Política Migratoria - SEGOB, 'Marco Jurídico'.

<sup>252</sup> Senado de la República, 'Comisión de Asuntos Migratorios | Marco Jurídico'.

<sup>253</sup> Save the Children México, 'Caravana Migrante: Respeto a los Derechos de Niñas y Niños', 19 January 2021.

<sup>254</sup> Interview with Luis Xavier Carranca Álvarez - representative of the Legal Clinic Alaíde Foppa; District Court in Administrative Matters of Mexico City, Application no 1864/2019 decided on 22 April 2021; Redacción Desinformémonos, 'Inconstitucionales, detenciones migratorias mayores a 36 horas: juzgado mexicano', 8 May 2021 ; Estados Unidos Mexicanos, 'Leyes Federales de México', sec. 001 Arts. 11 and 21.

<sup>255</sup> Estados Unidos Mexicanos, 'Leyes Federales de México', sec. 077 Art. 111.

<sup>256</sup> Luis Xavier Carranca Álvarez and Jorge Iván Mercado Mejía, 'La Suprema Corte y su oportunidad para humanizar la política migratoria | Nexos', El Juego de la Suprema Corte ; Interview with Luis Xavier Carranca Álvarez - representative of the Legal Clinic Alaíde Foppa.

<sup>257</sup> Arts. 16 (III), 36 and 37 (II) of the Migration Law; Arts. 10, 23, 60, 63 and 70 of the Law on Refugees and Complementary Protection and Political Asylum. In addition, the Migration Law specify the competence of agencies to collect data from children (Arts. 16 (III), 20, 28 and 47).

**database** (*Registro Nacional de Extranjeros*), which, is made available to institutions responsible for national security as well as being synchronised with other informational systems administrated by the Institute.<sup>258</sup>

Regarding migration related statistical data, the Federal Law on Transparency and Access of Public Governmental Information specifies that **executive bodies shall publicly disclose the following statistical data in the area of migration: number of entries, migratory status, detention** (*presentación*) and **return**. These statistics should be **disaggregated by gender, age group, and nationality**.<sup>259</sup> There is also the Centre for Migration Studies (CEM), which is a dedicated entity responsible for the research, compilation, and publishing of the statistics, operating under the Migration Unit of the Ministry of Interior.<sup>260</sup> The CEM receives the relevant data directly from the INM, DIF, and the Mexican Commission for Refugee Aid (COMAR) offices and develops statistical reports utilising the SPSS software, which is one of the most commonly used software in the area of statistics for social sciences.<sup>261</sup>

#### 5.1.4. Data rights of individuals

The migratory legal framework refers to the general data protection legislation, namely the Federal Law on Transparency and Access of Public Governmental Information<sup>262</sup> and the General Law on Protection of Personal Data in Possession of Obligated Entities.<sup>263</sup> Some experts point out that this approach provides rather weak protection, as migration is **consequently framed as a national security issue**<sup>264</sup> and does not specify which personal data shall be provided by migrants, nor in which circumstances its processing shall occur. The only protection is provided by a vague reference to the Federal Law on Transparency and Access of Public Governmental Information.

At the same time, the general data protection framework allows introducing limitations due to, inter alia, national security<sup>265</sup> therefore **leaving room for arbitrary interpretation**.<sup>266</sup> These limitations should remain, however, **necessary and proportionate in relation to the legitimate purpose**.<sup>267</sup> The legal framework also specifies that the processing of data on children should be guided by the **principle of the best interests of the child** and other rights established by the General Law on the Rights of Girls, Boys, and Youth.<sup>268</sup>

<sup>258</sup> Data should be processed according to the Federal Law on Transparency and Access of Public Governmental Information as well as Migration Law Regulation. See: Estados Unidos Mexicanos, 'Leyes Federales de México', sec. 208 and Diario Oficial de la Federación, 'Manual de Organización General Del Instituto Nacional de Migración'.

<sup>259</sup> Estados Unidos Mexicanos, 'Leyes Federales de México', sec. 208 Art. 69 (b and c).

<sup>260</sup> Unidad de Política Migratoria - SEGOB, 'Centro de Estudios Migratorios CEM'.

<sup>261</sup> Interview with G.C. - Representative of the Centre for Migration Studies - CEM.

<sup>262</sup> Art. 16 (III) of the Migration Law; Arts. 10 and 60 of the Law on Refugees and Complementary Protection and Political Asylum.

<sup>263</sup> Estados Unidos Mexicanos, 'Leyes Federales de México', sec. 202.

<sup>264</sup> Mauro Pérez Bravo, 'Los datos personales de migrantes y la seguridad nacional en México. Un dilema legislativo entre lo político y lo ético', *Diarios del Terruño*, Universidad Autónoma Metropolitana, December 2020.

<sup>265</sup> Art. 6 of the General Law on Protection of Personal Data in Possession of Obligated Entities.

<sup>266</sup> Art 70 of the General Law on Protection of Personal Data in Possession of Obligated Entities indicates that personal data can be shared without the consent of an individual due to, among others, national security.

<sup>267</sup> Arts. 80-83 establish general principles for processing personal data in the areas of national security and administration of justice.

<sup>268</sup> Estados Unidos Mexicanos, 'Leyes Federales de México', sec. 202 Art. 7 (para. 2), 69 (IV, b).

The National Institute for Transparency, Access to Information and Protection of Personal Data (*Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales - INAI*) remains the supervisory authority in the area of personal data protection.<sup>269</sup>

## MANUAL ON THE PROCESSING OF BIOMETRIC DATA



Even though the general data protection framework does not provide specific provisions regarding the processing of biometric data (what can sometimes create a hazardous limbo),<sup>270</sup> the INAI published a 'Manual on the treatment of biometric data'<sup>271</sup> providing a definition of biometric data and guidance on how to process this kind of data while ensuring rights of individuals.

### 5.1.5. Freedom of Information regulations

Mexico implemented **one of the most robust legal frameworks on the right to information in the world** (scored 2<sup>nd</sup> according to the Global Right to Information Rating<sup>272</sup>). According to Mexican legislation **everyone, including non-nationals, has a right to access public information** (including unpublished information).<sup>273</sup> There are two major channels to exercise this right: the submission of an individual request to the Transparency Unit of the relevant public body (such dedicated unit is formed within each governmental body) or application through the National Transparency Platform (*Plataforma Nacional de Transparencia*).<sup>274</sup> As with the processing of personal data, the regulatory authority in the area of the right to information is INAI. The same authority is also the administrator of the National Transparency Platform.<sup>275</sup>

## 5.2. AVAILABILITY AND ACCESSIBILITY OF DATA

Data on children in immigration detention is available and accessible through the official websites of CEM and National Transparency Platform.<sup>276</sup> According to the reports published by the CEM a total of **53,507 children were detained in INM Centres in 2019**, including 40,265 accompanied and 13,242 unaccompanied (the latter group was detained while waiting for their transfer to DIF facilities).<sup>277</sup> **During COVID-19 pandemic in 2020, the total number of detained children in these facilities significantly decreased** to 11,514, including 6,810 accompanied and 4,704 unaccompanied.

<sup>269</sup> Estados Unidos Mexicanos, sec. 202; Estados Unidos Mexicanos, sec. 208 Arts. 9, 11 (VI), 16, 17, 18 (para. 6), 21, 33, 54 (VII), 65 (VI), 71 (II) and Title 4th (Chapters II, III and IV).

<sup>270</sup> Milenio Diario, 'En México, Ficha Biométrica a Migrantes "de Interés" Para EU', 17 November 2019 ; Adrián Espallargas, 'México recopila información biométrica de los inmigrantes a cambio de fondos de EE.UU.', ABC, 6 April 2019.

<sup>271</sup> Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales, 'Guía para el tratamiento de datos biométricos | Documentos (y guías) para el Sector Público', March 2018.

<sup>272</sup> Access Info and Centre for Law and Democracy, Global Right to Information Rating.

<sup>273</sup> The enjoyment of this right is secured by the provisions of the Law on Transparency and Access of Public Governmental Information and Law on Protection of Personal Data in Possession of Obligated Entities.

<sup>274</sup> Estados Unidos Mexicanos, sec. 208 Title 5th (Chapter I).

<sup>275</sup> Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales, 'Plataforma Nacional de Transparencia'.

<sup>276</sup> Although information is accessible, the search engine of the National Transparency Platform, in particular regarding previous FOI requests, is not user-friendly.

<sup>277</sup> Unidad de Política Migratoria - SEGOB, 'CEM | Dirección de Estadística | Boletines Estadísticos'.

Complementary to the information provided by the CEM reports, FOI requests were sent directly via e-mail to the Department of Statistics of the CEM and to the Transparency Unity of the INM through the address provided by the National Transparency Platform. In both cases our requests were **responded to in a timely manner**. The one sent to the Department of Statistics of the CEM was answered on the subsequent day. The one submitted to the Transparency Unity of the INM was first formally accepted (confirmation of its acceptance was received together with the provision of protocol number and clear specifications regarding further steps of the process) and substantively answered within the timeframe prescribed by law (answered after 19 days, one day before the maximum timeframe).

The answers to the FOI requests were mostly qualitative. The CEM explained that the number of detained migrant children in their reports includes individuals sheltered in Migration Centres and Provisional Centres. The INM Transparency Unity stressed that **placement of migrants of all ages in police custody is prohibited** and that according to the Migration Law, the maximum length of the migration process is 15 business days. Although requested, no actual figure regarding the average length of detention of children in the INM Centres was released.



### NATIONAL TRANSPARENCY PLATFORM – ACCESS TO DATA INCLUDED IN THE RESPONSES TO HISTORICAL FOI REQUESTS

The National Transparency Platform allows for the identification and access of historical responses to FOI requests since 2003.<sup>278</sup> The database includes a considerable number of replies to the historical requests on the operation of Migration Centers (1,050 requests out of which 10% concerned, at least to a certain extent, children) as well as the migratory status of children (542 requests). Several requests specifically concerned immigration detention of children, in particular statistics on the training in the area of children's rights provided to the personnel of the INM, information on a budget allocated to the adaptation of migratory facilities to the needs of children, or statistics on the treatment of asylum seekers below 18 years of age.<sup>279</sup>

Notwithstanding, there are no **child-friendly versions of the official websites of the INM, CEM, or National Transparency Platform**. Likewise, there are no regulations that establish an obligation to provide child-friendly information. All the information published on the abovementioned websites is available only in Spanish.<sup>280</sup>

<sup>278</sup> Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales, 'Plataforma Nacional de Transparencia'.

<sup>279</sup> Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales, Response of the INM to the FOI Request nr. 0411100027417 from 14 March 2017 ; Response of the Secretaría de Hacienda y Crédito Público to the FOI Request nr. 0000600083917 from 29 March 2017 ; Response of the INM to the FOI Request no 0411100014720 from 26 February 2020.

<sup>280</sup> The majority of migrants in Mexico are of Latin American origin, which justifies the prioritization of Spanish translations of the documents and websites. Nevertheless, as mentioned by the CEM representative G.C on the interview conducted on 7 June 2021, many of the migrants (both adults and children) speak indigenous languages. For this reason, the Mexican National Human Rights Commission recommends translation of information for migrants into indigenous languages. See: Comisión Nacional de los Derechos Humanos, Report on the situation of migrant children in Central America, 2018.

### 5.3. TIME TRENDS

The reports published by the CEM are **updated monthly and annually**. They have been published since 2002, however, only **since 2007** more comprehensive and disaggregated information regarding the detention of children in INM Centres has been available.

### 5.4. LEVEL OF DISAGGREGATION

In line with the Convention on the Rights of the Child, the legislation applicable to migration issues defines children and teenagers as every person below 18 years of age (*NNA-niñas, niños y adolescentes*).<sup>281</sup> The CEM statistical reports provide **data disaggregated by two age groups**, namely **children** (0-11 years of age) and **adolescents** (12-17 years of age). This disaggregation is **due to the different needs and vulnerabilities** of children and adolescents that should be appropriately addressed.<sup>282</sup> In addition to age, the data included in the CEM Reports is disaggregated by **gender, nationality, and accompanied status** as required by the relevant legislation.<sup>283</sup>

Internal reforms within the INM and CEM have significantly increased the quality of data, in particular **the level of disaggregation**, and further improvements are expected due to the reform of 11/2020 (e.g. compilation of derived statistical data).<sup>284</sup> In addition, **a special section of the reports is dedicated to data related to children (including disaggregated statistics) since 2013**.<sup>285</sup>



#### RECORDING DATA ON DISABILITY

Even though the information on disability of detainees is currently not recorded by the CEM, it is expected that this feature will be integrated into the statistical framework soon.<sup>286</sup> The reform of 11/2020 increased the need for cooperation between various governmental agencies responsible for the reception, care, regularisation, as well as the development of statistical reports on migrants (in particular INM, CEM, DIF, and COMAR). This cooperation will likely facilitate the development of an integrated data platform with the increased level of disaggregation (including disability and place of application for status regularisation).

<sup>281</sup> Migration Law follows the definition established under the General Law on the Rights of Girls, Boys, and Youth. See: Estados Unidos Mexicanos, 'Leyes Federales de México', sec. 077 Art. 3 (nr. XIX).

<sup>282</sup> Interview with G.C. - Representative of the Centre for Migration Studies - CEM.

<sup>283</sup> This level of disaggregation is required by the Federal Law on Transparency and Access of Public Governmental Information. See: Estados Unidos Mexicanos, sec. 208 Art. 69 (b and c).

<sup>284</sup> Interview with G.C. - Representative of the Centre for Migration Studies - CEM.

<sup>285</sup> Unidad de Política Migratoria - SEGOB, 'CEM | Dirección de Estadística | Boletines Estadísticos', sec. 3.1.4.

<sup>286</sup> Interview with G.C. - Representative of the Centre for Migration Studies - CEM.

## 5.5. CONCLUSIONS

The prohibition of deprivation of liberty of all migrant children and their family members which was introduced in November 2020 means that Mexico has made a significant step towards the fulfilment of the UNGS recommendations providing adequate conditions for migrant children. The reform of 11/2020 can create momentum for further enhancement of data collection and make statistics more useful for policy-makers.

### 5.5.1. Key takeaways

Data on migrant children has been **continuously improving through the last years**, already reaching satisfactory quality in 2013. The CEM reports containing this data are released on a regular basis and are easily accessible through the official website. In addition, **historical data is accessible through the National Transparency Platform** through the search of the responses to previous FOI requests (since 2003). The Platform provides a convenient way to submit FOI request which are timely and comprehensively addressed, also when submitted by non-nationals.

Additional improvements in the quality of data on migrant children are expected with the implementation of the reform of 11/2020 such as **disaggregation by disability** in the CEM reports. These improvements shall be able to provide further support to public policies aiming at the realisation of children's rights. The deficiencies in the legal framework on **processing of biometric data have been partially addressed by the adoption of the official guidelines** in this matter (see 'Manual on the treatment of biometric data').<sup>287</sup>

The positive effect of the reform of 11/2020 is facilitated by **several strategic litigation cases** that can ultimately lead to the **prohibition of detention for all migrants**. These developments can ultimately shift perception of migration away from being a national security issue.

### 5.5.2. Room for improvement

Ensuring that no children are de facto deprived of liberty requires **full implementation of the reform of 11/2020**, in particular through the adoption of relevant subordinate legislation. To ensure accountability of public authorities, CSOs and the Public Defenders' Office should have free access to shelters where children are accommodated.

Aiming to the development of comprehensive public policies in the area of migration, the already visible advancements in data processing could be further facilitated by **better disaggregation and privacy protection measures** (see section 3.4 Level of disaggregation). Alongside this, through upholding the principle of the best interest of the child, public authorities could provide additional multilingual child-friendly and child-centred materials to migrant children and their family members and keep the legal information available on websites of migration agencies and the Mexican Senate up to date.

<sup>287</sup> Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales, 'Guía para el tratamiento de datos biométricos | Documentos (y guías) para el Sector Público', March 2018.

## 6. CONCLUSIONS AND RECOMMENDATIONS

At least three important conclusions emerge from the analysis. First, the **data on immigration detention of children remains** significantly limited. Keeping this issue high on the international agenda would arguably allow for more reliable and comprehensive data in the future. The influence of international and regional organisations as well as public opinion is best reflected by the **increasing availability of statistics on unaccompanied and separated children** (74% of countries that collect data on immigration detention distinguish this group). Nevertheless, any global estimates that are based, at least to certain extent, on the number of unaccompanied children are significantly underestimated. At the same time, a number of countries do not collect data on children detained with their parents (legal guardians). For instance, the United States introduced a category of ‘family units’ that blurs the demographic structure of migrants.<sup>288</sup>

Second, **despite the significant digitisation of public administration, as well as the ‘datafication’ of immigration laws** (i.e. inclusion of more data-related regulations, in particular obligations to maintain the registry and vast categories of personal data that can be collected), the **accessibility of properly disaggregated statistics remains low**. Only six in ten countries disaggregates statistics by gender and even less by nationality (five in ten). At the same time, the implementation of increasingly sophisticated data-based systems in the area of international migration governance, particularly for automated decision-making (e.g. visa processing), suggests the availability of detailed demographic data on migrants in at least certain countries (e.g. Australia, Canada, France, New Zealand). The gap between the scope of data collected by public authorities and the availability of statistical data points to the need for regulations that allow the **reuse of selected information for specific purposes, in particular for statistical and research purposes**. A solution that can strike an appropriate balance between the protection of migrants’ rights and public interest is to delegate this task to the **National Statistical Offices** while **ensuring their independence** and **strong statistical confidentiality laws**. The United Kingdom is an example of a successful partnership between immigration and statistical authorities.

This leads us to the third finding which relates to the **impact of FOI regulations on public accessibility of administrative records**. Access to reliable, timely and high-quality data is essential for understanding how migration detention affects children and their families, and how more child-friendly policies and practices can be implemented.<sup>289</sup> The research indicates that a robust FOI framework indeed facilitates the accessibility of statistics on immigration detention of children. In particular, the development of **Open Data Portals** allows to identify the relevant authorities and, through the access to historical FOI requests, assess the scope of available data. Nevertheless, information released under both FOI requests as well as annual reports of immigration authorities, indicates that **data is rarely duly anonymised**. Only three countries (**Australia, Finland, and the United States**) did not disclose small numbers due to privacy protection standards while **Bosnia and Herzegovina** provided statistics on

<sup>288</sup> According to the US Customs and Border Protection, a “[f]amily Unit represents the number of individuals (either a child under 18 years old, parent or legal guardian) apprehended with a family member by the U.S. Border Patrol”. See: United States (U.S. Customs and Border Protection), ‘U.S. Border Patrol Southwest Border Apprehensions by Sector’.

<sup>289</sup> UNICEF, ‘A Call to Action: Protecting Children on the Move Starts with Better Data’, 2018.

‘top nationalities’ which can, in certain situations, also provide an adequate level of protection. The abovementioned can be translated into recommendations to facilitate availability and accessibility of data on immigration detention of children. Data should be perceived as a **tool for measuring progress toward ending detention and leaving no child behind bars**:

### DATA COLLECTION



Data on children in immigration detention is still not collected in many states and therefore the **progress toward ending immigration detention cannot be assessed globally**. For this reason, all states should collect data on the migrant children they detain and should do so frequently, at minimum, **on an annual basis**. At the same time, states should ensure that the methodology of data collection remains of high quality and **produce statistics comparable throughout the time and across regions**. In this context, it is desirable that data collection framework is developed **in cooperation with the National Statistical Offices** as well as **regional and/or international organisations**.

### BETTER DATA



The type of data that is collected from children is very limited in many cases. It is imperative that there is an appropriate amount of information collected for children because of their **particularly vulnerable position**, in order to provide them with the most appropriate child-centric care. Therefore, data that is collected by states should always be disaggregated by at least **age** (according to the CRC definition), **gender, nationality, disability, length of detention, migration status, accompanied status, and place of detention**. In addition, states should constantly improve their statistical capacity by including additional information, in particular **health data**.

### PROTECTED DATA



Due to the vulnerability of children being detained, and the precarious or dangerous backgrounds that these children may be fleeing from, it is important that the data being collected is **appropriately protected and anonymised**. Data breaches have serious issues for both the children and their families (with potential ramifications in their countries of origin who may be able to persecute them if they're returned) and for states who could be liable to pay compensation. States must implement practices like those demonstrated in Australia, Bosnia and Herzegovina, Finland or the United States, where **small numbers are not released publicly**. States should also ensure the highest possible level of encryption and cyber protection is used for this data through legislative protections (including access to remedy), along with having appropriate procedures and legislation in place so that **sensitive personal data is never accidentally published**.



## DATA ACCESSIBILITY

Having anonymised data that is accessible to the public is **integral in the push to eliminate detention of children for migration related reasons**. The securitisation of migration detention has meant that states often avoid making migration detention data available to the public. However, **appropriately anonymised data disaggregated by basic features should be published by default** while more detailed statistics shall be made accessible to the public through FOI channels, **in particular for research and statistical purposes**.

The abovementioned recommendations aim at moving away from state-centred approach to data where access to data is restricted to public authorities, particularly in the areas of national security and immigration. Their implementation could catalyse the **systemic shift towards a child-centred approach to data** where data serves the best interests of the child, whether for the early identification of vulnerable individuals and application of alternatives to detention or holding public authorities accountable for achieving progress toward ending deprivation of liberty of children for migration related reasons.

# APPENDICES

## ANNEX I. DATA MATURITY INDEX – CODEBOOK

	VARIABLES	LABELS AND ASSOCIATED SCORES
LEGAL FRAMEWORK 0-5	<p><b>Definitional clarity of deprivation of liberty for migration related reasons</b> (whether regulations indicate which settings amount to deprivation of liberty or use euphemisms, in particular restrictions of freedom of movement)</p>	<p>0 No</p> <p>0,5 Partly (e.g. interpretation of several provisions allows to identify that certain setting amount to deprivation of liberty)</p> <p>1 Yes (e.g. single provisions specifies whether place amounts to deprivation of liberty, e.g. typically using term such as deprivation of liberty, detention or internment).</p>
	<p><b>Clear prohibition of immigration detention of children</b> (whether regulations prohibit detention of children or only certain groups such as unaccompanied children, minors below certain age threshold)</p>	<p>0 No</p> <p>0,5 Partly (e.g., prohibition of detention of certain group, for instance unaccompanied and separated children)</p> <p>1 Yes</p>
	<p><b>Robustness of personal data protection regime</b> (regulation and enforcement of data protection regulations)</p>	<p>0 No data protection law (or no data)</p> <p>0,25 limited data protection law and enforcement</p> <p>0,5 moderate data protection law and enforcement</p> <p>0,75 robust data protection law and enforcement</p> <p>1 heavy data protection law and enforcement</p> <p><i>This variable was extracted from the database 'Data Protection Laws of the World' compiled by DLA Piper.</i></p>
	<p><b>Scope of personal data collected</b> (whether regulations indicate which data, including personal and biometric data, are allowed to be collected and processed by authorities)</p>	<p>0 No</p> <p>0,5 Partly (general descriptions of data, e.g. personal information)</p> <p>1 Yes</p>
	<p><b>Data rights of individuals</b> (whether regular data protection regime is applicable to data on foreigners, e.g. right to access one's data or maximum data retention periods)</p>	<p>0 No</p> <p>0,5 Limited rights (e.g. only enlisted rights such as right to access, correct or delete data under certain conditions)</p> <p>1 Yes (regular data protection regulations apply)</p>
PUBLIC ACCESSIBILITY 0-5	<p><b>Robustness of Freedom of Information regime</b> (to what extent legal framework facilitates access to data collected by the authorities)</p>	<p>Scale 0-1 based on the Global Right to Information Rating developed by the Centre for Law and Democracy and Access Info. Methodology behind the variable:</p> <ol style="list-style-type: none"> <li>1) The following subindicators are taken into account: 2, 4, 6, 7, and 29.</li> <li>2) The score (maximum score: 24) is standardized into percentages.</li> <li>3) For calculating of the variable each 10% stands for 0,1 (maximum score: 1).</li> <li>4) The numbers are rounded up above 0,05 threshold (e.g. 95,8 stands for 1).</li> </ol>
	<p><b>Statistics published by default</b> (whether statistics on the detention of children for migration related reasons are released publicly by default, e.g. in the annual reports compiled by the respective authority or published on Open Data portals)</p>	<p>0 No</p> <p>0,5 Partly - shared by default in response to FOI request (e.g. Open Data Portal of Canada)</p> <p>1 Yes (open platforms, websites, reports, Open Data portals)</p>
	<p><b>Data shared with the UN</b> (whether data on children detained for migration related reasons has been shared either within the UN Global Study; under the last periodic review before CRC Committee or CMW Committee; or with the UN agencies, in particular UNHCR within the last five years)</p>	<p>0 No</p> <p>1 Yes (UNGS, UNHCR or last periodic review for CRC or CMW Committees)</p>

	VARIABLES	LABELS AND ASSOCIATED SCORES
	<p><b>Data shared on FOI request or previous inquiries</b> (whether data was shared on FOI requests submitted within the project or in response to the previous FOI requests and/or parliamentary inquiries)</p>	<p>0 No 1 Yes</p>
	<p><b>Clear prohibition of detention of children</b> (whether regulations prohibit detention of children or only certain groups such as unaccompanied children, minors below certain age threshold)</p>	<p>0 No response 0,25 Rejection of request (e.g. automatic response) 0,5 Replied later than 1 month 0,75 Replied within 1 month 1 Replied within 2 weeks</p> <p><i>If shared on requests of others, score 1 is granted.</i></p>
TIME TRENDS 0-4	<p><b>Last update</b> (whether data from 2019 or 2020 is available – either publicly or extracted through FOI request)</p>	<p>0 last update earlier than 2019 1 last update in 2019 or 2020</p>
	<p><b>Annual data</b> (whether data is compiled on annual basis)</p>	<p>0 annual data <b>not</b> available 1 annual data available</p>
	<p><b>Regularity</b> (whether data is compiled on a regular basis, i.e. annually, quarterly or daily, or compiled ad hoc, for instance when a FOI request is submitted)</p>	<p>0 No (ad hoc) 1 Yes (this score is granted when data was collected and/or compiled in at least three intervals covering at least three last years)</p>
	<p><b>Longitudinal data</b> (whether longitudinal data is available – either for 5 or 10 last years)</p>	<p>0 No 0,5 At least 5 year 1 At least 10 years</p>
LEVEL OF DISAGGREGATION 0-6	<p><b>Age</b> (whether age group 0-18 is distinguished in the statistics)</p>	<p>0 No data disaggregated by age 0,5 Data partly disaggregated (e.g. only for unaccompanied children) 1 Statistics distinguish children</p>
	<p><b>Gender</b> (whether data is disaggregated by gender)</p>	<p>0 No 1 Yes</p>
	<p><b>Nationality</b> (whether data is disaggregated by nationality)</p>	<p>0 No 1 Yes</p>
	<p><b>Disability</b> (whether information on disability is recorded)</p>	<p>0 No 1 Yes</p>
	<p><b>Accompanied status</b> (do the statistics indicate whether a child was detained unaccompanied or with a family/legal guardian)</p>	<p>0 No 0,5 only unaccompanied children 1 unaccompanied children and with family</p>
	<p><b>Privacy protection</b> (whether released data is duly anonymised, in particular whether small numbers that could lead to the re-identification of an individual are not made public)</p>	<p>0 Small numbers released/published (or data unavailable) 1 Small numbers aggregated (for numbers &lt;5)</p>

## ANNEX II. FREEDOM OF INFORMATION REQUEST LOG

COUNTRY	RIGHT TO INFORMATION*		AUTHORITY	LANGUAGE OF THE FOI REQUEST	REPILED TO THE INITIAL FOI REQUEST (waiting time in days)	REPILED TO THE FOLLOW-UP FOI REQUEST (waiting time in days)	INFORMATION RELEASED*					ADDITIONAL INFORMATION	
	RTI	GJN			days	days	annual number of children in immigration detention (calendar year)	gender	nationality	accompanied status	length of detention		
Angola	✓✓	?	Angola National Contact Point (SADC), Ministry of Foreign Affairs	Portuguese	no reply	N/A	N/A						
Australia	✓✓	?	Department of Home Affairs	English	44	N/A	2019-2020						The department sent two replies asking for time extensions with the request.
Belgium	✓✓	?	Immigration Department of the State Secretary for Asylum and Migration (Ministry of Security and Interior)	French	no reply	N/A							
Bosnia and Herzegovina	✓✓	?	Service for Foreigner's Affairs	Serbian	7	14	2011-2019						For follow-up request, an aggregated number for 2011-2018 number was released. In addition, only most common nationalities were disclosed.
Brazil	✓✓	✓✓	Federal Police/DEPEN National Penitentiary Department/ Secretariat of Justice and Public Security	Portuguese	3	1							No detention confirmed
Bulgaria	✓✓	✓✓	Migration Directorate (Ministry of Internal Affairs)	English	11	8	2019						The follow-up request was responded indicating that the data for 2011-2018 are not available.
Canada	✓✓	?	Canada Border Services Agency	English	6	(due to the lack of citizenship/residency)	2014-2016						The initial request was related to the data that was previously requested by other applicant but not published on Open Data Portal. The follow-up request was rejected due to the lack of citizenship or residency
Croatia	✓✓	?	Ministry of Interior	English	8		2019-2020						Information that was released included children detained at the airports (6 children in Dubrovnik Airport) as well as in police stations (no children detained).
Denmark	✓✓	?	Danish Immigration Office (Udlændingestyrelsen)	English	no reply	N/A							The initial request was sent to the Kriminalforsorgen (Danish Prison and Probation Office) but was then redirected to the Udlændingestyrelsen and Rigspoliti (Danish Police) both of whom didn't respond.
Finland	✓✓	?	Finnish Immigration Service	English	1		2014-2020						The initial request covered data for 2011-2020. The information shared covered period since 2014, which was the year of establishment of the facility.
France (incl. Mayotte)	✓✓	?	Ministry of Interior	French	30	1	2019						The released data refer only to continental France. When asked for statistics on children detained in Mayotte, the reply indicated that such data is not available.
Georgia	✓✓	?	Ministry of Internal Affairs (Public Information Division)	English	Not recorded	N/A	2019-2020						Initial request was submitted via dedicated form on the official website of Georgian Police.
Iraq		?	Ministry of Migration and Migrants	Arabic	no reply	N/A							
Jordan	✓✓	?	Ministry of Interior	Arabic	no reply	N/A							
Kazakhstan	✓✓	?	Border Service of the National Security Committee	Russian	(no reasons given)	N/A							Rejection by automated responder (with specific number assigned to the request).

Kenya			Department of Immigration Services (Ministry of Interior and Co-ordination of National Government)	English		N/A		N/A			
Lebanon			General Security Directorate	Arabic		N/A		N/A			
Malaysia		No right to information established in law	Immigration Department of Malaysia (Depot and Detainee Management Division)	English				N/A		Reply to the initial FOI request indicated another competent unit within the authority. The renewed request remained unanswered. Due to the scarcity of data Malaysia was subsequently excluded from the research.	
Malta			Immigration Police	English		(due to the lack of citizenship/residency)	N/A		N/A		
Mexico			Ministry of Interior (Centre for Migration Studies) / National Institute of Migration	Spanish							In response to the FOI request, we were referred to the website of the Ministry of Interior that includes data since 2007 disaggregated by the features indicated in the table.
Mozambique			(recorded only by GIJN)	Ministry of Interior / Ministry of Foreign Affairs	Portuguese		N/A		N/A		
New Zealand			Ministry of Business, Innovation and Employment	English							The request was first sent to Immigration NZ but then was referred to the Ministry of Business, Innovation and Employment which is the Ministry that Immigration NZ falls under. After the follow up request, the Ministry replied asking for confirmation of New Zealand citizenship or residence and thought the request would be cancelled however despite not having this, an answer was given 3 days later.
North Macedonia			Ministry of Internal Affairs	Macedonian							The reply to FOI request was subsequently released publicly on the website of the authority, however, without anonymizing the applicant.
Norway			Directorate of Immigration (initial request) National Police Immigration Service (follow-up request)	English							
Poland			Border Guard	Polish							
Romania			General Inspectorate for Immigration (Ministry of Internal Affairs)	English							
Russia			Ministry of Internal Affairs	Russian		N/A		N/A			
Serbia			Border Police Directorate (Ministry of Internal Affairs)	Serbian							Statistics for Nikola Tesla airport were not provided for 2011-2018 due to lack of data.
Spain			(recorded only by GIJN)	Ministry of Interior	Spanish		N/A		N/A		After reaching out Ministry of Interior, we were informed on the possible channels to submit FOI request and Spanish ID was required.
Sweden			Swedish Migration Agency	English		(due to the confidentiality)	N/A		N/A		In response to the FOI request, we were informed that "[t]he requested information is classified as confidential and cannot be disclosed to private individuals.
Turkey			(recorded only by GIJN)	Open Data Portal	English		N/A		N/A		
Ukraine			State Migration Service of Ukraine	Ukrainian		N/A		N/A			
United States			U.S. Immigration Customs Enforcement (ICE)	English		N/A		N/A			

\* In the remaining countries covered under the research, publicly available data (disaggregated by most of the features) was available either on the official websites of relevant authorities (United Kingdom) or released in reply to the previous FOI requests (Austria and Czech Republic). In Ireland, statistical information confirms no detention of children for migration related reasons.

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**What is this report about?** This study explores the variety of approaches to data on immigration detention of children taken by public authorities in 37 states. By analysing the legal framework, public accessibility, and quality of statistics, the report provides a comprehensive understanding of data collection frameworks and highlights promising practices for improving data collected by migration authorities.

**Why is it important?** Well-managed migration policies require informed policymaking rooted in evidence. In this context, data remains one of the most important tools for ending immigration detention of children which, although violates international human rights law, is still widely practiced.

**How can children benefit from this study?** Better data allows for early identification of vulnerable children and greater accountability of public authorities in the implementation of migration policies, including alternatives to immigration detention. By raising awareness on the role of data in strengthening the protection of children's rights, this study seeks to inform policymaking, human rights advocacy, investigative journalism, and strategic litigation.

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