

**mixed migration research series**

explaining people on the move

# Behind bars

the detention of migrants in and  
from the East & Horn of Africa



Study



**RMMS**

Regional  
Mixed Migration  
Secretariat



February 2015

# Behind bars: the detention of migrants in and from the East & Horn of Africa

This is the eighth of a series of studies – *explaining people on the move*: focusing on different aspects of mixed migration associated with the East and Horn of Africa (including Yemen) region.

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## The Regional Mixed Migration Secretariat (RMMS)

Formed in 2011 and based in Nairobi, the overall objective of the RMMS is to support agencies, institutions and fora in the Horn of Africa and Yemen sub-region to improve the management of protection and assistance to people in mixed migration flows in the Horn of Africa and across the Gulf of Aden and Red Sea in Yemen. The co-founders and Steering Committee members for the RMMS include UNHCR, IOM, Danish Refugee Council (DRC), INTERSOS and the Yemen Mixed Migration Task Force. The RMMS is therefore a regional hub aiming to provide support and coordination, analysis and research, information, data management and advocacy. It acts as an independent agency, hosted by the DRC, to stimulate forward thinking and policy development in relation to mixed migration. Its overarching focus and emphasis is on human rights, protection and assistance.

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## List of acronyms

ACHP:	African Commission on Human and Peoples' Rights
AIDA:	Asylum Information Database
APT:	Association for the Prevention of Torture
DRC:	Danish Refugee Council
CAT:	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CERD:	International Convention on the Elimination of All Forms of Racial Discrimination
CIE:	Identification and Expulsion Centre ( <i>Centri di identificazione ed espulsione</i> )
CPT:	Committee for the Prevention of Torture
CRC:	Convention on the Rights of the Child
DRC:	Democratic Republic of Congo
ECRE:	European Council on Refugee and Exiles
FCO:	Foreign and Commonwealth Office
HRC:	UN Human Rights Committee
HRCE:	Human Rights Concern Eritrea
HRLHA:	Human Rights League of the Horn of Africa
ICCPR:	International Covenant on Civil and Political Rights
ICRC:	International Committee of the Red Cross
IDC:	International Detention Coalition
ILO:	International Labour Organisation
IMBR:	International Migrant Bill of Rights
IPOA:	Independent Policing Oversight Authority (Kenya)
IRIN:	Integrated Regional Information Network
IOM:	International Organization for Migration
JRS:	Jesuit Refugee Service
KNCHR:	Kenya National Commission on Human Rights
MMTF:	Mixed Migration Task Force
NGO:	Non-Governmental Organization
OHCHR:	Office of the High Commissioner for Human Rights
OLF:	Oromo Liberation Front
ONLF:	Ogaden National Liberation Front
OPCAT:	Optional Protocol to the Convention against Torture
RCK:	Refugee Consortium of Kenya
RMMS:	Regional Mixed Migration Secretariat
UNDP:	United Nations Development Program
UNHCR:	Office of the United Nations High Commissioner for Refugees
UNODC:	United Nations Office on Drugs and Crime
UNPOS:	United Nations Political Office for Somalia
USD:	United States Dollar
WGAD:	UN Working Group on Arbitrary Detention



## Glossary of terms

**Selected definitions from the International Organization for Migration's Glossary on Migration (2004). The Full Glossary is available at [http://publications.iom.int/bookstore/free/IML\\_1\\_EN.pdf](http://publications.iom.int/bookstore/free/IML_1_EN.pdf)**

### **arbitrary**

In an unreasonable manner, related to the concepts of injustice, unpredictability, unreasonableness and capriciousness.

### **assisted voluntary return**

Logistical and financial support to rejected asylum seekers, trafficked migrants, stranded students, qualified nationals and other migrants unable or unwilling to remain in the host country who volunteer to return to their countries of origin.

### **asylum seekers**

Persons seeking to be admitted into a country as refugees and awaiting decision on their application for refugee status under relevant international and national instruments. In case of a negative decision, they must leave the country and may be expelled, as may any alien in an irregular situation, unless permission to stay is provided on humanitarian or other related grounds.

### **checkpoint**

A location (on the land border or at an airport or seaport) where persons are stopped by border officials for inspection and clearance, in order to enter the State.

### **civil and political rights**

Commonly used to describe the various rights contained in the *International Covenant on Civil and Political Rights, 1966* (e.g. right of self-determination; of free disposition of natural wealth and resources; of non-discrimination; of equal rights of men and women; right to life; freedom from torture, cruel, inhuman or degrading treatment or punishment; of freedom from slavery and servitude; of freedom from arbitrary arrest or detention; of freedom of movement within a State; right to liberty and security of the person; equality before the courts; right to a fair and public hearing by an impartial tribunal in respect of criminal charges; prohibition of retroactive criminal liability; right of privacy of the family, the home or correspondence; freedom of thought, conscience and religion; freedom of expression; right to peaceful assembly; freedom of association and of participation in public affairs).

### **border control**

A State's regulation of the entry of persons to its territory, in exercise of its sovereignty.

### **border officials**

A generic term describing those officials whose primary task is to guard the border and enforce the immigration (and possibly customs) laws of the State. Also termed "border guards", "border police" or "aliens police".

**de facto (Latin)**

Existing as a matter of fact.

**deportation**

The act of a State in the exercise of its sovereignty in removing an alien from its territory to a certain place after refusal of admission or termination of permission to remain.

**detention**

Restriction on freedom of movement, usually through enforced confinement, of an individual by government authorities. There are two types of detention. Criminal detention, having as a purpose punishment for the committed crime; and administrative detention, guaranteeing that another administrative measure (such as deportation or expulsion) can be implemented. In the majority of the countries, irregular migrants are subject to administrative detention, as they have violated immigration laws and regulations, which is not considered to be a crime. In many States, an alien may also be detained pending a decision on refugee status or on admission to or removal from the State.

**economic migrant**

A person leaving his/her habitual place of residence to settle outside his/her country of origin in order to improve his/her quality of life. This term may be used to distinguish from refugees fleeing persecution, and is also used to refer to persons attempting to enter a country without legal permission and/or by using asylum procedures without bona fide cause. It also applies to persons settling outside their country of origin for the duration of an agricultural season, appropriately called seasonal workers.

**exploitation**

The act of taking advantage of something or someone, in particular the act of taking unjust advantage of another for one's own benefit (e.g. sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs).

**expulsion**

An act by an authority of the State with the intention and with the effect of securing the removal of a person or persons (aliens or stateless persons) against their will from the territory of that State.

**forced/compulsory labour**

All work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself/herself voluntarily (*Art. 2(1), ILO Convention No.29 on Forced Labour, 1930*).

**freedom of movement**

This right is made up of three basic elements: freedom of movement within the territory of a country (*Art. 13(1), Universal Declaration of Human Rights, 1948*: "Everyone has the right to freedom of movement and residence within the borders of each state."), right to leave any country and the right to return to his or her own country (*Art. 13 (2), Universal Declaration of Human Rights, 1948*: "Everyone has the right to leave any country, including his own, and to return to his country.").

**habeas corpus**

An action before a court to test the legality of detention or imprisonment.

**hearing**

The opportunity to be heard or to present one's side of a case before a tribunal.

**holding centre**

A facility lodging asylum seekers or migrants in an irregular situation as soon as they arrive in a receiving country; their status is determined before they are sent to refugee camps or back to their country of origin.

**human rights**

Those liberties and benefits which, by accepted contemporary values, all human beings should be able to claim "as of right" in the society in which they live. These rights are contained in the *International Bill of Rights, comprising the Universal Declaration of Human Rights, 1948 and the International Covenants on Economic, Social and Cultural Rights, and on Civil and Political Rights, 1966* and have been developed by other treaties from this core (e.g. *The Convention on the Elimination of All Forms of Discrimination against Women, 1979; International Convention on the Elimination of All Forms of Racial Discrimination, 1965*).

**illegal entry**

Act of crossing borders without complying with the necessary requirements for legal entry into the receiving State (*Art. 3(b), UN Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention*

**international protection**

Legal protection, based on a mandate conferred by treaty to an organization, to ensure respect by States of rights identified in such instrument as: *1951 Refugee Convention, 1949 Geneva Conventions, and 1977 Protocols*, right of initiative of ICRC, ILO Conventions, human rights instruments.

**internally displaced persons/ IDPs**

Persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border (*Guiding Principles on Internal Displacement, UN Doc E/CN.4/1998/53/Add.2*).

**irregular migrant**

Someone who, owing to illegal entry or the expiry of his or her visa, lacks legal status in a transit or host country. The term applies to migrants who infringe a country's admission rules and any other person not authorized to remain in the host country (also called clandestine/ illegal/undocumented migrant or migrant in an irregular situation).

**irregular migration**

Movement that takes place outside the regulatory norms of the sending, transit and receiving countries. There is no clear or universally accepted definition of irregular migration. From the perspective of destination

countries it is illegal entry, stay or work in a country, meaning that the migrant does not have the necessary authorization or documents required under immigration regulations to enter, reside or work in a given country. From the perspective of the sending country, the irregularity is for example seen in cases in which a person crosses an international boundary without a valid passport or travel document or does not fulfil the administrative requirements for leaving the country. There is, however, a tendency to restrict the use of the term “illegal migration” to cases of smuggling of migrants and trafficking in persons.

#### **judicial review**

A court's power to invalidate legislative and executive actions as being unconstitutional or being contrary to law; a court's review of lower court's or an administrative body's factual or legal findings.

#### **kidnapping**

Unlawful forcible abduction or detention of an individual or group of individuals, usually accomplished for the purpose of extorting economic or political benefit from the victim of the kidnapping or from a third party. Kidnapping is normally subject to the national criminal legislation of individual States; there are, however, certain kidnappings that fall under international law (e.g. piracy).

#### **labour migration**

Movement of persons from their home State to another State for the purpose of employment. Labour migration is addressed by most States in their migration laws. In addition, some States take an active role in regulating outward labour migration and seeking opportunities for their nationals abroad.

#### **migrant worker**

A person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national (*Art. 2(1), International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990*).

#### **mixed flows**

Complex population movements including refugees, asylum seekers, economic migrants and other migrants.

#### **non-refoulement**

A principle laid down in the *Geneva Convention Relating to the status of Refugees, 1951* according to which “no Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.” This principle cannot be “claimed by a refugee, whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.” (*Art. 33 (1) and (2), Geneva Convention Relating to the status of Refugees, 1951.*)

**refugee (mandate)**

A person who meets the criteria of the UNHCR Statute and qualifies for the protection of the United Nations provided by the High Commissioner, regardless of whether or not s/he is in a country that is a party to the *Convention relating to the status of Refugees, 1951* or the *1967 Protocol relating to the Status of Refugees*, or whether or not s/he has been recognized by the host country as a refugee under either of these instruments.

**refugee (recognized)**

A person, who "owing to well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinions, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country" (*Convention relating to the status of Refugees, Art. 1A(2), 1951 as modified by the 1967 Protocol*).

**regular migration**

Migration that occurs through recognized, legal channels.

**smuggler (of people)**

An intermediary who is moving people in furtherance of a contract with them, in order to illegally transport them across an internationally recognized State border.

**slavery**

The status or condition of a person over whom any or all the powers attaching to the right of ownership are exercised (*Art. 1, Slavery Convention, 1926 as amended by 1953 Protocol*). Slavery is identified by an element of ownership or control over another's life, coercion and the restriction of movement and by the fact that someone is not free to leave or to change employer (e.g. traditional chattel slavery, bonded labour, serfdom, forced labour and slavery for ritual or religious purposes).

**smuggling**

The procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident (*Art. 3(a), UN Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, 2000*). Smuggling contrary to trafficking does not require an element of exploitation, coercion, or violation of human rights.

**stateless person**

A person who is not considered as a national by any State under the operation of its law (*Art. 1, UN Convention relating to the Status of Stateless Persons, 1954*). As such, a stateless person lacks those rights attributable to nationality: the diplomatic protection of a State, no inherent right of sojourn in the State of residence and no right of return in case s/he travels.

**torture**

Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him/her or a third person information or a confession, punishing him/her for an act s/he or a third person has committed or is suspected of having

committed, or intimidating or coercing him/her or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions (*Art. 1, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984*).

**trafficking in persons**

The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation (*Art. 3(a), UN Protocol to Prevent, Suppress and Punish trafficking in Persons, Especially Women and Children, Supplementing the UN Convention Against Organized Crime, 2000*).

**unaccompanied minors**

Persons under the age of majority who are not accompanied by a parent, guardian, or other adult who by law or custom is responsible for them. Unaccompanied minors present special challenges for border control officials, because detention and other practices used with undocumented adult aliens may not be appropriate for minors.

## Summary of key findings

This section highlights the key findings of the study, further details are found in the subsequent sections of the report.

summary of  
key findings

### Regional Focus

This study focuses on immigration detention in the East and Horn of Africa, as well as Yemen, Israel and Saudi Arabia which are countries where a significant number of migrants from this region migrate to. The report also includes a short section on the use of immigration detention in Italy and Malta, the first points of entry in Europe for Horn of Africa migrants (mainly Eritreans and Somalis) travelling the north-western route out of the region to Europe.

### The use of immigration detention

The use of immigration detention is widespread in the main destination and transit countries affecting migrants in and from East Africa and Horn of Africa countries. Instead of being a measure of last resort, detention of migrants is a routine practice in some of these countries (Djibouti, Israel, Kenya, Saudi Arabia, Tanzania and Yemen). In 2013 and 2014 for example, several countries, such as Kenya, Saudi Arabia and Tanzania carried out mass operations during which thousands of migrants were detained.

In most countries, irregular migrants are generally detained, either by law or as a *de facto* policy. Immigration detention is used for a variety of reasons, which commonly includes: controlling migration flows, as a deterrence measure for future migrants, security reasons (such as identity and health checks) or protection of the labour market. The detention of migrants can also be the result of chaotic or dysfunctional processes. For example, when migrants are detained because there are no resources (financial, transport) available for deportation; when a detention centre is full but the local prison has space; or when the local police demand bribes from migrants and detain them until they pay for their release. In short, migrants are detained for a variety of reasons, including more ad hoc, informal reasons that are not captured in formal immigration policy.

### International legislation

Although most countries have ratified a range of relevant international conventions that regulate the detention of all persons, including migrants, states in the region frequently act in violation of their international obligations:

- The *International Covenant on Civil and Political Rights (ICCPR)*, for example, which is legally binding on all countries that are part of this research except Saudi Arabia, states among other things that “No one shall be subjected to arbitrary arrest or detention”, that “Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him”. Nevertheless, arbitrary arrests are common in all countries and migrants

are often not informed (or at least do not understand) the charges against them.

- The *International Convention on the Elimination of All Forms of Racial Discrimination (CERD)* guarantees the “right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, in the enjoyment of the right to freedom of movement and residence within the border of the State”. Yet, the country sections provide examples of operations during which large numbers of migrants and urban refugees were detained and certain nationalities were specifically targeted, such as Somalis during operation ‘*Usalama Watch*’ in Kenya or Sub-Saharan African migrants in Israel.
- In most countries, children (under the age of eighteen years), both accompanied and unaccompanied, are detained, sometimes together with other adults, which violates the *Convention on the Rights of the Child (CRC)*.
- There have been several examples of *refoulement* of refugees and asylum seekers, for example of Eritreans and Sudanese by Israeli authorities and Somalis by Saudi authorities, which violates the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)* and the *1951 Refugee Convention*.

## Arbitrary detention

The country sections of this report describe how arbitrary detention is common in every country in the region. Especially, but not exclusively, during mass operations as referred to above. On these occasions, authorities did not carry out individual determinations to assess whether detention is reasonable, necessary and proportional, but instead migrants were detained in large groups without individual consideration. Periodic reviews are often not carried out and detained migrants are not always – or only after many days – brought before a judge or into a court. Migrants in Israel can be detained indefinitely, which by definition classifies as arbitrary detention.

## The effects of immigration detention

States consider immigration detention to be a deterrence measure. Although it is widely used in the region, there are no indications that the use of immigration detention leads to a decrease in the volume of mixed migration flows. In fact, increasing numbers of migrants are on the move in mixed migration flows in the region in spite of the threat of detention. Immigration detention (and deportation) could act as a temporary deterrence measure though. The number of migrants travelling from Ethiopia to Yemen and onwards to Saudi Arabia decreased for some time after a major crackdown on irregular migration by Saudi authorities but after some months the number was strongly rising again, with many recently deported Ethiopians re-attempting their journeys. One exception might be Israel, where the use of immigration detention led to a strong reduction of the number of migrants entering Israel. However, in this case, the use of immigration detention is combined with other measures - such as the construction of a fence, the practice of *refoulement* and an extraordinary low recognition rate of refugees. There are also external factors such as the extreme risk of travelling through the Sinai, which deter migrants from travelling to Israel.

Another effect of immigration detention, or the threat of detention, is that it fuels the migration economy, in which smugglers collude with corrupt state officials in extorting money from (detained) migrants, who have to pay to avoid detention or to be released from detention. As such, immigration detention fuels the migration economy both when migrants are on the move and when they are in custody under the aegis of state authorities.

## Alternatives to detention

International law prescribes that immigration detention should be a measure of last resort, only to be applied in exceptional cases, after all alternatives have been shown to be inadequate in the individual case. Nevertheless, there is no evidence in any of the researched countries that alternatives to detention are seriously considered. A possible exception may be Tanzania where the Immigration Department is exploring possibilities of alternatives to detention, such as establishing reception centres for migrants instead of prisons. According to the International Detention Coalition (IDC) restricting the application of detention and using alternatives generally costs less than detention.<sup>1</sup>

## Types of immigration detention centres and detention conditions

Countries in the region use a wide range of locations for the detention of migrants. In many countries, migrants initially spend at least a day or two (but often more) in police cells before being transported to prisons, or specific/makeshift detention centres. The study also shows several examples of ad hoc detention centres (such as a sports stadium during operation *'Usalama Watch'* in Kenya), as well as locations like the Holot Residency Centre in Israel, which is cast as 'open', but for all intents and purposes severely restricts the liberty and freedom of movement of its 'residents'.

Finally, detention of migrants can occur outside of state control. In Libya, for example, there are reportedly around 20 migrant detention centres or camps that are run by militia groups (known as *'katibas'*), composed of former rebels opposed to the Gaddafi regime.<sup>2</sup> As is the case for migrants who are held under state control – but in remote locations or cells in small police stations – this form of detention occurs beyond scrutiny or observation. Information about detention conditions and experiences only becomes available later from migrant testimony.<sup>3</sup>

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1 Sampson, Mitchel and Bowring, 2011, p. 7-9.

2 RMMS, 2014b, p. 55.

3 For example in research by Amnesty International (2013) and the Jesuit Refugee Service in Malta (JRS, 2014).

Although the 2012 UNHCR guidelines<sup>4</sup> state that conditions of detention must be humane and dignified, almost without exception the detention conditions in each of the countries reportedly breach standards, with unhygienic sanitary conditions, lack of proper food, lack of medical services and reported abuse, violence, sexual violations, extortion and bribery to be released.

## Detention monitoring

Most countries (except Eritrea) do allow detention monitoring, although the extent to which independent monitoring is allowed varies considerably. Some countries, such as Saudi Arabia, only allow governmental or quasi-non-governmental organizations to monitor detention conditions, while others, such as Kenya and Tanzania, allow the International Committee of the Red Cross (ICRC) as well as local NGOs and human rights organizations access to their prisons. However, none of the countries in the region have ratified the *Optional Protocol to the Convention against Torture*, which allows for the establishment of a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty.

## Detention of refugees, asylum seekers and vulnerable groups

According to the 2012 UNHCR guidelines and the *1951 Refugee Convention*, the right to seek asylum must be respected. However, the report provides several examples (in Djibouti, Israel, Kenya, Saudi Arabia) of detention and even deportation of migrants who might have genuine protection claims and whose asylum applications are not being considered. In many countries, police officers who might encounter migrants are not sufficiently aware of or are not familiar with refugee law, and as a consequence they detain asylum-seekers/refugees.

Furthermore, in Yemen and Israel there is no proper screening of whether migrants might be victims of trafficking or torture. As a result, it is very likely, especially in these two countries, that there are victims of trafficking and torture among the detained migrant population. Finally, as mentioned, children are frequently detained and there are several examples, as will be described in the sections on Djibouti, Israel, Kenya, Saudi Arabia, Tanzania and Yemen, where women and men and/or adults and children are not detained separately.

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4 It should be noted that the UNHCR (2012) guidelines only refer to asylum seekers. However, in these Guidelines UNHCR also explains: “These Guidelines reflect the state of international law relating to detention – on immigration-related grounds – of asylum-seekers and other persons seeking international protection. They equally apply to refugees and other persons found to be in need of international protection should they exceptionally be detained for immigration-related reasons [...] although they do not specifically cover the situation of non-asylum-seeking stateless persons [...] migrants, although many of the standards detailed herein may apply to them *mutatis mutandis*.”

## Procedural gaps and lack of resources

Due to a lack of clarity of jurisdiction, insufficient state resources, unclear and inefficient procedures and cooperation between authorities both within and between countries, as well as the 'migration detention economy', many migrants spend more time in detention than strictly necessary. For example, after having served their sentence, migrants are often deported to the nearest point of entry where, after crossing the border, they are arrested again.

Moreover, most governments in the region cannot afford to deport migrants, due to a lack of funds. As a consequence, migrants remain in prison or are brought to police cells after they have already finished their sentence and have to wait until authorities are able to carry out the deportation order. Usually embassies of the countries of origin have very little capacity to provide assistance. Finally, migrants often do not understand the charges against them due to a lack of interpreters in court proceedings, are not provided any access to legal assistance and do not get clear information, especially at border posts where police and authorities' capacity is overstretched. As a consequence, they may accept charges against them which they do not understand and/or they are not aware of their legal rights.

## Protection of migrants versus prosecution of smugglers

In most countries, smuggled or trafficked migrants who do not commit a crime per se (as the violation of immigration laws is not a criminal offence in most countries) run a larger risk of ending up in prison for prolonged periods of time compared to the smugglers and traffickers who did committed crimes. Countries in the region continue to detain migrants, but often fail to prosecute smugglers and traffickers. It should be noted here that there is a thin line between smuggling and trafficking with the differences becoming increasingly blurred. Migrants might start their journey by agreeing to be smuggled into a country, but find themselves deceived, coerced or forced into an exploitative situation later in the process.<sup>5</sup>

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5 RMMS, 2013a, p. 13.



# 1 Introduction

## 1.1 Objectives and methodology

The research sheds light on the issue of migrant detention in and beyond the East and Horn of Africa region. The report documents the scale and nature of detention and criminalization of migrants originating from the Horn of Africa, both within the Horn of Africa countries, as well as in Israel, Tanzania, Saudi Arabia and Yemen, which are major destination and/or transit countries for Horn of Africa migrants.

This report presents the context, the different reactions of different countries, and compares these with international legislation and guidelines.

The research will focus on:

- The scope and prevalence of migrant detention, including estimates of how many migrants face detention and their profiles.
- Experiences of migrant detainees, including where they come from, migration routes, how they ended up in detention, experiences and treatment in detention.
- Detention policy in the region – namely policies by governments, multilateral institutions, civil society, as well as *de facto* policies on migrant detention and possible abuses by state officials.
- International standards and best practices regarding migrant detention and the extent to which these are applied in the region, (e.g. grounds for detention, procedural safeguards, right to information, registration, length of detention, conditions, monitoring, vulnerable groups [women, children, long-term residents], alternative non-custodial measures, voluntary return).
- Mapping of (selected) existing facilities – location, conditions, and numbers of migrants.

The focus of the study is on migrants in mixed migration flows, which includes refugees, asylum seekers, irregular migrants, trafficked persons and economic migrants.

The research is based on an extensive literature study conducted between August and December 2014, and additional input from interviews, personal communication and a mini-expert survey (consisting of 9 questions with regard to immigration detention) which was distributed among experts in the region working with international organizations and international and local NGOs.

## 1.2 Research background: setting the scene

### What is immigration detention?

According to the Association for the Prevention of Torture (APT), UNHCR and the International Detention Coalition (IDC), immigration detention is defined as “the deprivation of an individual’s liberty, usually of an

administrative character, for an alleged breach of the conditions of entry, stay or residence in the receiving country".<sup>6</sup> There is a distinction between criminal detention and administrative detention. In most countries, irregular migrants are subject to administrative detention, as the violation of immigration laws and regulations is not considered to be a crime. In many countries asylum seekers are also detained pending a decision on refugee status or on admission to or removal from the state.<sup>7</sup> The above-mentioned definition intentionally does not distinguish between asylum seekers, irregular migrants, stateless people, or refugees, but instead fits all of these categories into a single box - non-citizen.<sup>8</sup> As a result, in this report we refer to all groups of non-citizens who are subject to immigration detention.

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*Many states in the region, as well as in other parts of the world, have introduced measures that are intended to tighten their border controls and to prevent the arrival of irregular migrants on their territory in an effort to defend their sovereignty and security.*

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### **Using immigration detention to control migration flows**

Many states in the region, as well as in other parts of the world,<sup>9</sup> have introduced measures that are intended to tighten their border controls and to prevent the arrival of irregular migrants on their territory in an effort to defend their sovereignty and security.<sup>10</sup> As part of a global trend to increasingly treat migration enforcement and asylum as security issues,<sup>11</sup> states have increasingly turned to immigration detention as a way to control migration flows. Although government policymakers tend to characterise detention as an effective way to make migration less appealing and keep track of migrants - who are regarded as potential security risks - there is little evidence that this strategy is achieving these stated security and deterrence goals.<sup>12</sup>

#### **Box 1 Immigration detention in Italy**

The 2011 "Arab Spring" revolutions across North Africa and the Middle East strongly increased trans-Mediterranean migration to Italy. As such, detention and deportation became prominent in the Italian government's response.<sup>13</sup> After a decrease in 2012, the number of migrants arriving in Italy strongly increased again in 2014. From 18 October 2013 to 17 October 2014, 150,164 migrants have been rescued and aided as part of Italy's *Mare Nostrum* operation, an average of about 409 per day.<sup>14</sup>

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6 APT/IDC/UNHCR, 2014, p. 20.

7 IOM, 2004.

8 Flynn, 2011, p. 7.

9 Although this report focuses on immigration detention of migrants in and from the East and Horn of Africa, it should be noted that detaining immigrants (including asylum seekers) is in fact common in 'western countries' as well. Asylum seekers are frequently detained in countries such as Malta, the Netherlands and the United Kingdom (AIDA, 2014a, p. 45), Australia (where unlawful non-citizens can be detained indefinitely; Refugee Council of Australia, 2014) and the United States, where at least 34,000 undocumented migrants should be detained every single day (Human Rights Watch, 2014e, p. 22.). As an example, this report includes two boxes on immigration detention in two European countries, Italy (see page 18) and Malta (see page 35), which are the first entry points into Europe for most Horn of Africa migrants.

10 Long and Crisp, 2011, p. 22.

11 Acer and Goodman, 2010, p. 508-9.

12 Amit, 2013 p. 32.

13 Global Detention Project, 2012.

14 CIR, 2014.

In line with Italy's Consolidated Immigration Act (Article 14), when immediate expulsion or refusal of entry is not possible, a person may be detained at the nearest *Centri di identificazione ed espulsione* (CIE; Identification and Expulsion Centre). In 2011, the maximum period of detention was extended from six to 18 months.<sup>15</sup> There are currently 13 CIEs located all over the country. However, at present 7 facilities have been temporarily closed because of management problems and damages caused by detainees' protests. Only 5 CIEs (Turin, Rome, Bari, Trapani Milo and Caltanissetta) are effectively operating. In 2013, 6,016 migrants, out of which 150 were asylum seekers, were held in CIEs (compared to 7,944 in 2012). The most recent available figure on the total number of detainees at a given day dates from 19 March 2014 and amounts to 367 migrants.<sup>16</sup>

In 2012, a number of experts expressed concerns to the Global Detention Project about routine detention of non-citizens outside the framework of the law. They raised particular concerns about detention situations in border zones and short-term facilities (so-called Welcome Centres) where migrants are often detained for lengthy periods of time. The Italian government and the Italian Red Cross have repeatedly been criticized by human rights organizations, the media, and the Council of Europe's Committee for the Prevention of Torture (CPT) for conditions at immigration detention facilities across the country, and in particular at the facility on Lampedusa.<sup>17</sup>

In December 2013, only two months after the Lampedusa disaster in which 366 people (mostly Eritreans) died, Italy was embarrassed by images (secretly filmed on a mobile phone) broadcasted on state television showing how migrants at the reception centre on Lampedusa were being stripped naked in mixed company while a worker hosed them down. The images also showed migrants queuing up in a crowded, open-air courtyard in cold, winter conditions, where they had to strip completely naked. The mayor of Lampedusa, Giusi Nicolini, said the video made the centre look like a "concentration camp" and that Italy as a whole should be "ashamed".<sup>18</sup> A recent (2014) report, prepared by Italian Refugee Council (CIR) and the European Council on Refugee and Exiles (ECRE) for the Asylum Information Database (AIDA) further described the conditions of administrative detention of migrants as very poor, although varying considerably from centre to centre. This was attributed to the fact that the management of each CIE is assigned to private entities, through public procurement contracts, exclusively on a 'value for money' criterion.

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15 Global Detention Project, 2012.

16 AIDA, 2014b, p. 64-65.

17 Global Detention Project, 2012.

18 BBC, 2013.

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*Recent RMMS research on Ethiopian migrants sheds new light on the power of migration drivers in the decisions migrants make. Although most migrants are very well aware that there is a substantial chance they will be arrested and detained (as well as be exposed to more serious protection risks) the findings of this study pointed to a surprisingly high level of risk-taking by migrants, who are so blinded by hope that they believe they will make the journey without too much damage.*

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*Numerous international human rights bodies and experts have issued increasingly forceful statements against the routine use of detention as a form of immigration control. Nevertheless, detention continues to be a frequent response to violations of immigration laws and/or a response to security issues.*

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Although immigration detention may act as a temporary deterrent and decrease public fears about migration and security, experience has demonstrated that it is virtually impossible to stop migration flows when the drivers and incentives are powerful enough. This is especially the case in the East and Horn of Africa region, which suffers from ongoing conflicts and endemic poverty, as well as long and highly porous borders. In this region, states also lack the resources and capacity (or volition) to enforce effective and stringent controls on population movements. Moreover, smugglers have proved that they quickly adapt to changing migration regimes by establishing new migration routes and means.<sup>19</sup> Furthermore, immigration laws are often implemented and prosecuted arbitrarily in a context where corruption distorts impartial treatment. Rising anti-migrant feeling along with rising numbers of migrants add to the challenges.

Recent RMMS research on Ethiopian migrants sheds new light on the power of migration drivers in the decisions migrants make.<sup>20</sup> Although most migrants are very well aware that there is a substantial chance they will be arrested and detained (as well as be exposed to more serious protection risks) the findings of this study pointed to a surprisingly high level of risk-taking by migrants, who are so *blinded by hope* that they believe they will make the journey without too much damage. The migration drivers for many of these Ethiopian migrants are simply stronger than the fear all these risks might evoke. They know they might walk straight into abuse, including arbitrary detention, and they know the chances of succeeding are very limited, yet they continue to leave Ethiopia.<sup>21</sup> In other contexts it is known that asylum seekers would rather risk detention than return to persecution in their country of origin.<sup>22</sup>

In this context, a purely control, security and enforcement-oriented approach to migration management absorbs huge amounts of state resources without a corresponding decrease of migration flows. In fact, some authors express similar concerns in relation to confining refugees to designated refugee camps (see chapter 2) and preventing their onward and free movement both within and from their country of first asylum. As such policies and practices restrict refugees' ability to establish livelihoods and forces them to rely on international assistance, it does not contain refugees, but encourages their irregular and onward movement.<sup>23</sup> For example, from January to early November 2014, an estimated 33,872 Eritreans crossed the Mediterranean from Libya to Italy.<sup>24</sup> Many lived in the refugee camps in northern Ethiopia, but at one point decided to move on and embark on a dangerous journey through Ethiopia, Sudan and Libya.

Numerous international human rights bodies and experts have issued increasingly forceful statements against the routine use of detention as a form of immigration control. Nevertheless, detention continues to be a frequent response to violations of immigration laws and/or a response to security issues. According to Amnesty International (among others), this

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19 Long and Crisp, 2011, p. 22.

20 RMMS, 2014c.

21 Ibid.

22 Richardson, 2010.

23 Long and Crisp, 2011, p. 22.

24 IOM, 2014f.

routine use of detention against irregular migrants violates both the spirit and frequently the letter of states' international human rights obligations<sup>25</sup> (see chapter 2). As migratory pressures grow, it is likely that states' use of detention to respond to these pressures will grow, which places increasing numbers of migrants in extremely vulnerable and precarious situations.<sup>26</sup>

### **Detention of migrants in and from the East and Horn of Africa**

The countries that are part of this study are no exception in terms of the increasing use of immigration detention as a way to control migration. Several of these countries recently carried out mass arrests of migrants, asylum seekers and refugees alike, for example:

- During the last months of 2013 and early 2014, Saudi Arabia implemented strong measures to protect the labour market and curb irregular migration in the context of its 'Saudization' policy (replacing migrant workers with Saudis). After a deadline for migrants to either leave voluntarily or regularize their migration status, Saudi authorities started to carry out labour inspections and arrests of irregular migrants. Hundreds of thousands were arrested and detained and over the course of several months, over 160,000 Ethiopians and 30,000 Somalis were deported to Addis Ababa and Mogadishu.<sup>27</sup>
- In July 2013, the Tanzanian president announced that all irregular migrants had to leave the country within 14 days. The reason was that the government wanted to get rid of criminals hiding under the umbrella of immigrants. Over 20,000 migrants were reported to have left the country voluntarily. After the 14-day deadline to leave the country had passed, the government launched an operation ('*Oparesheni Kimbunga*') rounding up the remaining irregular migrants and sending them back to their countries of origin (mainly Burundi, Rwanda and the Democratic Republic of Congo).<sup>28</sup> Over a thousand migrants were arrested and detained in the Geita, Kigoma and Kagera regions of north-western Tanzania (see the Tanzania country section for further details).
- At the end of March 2014, the Kenyan Interior Ministry launched a security operation dubbed '*Usalama Watch*' (Peace Watch), aimed at addressing rising terror attacks in Kenya. More than 4,000 individuals were arrested and detained, the majority of them Somalis.<sup>29</sup> The operation ended in July 2014. There have been several recent and similar episodes in Kenya, where the government responds to security and terror threats by arresting and detaining large numbers of migrants (see the Kenya country section for further details on operation '*Usalama Watch*').

Although for different reasons – protection of the labour market in Saudi Arabia and security in Tanzania and Kenya – detention of large groups of migrants in each of these cases could be defined as arbitrary (see chapter 2).

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25 Amnesty International, 2009, p. 6.

26 Flynn, 2011, p. 28.

27 RMMS, 2014a.

28 LHRC/ZHSC, 2013, p. 197-200.

29 RMMS, 2014l.

The cases above are just three recent examples. The country sections in this report (chapter 3) provide many other examples of the use of immigration detention in the region.

Why are the countries in the region using immigration detention? Which migrant groups are currently in detention and what are the detention conditions like? How do states' detention policies and practices compare to international legislation and guidelines and to what extent is the use of detention accompanied by human rights abuses? By documenting the use of immigration detention by countries in the region, this report aims to answer these questions.

## 2 Immigration Detention

### 2.1 Immigration detention: a source of growing concern

immigration  
detention:  
a source of  
growing concern

Detention and criminalization of people in mixed migration flows has become a common response by state authorities in the region to irregular migration and even asylum seekers. Detention, prison sentences, deportation and *refoulement* are common experiences for migrants in the region with accompanying human rights abuses in some cases. In detention, migrants are reportedly mistreated, suffer from health and psychological problems due to long spells of incarceration, and are sometimes even subjected to torture.

As these practices frequently contravene the standards set by international law and policy, which comprehensively regulate the detention of all persons, immigration detention represents a growing human rights challenge worldwide and is a source of serious concern for many human rights organizations.

According to some authors, the gap between human rights law and state practice relating to immigration detention is widening.<sup>30</sup> For example, the international human rights standards – which will be discussed in this chapter – restrict the use of detention for immigration purposes by requiring that it is necessary and proportional, and that no less restrictive measures would suffice. Thus, states must use and offer alternative measures both in law and in practice to prove that detention is necessary and proportional. This means that a policy of routinely detaining irregular migrants (which has happened in the past and still happens in the East and Horn of Africa) without considering the use of less restrictive alternatives, is disproportionate and unjustifiable in international human rights law.<sup>31</sup>

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Several international agencies expressed particular concerns about immigration detention in recent years. For example:

- During a special session of the UN Human Rights Council in 2009 devoted to the detention of migrants and asylum seekers, the former UN High Commissioner for Human Rights Navi Pillay remarked that the plight of “migrants, and particularly migrants in an irregular situation, is one of today’s most critical human rights challenges.” The former High Commissioner highlighted a number of concerns, including the growing criminalization of irregular migration, the need to combat arbitrary detention, and the often deplorable conditions in which migrants are detained and stated that “international human rights norms and standards provide us with a solid legal framework to address the critical challenges related to the detention of irregular migrants”.<sup>32</sup>
- The UN Working Group on Arbitrary Detention (WGAD), established in

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30 Acer and Goodman, 2010, p. 507.

31 Amnesty International, 2009, p. 7.

32 Ricupero and Flynn, 2009, p. 4.

1991, has further stated that criminalizing those who enter or remain in the country without authorization exceeds the legitimate interest of states to control and regulate irregular migration and can lead to unnecessary detention.<sup>33</sup> The Special Rapporteur on the Human Rights of Migrants has opposed the treatment of irregular migration as a criminal offence, stating that irregular migration should be treated as an administrative offence, and the detention of migrants on the grounds of their irregular status should always be a measure of last resort.<sup>34</sup>

- In March 2009, the UN General Assembly issued a statement where it recognized states' sovereign right to enact and implement migratory and border security measures, but also highlighted their duty to comply with international law, including international human rights law, in order to ensure full respect for the human rights of migrants.<sup>35</sup> The UN General Assembly also called upon all states to respect the human rights and the inherent dignity of migrants and to put an end to arbitrary arrest and detention and, where necessary, to review detention periods in order to avoid excessive detention of irregular migrants, and to adopt, where applicable, alternative measures to detention.<sup>36</sup>
- In October 2014, the UN Human Rights Committee (HRC), which monitors the implementation of the ICCPR, published General Comment no. 35 interpreting the right to liberty and security of person. Although not binding, the comment addresses immigration detention and provides, *inter alia*, that the "inability of a State party to carry out an expulsion...because of obstacles does not justify indefinite detention." The treaty body added that decisions to detain migrants must consider "the effect of the detention on their physical or mental health." And where detention is necessary it "should take place in appropriate, sanitary, non-punitive facilities, and should not take place in prisons."<sup>37</sup>

In 2014, UNHCR published a global strategy to support governments to end the detention of asylum-seekers and refugees, in which it listed the main challenges and concerns around governmental detention policies and practices, including:<sup>38</sup>

- Misconceptions about detention, its role and function.
- Lack of information regarding the availability, the types and effectiveness of alternatives to detention.
- The increasing rate and use of detention in a number of countries and/or its use as a default first measure in immigration laws and state practice.
- The use of detention as a deterrent.
- The lack of reliable statistics about the number and length of time persons are held in immigration detention at both national and global levels.
- The limited access (in some countries) to places of immigration detention and limited capacity to carry out systematic monitoring of these places of detention by UNHCR and/or its partners.

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33 Amnesty International, 2009, p. 6.

34 Ibid.

35 UN General Assembly, 2009, p. 4.

36 Ibid.

37 OHCHR, 2014, p. 5.

38 UNHCR, 2014a, p. 6.

- The often precarious and substandard conditions of detention, including for persons with special needs or in situations of vulnerability. UNHCR highlighted that conditions of detention must be humane and dignified.<sup>39</sup>

This chapter discusses several of the issues mentioned above, such as international law with regard to immigration detention, international guidelines and criteria, arbitrary detention and alternatives to detention.

## 2.2 International law

States have the authority and sovereignty to regulate migration. However, their immigration enforcement policies and practices – including those relating to immigration detention – must be in line with the requirements of international human rights law.<sup>40</sup> There are clear international laws regarding immigration detention. The table below, which is compiled from available data including Amnesty International reports, summarizes the most relevant international conventions with regard to immigration detention and lists the status of ratification by the countries in the region.<sup>41</sup>

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*States have the authority and sovereignty to regulate migration. However, their immigration enforcement policies and practices – including those relating to immigration detention – must be in line with the requirements of international human rights law.*

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39 UNHCR, 2014a, p. 6.

40 Acer and Goodman, 2010, p. 508.

41 Amnesty International, 2007 and Repucero and Flynn, 2009.

**Table 1:  
Summary of relevant international conventions with regard to  
immigration detention and the status of ratification<sup>42</sup>**

**International Covenant on Civil and Political Rights (ICCPR) (1966)**

<b>Article 9(1)</b>	Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his [or her] liberty except on such grounds and in accordance with such procedure as are established by law.
<b>Article 9(2)</b>	Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
<b>Article 10(1)</b>	"[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
<b>Article 12(1)</b>	Everyone lawfully within the territory of a state shall, within that territory, have the right of liberty of movement and freedom to choose his residence.
<b>Article 12(3)</b>	The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

Ratification by countries in the region of the ICCPR		
<b><u>Djibouti</u></b> a5/11/2002	<b><u>Eritrea</u></b> a22/1/2002	<b><u>Ethiopia</u></b> a11/6/1993
<b><u>Kenya</u></b> a1/5/1972	<b><u>Somalia*</u></b> a24/1/1990	<b><u>Tanzania</u></b> a11/6/1976
<b><u>Yemen</u></b> a9/2/1987	<b><u>Israel</u></b> s9/12/1966 r3/10/1991	<b><u>Saudi Arabia</u></b> --

\* According to the Puntland State of Somalia constitution, the Puntland government maintains the international conventions and treaties that the Somali Republic convened with foreign governments (pre 1991), if such conventions are not contradictory to Shari'a law or the interests of Puntland. Similarly, according to the Article 10 of Somaliland's constitution, the government maintains the international conventions and treaties that the Somali Republic convened with foreign governments (pre-1991) if such conventions are not contradictory to Shari'a law or the interests of Somaliland.

42 In the table, 'a' refers to acceded, 'd' refers to succeeded, 'r' refers to ratified, and 's' refers to signed. Accession is an act by which a State signifies its agreement to be legally bound by the terms of a particular treaty. It has the same legal effect as ratification, but is not preceded by an act of signature. Ratification is an act by which a State signifies an agreement to be legally bound by the terms of a particular treaty. To ratify a treaty, the State first signs it and then fulfils its own national legislative requirements. Signature of a treaty is an act by which a State provides a preliminary endorsement of the instrument. Signing does not create a binding legal obligation but does demonstrate the State's intent to examine the treaty domestically and consider ratifying it. Succession occurs when one State is replaced by another in the responsibility for the international relations of territory. Generally, a newly independent State which makes a notification of succession is considered a party to a treaty from the date of the succession of States or from the date of entry into force of the treaty, whichever is the later date.

### Convention Relating to the Status of Refugees (Refugee Convention) (1951)

- Article 26** Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances.
- Article 31(1)** The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.
- Article 31 (2)** The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.

#### Ratification by countries in the region of the Refugee Convention

**Djibouti**

d9/8/1977

**Eritrea**

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**Ethiopia**

a10/11/1969

**Kenya**

a16/5/1996

**Somalia**

a10/10/1978

**Tanzania**

a12/5/1964

**Yemen**

a18/1/1980

**Israel**

s1/8/1951

**Saudi Arabia**

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r1/10/1954

## Convention on the Rights of the Child (CRC) (1989)

- Article 9(1)** States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.
- Article 37(b)** No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.
- Article 37(d)** Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

### Ratification by countries in the region of the CRC

<b><u>Djibouti</u></b> s30/9/1990 r6/12/1990	<b><u>Eritrea</u></b> s20/12/1993 r3/8/1994	<b><u>Ethiopia</u></b> a14/5/1991
<b><u>Kenya</u></b> s26/1/1990 r30/7/1990	<b><u>Somalia</u></b> s9/5/2002	<b><u>Tanzania</u></b> s1/6/1990 r10/6/1991
<b><u>Yemen</u></b> s13/2/1990 r1/5/1991	<b><u>Israel</u></b> s3/7/1990 r3/10/1991	<b><u>Saudi Arabia</u></b> a26/1/1996

## International Convention on the Elimination of All Forms of Racial Discrimination (CERD) (1969)

- Article 5 (d)(i)** States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:  
[.] The right to freedom of movement and residence within the border of the State;[.]

### Ratification by countries in the region of the CERD

<b><u>Djibouti</u></b> s14/6/2006 r30/9/2011	<b><u>Eritrea</u></b> a31/7/2001	<b><u>Ethiopia</u></b> a23/6/1976
<b><u>Kenya</u></b> a13/9/2001	<b><u>Somalia</u></b> s26/1/1967 r26/8/1975	<b><u>Tanzania</u></b> a27/10/1972
<b><u>Yemen</u></b> a18/10/1972	<b><u>Israel</u></b> s7/3/1966 r3/1/1979	<b><u>Saudi Arabia</u></b> a23/9/1979

### Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT) (1984)

- Article 3(1)** No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.
- Article 10 (1)** Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.
- Article 16(1)** Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

#### Ratification by countries in the region of the CAT

**Djibouti**

a5/11/2002

**Eritrea**

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**Ethiopia**

a14/3/1994

**Kenya**

a21/2/1997

**Somalia**

a24/1/1990

**Tanzania**

--

**Yemen**

a5/11/1991

**Israel**

ss22/10/1986  
r3/10/1991

**Saudi Arabia**

a23/9/1997

### International Convention on the Protection of the Rights of All Migrant Workers and Members of their Family (Migrant Workers Convention) (1990)

- Article 16(1)** Migrant workers and members of their families shall have the right to liberty and security of person.
- Article 16(5)** Migrant workers and members of their families who are arrested shall be informed at the time of arrest as far as possible in a language they understand of the reasons for their arrest and they shall be promptly informed in a language they understand of any charges against them.
- Article 16(8)** Migrant workers and members of their families who are deprived of their liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of their detention and order their release if the detention is not lawful. When they attend such proceedings, they shall have the assistance, if necessary without cost to them, of an interpreter, if they cannot understand or speak the language used.

Ratification by countries in the region of the Migrant Workers Convention		
<u>Djibouti</u>	<u>Eritrea</u>	<u>Ethiopia</u>
--	--	--
<u>Kenya</u>	<u>Somalia</u>	<u>Tanzania</u>
--	--	--
<u>Yemen</u>	<u>Israel</u>	<u>Saudi Arabia</u>
--	--	--

### Optional Protocol to the Convention against Torture (OPCAT) (2002)2

- Article 1** The objective of the present Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.
- Article 3** Each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as the national preventive mechanism).
- Article 17** Each State Party shall maintain, designate or establish, at the latest one year after the entry into force of the present Protocol or of its ratification or accession, one or several independent national preventive mechanisms for the prevention of torture at the domestic level.

Ratification by countries in the region of the OPCAT		
<u>Djibouti</u>	<u>Eritrea</u>	<u>Ethiopia</u>
--	--	--
<u>Kenya</u>	<u>Somalia</u>	<u>Tanzania</u>
--	--	--
<u>Yemen</u>	<u>Israel</u>	<u>Saudi Arabia</u>
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### African Charter on Human and Peoples' Rights (1981)

Article 6 Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

Ratification by countries in the region of the African Charter on Human and Peoples' Rights		
<u>Djibouti</u>	<u>Eritrea</u>	<u>Ethiopia</u>
s20/12/1991 r11/11/1991	r14/01/1999	r15/06/1998
<u>Kenya</u>	<u>Somalia</u>	<u>Tanzania</u>
r23/01/1992	s26/02/1982 r31/07/1985	s31/05/1982 r8/02/1984
<u>Yemen</u>	<u>Israel</u>	<u>Saudi Arabia</u>
N/A	N/A	N/A

**Arab Charter on Human Rights (revised, 2004)**

**Article 14(1)** Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest, search or detention without a legal warrant.

**Article (2)** No one shall be deprived of his liberty except on such grounds and in such circumstances as are determined by law and in accordance with such procedure as is established thereby.

**Article 14 (3)** Anyone who is arrested shall be informed, at the time of arrest, in a language that he understands, of the reasons for his arrest and shall be promptly informed of any charges against him. He shall be entitled to contact his family members.

**Ratification by countries in the region  
of the Arab Charter on Human Rights**

**Djibouti**

N/A

**Eritrea**

N/A

**Ethiopia**

N/A

**Kenya**

N/A

**Somalia**

N/A

**Tanzania**

N/A

**Yemen**

r26/8/2008

**Israel**

N/A

**Saudi Arabia**

r15/042009

As shown in table 1, most of the countries that are part of this research are a party to several international treaties and conventions which contain articles relevant to immigration detention. There are, however, additional international conventions that are also relevant for immigration detention, which are nonetheless not ratified by any of these countries (the Migrant Workers Convention and the OPCAT for example).

The table above is not exhaustive. Many additional international and legally binding treaties, conventions, charters and protocols, as well as non-treaty standards such as General Assembly resolutions, reports of Special Rapporteurs or advisory opinions exist which are relevant to migrant detention. These apply to a range of issues such as:

- Prohibition of detention on the basis of illegal entry or presence
- Prohibition of arbitrary detention
- Right to be informed of the reasons for detention
- Right to challenge the lawfulness of detention before a judicial body
- Access to counsel and right to legal assistance and interpretation services
- Humane conditions in detention
- Communication with the outside world (family, organizations and consular/diplomatic authorities)
- Access to medical care
- Place of detention (e.g. detainees should be held in special immigration detention centres in conditions appropriate to their status and not with persons charged with or convicted of criminal offences [unless so charged or convicted themselves]).
- Standards relating to particular groups, such as children, women and other vulnerable groups.

In 2011, IOM published an information note on general principles covering international standards on immigration detention. It listed three core principles:

- Principle 1: Grounds for detention must be established by law and exhaustively enumerated in legislation.
- Principle 2: Detention is a measure of last resort which must have a legitimate aim, be proportionate to the aim pursued and have fair balance struck between the conflicting interests.
- Principle 3: Detention must be ordered and approved by a judge and subject to automatic regular judicial review in each individual case.<sup>43</sup>

Moreover, there are specific rights and standards applicable to migrants in detention:

- Right to be informed upon entry in the territory and while in detention;
- Right to communicate with the outside world;
- Obligation [of the state] to register the presence of any migrant placed either in custody or in detention;
- Obligation [of the state] to establish a maximum period of detention in national legislation;
- Right to human detention conditions and obligation to respect the inherent dignity of every human person;
- Obligation [of the state] to allow monitoring of reception centres;
- Prohibition of the detention of vulnerable individuals.<sup>44</sup>

Although not formally binding, there are instruments that form part of a broad consensus in the international community and reflect customary or 'soft' law.<sup>45</sup> These include declarations, principles, and guidelines and contain authoritative interpretations of states' obligations under international law and can include detailed guidance regarding more general rules. The most widely recognized is the *1948 Universal Declaration of Human Rights*. The two most relevant articles within this declaration are articles 3 and 9:

- Article 3: Everyone has the right to life, liberty and security of person.
- Article 9: No one shall be subjected to arbitrary arrest, detention or exile.

Another relevant declaration is the *1985 Declaration on the Human Rights of Individuals who are not nationals of the country in which they live*:

- Article 5(1): Aliens shall enjoy, in accordance with domestic law and subject to the relevant international obligation of the State in which they are present, in particular the following rights:
  - The right to life and security of person; no alien shall be subjected to arbitrary arrest or detention; no alien shall be deprived of his or her liberty except on such grounds and in accordance with such procedures as are established by law.

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43 IOM, 2011, p. 9.

44 Ibid.

45 Ricupero and Flynn, 2009, p. 5.

## Box 2 The International Migrant Bill of Rights (IMBR)

Although international norms and best practices are traditionally adopted within state and UN-led processes, scholars and migration experts recently came together to produce the IMBR in response to the absence of a comprehensive normative framework governing the rights of all international migrants.<sup>46</sup> Grounded in international law and best practices, it consolidates the fundamental rights applicable to migrants in a single document.<sup>47</sup> In doing so it makes explicit what is implicit in human rights law – migrants are entitled to the protection of their basic rights irrespective of their reasons for movement. Of relevance to the issue of immigration detention is Article 6 of the IMBR. This is the right to liberty and security of person as it applies to migrants. Expounding on this and other rights are the IMBR commentaries and a non-technical handbook, both of which may be used by migrants and practitioners for advocacy.

### Vulnerable groups

Human rights agencies agree that special attention should be given to the particular needs of vulnerable persons, such as children, pregnant women, the elderly, survivors of torture and those with serious medical or psychological conditions. As highlighted by the Special Rapporteur on the human rights of migrants, "...special arrangements should be sought to protect vulnerable groups. In these cases the harm inflicted by administrative detention seems...to be wholly disproportionate to the policy aim of immigration control."<sup>48</sup>

Women in immigration detention have distinctive needs that, according to APT, IDC and UNHCR, need to be provided for. Gender specific needs and related reproductive health matters of women need to be catered for and there should be measures in place to prevent sexual abuse and other forms of gender-based violence.<sup>49</sup> According to UNHCR's detention guidelines, facilities and materials are required to meet women's specific hygiene needs and the use of female guards and wardens should be promoted. Female asylum-seekers in detention who have been subjected to sexual abuse need to receive appropriate medical advice and counselling, including where pregnancy results, and are to be provided with physical and mental health care, support and legal aid.<sup>50</sup> APT, IDC and UNHCR further state that women who have been caught up in conflict situations or who have fallen into or placed themselves in the hands of people traffickers or smugglers are to be regarded as particularly at risk. Female-headed family units may also be particularly vulnerable, and medical staff ought to be attuned to the risk of domestic violence, which may be exacerbated by the detention

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*As highlighted by the Special Rapporteur on the human rights of migrants, "...special arrangements should be sought to protect vulnerable groups. In these cases the harm inflicted by administrative detention seems...to be wholly disproportionate to the policy aim of immigration control."*

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46 An international migrant is defined as a person who is outside of a state of which the migrant is a citizen or national, or, in the case of a stateless migrant, the migrant's state of birth or habitual residence.

47 IMBR Initiative.

48 Amnesty International, 2009, p. 8.

49 APT/IDC/UNHCR, 2014, p. 186.

50 UNHCR, 2012, p. 37.

experience.<sup>51</sup> Finally, UNHCR guidelines outline that some categories of women, including pregnant women and nursing mothers, should not be detained at all.<sup>52</sup>

Another particular vulnerable group are stateless persons. Stateless persons have no country of nationality to which they can return, and so cannot be removed. According to the UN HRC, where a state party to the ICCPR is unable to expel a person because of his/her statelessness, the state may not justifiably resort to their indefinite detention.<sup>53</sup> The Equal Rights Trust draws an important distinction between stateless persons and irregular migrants. Lawful removal of stateless persons is generally subject to extensive delays and often impossible. This makes stateless persons detained for the purpose of removal vulnerable to prolonged detention and as such makes them vulnerable to the negative impact of detention. The Equal Rights Trust developed guidelines to protect stateless persons from arbitrary detention. These guidelines provide detailed guidance on how states should treat stateless persons in the context of immigration detention in order to comply with their obligations under international human rights law, in particular, the rights to equality and non-discrimination and the right to be free from arbitrary detention. The guidelines point to the importance of early identification of statelessness as this should protect stateless persons from being detained on the assumption that they can be removed. According to these guidelines, when stateless persons cannot be removed, detention for the purpose of removal is arbitrary and in breach of international human rights law. The guidelines further state that “stateless persons are vulnerable and should be protected at all time” and that “it is highly desirable that ‘statelessness’ is recognised as a protected characteristic.”<sup>54</sup>

### **The detention of children**

As summarized in table 1 each of the countries in the region is legally bound by the CRC, which indicates that children should not be detained for reasons related to their migration status, and places strict limits on the exceptional use of detention. Nevertheless, migrant children are not spared detention with many states depriving them of their liberty as a routine response to illegal entry, rather than as a measure of last resort.<sup>55</sup> Sometimes children are detained with their parents, sometimes they are detained alone (the sections on Kenya, Tanzania, Yemen, Israel and Saudi Arabia all provide examples of children detained with their parents and/or other adults, as well as unaccompanied children being detained with other adults), including children as young as eight according to IDC research.<sup>56</sup>

Often children are detained on the premise that it is not in their best interests to separate them from their detained parents. However, according to the IDC, the primary focus should be on a child’s right not to be detained and their right to have their parents and family reside with them. According to the IDC, this “requires that states focus on the needs and rights of children

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*Migrant children are not spared detention with many states depriving them of their liberty as a routine response to illegal entry, rather than as a measure of last resort.*

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51 APT/IDC/UNHCR, 2014, p. 167-168.

52 UNHCR, 2012, p. 37.

53 OHCHR, 2014, p. 5.

54 Equal Rights Trust, 2012, p. 2, 4, 8, 24.

55 Farmer, 2013, p. 15-16

56 Corlett, et al., 2012, p. 12.

and not treat children as mere appendages of their parents or families.”<sup>57</sup> Alternatives to detention (see section 2.5) could offer solutions in these instances.

In addition to the relevant articles of the CRC as listed in table 1, the Committee on the Rights of the Child in General Comment No. 6 states that “unaccompanied or separated children should not, as a general rule, be detained,” and “detention cannot be justified solely on... their migratory or residence status, or lack thereof.” According to UNHCR “children seeking asylum should not be kept in detention and that this is particularly important in the case of unaccompanied children.” States must also adhere to UN standards on conditions of confinement, including by segregating children from unrelated adults where it is in their best interest, and by always providing education. Where children in families are subject to immigration detention, states should ensure that the child should not be separated from his or her parents against his or her will.<sup>58</sup>

### Box 3 Immigration detention in Malta

Since 2005, detention has been mandatory in Malta for all non-documented arrivals, although some groups such as unaccompanied minors, pregnant women and so-called vulnerable cases are eligible for early release.

According to Human Rights Watch, Malta routinely detains an average of 1,500 people per year, including children, who arrive in the country by boat irregularly. Boat migrants arriving in Malta are taken straight to detention if they lack an entry visa.<sup>59</sup> Although 93 percent apply for asylum, basically all boat migrants are detained.<sup>60</sup>

The maximum duration for the detention of asylum seekers, in terms of national policy, but not clearly contained in law, is set at 12 months.<sup>61</sup> Migrants who do not apply for asylum, or whose asylum claims are rejected, can be detained for up to 18 months.<sup>62</sup>

The total number of asylum seekers detained in 2013 (including those detained in the course of the asylum procedure and those who applied for asylum from detention) was approximately 1,900.<sup>63</sup>

During 2013, 2,008 people arrived in Malta by boat, the vast majority of which applied for asylum, including 443 unaccompanied children. In 2014 there have been fewer boats arriving in Malta. According to IOM and UNHCR, this development should be seen in the context of the Italian-led Mare Nostrum operation at sea, which has led to a significant increase in disembarkations in Sicily. The total

57 Corlett, et al., 2012, p. 33.

58 Farmer, 2013, p. 15-16

59 Human Rights Watch, 2012a, p. 1.

60 Ibid, p. 29.

61 AIDA, 2014c, p. 51.

62 Human Rights Watch, 2012a, p. 1-4.

63 AIDA, 2014c, p. 48.

number of rescued migrants who had disembarked in Malta was 300 by mid-2014.<sup>64</sup>

At the end of 2013, 497 migrants were in detention. Malta currently has 2 immigration detention facilities in use, 1 in Safi Barracks – B Block – and one in Lyster Barracks – Hermes Block. All the facilities are used to detain both asylum-seekers and immigrants awaiting removal.<sup>65</sup> Malta is generally not well-equipped to receive large numbers of unaccompanied children. For example, in 2013, the two main homes used as children’s residences were at full capacity. As a result children have also been housed in various facilities, including in a centre for adults in Hal-Far.<sup>66</sup>

In a 2012 report, Human Rights Watch concluded that the Maltese detention policy operates in an automated, indiscriminate, and blanket manner in violation of international law. Malta, according to Human Rights Watch, routinely detains unaccompanied migrant children whose age is in question, as well as families with children, elderly people, and people with mental or physical disabilities (although most are released before the 12 or 18 month time limit). While Human Rights Watch acknowledged that Malta’s burden is disproportionately large (in 2012 Malta had the highest number of asylum seekers relative to the national population of any country in the industrialized world), it concluded that detention is neither a legal nor a sound response to boat migration in the central Mediterranean.<sup>67</sup>

## 2.3 Immigration detention criteria, guidelines and strategies

### Criteria for immigration detention<sup>68</sup>

International law, as discussed above, provides that restrictions on liberty and the exceptional use of detention are only permissible when they are both legal and non-arbitrary.<sup>69</sup>

*Legality* means that detention may only be imposed on grounds prescribed by law and in accordance with procedures authorized by law. Immigration detention not specifically enumerated in states’ domestic law would be unlawful and impermissible.

*Non-arbitrary detention* requires a number of additional safeguards to ensure fairness and non-discrimination:

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64 IOM/UNHCR, 2014, p. 3-4.

65 AIDA, 2014c, p. 48.

66 IOM/UNHCR, 2014, p. 3-4.

67 Human Rights Watch, 2012a, p. 1-4.

68 Paragraph based on: APT/IDC/UNHCR, 2014, p. 32.

69 APT/IDC/UNHCR, 2014, p. 32.

- There should be a legitimate purpose for detention. When someone presents a risk of absconding from future legal proceedings or administrative processes or when someone presents a danger to their own or public security there could be a legitimate purpose for detention. The criminalization of irregular entry of asylum-seekers and migrants, according to APT, IDC and UNHCR always “exceeds the legitimate interest of States” and will therefore be arbitrary.
- Furthermore, immigration detention must be necessary, reasonable and proportionate, which requires individualized assessment. Any group detention decisions or discriminatory detention of asylum-seekers and migrants are arbitrary. This applies to all persons subject to immigration detention, regardless of immigration status.

### International guidelines

In addition to international legislation, several international organizations, regional bodies and other organizations have published immigration detention guidelines. This section notes some examples, which could serve as an additional framework to compare actual state practices in the region with international guidelines.

In 2012, UNHCR published its *'Guidelines on the Applicable Criteria and Standards relating to the Detention'*, which includes the following guidelines:

- The right to seek asylum must be respected;
- The rights to liberty and security of person and to freedom of movement apply to asylum-seekers;
- Detention must be in accordance with and authorised by law;
- Detention must not be arbitrary, and any decision to detain must be based on an assessment of the individual's particular circumstances;
- Detention must not be discriminatory;
- Indefinite detention is arbitrary and maximum limits on detention should be established in law;
- Decisions to detain or to extend detention must be subject to minimum procedural safeguards;
- Conditions of detention must be humane and dignified;
- The special circumstances and needs of particular asylum-seekers must be taken into account (victims of trafficking, women, children);
- Detention should be subject to independent monitoring and inspection.<sup>70</sup>

More recently in its *Global Strategy to support governments to end the detention of asylum-seekers and refugees*, published in 2014, UNHCR formulated the following three goals:

- End the detention of children;
- Ensure that alternatives to detention are available in law and implemented in practice;
- Ensure that conditions of detention, where detention is necessary and unavoidable, meet international standards by, inter alia, securing access to places of immigration detention for UNHCR and/or its partners and carrying out regular monitoring.<sup>71</sup>

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70 UNHCR, 2012.

71 UNHCR, 2014a, p. 7.

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*Section 2.1 of the African Union 2006 Migration Policy Framework for Africa, sets out that States must: "Ensure that migrants who are detained by public authorities, are treated humanely and fairly regardless of their immigration status, and are afforded all applicable legal protections, including where appropriate the assistance of counsel and competent interpreter services, access to their consulates, protections against arbitrary detention, in accordance with norms of international law."*

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The UN Working Group on Arbitrary Detention (UNWGAD) has further emphasized that there must be "strict legal limitations" and "judicial safeguards" when migrants are detained. Furthermore, states must justify detention based on criteria that should "be clearly defined and exhaustively enumerated in legislation." UNWGAD stressed that administrative detention of migrants should – based on the principle of proportionality – be reverted to as a matter of "last resort".<sup>72</sup>

Finally, in the region, section 2.1 of the African Union *2006 Migration Policy Framework for Africa*, sets out that states must: "Ensure that migrants who are detained by public authorities, are treated humanely and fairly regardless of their immigration status, and are afforded all applicable legal protections, including where appropriate the assistance of counsel and competent interpreter services, access to their consulates, protections against arbitrary detention, in accordance with norms of international law."<sup>73</sup>

## 2.4 Arbitrary detention

Arbitrary detention refers to detention that is not reasonable and necessary in the circumstances of the particular case and is not proportional to the end sought. This assessment can only be made through an individualized determination.<sup>74</sup>

Furthermore, according to human rights law (for example the *ICCPR*), the determination whether detention is necessary should be subject to periodic independent review, which is an important procedural safeguard against arbitrary detention. For example, in some cases, detention may have been legitimate at an initial stage, but might become arbitrary as the duration of detention grows. Periodic reviews should prevent this.<sup>75</sup> The principle of *habeas corpus*, which means that a person under arrest should be brought before a judge or into a court is an essential safeguard against arbitrary detention. However, the UN Working Group on Arbitrary Detention has recently expressed its concern that the use of *habeas corpus* is "still weak or non-existent in some States, particularly with respect to administrative detention. As such, this protection often does not function as a prompt court review of detention".<sup>76</sup>

As long as detention is considered to serve a legitimate public interest it cannot be considered as arbitrary. According to the UN HRC, the concepts of proportionality and necessity are the counterbalance to this 'legitimacy' argument. Even if detention serves a political purpose, if it fails the tests of proportionality and necessity it cannot be justifiable and is therefore 'arbitrary'. Individual circumstances of any particular case should always be considered, and 'one size fits all' approaches avoided. Even if a state is acting in pursuit of a broader policy of immigration control and national security issues, there should be an examination of the proportionality and

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<sup>72</sup> Acer and Goodman, 2010, p. 513.

<sup>73</sup> African Union, 2006. Chapter 2, Human Rights of Migrants, Section 2.1, Legislation and policies.

<sup>74</sup> Acer and Goodman, 2010, p. 515.

<sup>75</sup> Ibid, p. 524-25.

<sup>76</sup> Ibid, p. 523-24.

necessity of each and every instance of detention.<sup>77</sup>

Thus, independent court review is essential to ensure that detention is not arbitrary and is conducted in accordance with international law. Review must be effective and must include a genuine inquiry into the necessity of detention.<sup>78</sup> Considering that several states (Kenya, Tanzania, Saudi Arabia, Israel) in the region recently carried out mass arrests and detention of irregular migrants - as described in chapter 1 and in detail in the next chapter – these are important notes which suggest instances of arbitrary detention in these countries.

## 2.5 The effects of immigration detention

As described, many states consider immigration detention to work as a deterrent. Apart from the fact that using detention as a deterrence measure is in contravention of international law, research has found it is not an effective deterrent of asylum seekers and irregular migrants in either destination or transit contexts.<sup>79</sup> A 2011 UNHCR study reports that there is no empirical evidence available to give credence to the assumption that the threat of being detained deters irregular migration, or more specifically, discourages persons from seeking asylum. The author points to global migration statistics which have been rising regardless of increasingly harsh governmental policies on detention and in a later report concludes that not even the most stringent detention policies deter irregular migration or discourage persons from seeking asylum.<sup>80</sup> According to this author, any reduction in global asylum numbers have been associated with non-entrée policies, including containment in regions of origin and interception / interdiction measures, or can be attributed to large-scale repatriation programmes.<sup>81</sup>

Nevertheless, there is also no empirical evidence proving that the threat of detention does not deter migration to at least some extent. Theoretically, global migration statistics may be rising even more without the threat and actual practice of immigration detention. In some instances tough laws, including the application of measures such as immigration detention, might deter migration or at least displace mixed migration flows, making smugglers choose alternative routes because of tougher laws. An example is Israel, where the use of immigration detention led to a significant reduction in the number of migrants entering the country. However, it should be noted that in the case of Israel the use of immigration detention is combined with other measures - such as the construction of a fence, the practice of *refoulement* and an extraordinary low recognition rate of refugees. There are also external factors such as the extreme risk of travelling through the Sinai which deter migrants from travelling to Israel. As a consequence, an increasing number of Horn of Africa migrants (particularly Eritreans) migrated towards Europe instead of Israel.

## the effects of immigration detention

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77 Phillips, 2013, p. 9.

78 Acer and Goodman, 2010, p. 518.

79 Edwards, 2013, p. 4.

80 Edwards, 2011, p. iii; Edwards, 2013, p. 4.

81 *Ibid*, p. 1.

Another nuance is that some migrants may even think detention can serve as a springboard for secondary migration or provide safety. This might be the case with migrants picked while crossing the Mediterranean from Libya to Italy. After being picked up and temporarily detained by the Italian authorities, many migrants move on to their desired destination countries in north-western Europe.

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*Studies have also shown asylum seekers and irregular migrants are not even aware of detention policy or its impact in the country of destination. They may see it as an inevitable part of the journey and do not convey the deterrence message back to those in their country of origin.*

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On the other hand, studies have also shown asylum seekers and irregular migrants are not even aware of detention policy or its impact in the country of destination. They may see it as an inevitable part of the journey and do not convey the deterrence message back to those in their country of origin.<sup>82</sup> Moreover, many asylum seekers have little or no say about their journey or their final destination.<sup>83</sup>

Another reason for detention is to prevent migrants from absconding. However, there is evidence that refugees, asylum seekers and irregular migrants who are in supported alternatives to detention processes are very unlikely to abscond.<sup>84</sup>

Immigration detention has a detrimental impact on the mental and physical health of those detained, both children and adults. The impact of detention on children is similar to its effect on adults. However, detention may cause additional problems for children's developmental and physical health.<sup>85</sup> Although limited information is available, it is estimated that as many as one million children are affected by immigration detention polices worldwide.<sup>86</sup>

A recent IDC study listed a wide range of psychological disturbances that are commonly observed among children in detention, including separation anxiety, disruptive conduct, nocturnal enuresis, sleep disturbances, nightmare and night terrors, sleepwalking, impaired cognitive development, mutism, stereotypic behaviours, and refusal to eat and drink.<sup>87</sup> Moreover, children often go without access to education for months or years, which further increases the high toll of immigration detention on them.<sup>88</sup> The negative impact of detention on children is regardless of the conditions in which they are kept. Feelings of hopelessness and frustration can manifest as acts of violence against the self or others. Detention also erodes the functioning of families, meaning that children can lose the support and protection of their parents, or take on roles beyond their level of maturity.<sup>89</sup>

As such, the United Nations Commission on Human Rights has stated, "unaccompanied minors should never be detained." With specific regard to children who are seeking international protection, UNHCR asserts that "minors who are asylum-seekers should not be detained".<sup>90</sup>

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82 Research cited in Corlett, et al., 2012, p. 34.

83 Edwards, 2013, p. 4.

84 Corlett, et al., 2012, p. 33.

85 Ibid, p. 48.

86 Hamilton, et al., 2011, p. 62.

87 Corlett, et al., 2012, p. 51

88 Farmer, 2013, p. 15.

89 Corlett, et al., 2012, p. 7.

90 Ibid, p. 17.

Another effect of immigration detention, or the threat of detention, is that it fuels the 'migration economy', where smugglers collude with corrupt state officials in extorting money from (detained) migrants, who then have to pay to avoid detention or to be released from detention. As such, immigration detention fuels the migration economy both when migrants are on the move and when they are in custody under the aegis of state authorities.

## detention monitoring

### Box 4 Alternatives to detention

As discussed, international law prescribes that immigration detention should be a measure of last resort, only to be applied in exceptional cases, after all alternatives have been shown to be inadequate in the individual case. Immigration detention is not the only immigration control measure that exists in the policy tool box available to states. There is a continuum of control measures available, which create a range of more or less restrictive alternatives to detention, such as:

- Registration/documentation requirements;
- Release on bail, bond or surety;
- Release to NGO supervision;
- Reporting requirements;
- Directed residence;
- Residence in open centres;
- Residence in semi-closed centres.<sup>91</sup>

The IDC developed a *Community Assessment and Placement Model*, a five-step model that authorities can utilize to ensure that detention is only used as the final option in exceptional cases.<sup>92</sup> The IDC has also identified several benefits in restricting the application of detention and prioritising community-based options, which cost less than detention; maintain high rates of compliance and appearance; increase voluntary return and independent departure rates; reduce wrongful detention and litigation; reduce overcrowding and long-term detention; respect, protect and fulfil human rights; improve integration outcomes for approved cases and improve client health and welfare.<sup>93</sup>

*Another effect of immigration detention, or the threat of detention, is that it fuels the 'migration economy', where smugglers collude with corrupt state officials in extorting money from (detained) migrants...*

## 2.6 Detention monitoring

Given that immigration detention is a deprivation of liberty, it is, according to the APT/IDC/UNHCR detention monitoring manual, vital that states' policies and practices comply with the rule of law and relevant safeguards provided in international law as discussed in this chapter. Critical, in this

91 Amnesty International, 2009, p. 11.

92 See Sampson, Mitchell and Bowring, 2011. This IDC report includes examples from countries where these steps have been implemented. However, there are no examples included from the focus countries in this report.

93 Ibid, p. 7-9.

regard, are transparency and independent oversight of the states' power to deprive migrants of their liberty through detention visits. These visits can also have a deterrent effect, reducing the risk of human rights violations such as torture and inhuman and degrading treatment.<sup>94</sup>

Several monitoring bodies have access to immigration detention facilities:

- UNHCR has a particular role to play in monitoring immigration detention because of its supervisory responsibility over state implementation of international instruments relating to asylum-seekers and refugees and its mandate for the international protection of refugees. State parties to the *Refugee Convention* are obliged to cooperate with UNHCR, including providing UNHCR with access to places of detention as well as to asylum-seekers and refugees in detention.
- Part of the *OPCAT* is a dual system of preventive visits undertaken by independent international bodies (the UN Subcommittee for the Prevention of Torture, SPT) and national bodies (National Preventive Mechanisms, NPMs). The SPT is composed of 25 independent experts and can monitor places of detention, including immigration detention, in any state party to the *OPCAT*. At the national level, *OPCAT* state parties are obliged to maintain, designate or establish functionally independent and suitably staffed and resourced NPMs and grant NPMs access to all places of detention. However, as discussed in section 2.2, to this date no country in the region has ratified the *OPCAT*.
- Human Rights Council Special Procedures can visit places of immigration detention. Examples are the Special Rapporteurs on Torture, on the Human Rights of Migrants, and on Trafficking in Persons, Especially Women and Children, and the Working Group on Arbitrary Detention (WGAD). Until now, however, the UN WGAD has not visited any of the countries that are part of this research. Requests for visits to Saudi Arabia and Ethiopia are pending.
- The International Committee of the Red Cross (ICRC) has been the leading body monitoring places of detention in the context of armed conflicts. Later the mandate was extended allowing the organization to visit detainees, with the agreement of the concerned government, during internal troubles or tensions. This includes places of immigration detention.
- The African Commission on Human and Peoples Rights (ACHPR), including the Special Rapporteurs on Refugees, Asylum-Seekers and Internally Displaced Persons in Africa and on Prisons and Conditions of Detention in Africa, are examples of a regional body and mechanisms that could carry out detention monitoring visits.
- On the national level, national human rights institutions, NGOs and parliamentarians can carry out detention visits.<sup>95</sup>

The APT, IDC and UNHCR recently developed a manual for detention monitoring. Aspects that should be examined during detention monitoring are:

- The legal framework that establishes the basis for immigration detention.
- The administrative framework that governs the implementation of the immigration detention scheme at an operational level.

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94 APT/IDC/UNHCR, 2014, p. 21.

95 Ibid, p. 22-25.

- The living conditions of immigration detainees.
- The detention regime as regards activities.
- The treatment and care of immigration detainees.
- The day-to-day operation, organization and management of the place of detention and its effect on detainees, as well as staff.
- An immigration detainee's access to professional care, advice and assistance, including:
  - Medical care;
  - UNHCR, other international or non-governmental organizations and/or consular assistance;
  - Legal assistance.
- An immigration detainee's access to:
  - Family;
  - Asylum and immigration procedures;
  - Information relating to their rights and the basis for their detention;
  - Effective complaints mechanisms and remedies before a judicial authority;
- The quality and character of relations between the immigration detainees, staff, management and the detaining authorities;
- The staff–detainee ratio and staff working conditions.<sup>96</sup>
- The extent to which children and adults (“Age segregation”), women and men (“Gender segregation”), and criminal and administrative detainees (“Legal segregation”) are given separate areas of a facility or share the same space.<sup>97</sup>
- Grounds for detention
- Length of time in detention<sup>98</sup>

## 2.7 Types of immigration detention centres

Detention for the purpose of migration control comes in many forms. Migrants can be detained in prisons, police stations and juvenile detention centres (all criminal detention) or in migrant detention centres, immigration offices, reception centres or transit zones (administrative detention). Moreover, immigration detention could be of a more ad hoc nature, such as temporary detention centres, camps, hotels, military bases, hospitals or stadiums.<sup>99</sup> For example, during the 2014 operation ‘*Usalama Watch*’ in Kenya, the Kasarani Stadium in Nairobi was temporarily used as a detention centre for arrested irregular migrants and refugees. Other forms of immigration detention include restricted movement arrangements and closed camp settings.<sup>100</sup>

Finally, detention of migrants can occur outside of state control. In Libya for example, migrant detention centres, which are located across the country, are divided into centres that are under the control of the Libyan Interior

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<sup>96</sup> APT/DC//UNHCR, 2014, p. 38.

<sup>97</sup> Flynn, 2011, p. 23-24.

<sup>98</sup> Sampson, Mitchell and Bowring, 2011, p. 7-9.

<sup>99</sup> Flynn, 2011, p. 16.

<sup>100</sup> Amnesty International, 2007, p. 1.

Ministry and those that are run by militias.<sup>101</sup> After the fall of Gaddafi, these militias, composed of former rebels, took control of camps that already existed under the previous regime and opened other places of detention as well. Shortly after the war, there were reportedly up to 100 migrant detention camps.<sup>102</sup> Current reports indicate the presence of around 20 camps for irregular migrants, mostly located in the south of Libya.<sup>103</sup> According to the British Foreign and Commonwealth Office (FCO), approximately half of Libya's detention facilities are under some form of government control, but most are in practice run by militias.<sup>104</sup> The number of migrants in detention centres run by militias is unknown, but it is estimated that between 4,000 and 6,000 migrants are being detained in Libya at any given time.<sup>105</sup> As is the case for migrants who are held under state control (but in remote locations or cells in small police stations), this form of detention occurs beyond scrutiny or observation. Information about detention conditions and experiences only becomes available later from migrant testimony.<sup>106</sup>

According to the UNWGAD "the places of deprivation of liberty concerned by the present principles may be places of custody situated in border areas, on police premises, premises under the authority of a prison administration, ad hoc centres, so-called international or transit zones in ports or international airports, gathering centres or certain hospital premises".<sup>107</sup> In some countries detention is mandatory, and can be for prolonged or indefinite periods.<sup>108</sup>

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*In some countries  
detention is mandatory,  
and can be for prolonged  
or indefinite periods.*

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101 Although Libya is not part of this research, the example of militia detention is provided as it affects many Horn of Africa migrants going to or transiting through Libya. Immigration detention in Libya is covered in forthcoming research publication by the Mixed Migration Task Force for North of Africa and Horn (MMTF-NOAH) under the auspices of IOM Regional Office for Middle East and North Africa (MENA) based in Cairo. It is expected to be published and made available by Spring 2015.

102 RMMS, 2014b, p. 55.

103 FIDH/Migreurop/JSFM, 2012, p. 44.

104 FCO, 2013, p. 195.

105 Amnesty International, 2013, p. 5.

106 For example in research by Amnesty International (2013) and the Jesuit Refugee Service in Malta (JRS, 2014).

107 Cited in Flynn, 2011, p. 4.

108 Amnesty International, 2007, p. 1.

### 3 Detention of migrants in and from the east and Horn of Africa region: country sections

This chapter includes the country/area sections and focuses on immigration detention within the Horn of Africa countries (Djibouti, Eritrea, Ethiopia, Kenya, Puntland, Somaliland, Somalia South Central) as well as on immigration detention of migrants from these countries of origin in a selected number of transit and destination countries (Israel, Saudi Arabia, Tanzania and Yemen).

Naturally, the length of the country sections differ, depending on the amount of information that is available, the extent to which immigration detention is an issue that is widely reported on, and the extent to which the government allows, for example, independent monitoring of detention facilities and conditions by (I)NGOs and international organizations. As such, for example, far more information is available on immigration detention in Kenya compared to Eritrea. Kenya recently carried out mass arrests of migrants, but also allows independent monitoring and allows international organizations (such as UNHCR) and NGOs (such as the Refugee Consortium of Kenya) to report on detention circumstances. Eritrea, on the other hand, is a country where not many migrants pass through or choose as their destination country and its government does not allow any independent monitoring.

#### 3.1 Djibouti

##### Mixed migration context<sup>109</sup>

Djibouti is the major transit country for Horn of Africa migrants travelling irregularly to Yemen and further to Saudi Arabia or other Gulf States. Most transit migrants depart from the vicinity of the portal town of Obock, or, in order to avoid patrols by Djiboutian authorities, from remote coastal locations.<sup>110</sup> In October 2014, an estimated 3,059 migrants/refugees arrived on Yemen's shores via Djibouti. This brought the total estimated number of Djibouti arrivals in Yemen to 34,237 in the first 10 months of 2014.<sup>111</sup>

109 For more detailed descriptions of the mixed migration context in each of the countries in this report, refer to previous reports in the RMMS Mixed Migration Research Series, including reports on 1: Migrant Smuggling in the Horn of Africa and Yemen; 2: Mixed Migration in Kenya; 3: Responses to Mixed Migration in the Horn of Africa, Yemen and neighbouring countries; 4: Saudi Arabian migration policy and its impact on migration flows in the region; 5: Migration from the Horn of Africa through Sudan and Libya towards Europe; 6: Knowledge, Attitudes and Practices of Ethiopian migrants to and through Yemen; 7: female migration from the Horn of Africa.

110 RMMS, 2013c, p. 33.

111 RMMS, 2014m.

Djibouti is also a destination country for Somali, Eritrean and Ethiopian refugees and migrants. In 2012, the Oromia Support Group estimated that there are several thousand undocumented Ethiopian migrants in Djibouti City.<sup>112</sup> Djibouti hosts approximately 21,000 refugees in the Ali Addeh and Hol Hol refugee camps.

### Use of immigration detention

Djiboutian authorities are trying to reduce irregular migration flows through its territory and Ethiopian migrants in Djibouti are usually regarded as irregular migrants.

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*"I mainly work in Avenue 13 during the day and sleep on the street during the night..I tried to avoid sleeping with other kids, because the police always stop and take every one to Nagad."*

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*"I mainly work in Avenue 13 during the day and sleep on the street during the night..I tried to avoid sleeping with other kids, because the police always stop and take every one to Nagad. So I prefer looking for little corners where there is no one and sleep there. When the police take me, I stay 3 or 4 days in jail..sometimes 1. Other times they bring me to the border with Ethiopia and leave me there. It already happened 3 times. Every time, as soon as they leave, I start walking back to Djibouti. I walk for 1 hour to reach Ali Sabieh, and from there I usually wait for a truck going from Ethiopia to the city and when the driver stops to eat I hide inside or under the truck. Then when he stops again at the port in Djibouti I descend."*

14-year old, Ethiopian boy interviewed by field correspondent in Djibouti-city<sup>113</sup>

As such, authorities in Djibouti frequently round up and arrest those in mixed migration flows travelling through the country without proper documentation.<sup>114</sup>

- In January 2013, the Human Rights League of the Horn of Africa (HRLHA) reported that Djibouti had arbitrarily arrested 43 refugees from Ethiopia and deported them to Ethiopia. They were alleged to have been picked up by Djiboutian security forces in December 2012 and were confined in a small detention cell before being handed over to Ethiopian security forces. According to the HRLHA, upon return the Ethiopian authorities detained the deported refugees in the Dire Dawa detention centre, where they were held in solitary confinement.<sup>115</sup>
- The Djibouti government occasionally detained and deported large numbers of migrants throughout 2013. Reportedly, they were given the opportunity to claim refugee status, and those who did were referred for a status determination to the National Eligibility Commission, which, however, had not met in years. Those who do not claim refugee status are usually expelled. The commission resumed its activities in August 2013 but there was a serious backlog of individuals at risk of expulsion.<sup>116</sup>
- In late 2013, the governments of Ethiopia and Djibouti were reported to have increased surveillance along migration routes and departure points between Ethiopia and Djibouti to deter migration flows.<sup>117</sup>

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<sup>112</sup> Oromia Support Group, 2012b, p. 28.

<sup>113</sup> Giulia Spagna, Child Migration in Djibouti, unpublished raw data.

<sup>114</sup> RMMS, 2013a, p. 23.

<sup>115</sup> Human Rights League of the Horn of Africa, 2013.

<sup>116</sup> US Department of State, 2014, Djibouti Country Report P 14.

<sup>117</sup> RMMS, 2013j.

- In early 2014, Djiboutian authorities were reported to have mounted checkpoints along the Djiboutian/Somaliland border. As a result, migrants/refugees intercepted were returned to Loya Ade near the border.<sup>118</sup>
- Throughout 2014, Somalis arriving in Yemen continued to report arrest and detention on suspicion of affiliation to Al Shabaab, and mistreatment by authorities patrolling the coastline or at border points.
- In June 2014, monitoring teams reported the arrest, detention and deportation of 200 migrants/refugees in Djibouti. Joint military operations between Djibouti and Ethiopia to address irregular movement continued throughout 2014.<sup>119</sup>

*Randa, a 20-year-old Somali female, was travelling with a group of Somali men and women. While crossing into Djibouti at Loya Ade, they were arrested by border guards. Fearing sexual assault, she claimed that she was the wife of a man in the group. She was deported together with that man and six other Somali men. Three other Somali women also in the group, however, remained in custody. Randa never saw those three women again but she later heard they had been raped.<sup>120</sup>*

The Djiboutian military also patrols the Obock coastline, arresting and deporting Ethiopian migrants it finds.<sup>121</sup> Authorities frequently intercept boats full of smuggled people.<sup>122</sup> In 2012, approximately 3,533 irregular migrants were intercepted and ‘rescued at sea’ as they were being smuggled on boat trips to Yemen. Intercepted migrants are normally returned to Djibouti and sent to detention facilities or local prisons awaiting deportation.

There are reports of collusion between smugglers and authorities. Migrants in Yemen who have transited through Djibouti report that in some cases boat owners and captains had paid the coast guards to continue their journey. In other cases migrants claim they witnessed members of the coast guard and smugglers sexually abusing female migrants when a smuggler boat was stopped.

*One hour into our sea voyage the boat was intercepted by the Djibouti military police or coast guards, and towed towards the Djibouti-Eritrean border. There were 44 people on the boat, 15 of them women and girls. Some of the women were sexually abused by the brokers and the police or coastguards who had intercepted the boat. We tried to defend them but we were beaten. There seemed to be a negotiation between the brokers and authorities at some point.*

Ethiopian migrant interviewed in Hargeisa in 2014 by RMMS staff

Monitoring teams in Yemen have also recorded claims by Somalis of the latter’s arrest by authorities in Djibouti (during the earlier stages of their journeys). According to the migrants/refugees, they were only released after

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118 RMMS, 2014g.

119 RMMS, 2014k.

120 DRC, 2013.

121 RMMS 2014g.

122 RMMS, 2013c, p. 35.

paying a bribe of approximately USD 50.<sup>123</sup> Some have reported paying bribes of as much as USD 1,000 for their release in Djibouti.<sup>124</sup>

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*“When the police take me, as I’m little, they don’t always put me in the cell with the others, they use me to prepare the food for the detainees, or to bring around the cigarettes and the things they want to sell to detainees [contraband]. If I sell everything they let me go.”*

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*“When the police take me, as I’m little, they don’t always put me in the cell with the others, they use me to prepare the food for the detainees, or to bring around the cigarettes and the things they want to sell to detainees [contraband]. If I sell everything they let me go.”*  
7-year old Ethiopian girl interviewed by field correspondent in Djibouti-city<sup>125</sup>

### **Box 5 Detention of migrant children in Djibouti**

Each year an undetermined number of foreign children arrive in Djibouti by foot, bus or train. Some follow the main migration route towards the Arabian Peninsula, trying to embark from Obock to cross the Gulf of Aden, but the majority cannot afford such a trip and remain stranded in the urban and peri-urban areas of the capital city (Djibouti-ville). This heterogeneous group of children, some as young as seven years old, consist mainly of Ethiopian nationals (from the Oromo and Somali region) and to a smaller extent Somalilanders. The majority of the Ethiopian migrant children gather in the city of Dire Dawa (Ethiopia) and use the train connecting Dire Dawa to Djibouti twice a week, on which they can jump and hide to avoid paying the train’s fare. The majority of these children face hard times in Djibouti. Forced to be self-reliant, they earn erratic incomes from begging, peddling goods, washing cars or shoes and from petty crimes. The street becomes their habitual residence and source of livelihoods, which makes them known as *enfants de la rue* (street children).

Due to strict immigration policies in Djibouti, these children are constantly rounded up and imprisoned by the law enforcement officials who patrol the centre-ville areas. When in prison, migrant street children face the same conditions as other detainees, with whom they have to share overcrowded cells, irregular and meagre meals and the absence of sanitary services. Both children as well as CARITAS staff report abusive behaviour by law enforcement officials during detention, including sexual abuse by the guards. Some statements by migrants submitted during the research of this study make claims of gross sexual defilement and forced sexual acts. As these claims cannot be verified they are not quoted in this report. Children are also reportedly used to clean the officers’ offices, cars and clothes, and to sell contraband goods among detainees. Like other detained irregular migrants, child migrants face deportation back to Ethiopia across the border just three hours away from Djibouti-ville, where they are left without prior evaluation (or status determination) of their needs. Many return by foot or by hiding in trucks travelling to the city. There are additional risks for migrant girls.

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123 RMMS, 2013c, p. 36.

124 RMMS, 2013d.

125 Giulia Spagna, Child Migration in Djibouti, unpublished raw data.

Being alone in the streets of a Muslim country makes them more likely to be stigmatized as immoral and therefore excluded, or, exposed to sexual violence. Violence towards them by other migrants, nationals or law enforcement officials is more easily justified.<sup>126</sup>

*"The police are always after me, I lost the count of the times I was in prison. What they do with us it depends on luck ("C'est la change"): sometimes they bring us to the borders, sometimes they bring us to clean the police cars or shoes, sometimes we end up in jail... for 1 day to a week, ...if you have money and you pay them you can go out almost immediately...you give them 1,000 or 2,000 Djibouti Franc [5.65 and 11.30 USD] and they let you go. But the jail is really ugly. We stay altogether, 30-50 people in the same room, and we have no toilet, everyone has to make his excrements there. The smell is unbearable. They give us dry rice and water once a day, sometimes a piece of bread, and that's it."*

15-year old Ethiopian girl interviewed by field correspondent in Djibouti-city<sup>127</sup>

### Detention conditions and monitoring

Police round-ups of non-Djiboutian residents, including asylum seekers, happen frequently.<sup>128</sup> Migrants who are arrested are often detained at the Nagad Detention Facility near Djibouti city. The Nagad Detention Facility primarily holds undocumented migrants, but is not part of the prison system in Djibouti. The conditions are described as poor, although detainees had access to potable water, food, and medical treatment. The Djibouti authorities reportedly deport most detainees within 24 hours of arrest with access granted to foreign embassies and the ICRC. Authorities allowed ICRC regional representatives based in Nairobi to visit Nagad Detention Facility quarterly.<sup>129</sup> Migrants are also detained at a coast guard's base in Obock.<sup>130</sup> Due to limited detention facilities and other resources, the arrest of migrants in Djibouti appears to be arbitrary and not systematic.<sup>131</sup>

*"The number [of times] the police took me are countless. They take Ethiopian, Somali, Djiboutian and they put us in Nagad, everyone in the same cage. There are no bathrooms, if you have to...[relieve yourself] you have to do it there, in front of everyone. After a while the smell becomes unbearable...you want to die. In the morning they give us very dry bread and tea...and for lunch some rice, not cooked well, not salted...it's really bad, and they just give us very hot water to drink, from the sink...so several people vomit. We stay like this for 4, 5 days. If you happen to have some money with you, you give it to the police and they let you go, but I never have. Then they bring all the Ethiopians to the borders, we are all put in a big van and they bring us to the*

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*"The number [of times] the police took me are countless. They take Ethiopian, Somali, Djiboutian and they put us in Nagad, everyone in the same cage. There are no bathrooms, if you have to...[relieve yourself] you have to do it there, in front of everyone. After a while the smell becomes unbearable...you want to die."*

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126 RMMS, 2014f.

127 Giulia Spagna, Child Migration in Djibouti, unpublished raw data.

128 US Department of State, 2013, p. 154.

129 US Department of State, 2014, Djibouti Country Report, p. 3-4.

130 RMMS, 2013d.

131 RMMS, 2012.

*border. Once there, we always try to come back. For the Somali and Somalilanders it's different, they let them clean their cars and then they let them go. When we are 20 people in the jail [it] is fine, because even if we have to stay together and have no bathroom we can lie down and sleep..but sometimes they put 70, 90 or even 100 persons all in the same cell, it's impossible to stay there. "*

17-year old Ethiopian boy interviewed by field correspondent in Djibouti-city<sup>132</sup>

### **Eritreans in detention in Djibouti**

In March 2014, a report by the Special Rapporteur on the situation of human rights in Eritrea indicated that Djiboutian authorities released 266 Eritrean refugees/asylum seekers detained in Nagad, where they had been held for over 5 years.<sup>133</sup> Human Rights Concern Eritrea (HRCE) had been campaigning for their release since 2011. In March 2014, its director began a hunger strike outside the Djibouti Mission to the United Nations (UN) in Geneva in support of the detained Eritrean refugees/asylum seekers, who were eventually released.<sup>134</sup> The refugees/asylum-seekers had been detained incommunicado, without visiting rights. Most of them are deserters from forcible and indefinite national military conscription in Eritrea. It is believed the refugees/asylum-seekers were kept in detention by the Djibouti authorities because they were deemed a security threat due to the ongoing border dispute between Eritrea and Djibouti. According to HRCE, many of the detainees had been suffering from diseases such as tuberculosis, hepatitis, serious depression and various infections, and had not received treatment. Two are known to have died in custody from illnesses contracted in prison, which were caused by an unhygienic environment and a lack of medical care.<sup>135</sup>

### **Conclusion: immigration detention in Djibouti compared with international standards**

Detention of migrants seems to be a routine practice in Djibouti. There is no information available showing that less restrictive alternatives are considered or that detention is used as a measure of last resort. Arbitrary detention is common as migrants are usually detained as a group, without independent court review and individualized determination to assess whether detention is necessary and reasonable. Detention of children who are held in appalling conditions appears to be common in Djibouti.

## **3.2 Eritrea**

### **Mixed migration context**

Since the early 2000s, Eritreans started to leave the country in large numbers to escape the poor economic conditions and, for many, to evade the country's compulsory national service. By early 2013, approximately 300,000 Eritrean refugees and asylum seekers lived in Sudan, Ethiopia, Israel, and Europe.<sup>136</sup> It is estimated that up to 5,000 Eritreans might be

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<sup>132</sup> Giulia Spagna, Child Migration in Djibouti, unpublished raw data.

<sup>133</sup> RMMS, 2014i.

<sup>134</sup> Plaut, 2014.

<sup>135</sup> RMMS, 2014i.

<sup>136</sup> RMMS, 2014b, p. 17.

leaving the country every month.<sup>137</sup> An estimated 33,872 Eritreans reached Italy in 2014 (up until early November), after travelling through Ethiopia and/or Sudan and crossing the Mediterranean from Libya.<sup>138</sup> As Eritrea is not a transit or destination country in mixed migration flows in the region, immigration detention in Eritrea itself is not a particular issue.

### **Detention in Eritrea: foreigners, conditions and monitoring**

According to the 2013 US Department of State Human Rights report, there are no reports of detention of foreign nationals in Eritrea in 2013. However, in cases where foreign consular officials questioned government authorities about missing nationals from previous years, authorities denied their ability to obtain information. Allegedly, there are Ethiopian and Djiboutian prisoners of war in Eritrean prisons. Although it is known that prison conditions in Eritrea are harsh and life threatening, Eritrea – a closed and highly securitised state under an authoritarian government - does not permit independent monitoring by domestic nor international observers. Hence, the ICRC is not permitted to visit prisons or detention centres.<sup>139</sup>

### **Detention of Eritreans**

The act of leaving Eritrea may lead to imprisonment of Eritrean migrants. Eritreans who are caught fleeing from Eritrea to Sudan can be punished by imprisonment of three years while those caught entering Ethiopia are punishable by death.<sup>140</sup> Many people are arrested at the border while attempting to cross into neighbouring countries. They are often arrested at night and taken to secret detention places, without family members knowing of their whereabouts or being able to visit them.<sup>141</sup>

Eritrean refugees and asylum seekers who are repatriated from other countries are reportedly also detained in Eritrea, as they are considered traitors.<sup>142</sup> They may even face life imprisonment or the death penalty as a result.<sup>143</sup> According to the 2014 report by the Special Rapporteur on the situation of human rights in Eritrea, unsuccessful asylum seekers and other returnees, including national service evaders and deserters, face torture, detention and disappearance in Eritrea.<sup>144</sup> It is further reported that military service escapees, as well as perceived offenders, are frequently sent to one of numerous prisons as punishment. Wi'a prison camp, situated on the Red Sea coast, south of Massawa, is a notoriously harsh one. According to the Human Rights Report "Punishment amounting to torture, inhuman or

137 van Reisen, Estefanos and Rijken, 2013, p. 53.

138 IOM, 2014f.

139 US Department of State, 2014, Eritrea Country Report, p. 2-4; 17. In a potential attempt towards more openness, the President of Eritrea in early 2013 sent a letter to the UN Secretary General, asking the UN to initiate an investigation on the trafficking of Eritreans out of the country and underlined the commitment of the government to halting the practice (UNHCR, 2013b).

140 van Reisen, Estefanos and Rijken, 2013, p. 53.

141 UN OHCHR, 2014, p. 16-17.

142 From late 2011 and onwards, there have been increasing reports of forcible returns of Eritreans by the Sudanese Government. Amnesty International urged Sudan to comply with its international legal obligations and stop all forced returns of refugees and asylum seekers to Eritrea. Amnesty International, 2012a.

143 Freedom House, 2013.

144 UN OHCHR, 2014, p. 6.

degrading treatment, as well as detention in inhumane conditions appears to be the norm, even for trivial cases. National service conscripts in detention are also used for hard labour.”<sup>145</sup>

Other reasons for detention – and related to emigration for Eritreans - include trumped up charges of plotting to leave the country or helping others to flee; failing to pay a fine when a family member has fled the country; or being held in lieu of a parent or family member having left the country.<sup>146</sup>

However, as the focus of this report is on immigration detention (of migrants who are detained in foreign countries) this section will not go into further detail on these issues. With regard to Eritrea, the focus in this report will be on Eritreans in detention in other countries in the region (for example Israel), which will be discussed in the other country sections.

### 3.3 Ethiopia

#### Mixed migration context

Ethiopians dominate the mixed migration flows in the region. On average, over 75% of migrants arriving in Yemen are Ethiopians. More than 350,000 Ethiopians have arrived in Yemen since 2006, with 64,225 arriving in 2014 (up to November).<sup>147</sup> Most (approximately 80%) of the irregular migrants leave from Djibouti, and after arrival in Yemen many intend to travel onwards to Saudi Arabia or other Gulf States. However, during a recent crackdown on irregular migration by Saudi authorities at least 163,000 Ethiopians were deported to Addis Ababa (see the section on Saudi Arabia). In addition, since 2011 between 100,000 and 200,000 regular Ethiopian labour migrants formally migrated to Saudi Arabia annually – mostly through private employment agencies.<sup>148</sup>

Ethiopians are one of the largest groups going south from the Horn of Africa, towards South Africa. In 2009, it was estimated well over 10,000 Ethiopians are smuggled each year from Ethiopia towards South Africa, crossing many countries including Kenya and Tanzania.<sup>149</sup> More up-to-date estimates are unavailable although it is likely these figures may have risen. IOM Tanzania recently suggested that the Saudi crackdown might have pushed more Ethiopians south again in search of better economic opportunities.<sup>150</sup> Moreover, substantial numbers of Ethiopians migrate to Europe, transiting through Sudan and Libya, although numbers are unknown. It is reported many register as Eritreans.<sup>151</sup>

Ethiopia is also a major transit point along the migration route out of the Horn of Africa. Many mixed migrants from South Central Somalia and Somaliland transit through Ethiopia on their way to Sudan, with places such

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145 UN OHCHR, 2014, p. 6.

146 Ibid, p. 16-17.

147 RMMS, 2014h.

148 RMMS, 2014a, p. 9.

149 Horwood, 2009.

150 IOM, 2014c.

151 RMMS, 2014b, p. 28.

as Jijiga, Addis Ababa and Metema (on the border with Sudan) being major migration hubs.<sup>152</sup> Moreover, many Eritrean refugees at one point leave the refugee camps in northern Ethiopia and transit through Ethiopia before crossing into Sudan to join the increasing number of Eritreans trying to reach Europe. Between January and early November 2014, 33,872 Eritrean refugees/migrants arrived in Italy from Libya.<sup>153</sup>

Finally, Ethiopia hosts the largest number of refugees in Africa (it overtook Kenya in August 2014). As of July 2014, Ethiopia hosted 629,718 refugees, including 247,000 South Sudanese, 245,000 Somalis and 99,000 Eritreans.<sup>154</sup>

### **Prevalence of immigration detention in Ethiopia**

Not much is known about immigration detention in Ethiopia. Only scattered data is available, for example anecdotal information about Eritreans who are sometimes regarded as potential security threats. Young Eritrean men are particularly vulnerable and may be placed in detention facilities as a result.<sup>155</sup> Occasionally, there are media reports about Ethiopian authorities arresting and deporting migrants from Somaliland, who are transiting through Ethiopia on their way to Sudan, Libya and, eventually, Europe. In October 2013, for example, Ethiopian authorities handed over 33 migrants to Somaliland immigration officials after they had been arrested in Ethiopia. The Somaliland and Ethiopian governments are cooperating to curb irregular migration of Somaliland youth.<sup>156</sup>

### **Detention of Ethiopians**

Furthermore, Ethiopians themselves report episodes of detention. In a recent RMMS survey, 31% of Ethiopian returnee migrants (who came back from Saudi Arabia) had experienced and/or witnessed seizure and detention while travelling through Ethiopia; 19% experienced and/or witnessed what they understood to be unlawful arrest and detention in Ethiopia.<sup>157</sup>

In fact, many Ethiopians who left the country experienced politically motivated detention in Ethiopia, which is among the reasons for their migration. Members of political parties and those who criticize the regime have reportedly faced arbitrary arrest and detention, and opposition groups such as the Oromo Liberation Front (OLF) and Ogaden National Liberation Front (ONLF) have been branded terrorist organizations. Human Rights Watch and Amnesty International have reported on what they regard as arbitrary detentions, torture and restrictions on the freedom of speech and systematic marginalization of certain groups, in particular those of Oromo ethnicity.<sup>158</sup> The Oromia Support Group, in several reports, describes how many Ethiopian refugees in Somaliland, Djibouti and South Africa<sup>159</sup> experienced (sometimes multiple) episodes of detention in Ethiopia. Out

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152 RMMS, 2014b, p. 28.

153 IOM, 2014f,

154 UNHCR, 2014b.

155 RMMS, 2013a, p. 19.

156 Somaliland Press, 2013.

157 RMMS, 2014c, p. 6.

158 Human Rights Watch, 2009; Amnesty International, 2012b.

159 Oromia Support Group, 2012a; Oromia Support Group, 2012b; Oromia Support Group, 2013.

of 60 migrants interviewed in South Africa in 2012, 38 had been detained in Ethiopia, of which 68% reported being tortured.<sup>160</sup> As will be described later, many Ethiopians who have fled their country, be it for economic or political reasons, are again detained in different transit or destination countries such as Kenya, Tanzania and South Africa, not because of their political affiliation, but because of their illegal presence.

### **Detention, deportation and *refoulement* of Ethiopian migrants**

Small to moderate numbers of refugees and asylum-seekers appear to be detained in Kenya, Djibouti and Somaliland, reportedly at the request of and with the assistance of members of the Ethiopian security system before being deported back to Ethiopia. Larger numbers are detained for short periods especially in Kenya and Djibouti in roundups to find undocumented migrants. The Oromia Support Group reports on the *refoulement* of Oromo from Nairobi in 2007 and 2008. One of them was reportedly killed in detention in Kaliti prison, Addis Ababa, after years of intermittent torture and incommunicado solitary confinement. Another one remains in detention in Ethiopia. Two ONLF leaders were detained in Nairobi in January 2014 and deported to Ethiopia. In December 2012, at least 43 Oromo and Ogadeni refugees were detained in Djibouti city and deported to Ethiopia the next day. They are reported to be detained in Dire Dawa town detention centre.

According to the US Department of State, conditions in Ethiopian prisons are harsh. In 2013 it was reported that juveniles are sometimes incarcerated with adults, although male and female prisoners are generally separated. Severe overcrowding is common, especially in the sleeping quarters. Medical care in federal prisons is unreliable and in regional prisons almost non-existent; many prisoners have serious health problems, including mental health problems. Access to potable water is limited and water shortages cause unhygienic conditions, with most prisons lacking appropriate sanitary facilities. Reports on detention in police stations suggest poor hygiene conditions and police abuse.<sup>161</sup>

The ICRC is allowed to visit regional prisons throughout the country. In 2013 it was reported that regional authorities allowed government and NGO representatives to meet regularly with prisoners without third parties present. In 2013, the government-established Ethiopian Human Rights Commission (EHRC) which is funded by parliament. EHRC monitored federal and regional detention centres and interviewed prison officials and prisoners in response to allegations of widespread human rights abuses. The Ethiopian NGO Justice For All-Prison Fellowship Ethiopia (JFA-PFE) was granted access to various prison and detention facilities.<sup>162</sup>

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160 Oromia Support Group, 2013, p. 1.

161 US Department of State, 2014, Country Report Ethiopia, p. 3-4.

162 *Ibid.*, p. 5.

## 3.4 Kenya

### Mixed migration context

Kenya is a major hub for mixed migration in the region. At the end of July 2014, Kenya hosted 575,334 registered refugees and asylum-seekers,<sup>163</sup> mostly from Somalia, Ethiopia and South Sudan. Additionally, large numbers of irregular migrants (including many Somalis and Ethiopians) enter Kenya every year settling in urban areas with the intention of looking for work or transiting through Kenya and moving into Tanzania and Uganda, often on their way to South Africa.<sup>164</sup> However, the number of irregular migrants transiting through Kenya annually is unknown.

### The use of immigration detention in Kenya

Under the *2011 Kenya Citizenship and Immigration Act*, a migrant who unlawfully enters or is unlawfully present in the country commits a criminal offence. If convicted, the penalty may involve a fine (of up to USD 5,500) or imprisonment (of up to 3 years), or both. Importantly, this rule does not apply to newly arrived asylum-seekers. Under the Act, irregular migrants may also be detained in police custody, prison or immigration holding facilities pending their deportation.

In recent years, it has been estimated that, apart from the massive arrests during 2012 and 2014 security operations (see below), hundreds of irregular migrants have been arrested and detained in Kenya. Every month, the media reports on incidents of arrests, raids and detention (and deportation) of groups of migrants. In 2011, the Nairobi-based NGO Legal Resources Foundation conducted a study which identified 726 foreigners in the prison system in Kenya.<sup>165</sup> In 2012, the Refugee Consortium of Kenya (RCK) provided legal representation to 727 asylum seekers and refugees held in various detention centres across the country.<sup>166</sup> In the summer of 2012, Kenyan authorities announced the '*Fagia Wageni*' ('Do away with/ get rid of the foreigners') operation, intended to round up irregular migrants in the country. The Kenyan authorities subsequently carried out two raids in the Eastleigh neighbourhood of Nairobi. UNHCR and partners estimated that approximately 100 migrants were arrested and brought before the courts.<sup>167</sup>

In June 2013, in three separate incidents, a total of 135 Ethiopians were intercepted in Nairobi, Lunga Lunga in the Coast region and at Nairobi airport. Some of them were sentenced to 4 months in prison or fined 20,000 Kenyan Shillings [USD 225], which they could not raise. The Ethiopians who were intercepted in the coast region, had previously been imprisoned in Tanzania while on their way to South Africa.<sup>168</sup>

*"We were all caught by the Tanzanian police and thrown into jail for three months at Songwe [on the Malawi border]. Then we were deported by bus to the Kenyan border. The Kenyans put us in their prisons in Nairobi*

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163 UNHCR, 2014b.

164 RMMS, 2013c, p. 51.

165 RMMS, 2013b, p. 7.

166 Kiama and Likule, 2013, p. 34.

167 RMMS, 2013b, p. 31.

168 RMMS 2013h.

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*“We were all caught by the Tanzanian police and thrown into jail for three months at Songwe [on the Malawi border]. Then we were deported by bus to the Kenyan border. The Kenyans put us in their prisons in Nairobi for 2.5 months.”*

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*for 2.5 months. Eventually, they drove us up to Moyale and dropped us off there. Prison conditions in Tanzania and Kenya were very poor. The food was bad and the cells were so full we had to sleep sitting up. There was no bedding. We all lost a lot of weight in prisons”.*

Ethiopian, 30, who had already been deported twice but was saving up to try again, Interviewed in a 2009 IOM study<sup>169</sup>

Despite scattered information on such separate incidents (also see below on arrests of Ethiopians in 2014), comprehensive data on the number of migrants in detention in Kenya, as in other countries, is not collated. There are no ready statistics of migrants in Kenyan prisons, as there is no categorisation of foreigners in the Kenyan judicial system and no database with numbers publicly released.<sup>170</sup> Data is especially limited for crucial areas of the country, such as the North Eastern Province, where it is likely that many irregular migrants are detected while, or shortly after, crossing the Somali-Kenya border.<sup>171</sup> In the first two weeks of October 2014 for example, 18 refugees and asylum seekers were arrested in Garissa County in north eastern Kenya (14 male, 4 female). Three were fined for residing outside the Dadaab refugee camps. The other 15 were suspected of unlawful presence in Kenya and were discharged after RCK intervened. In October 2014, UNHCR reported that 153 refugees and asylum seekers were held in Garissa Prison Centre and received legal counselling from RCK.<sup>172</sup>

RCK estimates that, excluding special operations (see below), around 1,000 migrants are arrested and are held in detention every year. The NGO acknowledges, however, that this is a very conservative estimate. Around 90% of the arrests are of Ethiopians, mostly between 20-40 years of age. RCK has not come across any women, and less than 2% of migrants in detention are children (around 16 years old).

### **Arrests and detention of Ethiopians in 2014**

More recently, in 2014, there have been multiple incidents in which (mainly) Ethiopian migrants were arrested and detained in Kenya, implying a potential increase in the number of Ethiopians traveling south through Kenya on their way to South Africa. It could also point to the increased efforts by Kenyan authorities to curb irregular migration through its territories. In May 2014, for example:

- The police in Kitengela (south east of Nairobi) arrested 25 Ethiopian nationals on their way to Tanzania for being in the country without valid documents. The men, in their early 20s, were found hidden in a house, while waiting to be ferried to South Africa through Tanzania. They were arraigned at Mavoko Law Court where they were charged for being in the country without valid travel documents.<sup>173</sup>
- The police in Kiambu (north of Nairobi) arrested 50 irregular migrants, allegedly from Ethiopia, after they were discovered hiding at a house.<sup>174</sup>

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169 Horwood, 2009, p. 129.

170 RMMS, 2013b, p. 7;

171 Ibid, p. 30.

172 UNHCR, 2014c.

173 Standard Media, 2014.

174 Daily Nation, 2014.

- Kenya's prison authorities in northern border towns expressed concern over the high influx of migrants from Ethiopia, causing a serious congestion and burden in the prison cells. Isiolo County Prison Commander Ibrahim Hassan said the Isiolo Prison received 107 migrants during one week in May 2014 alone, with the number increasing every day. It is estimated more than 200 Ethiopians enter Kenya illegally every month.<sup>175</sup> 257 Ethiopians are reportedly held at the Isiolo Prison, while 33 are held at the Meru Prison.<sup>176</sup>

### Challenges in Kenyan immigration detention policy and practices

According to RCK, one of the challenges in mixed migration and refugee protection in Kenya is the failure by law enforcement officers to distinguish between criminals, irregular migrants and asylum seekers.<sup>177</sup> Some reasons for the arrest and detention of refugees by Kenyan police stems from ignorance of the correct procedures and ineffective application of refugee law. In a 2012 report, RCK explained that the *2006 Refugee Act* states that asylum seekers have a period of 30 days once they have crossed the border to get to a registration point. For most refugees coming from Somalia, this registration point will be the Dadaab refugee camps in north eastern Kenya, but some make their way directly to Garissa or onwards to Nairobi, for example. Because those seeking protection usually cross the border without documentation, it is not easy for the police to know how long they have been in the country. Many of the police have insufficient training on refugee matters and are not familiar with refugee law.<sup>178</sup> They are often not able to conduct proper interviews (which is compounded by language barriers) with migrants to assess whether they entered the country as an economic migrant or asylum seeker. This can lead to asylum-seekers being categorised as economic migrants.<sup>179</sup>

If migrants are arrested they are brought to court, which usually happens fast. However, there is also a lack of adequately trained interpreters in the courts. As a result, migrants often do not understand the charges against them,<sup>180</sup> and they might accept the charges without properly understanding them, or, misconstrue the judicial officer's questions.

Irregular immigration either attracts a fine or a custodial sentence. Fines can be high, with some irregular migrants fined 100,000 or 200,000 Kenya Shillings [between USD 1,125 and 2,250]. In the previous *Immigration Act*, the prison sentence was around 6 months, but in the new *2011 Citizenship and Immigration Act* it can be up to 3 years. The context of the government of Kenya's crackdown on irregular migration in 2014 (see below) could possibly influence the judges' sentences.

Another issue, reported in a previous RMMS study, is that migrants in Kenya often face multiple detention in several ways. For example, they are arrested several times during their journey because they do not have proper documentation or they are released from prison only to end up again in a

<sup>175</sup> Coast Week, 2014.

<sup>176</sup> RMMS Monthly Summary April 2014.

<sup>177</sup> Kiama and Likule, 2013, p. 34.

<sup>178</sup> RCK, 2012, p. 36-37.

<sup>179</sup> RMMS, 2013b, p. 31.

<sup>180</sup> RCK, 2012, p. 36-37.

police cell because there are no deportation / repatriation systems in place. Migrants also face the risk of multiple detentions between countries. Often migrants are deported to the nearest point of entry where, after crossing the border, they are arrested again.<sup>181</sup>

When migrants are arrested, the usual process in Kenya is for them to spend one or two nights in a police cell before they are charged and sentenced to prison (for example, for two months). In some cases this cycle repeats itself before their eventual repatriation. Usually migrants are handed over to an immigration officer after they serve their sentence. The immigration officer has to keep the migrants until repatriation is arranged. However, migrants often end up in police cells, where they usually have to wait for a long time before repatriation. This has to do with the lack of financial resources for quick and efficient repatriation. For example, immigration officers will not arrange transport to repatriate just two Ethiopian migrants and will wait until there is a substantial number eligible for repatriation. This basically extends the prison sentence. While waiting for repatriation, migrants may be held in small police cells with 70 or 80 people. Conditions are often poor with a lack of space and resources for food. According to RCK, irregular migrants who have not yet been convicted of unlawful presence, or those awaiting deportation, are often detained with criminals.

Apart from these procedural gaps, there have been numerous reports of police harassment and abuse of migrants and refugees. RCK reported in 2012 that many of those crossing into Kenya from Somalia experience harassment near the border by Kenyan police, who extort bribes from migrants. Apart from cases of bribery, some faced detention and deportation.<sup>182</sup> Direct abuse and violence perpetrated by Kenya's security apparatus against refugees has, according to RCK, been well documented.<sup>183</sup> Kenya officially closed the border between Kenya and Somalia in 2007, citing security reasons. However, RCK takes the position that the continued refusal by the government of Kenya to open the border during the 2011 famine and refugee crisis exposed new arrivals to protection violations and criminal activity on the road to Dadaab and other destinations, including arrest, detention and extortion by Kenyan police.<sup>184</sup>

### **Detention conditions and monitoring**

Migrants in Kenya are held in different prisons, such as Meru Prison, Isiolo Prison, Voi Prison, Langata prison in Nairobi, or in police stations such as Nairobi's Industrial Area Police Station or Pangani Police station in Nairobi. This depends on where they are apprehended and brought to court.

The prison conditions in Kenya fall short of internationally acceptable standards (see also the next sections). Prison conditions expose asylum seekers and refugees to assault, sexual abuse, torture, ill-health, lack of counselling support, limited legal assistance and a poor diet.<sup>185</sup>

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181 RMMS, 2013b, p. 9.

182 RCK, 2012, p. 49.

183 Ibid, p. 49.

184 Ibid, p. 11.

185 Kiama and Likule, 2013, p. 34.

In 2009, the Kenya National Commission on Human Rights (KNCHR) carried out a prison assessment and concluded that torture, degrading and inhuman treatment, unsanitary conditions, and extreme overcrowding were endemic in Kenyan prisons. Moreover, KNCHR reported that prison staff routinely beat and assaulted prisoners. There were also media reports that prison officials rape female inmates. After the assessment, the Department of Prisons began implementing reforms to curb abuse. However, detention conditions, both in prisons and police cells are still considered harsh and life threatening. The NGO Legal Resources Foundation (LRF) attributes poor prison conditions to a lack of funding, overcrowding, inadequate staff training, and poor management.<sup>186</sup>

The Kenyan government does permit prison visits by local human rights groups and international diplomatic representatives.<sup>187</sup> The RCK, for example carries out periodic detention visits. On average, RCK conducts five monitoring missions per year, during which they visit police stations, prisons and other government offices such as immigration offices.

### **Security operations and immigration detention**

In addition to routine arrests and detention of irregular migrants in Kenya, the authorities on several occasions in recent years have carried out mass arrests and detention of migrants and refugees as part of its security operations. In 2011, after three Improvised Explosive Device (IED) attacks in Dadaab killed and injured several police officers, the Kenyan police launched a series of counter-measures. The government imposed curfews, travel restrictions and initiated police swoops. Reports included looting, vandalism, arbitrary detention, extortion and 160-170 confirmed hospital cases, including beatings and broken bones. Following each incident, indiscriminate arrests took place in which 20-30 refugees were detained for one or two nights.<sup>188</sup>

The sections below describe two of the most recent operations during which large numbers of migrants and refugees were detained.

### **2012-2013: reinforcement of encampment policy**

During several months in 2012, Kenya experienced a series of grenade attacks targeting individuals in churches, mosques and public transport in major cities and towns in Kenya. Following these attacks, the Kenyan police launched a massive police operation in November 2012, detaining and targeting irregular migrants. Moreover, on December 18th 2012, the Commissioner of Refugee Affairs, in coordination with the Ministry of Internal Security and Public Administration, sought to reinforce a pre-existing encampment policy by issuing a directive requiring all refugees living in urban areas (approximately 50,000 by that time) to return to refugee camps. The new policy was motivated by security concerns and the increasing tensions between refugee and host communities following the attacks.<sup>189</sup>

<sup>186</sup> US Department of State, 2014, Country Report Kenya, p.8.

<sup>187</sup> Ibid, p.10.

<sup>188</sup> RCK, 2012, p. 44.

<sup>189</sup> RMMS, 2013b, p. 41-42.

According to Human Rights Watch, during this operation (which was conducted between December 2012 and February 2013) the Kenyan police arbitrarily detained at least one thousand people in homes, streets, vehicles, and police stations, including in inhuman and degrading conditions. The police also falsely charged well over one hundred people—and possibly many more - with public order offenses, with no evidence of any kind to substantiate the charges. The police were said to have held migrants in police stations for hours or days without giving them reasons for their arrest, without interviewing them, and without charging them with any offense.<sup>190</sup> Human Rights Watch reported that the largest number of documented arbitrary detention cases involved detention in police vehicles. Twenty-two people described how police detained them, together with around 430 others, in police trucks and cars, sometimes for hours on end, without giving any reason.<sup>191</sup>

According to the Human Rights Watch report, the General Services Unit (GSU), the Regular Police (RP), the Administration Police (AP), and the Criminal Investigations Department (CID) in Nairobi committed a range of abuses, including rape, violent assault, theft, extortion and arbitrary detention in inhumane and degrading conditions.<sup>192</sup> Numerous interviewees said police beat and kicked them and others in trucks.<sup>193</sup>

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*"I was walking home on 4th Street when three RP [Regular Police] officers—one woman and two men—stopped me. I showed them my refugee documents and they just attacked me. The woman grabbed my breasts and shoulders and tried to lift my veil and then pushed me into a ditch by the roadside. Then all three hit and kicked me and tore at my clothes. The woman was shouting 'you are a prostitute' and 'you Somalis are all Al-Shabaab and terrorists.'"*

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34-year-old Somali woman, interviewed by Human Rights Watch in Eastleigh, Nairobi, 4-2-2013<sup>194</sup>

Almost all migrants interviewed by Human Rights Watch said the police demanded victims to pay them large sums of money and then let them go.<sup>195</sup> Based on the descriptions given by former detainees, Human Rights Watch concluded that the detention conditions in Pangani police station (close to Eastleigh neighbourhood) amounted to inhuman and degrading treatment. It was reported that up to one hundred people were held at a time for days in three very small police cells with one toilet.<sup>196</sup>

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<sup>190</sup> Human Rights Watch, 2013a, p. 33.

<sup>191</sup> Ibid, p. 35-36.

<sup>192</sup> RMMS, 2013c, p. 56; Human Rights Watch, 2013a.

<sup>193</sup> Human Rights Watch, 2013a, p. 35-36.

<sup>194</sup> Ibid, p. II.

<sup>195</sup> Ibid, p. 2.

<sup>196</sup> Ibid, p. 34.

*"It was around midnight on November 18 and the GSU, RP, and AP all came to Alferdoos House apartment block in Eastleigh's Section 1, about five minutes away from where the bus explosion happened earlier that day. They rounded up 28 of us, all young men, and took us to Pangani police station. There were already around 60 other Somali and Somali Kenyan men and children, some of them 12 or 13 years old, who told us they had just been brought there, like us. They put all of us in three small cells, linked with one narrow corridor which had a filthy overflowing toilet at one end. The whole place stank of faeces and urine. They forced me and around 30 others in one of the cells which was 3 meters by 3 meters and which did not have a window. We had no space to move. It was so full no one could even sit down. The police kept insulting us, saying we were Al-Shabaab members and said, 'Somalis are donkeys and have no rights in Kenya.' They kept us in that cell all night, all next day, and the whole following night. The police did not interview us and on November 20 they took us to court".*

Young Somali Kenyan, interviewed by Human Rights Watch in Eastleigh, Nairobi, February 2, 2013<sup>197</sup>

Human Rights Watch further concluded that the Kenyan authorities failed to show that the plan to force tens of thousands of refugees living in Kenya's cities into closed camps was both necessary to achieve enhanced national security and proportional (i.e., the least restrictive measure to address Kenya's genuine national security concerns). The operation also unjustifiably discriminated between Kenyan citizens and refugees because the policy allows Kenyans to move freely and denies refugees that right, which they have under the *Refugee Convention*, the *International Covenant on Civil and Political Rights*, and Kenyan law.<sup>198</sup>

Following a petition filed by Kituo cha Sheria, a legal aid organisation in Nairobi advocating for the rights of refugees, the directive was stayed by the High Court on 23 January 2013. The Court made a conservatory order which restrained the government from implementing the encampment directive.<sup>199</sup> After that, abuses by security services reduced from February 2013. The directive was subsequently overturned by the High court on 26 July 2013.<sup>200</sup> The High Court ruled that the order was unconstitutional and in violation of numerous rights of refugees. Moreover, the Court ruled that the Kenyan government had not demonstrated that the presence of refugees in urban areas resulted in an increased national security threat.<sup>201</sup>

### **Usalama Watch**

At the end of March 2014, the Interior Ministry launched yet another security operation dubbed '*Usalama Watch*', again aimed at addressing rising terror attacks in Kenya. The operation was implemented following an attack in Mombasa on 23 March 2014 and explosions in Eastleigh on 31 March 2014, which killed at least ten people and injured scores of others.<sup>202</sup>

*"We had no space to move. It was so full no one could even sit down. The police kept insulting us, saying we were Al-Shabaab members and said, 'Somalis are donkeys and have no rights in Kenya.' They kept us in that cell all night, all next day, and the whole following night. The police did not interview us and on November 20 they took us to court."*

<sup>197</sup> Human Rights Watch, 2013a, p. 35.

<sup>198</sup> Ibid, p. 3.

<sup>199</sup> RMMS, 2013b, p. 43.

<sup>200</sup> RMMS, 2013c, p. 56; Human Rights Watch, 2013a.

<sup>201</sup> Amnesty International, 2014, p. 4-5.

<sup>202</sup> Ibid, p. 4.

On 26 March 2014, Kenya's Cabinet Secretary for the Ministry of Interior and Coordination of National Government, Joseph Ole Lenku, issued a press statement ordering all refugees to the camps citing security challenges as the reason.<sup>203</sup> This order was made despite the High Court ruling overturning an identical directive in July 2013.

On 4 April, security forces put up road blocks and began sweeps in Eastleigh, indiscriminately rounding up and arresting thousands of people. According to Amnesty International, the operation has disproportionately impacted the Somali community, as the operation focused on Somali nationals (including refugees and asylum seekers), although there were arrests of Kenyan nationals, refugees of other nationalities (for example Congolese) and other foreign nationals as well.<sup>204</sup>

During this operation more than 4,000 individuals were arrested and detained, the majority of them Somali refugees and asylum seekers.<sup>205</sup> An estimated 2,200 refugees were sent to Dadaab and Kakuma refugee camps, while 359 Somalis were deported to Mogadishu, Somalia by April 2014.<sup>206</sup>

Several agencies expressed their concern over Operation 'Usalama Watch'. UNHCR cautioned over harassment and other abuses, overcrowding and inadequate sanitation in holding facilities, including the Kasarani Stadium where hundreds or even thousands of migrants were held.<sup>207</sup>

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*Mohamed was detained on 6 April. He said that during the 48 hours he was detained, he was given no food by the authorities. He said: "After some hours some Somalis gave me food. The police harassed us, as though we were not humans. They would say 'you are refugees, don't talk'. Conditions were terrible. There is no humanity, not in Kenya."*

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Interviewed by Amnesty International in Nairobi<sup>208</sup>

In May 2014, Human Rights Watch urged the government to "stop arbitrary arrests and detentions, extortion, and other abuses against Somalis" and to "halt summary deportations and ensure that any undocumented Somali... [has the]...opportunity to file asylum claims." Human Rights Watch visited the Pangani police station in Eastleigh and found hundreds of detainees "packed into cells designed to accommodate 20 people. Detainees had no room to sit, and the cells were filthy with urine and excrement. Police were also holding detainees beyond the 24-hour limit proscribed [sic] under Kenyan law, without taking them to court."<sup>209</sup>

Independent investigators and media were denied access to Kasarani stadium until April 9 when a limited visit was permitted. People who participated said that they were only provided limited access and were not able to freely interview detainees in the stadium.<sup>210</sup> The police were

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203 Amnesty International, 2014, p. 4-5.

204 Ibid, p. 4.

205 RMMS, 2014l.

206 RMMS, 2014k.

207 RMMS, 2014i.

208 Amnesty International, 2014, p. 8.

209 Ibid.

210 Human Rights Watch, 2014c.

also accused of confiscating and destroying refugee documentation and extorting large sums of money from detained foreigners.<sup>211</sup>

*Ahmed, 26, was taken by the General Service Unit (GSU) from his home to Kasarani football stadium just after midnight on 6 April. He said "they came to my house in the middle of the night and demanded my papers [valid documentation]. My ID had expired. They said 'this is not real ID' so they beat and kicked me and then took me to Kasarani." Ahmed was held for four days without charge, often for extended periods under a netting roof in the stadium with no protection from the heavy rain. On 10 April, some of Ahmed's friends paid 20,000ksh [USD 230] for his release.*

Interviewed by Amnesty International in Nairobi<sup>212</sup>

Amnesty International also reported that throughout the operation, payment was demanded from people who had valid documentation as well as those who were undocumented in order to secure their release.<sup>213</sup> Individuals interviewed by Amnesty International spoke of how they were arrested and held without charge. They were often detained for days at a time and well beyond the 24 hour limit set by Kenyan law. Most were unclear about the legal basis of their detention.<sup>214</sup> Furthermore, Amnesty International stated that it was not aware of any Somali arrested and charged with terrorism during this counter-terror operation.<sup>215</sup>

The conditions of detention were reportedly poor. Migrants/refugees were held in unsanitary and overcrowded cells in which men, women and children were held together. Witnesses interviewed by Amnesty International said the stench in Kasarani Police Station was unbearable. People defecated on the floor and, due to lack of room, would later trample on the human waste. During hours of detention, detainees were not given any food. At least two people reportedly died during the operation.

Migrant children were also affected by detentions carried out during the operation. According to an IRIN report, around 300 children, including babies as young as a few months, were separated from their parents who were arrested during the operation. Some of these children were also held in Kasarani stadium without a parent or guardian. According to UNHCR this was "completely unacceptable given the conditions of detention".<sup>216</sup> There were also extreme albeit unverified reports. For example, Amnesty International was told of a mother of a young baby who was arrested and detained by the police. Owing to this separation, the baby was left alone and after three days was said to have died.<sup>217</sup>

Finally, Kenya's Independent Policing Oversight Authority (IPOA), mandated to hold the police accountable to the public in the performance of its functions, released a monitoring report on operation '*Usalama Watch*' in July 2014. The IPOA confirmed that the detention facilities were in very

## Kenya

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211 RMMS, 2014j.

212 Amnesty International, 2014, p. 7.

213 Ibid, p. 5.

214 Ibid.

215 Ibid, p. 4.

216 IRIN, 2014b.

217 Amnesty International, 2014, p. 8.

deplorable conditions, they were also overcrowded and children and adults were confined in the same cells.<sup>218</sup> The IPOA also concluded that the constitutional limit of 24 hours, within which arraignment in court should be done for persons under arrest, had been grossly violated during the operation.<sup>219</sup> The IPOA further concluded that there was a lack of proper coordination/supervision of the operation, there was unethical conduct by some police officers, and individuals caught in the operation's dragnet were subject to violations of their human rights, which are guaranteed in Kenya's Constitution.<sup>220</sup>

### **Conclusion: immigration detention in Kenya compared with international standards**

Amnesty International concluded that the actions of the Kenyan government during Operation '*Usalama Watch*' were a blatant violation of national and international law.<sup>221</sup> Under the *Refugee Convention*, Kenya is obliged to guarantee refugees the right to move freely within their country.<sup>222</sup>

Kenyan and international law also prohibit arbitrary detention. Police officers can only arrest and detain a person if they have reasonable grounds for suspecting them of having committed an offense. Further, as described in chapter 2, under international law anyone who is arrested must be informed, at the time of arrest, of the reasons for their arrest and is to be promptly informed of any charges against them. They must also be brought before a judge. Moreover, under international law all people are entitled to protection from torture, cruel, inhuman or degrading treatment or punishment. Amnesty International concluded that Kenyan security forces were acting in violation of these rights.<sup>223</sup> Furthermore, there is no policy in Kenya promoting alternatives to detention or using detention as a measure of last resort. The *de facto* policy is that undocumented foreigners are detained, charged, fined/imprisoned and deported.

Kenyan law also provides that a place of detention, such as a police station, must be designated as such through a gazette notice. However, from 2 to 16 April individuals were held at Kasarani stadium despite the fact that the stadium had not been designated as a police station. On 17 April, in what Amnesty International saw as a response to concerns raised by human rights organizations and other actors, the Inspector General of Police designated Kasarani stadium a police station and backdated the designation to 2 April.<sup>224</sup> If migration-related detention is meant to be undertaken only to serve limited administrative purposes set out in law, an ad hoc site run by a body that is not authorized to service those purposes violates the proportionality standard. Detention in ad hoc sites can pose problems with respect to the conditions of confinement and also with respect to whether people held in the facilities are able to enjoy their rights set out in law.<sup>225</sup> The IPOA further concluded that Kenyan authorities violated the right of

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218 IPOA, 2014, p. 5-7.

219 Ibid.

220 RMMS Monthly Summary June 2014; IPOA, 2014, p. 18-19.

221 Amnesty International, 2014, p. 4.

222 Ibid, p. 9.

223 Ibid, p. 7-9.

224 Ibid, p. 7.

225 Flynn, 2011, p. 21.

children to be held separately from adults and that the operation was not conducted in compliance with respect for the rule of law, democracy, human rights and fundamental freedoms as envisaged in Kenya's Constitution.<sup>226</sup>

Finally, it has been argued that the operation deliberately conflated immigration issues with counter-terrorism and has widened dangerous communal divides. According to some, Al-Shabaab have been exploiting the disturbing images of huddled Somalis in detention. Moreover, actions that look like collective punishment of a particular minority and faith group will likely marginalise and potentially radicalise some sections of the community further.<sup>227</sup>

### 3.5 Puntland

#### Mixed migration context

The Puntland State of Somalia is mainly a transit country for mixed migration from Ethiopia and other parts of Somalia, with migrants using the port of Bossaso and nearby areas on the Puntland coast to cross the Gulf of Aden to Yemen. Previously, most migrants heading for Yemen used Bossaso as a departure point, with 3,000-4,000 migrants departing every month. However, since 2012, the majority use Djibouti as a departure point,<sup>228</sup> although recent figures seem to imply that the number of migrants leaving from Puntland is rising again. In November 2014, approximately 7,175 migrants/refugees crossed the Arabian Sea to Yemen from Puntland. An estimated 44,565 migrants/refugees arrived in Yemen using this route between January 2014 and November 2014.<sup>229</sup>

#### The use of immigration detention in Puntland

The Puntland authorities claim to be actively fighting migrant smuggling. In 2012, there were several reports of counter-smuggling patrols and investigations. Many smugglers – as well as pirates, who often collaborate with smugglers – are reportedly in prison in Puntland. However, many migrants end up being arrested and detained by Puntland authorities as well.<sup>230</sup> It is estimated that on average between 9 and 15 migrants are detained in Puntland every month, 95% are males and most are between 19 and 33.

In August 2012, following a tip off that two smuggling boats were bound for Yemen, Puntland police arrested 80 migrants who were to be smuggled. The migrants were detained at Bossaso seaport, but were released the next day. Several such arrests were made during 2012.<sup>231</sup> In June 2013, migrants who travelled from Mogadishu to Galkayo reported being detained and interrogated by the Puntland police.<sup>232</sup> Throughout 2013 and 2014, (Ethiopian) migrants arriving in Yemen continued to report arrests and detention by Puntland police at Garowe checkpoint.<sup>233</sup> Detention of

226 IPOA, 2014, p 13; p. 18-19.

227 Barnes, 2014.

228 RMMS, 2013c, p. 59.

229 RMMS, 2014h.

230 RMMS, 2014a, p. 28.

231 RMMS, 2012.

232 RMMS, 2013h.

233 RMMS, 2013f; RMMS, 2014h.

migrants (including irregular migrants, asylum seekers and refugees) in Puntland is usually at police stations, immigration detention facilities and checkpoints.

Reportedly, Puntland authorities have set up checkpoints along the way from Garowe to Laas Caanood and further towards Somaliland, where migrants are intercepted and risk prolonged detention by authorities. These are mostly migrants who wish to travel west into Ethiopia, towards Sudan and Libya.<sup>234</sup>

### **Detention conditions and monitoring**

In April 2012, the UN Independent Expert for Somalia visited several detention centres in Puntland (and Somaliland). Detention conditions were described as close to inhumane, overcrowded and frequently lacked water, sanitation, and ventilation.<sup>235</sup> Sources in Puntland confirm these poor conditions of accommodation, hygiene and sanitation. No food is provided to the migrants in detention, with humanitarian agencies occasionally providing food. Usually migrants in detention are separated by gender. It is also reported that they sometimes have to pay bribes upon their release.

Although Puntland does allow prison monitoring by independent non-governmental observers, in 2013 it declined to authorize prison visits by the UN Political Office for Somalia (UNPOS) and the UN Assistance Mission in Somalia's human rights unit.<sup>236</sup> A local NGO, KAALO, carries out weekly detention monitoring visits in Bossaso and Garoowe.

## **3.6 Somaliland**

### **Mixed migration context**

Somaliland is an origin, destination and transit country for mixed migrants in the Horn of Africa. Large numbers of mixed migrants (Ethiopians and Somalis) transit through Somaliland to the port of Bossaso in Puntland or (predominantly) further north to Djibouti, before crossing to Yemen.<sup>237</sup> The Loya'ada border town between Somaliland and Djibouti is a major transit point in these mixed flows, with well-established smuggling networks.<sup>238</sup>

Somaliland is also a destination for Ethiopian economic migrants and asylum seekers (who have not had the opportunity to register, following suspension of registration from 2008 until March 2012). Aid agencies in Somaliland estimate that there are at least 20,000 undocumented migrants in Somaliland, many of them in the city of Hargeisa. Additionally, it is estimated that 85,000 IDPs are currently living in Somaliland.<sup>239</sup>

Finally, there are increasing reports of unemployed but educated youth from Somaliland attempting to migrate to Europe using the route through

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234 RMMS, 2014g.

235 US Department of State, 2014, Country Report Somalia p.4-5

236 Ibid, p.6.

237 RMMS Country Profile Somaliland.

238 MMTF Somaliland, 2012, p. 3-4.

239 RMMS Country Profile Somaliland.

### **The use of immigration detention in Somaliland**

Somaliland authorities are unhappy about the volume of migrants passing through and/or residing in their territory.<sup>241</sup> As such, arrests and detention of migrants are common in Somaliland. In Loya'ada, for example, migrants are often detained for unlimited days, depending on the availability of transport to take them back to the Ethiopian border. In 2012, the Somaliland Mixed Migration Task Force (MMTF) reported that 27 Ethiopians were being held in poor conditions at the Loya'ada police station. In 2012, the MMTF estimated that on average 200 to 250 Ethiopians were detained and deported in this manner every month, without screening for protection needs.<sup>242</sup>

In the event migrants are intercepted by Somaliland authorities, they are usually deported to Ethiopia (via Hargeisa) or transferred to IOM as soon as possible. Occasionally, IOM provides assistance, including return assistance, to intercepted migrants. Somaliland authorities do not have the resources to keep migrants in detention for a long time. Detention is normally in the compound of police stations for several days at most, until they can be deported or are released.

In August 2012, the Somaliland authorities carried out police raids in Hargeisa. According to Human Rights Watch, during these raids around 56 Ethiopians were arrested and taken to different detention facilities, while 25 registered refugees and two asylum seekers were detained at the central police station. One of the refugees told Human Rights Watch that six injured refugees had not received medical assistance for three days, before they were released.<sup>243</sup> On 31 August 2012, dozens of Ethiopians were forcibly returned to Ethiopia, after which Human Rights Watch urged the Somaliland authorities to immediately stop deporting Ethiopian refugees and asylum seekers.

### **Detention conditions and monitoring**

Prison conditions in Somaliland, as in Puntland, are described as close to inhumane, overcrowded and frequently lack water, sanitation, and ventilation.<sup>244</sup> In Somaliland, a Prison Conditions Management Committee - organized by UNDP and composed of medical doctors, government officials, and civil society representatives - visited prisons in 2013. Somaliland also allowed the UN Political Office for Somalia (UNPOS) and the UN Assistance Mission in Somalia's human rights unit to visit prisons.<sup>245</sup>

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240 IRIN, 2012; RMMS, 2014b.

241 RMMS, 2013c, p. 65.

242 MMTF Somaliland, 2012.

243 Human Rights Watch, 2012b.

244 US Department of State, 2014, Country Report Somalia p.4-5

245 Ibid, p.6.

## 3.7 Somalia South Central

### Mixed migration context

Somalia is the third largest source country of refugees worldwide after Afghanistan and Syria.<sup>246</sup> In 2012, the number of Somali refugees displaced outside their country and in the region reached a million persons.<sup>247</sup> The reasons for migration include a wide range of factors, including extreme poverty; prolonged insecurity; sexual violence and other serious human rights violations; lack of access to basic needs such as food, medical services, healthcare and livelihoods, as well as natural disasters.<sup>248</sup>

Refugees and migrants from Somalia South Central migrate in every direction. In 2013, a total of 11,045 Somalis arrived in Yemen, of which 5,934 crossed the Red Sea from Djibouti and 5,111 crossed the Arabian Sea. Between January 2014 and 30 November 2014, an estimated 18,413 Somalis arrived in Yemen by boat, where 4,285 crossed the Red Sea from Djibouti and 14,128 the Arabian Sea.<sup>249</sup> Although the number of Somali arrivals in Yemen in 2014 has risen markedly when compared to the arrivals in 2013, they are still notably lower when compared to previous years. For example, new Somali arrivals amounted to 23,086 in 2012 and 27,350 in 2011.<sup>250</sup>

The number of Somalis who move on from Yemen to Saudi Arabia is unknown, but the deportation of over 40,000 Somali migrants from Saudi Arabia between December 2013 and August 2014<sup>251</sup> indicates that a substantial share of Somalis arriving in Yemen successfully crossed into Saudi Arabia in recent years.<sup>252</sup> Like Ethiopians, Somali irregular migrants also travel south, through Kenya, Tanzania and other countries on their way to South Africa and west, through Sudan and Libya to Europe. In the first 10 months of 2014, 4,965 Somalis crossed the Mediterranean to Italy from Libya.<sup>253</sup>

Somalia South Central is not a country of destination for asylum seekers or refugees from neighbouring countries, nor a destination or transit country for others in mixed migration flows. As such, immigration detention is not an issue.

### Detention condition and monitoring

Although the South Central government does permit prison monitoring by independent non-governmental observers,<sup>254</sup> it is unknown how many people (let alone how many foreigners) are in prison. Prison and detention centre conditions are described as harsh and life threatening throughout the country, with medical care and sanitation wholly inadequate in many prisons. Problems include overcrowding, poor sanitation, and a lack of health care. Inadequate food, water, ventilation, and lighting continued

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246 UNHCR, 2013a.

247 RMMS, 2014b, p. 29.

248 UNHCR and IOM, 2010, p. 8.

249 UNHCR, 2014d.

250 UNHCR, 2013d.

251 IOM, 2014d.

252 RMMS, 2014a, p. 27.

253 IOM, 2014f.

254 US Department of State, 2014, Country Report Somalia p.6.

to be persistent problems. Tuberculosis and pneumonia were reportedly widespread.<sup>255</sup>

## 3.8 Tanzania

### Mixed migration context

For decades, Tanzania hosted the largest refugee population in Africa, with almost one million refugees fleeing into the country from southern African countries and the Great Lakes region (mostly the Democratic Republic of Congo, Rwanda, Burundi and Uganda). However, due to naturalisation and repatriation programmes as well as increased stability in the Great Lakes region, refugee numbers have fallen considerably.<sup>256</sup> As of December 2013, Tanzania hosted just over 100,000 refugees.<sup>257</sup> Additionally, Tanzania is a major transit country for irregular migrants, mostly from Somalia and Ethiopia, heading south towards Tanzania's borders with Malawi, Mozambique and Zambia, en route to South Africa.

### The use of immigration detention in Tanzania

Authorities in Tanzania are struggling with the large number of irregular migrants who are using the country as a transit corridor.<sup>258</sup> This may have resulted in an increased use of immigration detention as a migration management tool by Tanzanian authorities.<sup>259</sup>

Tanzania detains irregular migrants as a matter of law. However, no clear statistics on the number of migrants can be obtained. Nevertheless, refugees, migrants and asylum seekers in Tanzania are, according to Asylum Access, being detained at an alarming rate.<sup>260</sup> In a 2011 survey of 122 refugees and asylum seekers living in Dar es Salaam, nearly 40% of respondents reported having been arrested and detained at least once, some reported being arrested more than six times.<sup>261</sup> In a 2012 study by the Oromia Support Group, 5 out of 60 migrants who were interviewed in South Africa experienced detention for up to five months in Tanzania.<sup>262</sup> In 2013, Asylum Access surveyed 479 migrants in 13 prisons in major urban areas in 9 regions in Tanzania. However, according to Asylum Access, this number does not reflect the total number of migrants in detention in these regions. There were many more migrants in prison than Asylum Access was able to interview. The majority of migrants in detention are economic migrants. Victims of trafficking, asylum seekers and refugees are not detained as a matter of law.

The expulsion of over 160,000 Ethiopian migrants from Saudi Arabia (see section 3.1) in late 2013 and early 2014 may push more Ethiopian migrants south again in search of better economic opportunities. Some examples of arrests of Ethiopians in 2014 seem to underline this:

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255 US Department of State, 2014, Country Report Somalia p.4-5

256 ACP, 2010, p. 3.

257 UNHCR, 2013c, p. 2.

258 RMMS, 2013c, p. 96.

259 Asylum Access, 2013, p. 7.

260 Asylum Access, 2012, p. 5.

261 Asylum Access, 2011, p. 7.

262 Oromia Support Group, 2013, p. 59.

- In August 2014, it was reported that the Tanzanian police, in collaboration with the country's immigration department, apprehended 48 undocumented immigrants of Ethiopian origin in Bagamoyo district (along the coast north of Dar es Salaam). The Ethiopians were deserted by their smugglers who had promised to take them to their destination and were left wandering in the forest for 15 days, without food or water.
- On August 22<sup>nd</sup> 2014, 11 Ethiopian migrants were arrested hiding in the bush in Chalinze town (inland from Dar es Salaam).
- On August 14<sup>th</sup> 2014, 21 migrants were arrested in Makambako town, southern Tanzania; they were transported in a lorry which was supposed to be transporting cement.
- In January 2014, more than 150 migrants from Ethiopia were arrested in Mbeya, Kilimanjaro and Mwanza.<sup>263</sup>

However, arrests of large groups of Ethiopians have been common in Tanzania before 2014 as well. In February 2013 for example, 96 undocumented Ethiopian migrants were arrested in Arusha region, where immigration officers impounded a lorry which was ferrying them. The Ethiopians were escorted by four Tanzanians. They entered Tanzania from Kenya, but did not use the official Namanga border crossing between the two countries, but instead used 'illegal paths' to cross the border. The week before, another 13 Ethiopians were arrested on the outskirts of Arusha.<sup>264</sup>

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*"On 10 October 2007, we were sentenced to 18 months in jail in Tanzania. I spent over seven months there doing hard labour in the prison."*

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*"On 10 October 2007, we were sentenced to 18 months in jail in Tanzania. I spent over seven months there doing hard labour in the prison. We built houses and moved stones, etc. They made us carry sacks filled with sand. If you fall down from the weight you will be kicked and beaten. On 24 April 2008, a presidential pardon allowed us to be released, but for the 110 Ethiopians and 70 Somalis who qualified, it only allowed us a change of clothes – from prison clothes to normal ones. We still had to pay the prison police to be released. A Somali man had to pay USD 1,200 to them for my release. I got out on 28 May 2008".*

40 year old Somali, interviewed in IOM research in Dzaleka refugee camp, Malawi<sup>265</sup>

Occasionally, IOM in coordination with the Ministry of Home Affairs in Tanzania and Ethiopian Ministry of Foreign Affairs, assists Ethiopian migrants held in prisons to return home. In May 2014 for example, 220 Ethiopian migrants were assisted to return home.<sup>266</sup> In October 2014, another 450 Ethiopian migrants held in Tanzanian prisons for immigration offenses were assisted to return home, with another 130 expected to return home with IOM assistance by the end of 2014. Since 2009, IOM has helped over 2,500 Ethiopian detainees to return home from Tanzania.<sup>267</sup>

A 2013 prison survey by Asylum Access found that the majority of the migrants encountered by the researchers had paid smugglers to be smuggled

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263 The Reporter, 2014.

264 GirumPost, 2013.

265 Horwood, 2009, p. 85.

266 IOM, 2014c.

267 IOM, 2014e.

to South Africa before being apprehended and detained by Tanzanian authorities. According to the findings, the migrants were frequently charged and sentenced as a group over a short period and their understanding of the procedure appeared limited. It was also noted that convictions of illegal entry attracts a wide variety of sentences; some migrants are serving much longer sentences for the same offence when compared to others. Migrants are often asked to pay a fine of 100,000 Tanzanian Shillings [USD 60] or serve a sentence. Most are not able to pay the fine.<sup>268</sup>

*“The first time I got involved in smuggling I was taking 20 people across Tanzania. We all got caught and thrown into prison. The police agreed to spring us en masse for USD 500. They asked for USD 1,000 but I negotiated it down. Police are bribe-able all along the way in Tanzania and Malawi. Nothing stops the smuggling when they can pay the police”.*

Smuggler, interviewed in IOM research in 2009, at Songwe border between Tanzania and Malawi<sup>269</sup>

Often migrants experience multiple detentions in different countries along the migration route to South Africa.<sup>270</sup> They also face the risk of being intercepted by authorities and pushed back across borders. In 2011, for example, Mozambique sent back 800 migrants to Tanzania, where they were detained after crossing the border.<sup>271</sup>

According to IOM, authorities in Tanzania have voiced their concerns about migrant detention; however as a matter of law anyone found in the country unlawfully has to be charged with the exception of asylum seekers and victims of trafficking. The government through the immigration department is exploring possibilities of alternatives to detention, such as establishing reception centres to keep migrants instead of in prisons, as well as making further use of IOM's Assisted Voluntary Return and Reintegration (AVRR) service.

### Immigration detention locations

Designated detention facilities are: police stations and posts, prisons, and remand homes for migrants under 18. There are no specific immigration detention facilities in Tanzania. Migrants are held at the police stations for a period of up to 24 hours; they are then processed through a court of law where they are charged. They will then be remanded in prison custody until their case finalizes through conviction or acquittal. Remand homes are not favoured by authorities since they are supervised by the social welfare department and are non-militarized facilities. Migrants coming from the Horn of Africa (mainly adult males from Somalia and Ethiopia) are usually held at Maweni Prison-Tanga, Karanga Prison-Kilimanjaro, Kisongo Prison-Arusha, Mkuza and Kigongoni Prisons-Coast, Iringa Prison-Iringa and Ruanda Prison in Mbeya. Migrants travelling from countries bordering north western Tanzania (from Rwanda, Burundi and Congo) often travel with nuclear and extended family members, and are mainly held in prisons in the Kagera, Kigoma and Geita regions.

<sup>268</sup> Asylum Access, 2013, p. 5.

<sup>269</sup> Horwood, 2009, p. 84.

<sup>270</sup> Ibid, p. 127-128.

<sup>271</sup> Oromia Support Group, 2013, p. 49.

### **Restricted movement of refugees**

Movement of refugees is restricted in Tanzania. It is illegal for refugees to live outside their camps or settlements or to travel more than 4 kilometres outside refugee camps without permits. Moreover, refugees are only allowed to engage in small income-generating activities within the confines of the camps.<sup>272</sup> The Tanzanian Ministry of Home Affairs office within the camps issues exit permits to refugees as long as they are able to provide a credible reason for exiting. Usually, refugees apprehended outside camps without permits are sentenced to community service rather than imprisonment and deportation, as was the case previously. However, by law, this offence still carries a fine and a three-year prison sentence. In 2013, UNHCR reported that when police apprehend refugees without permits they usually place them in a prison facility within the camps. Generally they are then released back into the camps within a short time.<sup>273</sup>

### **Challenges regarding immigration detention in Tanzania**

Recent IOM research (2014) listed some of the problems experienced by migrants in mixed flows when they are arrested in transit countries, including in Tanzania:<sup>274</sup>

- There is a lack of capacity in areas where migrants are caught. Many migrants spend their first days in detention at police stations, while cases are processed through court. Many of these police jails do not have the capacity to provide food for detainees. After long and harsh journeys migrants are often not in good physical condition. This could be further exacerbated when there is no access to food or water.
- There is a lack of translators in court. Most migrants interviewed by IOM said there were no translators present during their court proceedings and they did not have any counsel present.
- Detained migrants in mixed flows were often not allowed any kind of communication with family and friends. This makes it hard for migrants to pay the court the awarded fines, which are then often changed to a term in prison.
- As described in the section on Kenya, migrants are regularly deported to the next border post. Some migrants who have finished their sentence in one country were arrested and detained by the authorities of the next country.
- Minors who were arrested traveling with adult migrants were also sentenced to the same terms and the issue of reduced responsibility for the minors due to their minority did not seem to be considered.<sup>275</sup>

IOM recently confirmed that while laws of Tanzania prohibit child detention, the practice is different. Based on anecdotal data, it is known that both unaccompanied and accompanied children are subjected to detention with adults. The relevant laws relating to immigration detention in Tanzania are currently being considered for review. The government has pledged to review the *1995 Immigration Act* and the *1998 Refugees Act*, as well as their corresponding policies.

*“From Mombasa we left on a boat to Tanzania, where we were caught by police, sentenced and put in prison. The Tanzanian police*

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272 Asylum Access and the Refugee Work Rights Coalition, 2014, p. 35.

273 US Department of State, 2014, Country Report Tanzania, p. 18.

274 IOM, 2014b, p. 69.

275 Ibid, p. 69.

*took all our clothes and money when they caught us. In custody, they beat us repeatedly. They seemed to be having fun inflicting pain. There was no reason for them to keep hitting us when we were in prison. After two or three months, we were released, but the police chief told us that even though the courts had released us we would still have to pay him USD 1,500 to actually leave. He threatened us that we would die in prison if he didn't get his money".*  
 24 year old Ethiopian, interviewed in IOM research in Rustenburg, South Africa<sup>276</sup>

### Detention monitoring and conditions

The commission for Human Rights and Good Governance in Tanzania is mandated to conduct monitoring of all detention facilities in the country. Asylum Access Tanzania also conducts prison visits in the regions of Arusha, Tanga, Morogoro, Pwani, Lindi, Dar es Salaam, Mbeya, Ruvuma, and Mtwara to identify potential refugees and asylum seekers being erroneously detained.<sup>277</sup>

The detention conditions in Tanzania reportedly fall short of international standards. Asylum Access reports inhumane conditions, including prisoner abuse, lack of access to adequate medical care and overcrowding.<sup>278</sup> The Oromia Support Group describes how detention for up to five months in unsanitary, severely overcrowded conditions, is a common experience for migrants travelling to South Africa.<sup>279</sup> The Tanzanian Legal and Human Rights Centre confirms that overcrowding in prisons is endemic, stating that almost all prisoners in Tanzania live in rooms of more than 50 prisoners without adequate sleeping facilities, access to light, or privacy.<sup>280</sup>

*"The conditions were horrendous. Prison in Tanzania was not good. Some Somali boys got raped".*  
 18 year old Somali, interviewed in IOM research in Johannesburg<sup>281</sup>

IOM research reports that food and clean water and adequate sanitation are lacking, and torture, rape, and beatings are common.<sup>282</sup> The lack of bed nets and poor and inadequate medical care lead to worsening health conditions among migrants in mixed flows. IOM further reported that hunger strikes were common in Tanzania among the migrants in detention. As the deportation process can be lengthy, this included migrants who had already finished their sentences and were awaiting deportation.<sup>283</sup>

*"We were a group of 43 Somali migrants. We took a boat to Mocimboa [Mozambique] from Mombasa [Kenya], but it got lost at sea and we floated around for 13 days. The boat then capsized somewhere off shore and we had to swim ashore. We then boarded another boat to Pemba [northern Mozambique, not to be confused with Pemba Island*

*"From Mombasa we left on a boat to Tanzania, where we were caught by police, sentenced and put in prison. The Tanzanian police took all our clothes and money when they caught us. In custody, they beat us repeatedly. They seemed to be having fun inflicting pain."*

*"The conditions were horrendous. Prison in Tanzania was not good. Some Somali boys got raped."*

<sup>276</sup> Horwood, 2009, p. 84.

<sup>277</sup> US Department of State, 2014, Country Report Tanzania, p. 6.

<sup>278</sup> Asylum Access, 2012, p. 5.

<sup>279</sup> Oromia Support Group, 2013, p. 59.

<sup>280</sup> Legal and Human Rights Centre, 2010, as cited in Asylum Access, 2012, p. 6.

<sup>281</sup> Horwood, 2009, p. 129.

<sup>282</sup> Information from interviews only; researchers were not allowed to view prison cells.

<sup>283</sup> IOM, 2014b, p. 42.

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*“We were a group of 43 Somali migrants. We took a boat to Mocimboa [Mozambique] from Mombasa [Kenya], but it got lost at sea and we floated around for 13 days. The boat then capsized somewhere off shore and we had to swim ashore. We then boarded another boat to Pemba [northern Mozambique, not to be confused with Pemba Island off northern Tanzania], which also capsized. When we got to Pemba we were arrested, sent to prison for two months and then deported to Tanzania. The days at sea and the days in prison were similar in so far that we nearly died of hunger.”*

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*off northern Tanzania], which also capsized. When we got to Pemba we were arrested, sent to prison for two months and then deported to Tanzania. The days at sea and the days in prison were similar in so far that we nearly died of hunger”.*

35 year old Somali migrant, interviewed in IOM research in Rustenburg, South Africa<sup>284</sup>

### **Operation Kimbunga**

On 27th July 2013, the Tanzanian President, Jakaya Mrisho Kikwete, made an announcement requiring all irregular migrants to leave the country within 14 days. The motivation behind the announcement was the government's desire to flush out criminals hiding under the umbrella of immigrants. Over 20,000 irregular migrants were reported to have left the country voluntarily after the announcement was made. When the deadline passed, the Tanzanian government launched an operation aimed at making sure all remaining irregular migrants were rounded up and sent back to their countries of origin. This operation was termed '*Oparesheni Kimbunga*'. The operation commenced on 6th September 2013, with a special focus on the regions of Kagera and Kigoma in western Tanzania (close to the Burundian border).<sup>285</sup> According to Tanzanian government sources, 1,237 irregular migrants from Rwanda, Burundi, Somalia, and the Democratic Republic of Congo (DRC) were seized in Geita, Kigoma and Kagera.<sup>286</sup>

There were several reports that the operation was conducted in disregard of basic human rights. According to the Legal and Human Rights Centre (LHRC), the rights violated included family rights; the right to own property; the right to a clean and safe environment; citizenship rights; rights to education; the right to be free from torture; the right to freedom of movement; and the right to health, food and water. The operation reportedly failed to differentiate between legal and irregular migrants and was conducted in disregard of the fact that families were torn apart and in some instances women were ordered to leave with their children or leave them behind. As with Operation '*Usalama Watch*' in Kenya, there were allegations of corruption. Local officials and immigration officers were allegedly protecting people with money or releasing people if they paid a bribe. Reportedly, people were also subjected to torture by officials conducting the operation.<sup>287</sup>

International organizations, including UNHCR and IOM, raised concerns about the treatment of irregular migrants and others who might have been affected by this forced expulsion campaign. After significant pressure from these groups and from the diplomatic community, the government suspended the expulsion campaign in late September 2013.<sup>288</sup>

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284 Horwood, 2009, p. 44-45.

285 LHRC/ZHSC, 2013, p. 197-200.

286 AIAfrica, 2013.

287 LHRC/ZHSC, 2013, p. 197-200.

288 US Department of State, 2014, Country Report Tanzania, p. 17.

**Conclusion: immigration detention in Tanzania compared with international standards.**

In a 2013 prison survey, Asylum Access Tanzania identified 18 asylum seekers or refugees under the *1951 Refugee Convention*, the *1967 OAU Refugee Convention* or other persons of concern to UNHCR, among 389 irregular migrants detained in Tanzanian prisons.<sup>289</sup> It was also found that vulnerable groups are not being detained as a “measure of last resort” in Tanzania, but rather as part of routine migration enforcement, often as a measure of first resort.<sup>290</sup> Similarly, alternatives to detention have not been promoted.

Asylum Access concludes that the Tanzanian law has fallen behind regional and international standards regarding the detention of migrants and refugees. The principal law in Tanzania governing migrants (the *1995 Immigration Act*) makes few provisions for alternatives to detention. Lack of interpreters and lack of legal and other support services lengthens the amount of time spent by migrants in detention.<sup>291</sup> The *1998 Refugee Act* does contain provisions protecting forced migrants. For example, asylum seekers should not be detained for illegal entry (section 9(3)). However, the *1995 Immigration Act* provides detailed guidance on the penalization of irregular migrants (including the size of fines and the duration of imprisonment based on illegal entry), but it does not refer to the particular needs of refugees and asylum seekers.<sup>292</sup> Asylum Access researchers also observed that screening procedures were not used to determine whether migrants had asylum claims or other claims for protection. According to the NGO, none of the 18 asylum seekers it identified during its 2013 prison survey were given access to legal counsel.<sup>293</sup>

In early 2012, Asylum Access Tanzania wrote a letter to the Special Rapporteur on the human rights of migrants expressing their concern about: “the threat of arbitrary arrest and unlawful detention of newly arriving refugees and asylum seekers whom the government fails to screen from among mixed migration flows. This carries with it the threat of *refoulement*, and exposes vulnerable women, children, the elderly, and survivors of torture or trauma to detention conditions which fall below international standards of access to health, safety and dignity of the person”.<sup>294</sup> Asylum Access called upon the “the government of Tanzania, and all organs of the United Nations, to take immediate measures to protect the rights of at-risk refugees migrants and asylum seekers, to shore up existing legal and procedural frameworks, and to prevent further violations of domestic and international human rights laws”.<sup>295</sup>

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289 Asylum Access, 2013, p. 5.

290 Asylum Access, 2012, p. 7.

291 Asylum Access, 2013, p. 6.

292 Ibid, p. 24.

293 Ibid, p. 23-24.

294 Asylum Access, 2012, p. 1-2.

295 Ibid, p. 1-2.

## 3.9 Yemen

### Mixed migration context

In terms of mixed migration, Yemen is a country of origin, destination and transit. Most migrants from the Horn of Africa, heading to Saudi Arabia or other Gulf States, use Yemen as a transit country. Between January 2014 and November 2014, an estimated 82,680 migrants/asylum seekers arrived in Yemen via the Red Sea/Gulf of Aden and Arabian Sea. Approximately 65,319 and 107,532 made similar journeys in 2013 and 2012 respectively.<sup>296</sup>

Moreover, large numbers of Yemenis themselves have migrated to the Gulf States. In 2013, the number of Yemenis in Saudi Arabia was estimated at 1.5 million.<sup>297</sup> However, hundreds of thousands have left or were arrested, detained and deported during the late 2013, early 2014 Saudi crackdown on irregular migration (see the section on Saudi Arabia).

Yemen is also a destination country, with large numbers of Somali refugees and asylum seekers. Additionally, many (Ethiopian) migrants who do not succeed in reaching one of the Gulf States (which are increasingly difficult to enter due to stringent border controls) get stuck in Yemen or have to stay in the country for some time to earn enough money for onward travel.<sup>298</sup>

### The use of immigration detention in Yemen

As in other countries in the region, migrants in Yemen are frequently arrested and detained. Migrants are usually detained for illegal entry, as a routine practice (instead of a measure of last resort).

Sources in Yemen report that there is a clear trend of arresting irregular migrants, including asylum-seekers upon arrival. Although there is no clear policy in place, this trend seems to be rooted in security considerations by the government. Alternatives to detention are generally not considered, although persons are sometimes released spontaneously and without conditions. Often, hundreds of migrants are brought to the detention centres at one time, making it difficult to screen and identify the most vulnerable in the group. This trend should be seen against a backdrop of increasing concern about infiltration of the country by persons possibly involved in terrorism, human trafficking, or other forms of organized crime.

Arrests occur on arrival along Yemen's coast, on Khat farms in the countryside (where many Ethiopian male migrants find work) or in northern parts of Yemen where migrants transit through on their way to Saudi Arabia.<sup>299</sup> In the southern governorates of Yemen, detention of migrants often happens along the coastal areas. New arrivals are often encountered by government and military authorities (including military brigades and coast guards). Somalis are rarely detained because of their *prima facie* refugee status. In detention or other holding facilities, non-Somalis new arrivals are screened for asylum seekers, refugees and vulnerable migrants by UNHCR implementing partners and IOM. Economic migrants are then transferred to Immigration Detention Centres, which are closed holding centres, in Taiz,

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296 UNHCR, 2014d.

297 Yemen Times, 2013.

298 RMMS, 2014a, p. 35.

299 RMMS, 2013e.

Aden or Sana'a. Asylum-seekers are sometimes released, but according to recent reports there is a tendency for them to be kept in detention as well. New arrivals are also intercepted in-country.

In March 2013, for example, 850 migrants were detained and returned to their home countries. A majority of them were intercepted in the northern governorate of Sada'a.<sup>300</sup> In that case new arrivals are not screened for asylum seekers upon arrival as screening is conducted at the immigration holding centres or in detention centres, mostly in Aden and Taiz. For example, from January to October, about 1,584 individuals were screened to determine if they wanted to seek asylum while held in detention in Aden and Taiz.

There were other instances in 2013 when female migrants were arrested and detained at the Taiz central prison pending their possible deportation. On 12 May 2013, for example, the Yemeni military intercepted a boat at sea carrying 53 migrants, 40 of whom were of Somali nationality. The 40 Somalis were released into the custody of UNHCR partners while 13 Ethiopians including 4 women (one of whom had been subjected to rape during the sea journey) were transported to the Taiz Central Prison. It was unclear if any of the Ethiopians wished to seek asylum as no access was granted to humanitarian actors. Some incidents suggest that Yemeni authorities may also extort money from migrants with the threat of possible arrest and detention should they fail to pay up.<sup>301</sup>

More recently, in July 2014, around 44 Ethiopian migrants were arrested near the port of Mocha, along Yemen's west coast. They were sent to Taiz prison pending deportation.<sup>302</sup> Migrants who are arrested upon arrival are frequently held at Taiz prison. However, protection teams are not always allowed access to determine if there are any refugees and asylum seekers among new arrivals.<sup>303</sup> Detainees (migrants in detention) are not always given the opportunity to seek asylum and are sometimes deported by force. Migrants who are rounded up in the south along the coast are reportedly also detained by Yemeni authorities at various military camps.<sup>304</sup>

Usually migrants are detained in immigration detention centres or in police detention centres as they await their court trials. They can also be detained in central prisons that are used for criminals, like in the case of Taiz and sometimes Aden. Along the coastal areas migrants are sometimes detained at ad hoc facilities at military or coast guard facilities. They are kept there prior to their transfer to immigration centres in Aden or Taiz. Few new arrivals are detained along the Gulf of Aden. If so, they are held at offices of the police or security forces for a short period.

In 2009, Human Rights Watch reported that Ethiopian asylum seekers who were captured by the security forces faced *refoulement* alongside other Ethiopians scheduled for deportation. There was also evidence that Ethiopian embassy officials were allowed to coerce asylum seekers detained

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300 RMMS, 2013e.

301 RMMS, 2014e, p. 60.

302 RMMSm 2014l.

303 RMMS, 2013c, p. 79.

304 Ibid, p. 78.

in Sana'a's immigration facility into signing forms indicating their willingness to return to Ethiopia.<sup>305</sup> In more recent RMMS research, Ethiopian migrants reported, during a focus group discussion in Sana'a, that similar practices of Ethiopian authorities targeting migrants in Yemen still occur.<sup>306</sup>

According to the US Department of State, the Yemeni government lacks formal victim identification procedures to proactively identify and assist victims of trafficking among vulnerable groups, such as individuals detained for illegal immigration.<sup>307</sup>

*"I paid 700 USD to the smugglers in Djibouti in order to reach Yemen. I came by boat with more than 90 people, crowded, the people over me, I could not breath." As soon as he arrived in Yemeni coastal area (Mocha), he escaped from the smugglers in order not to pay any more money. The smugglers followed him while he was walking on the main road towards Hodeidah. He was stopped by 3 people who told him that he should go with them in order to provide him with some food. He went with them until they arrived in a farm which was full of migrants. "The smugglers started to torture me by beating and then they wrapped my left arm until it got swollen, after that they poured acid on my arm and threw me on the street. "I felt that I almost died, I could not see or speak". Some Yemeni passers-by took him to a hospital in Hodeidah, when the doctor saw the arm he decided to cut it. After that he was sent to the Criminal Investigation Department (CID). After 2 months he was transferred to Sana'a immigration detention to be deported to his country.*

22 year old Ethiopian, interviewed by INTERSOS in the Hodeidah Criminal Investigation Department (CID) in 2013.

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*"The smugglers started to torture me by beating and then they wrapped my left arm until it got swollen, after that they poured acid on my arm and threw me on the street."*

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### **The number of migrants in detention in Yemen**

In 2012, it was estimated that around 2,000 Ethiopians were in prisons in Yemen.<sup>308</sup> According to INTERSOS figures, 1,146 migrants were detained in 2013, of which:

- 611 were released;
- 465 were refugees, 536 asylum seekers and 145 migrants;
- 254 were Somali, 195 Ethiopian, 677 Eritrean and 20 other nationalities;
- 947 were males and 197 females;
- 1,020 were adults and 126 minors.

Since the beginning of 2014, over 2,000 migrants have been detained in immigration detention in Sana'a, of which 99% are Ethiopians. This number includes about 200 women and a smaller number of children.

Recent media reports confirm that Eritreans regularly end up in prison in Yemen. *The Yemen Times* reported how a group of 200 Eritreans living on the streets of Sana'a had been arrested and detained after crossing the Red Sea. They were said to have spent between 3 and 20 months in the central prison of Hodeida governorate, before being released with help from UNHCR. The director of the Deportation Department in Sana'a was

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305 Human Rights Watch, 2009, p. 3.

306 RMMS, 2014a, p. 37.

307 US Department of State, 2013, p. 396-397.

308 DRC and RMMS, 2012, p. 28.

quoted as saying that irregular migrants face jail time until they are officially acknowledged as refugees.<sup>309</sup>

### **Detention conditions and monitoring**

Prison conditions in Yemen are poor and do not meet international standards, with prisoners lacking many basic needs. Many prisons, particularly in rural areas, are overcrowded, with poor sanitary conditions, inadequate food, and inadequate medical care.<sup>310</sup> IOM operates a health clinic in the Immigration Detention Center in Sana'a and some other basic needs are provided, but the facility's overall conditions are austere. Sanitation facilities are often not functioning. Presently, IOM provides two meals a day and water. In mid-2014, UNHCR was able to distribute hygiene kits to the detainees in order to ease their detention conditions. In the south, the conditions at Aden Immigration Detention Centre are very poor as there is not enough space for large numbers of migrants. IOM screens and cares for migrants with health issues and provides clothing and hygiene kits to all migrants in the Aden Immigration Detention Centre.

Men and women are separated, but minors and adults, as well as criminal and administrative detainees are not. In immigration detention in Aden, there is one bathroom for all detained migrants. In Taiz, male migrants are kept separately, but boys are held with adults and migrant women are held alongside Yemeni women in prison. Often, immigration facilities become overcrowded as individuals wait to be repatriated. There are no reports available on mistreatment, abuses or human rights violations in immigration detention in Yemen.

The Yemeni government does permit visits to prison facilities by independent human rights observers such as the ICRC. UNHCR carries out monitoring visits to immigration detention centres in Sana'a and has set up a detention monitoring system throughout the country. These visits are conducted by UNHCR's implementing partner, INTERSOS, and encompass all types of detention facilities for refugees and asylum seekers. INTERSOS, which is also an implementing partner for IOM, monitors detention facilities in 7 southern governorates and Taiz. IOM also has a presence in the immigration detention centres and ICRC and MSF (previously) monitor the situation as well.

In 2013, local human rights NGOs and other organizations, such as Human Rights Watch, also interviewed former prisoners and family members of prisoners in order to report on prison conditions.<sup>311</sup> In 2013 it was reported that there are difficulties in accessing potential asylum seekers in detention.<sup>312</sup> INTERSOS is training police officers who are working directly with refugees and asylum seekers on international law. The focus is to build their capacity to ensure the protection of refugees, asylum seekers, and migrants.

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309 Yemen Times, 2014.

310 US Department of State, 2014, Country Report Yemen, p. 5.

311 Ibid, p. 7.

312 Ibid, p. 25.

IOM screens all migrants in detention looking for those who are willing to repatriate voluntarily. IOM also screens all encountered migrants to identify the most vulnerable (victims of trafficking, UAMs, single women, single parents, elderly, disabled). On a case by case basis, IOM provides immediate assistance (food, clothing, shelter, and voluntary return) according to the identified vulnerable migrants' needs and with their informed consent. UNHCR also screens migrants in detention in order to identify refugees and asylum seekers. Unaccompanied or separated minors, victims of trafficking and people with medical issues are also identified through the use of a screening form.

### **Collusion between traffickers and authorities**

A specific problem in Yemen has been the alleged collusion between traffickers and authorities. In a 2014 report, Human Rights Watch described how Yemeni traffickers in and around the northern town of Haradh found a brutal method of making money: by taking migrants captive and transporting them to isolated compounds, where they inflict severe pain and suffering to extort money from the migrants' relatives and friends in Ethiopia and Saudi Arabia. This practice allegedly began as far back as 2006. Migrants who survived or escaped, referred to these places as 'torture camps'. It is reported that Yemeni officials of various ranks and positions take bribes to turn a blind eye, or even play a more active role in the operations.<sup>313</sup> For example, some migrants told Human Rights Watch that checkpoint guards detained them, robbed them and then turned them over to traffickers. Migrants said they saw the traffickers paying the guards directly.<sup>314</sup> In other words, these officials actively helped the traffickers capture and detain migrants. Human Rights Watch also described how Yemeni officials have conducted only sporadic raids on the camps and have frequently warned traffickers of raids.<sup>315</sup>

Finally, the authorities are not sufficiently prepared to take custody of the large numbers of abused migrants who are freed during raids. This is attributed to the secrecy surrounding the raids. No one, not even local humanitarian organizations, is notified by the military in advance. Migrants who were released during several raids between March and May 2013 (an estimated 3,000 to 7,000) were taken to a military camp at al-Tuwal border crossing. According to aid agency reports, there was no food, water or shelter. According to IOM, in April 2013, officials held a total of 1,163 migrants, including 121 women and girls at a detention facility run by the Immigration Passport and Naturalization Authority in Sanaa, and another 535 migrants, including 90 women and girls, at the Amran Central Prison. Women and girls were segregated from the men. Prior to the raids both holding facilities were already filled beyond their maximum capacity.<sup>316</sup>

*A 10 year old Nigerian boy was with his mother in Al-Zuhra north of Hodeidah detained at a farm for smugglers. "The smuggler asked my mother to give more money and he gave her 10 days to pay. But she has no money to pay. After 10 days the smuggler came and started to beat my mother with a huge stick in his hand until she died. All the time*

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313 Human Rights Watch, 2014d, p. 5.

314 Ibid, p. 53-54.

315 Ibid, p. 5.

316 Ibid, p. 62.

*I was crying when the smuggler beat my mother". The police came to the farm and arrested some migrants. The father was also there, but he could not interfere and escaped when the police arrived in the farm and he left his child there. In the prison a woman from Sudan was looking after the child.*

10 year old Nigerian interviewed by INTERSOS in the Hodeidah central prison, August 2013

### **Conclusion: immigration detention in Yemen compared with international standards**

During a 2013 IDC Regional workshop on immigration detention in the Middle East and North Africa region, some of the key issues with regard to immigration detention in Yemen were listed. These include:

- Lack of basic procedural guarantees in the detention facilities with migrants not afforded information as to the charges against them and the possibility of legal redress. The law states that the government must provide attorneys for indigent detainees, but in practice it often did not do so.
- Reports that officials do not always observe due process when arresting and detaining individuals - with shootouts between smugglers and security forces sometimes leading to migrant injuries.
- While access may be provided to UNHCR/NGOs to primary prisons/detention facilities, there is limited access provided to detention facilities run by coast guard or political security forces.
- Poor conditions in detention centres: overcrowded, have poor sanitation, inadequate food and medical care.
- Refugee and asylum-seeking children are detained with adults.
- Detention of vulnerable groups: children, people of concern to UNHCR, and particular groups (male Somalis, Eritreans – assumed to have terrorist links).<sup>317</sup>

## **3.10 Israel**

### **Mixed migration context**

Israel used to be an important country of destination for migrants, refugees and asylum seekers from countries such as Eritrea and Sudan. According to the Israeli Population, Immigration and Border Authority, 64,498 foreign nationals irregularly entered Israel between January 2006 and the end of 2013, mostly at the Egyptian border. By the end of 2013, 52,961 remained in Israel, almost all Eritreans and Sudanese, of which over 30,000 are Eritreans.<sup>318</sup> Between 2006 and 2011, the number of Eritreans annually crossing the border from Sinai (Egypt) to Israel increased significantly from 1,348 to 17,175. However, stringent Israeli immigration measures put in place in 2012 and finalised in 2013 (see below) have reduced this number to almost zero.<sup>319</sup>

For those who managed to enter Israel, the chances of being granted asylum or recognized as a refugee are small. Israel has the lowest recognition rate of refugees in the Western world - 0.15% of asylum requests examined

<sup>317</sup> IDC, 2011, p. 6-7.

<sup>318</sup> Human Rights Watch, 2014f, p. 17.

<sup>319</sup> Human Rights Watch, 2014a, p. 17.

between July 2009 and August 2013 received a positive reply.<sup>320</sup> Between 1951 (the time it signed the *Refugee Convention*) and 2012, Israel recognized only 157 refugees.<sup>321</sup> While the global protection rate of Eritrean refugees in 2013 stood at 83%, the recognition rate of Eritreans in Israel in early 2013 was 0,001%, with only two applications approved out of 1,468 received.<sup>322</sup> According to the Israeli government, military desertion provides insufficient grounds for presenting a subjective fear of persecution.<sup>323</sup>

Human Rights Watch concluded that the asylum system systematically denies Eritreans and Sudanese access to fair and efficient asylum procedures, which helps Israel to avoid granting them refugee status which would entitle them to remain in Israel, with freedom of movement and associated rights, until it is safe for them to return to their home countries.<sup>324</sup>

### **The use of immigration detention in Israel**

If asylum seekers survive torture camps in Sinai,<sup>325</sup> avoid being shot by Egyptian soldiers on the border, cross into Israel (despite a fence that was constructed along the border with Egypt) and avoid the practice of *refoulement*, they often end up in prison.<sup>326</sup>

On January 10 2012, the Israeli Parliament (the Knesset) passed an Amendment to the *1954 Prevention of Infiltration Law*. From then on, all irregular border-crossers, whether refugees, undocumented migrants or those who actually have an intention to harm Israel's security, were defined as 'infiltrators'. These infiltrators can, except for unaccompanied minors, be detained by the Israeli authorities for three years before deportation.<sup>327</sup>

However, on 16 November 2013 the Israeli Supreme Court overturned this and declared that the *Third Amendment to the Law for the Prevention of Infiltration* (including the prolonged imprisonment of asylum seekers in administrative detention) was unconstitutional.<sup>328</sup>

Despite this ruling, Israel announced that asylum seekers in detention would not be released and a new *Fourth Amendment* of the *Anti-Infiltration Law* proposal was presented to the Knesset's Interior Affairs Committee.<sup>329</sup> This Amendment was passed in December 2013. According to the Amendment, asylum seekers arriving from Egypt are compulsorily detained in Saharonim prison for a period of one year (instead of three). At the end of one year, the detainees will be transferred to a new so-called 'open' residency centre (known as Holot) in the Negev desert for an indefinite detention

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320 Kovaliyov-Livi and Rozen, 2014, p. 10.

321 Hotline for Migrant Workers, 2012, p. 6.

322 Kovaliyov-Livi and Rozen, 2014, p. 5.

323 US Department of State, 2014, Country Report Israel, p. 17.

324 Human Rights Watch, 2014f, p. 7.

325 See the reports by van Reisen, Estafanos and Rijken (2012 and 2013) referred to in the bibliography or chapter 5 of RMMS 2014 report: *Going West: contemporary mixed migration trends from the Horn of Africa to Libya and Europe* for more on trafficking, kidnapping for ransom and torture of Eritreans in Egypt's Sinai peninsula.

326 Hotline for Migrant Workers, 2012, p. 15.

327 Humphris, 2013, p. 4.

328 Van Reisen, Estefanos and Rijken, 2013, p. 104-105.

329 Ibid, p. 106.

period.<sup>330</sup> One of the purposes of the long to indefinite detention periods, according to the explanatory notes of the amendment, is deterrence: “The expectation is that the detention period will stop the massive infiltration or at least minimize it.”<sup>331</sup>

In May 2014, the Israeli authorities published criteria stipulating the four groups of people the Interior Ministry can order to residency centres:

- Eritreans who entered Israel before May 31, 2011;
- Sudanese who entered before May 31;
- “an infiltrator who a border control officer finds has been involved in criminal activities, and has not complied with conditions established by the Attorney General”;
- “an infiltrator who has finished serving a criminal sentence for a crime of which he was convicted and if there is no [other] available place to keep him in custody.”<sup>332</sup>

### **Bureaucratic difficulties regarding ‘conditional release permits’**

As such, Eritreans and Sudanese who have been in Israel for years can also be summoned to the ‘residency centre’. Since 2001, Israel has pursued a policy under which tens of thousands of sub-Saharan nationals, including Eritreans and Sudanese, have been issued only a basic right not to be deported to their home countries. This is labelled a “temporary non-removal policy” or a “temporary policy of non-deportation.”<sup>333</sup>

Until early 2013, the majority of Eritreans and Sudanese trying to claim asylum were refused access to asylum procedures. Since August 2008, most individuals covered by the temporary non-removal policy are given a “conditional release” permit. Permit holders who lodge an asylum claim retain the permit while the claim is processed.<sup>334</sup> The law states that these permits should be renewed every month. By not renewing in time, the permit holder may be arrested and detained for unlawful presence. Until late 2013, permit holders could generally renew permits five days a week at 24 offices and were sometimes given a 4 month extension. This changed in December 2013. Permit renewal services were closed at all but four offices and opening times reduced to two days a week for two-and-half hours a day. Moreover, permit holders must first queue (in lines made up by as many as 1,500 individuals) to obtain a small paper ticket with an appointment date. They must then return on the specified date and queue again. Permits were being renewed for only two months.<sup>335</sup>

Reportedly, many did not manage to renew their permits following these changes. Since January 2014, there have been various police sweeps involving the arrest and detention of people with expired permits. For example, in January 2014, the police in Tel Aviv carried out sweeps, arresting people with expired permits. They were then taken to Givon prison in the town of Ramle, about 40 kilometres from Tel Aviv.<sup>336</sup>

330 Kovaliyov-Livi and Rozen, 2014, p. 3.

331 Hotline for Migrant Workers, 2012, p. 7.

332 Human Rights Watch, 2014f, p. 30.

333 Ibid, p. 51.

334 Human Rights Watch, 2014f, p. 55.

335 Ibid, p. 56.

336 Ibid, p. 32.

### Holot Residency Centre

Holot is located across the road from Saharonim prison, in an area close to the border with Egypt. The facility has a capacity of 3,300, which is projected to rise to 11,000.<sup>337</sup> It is managed by the Israeli Prison Service (IPS) and, while it is defined as an open residency centre, it is reported to resemble a prison.<sup>338</sup>

As of June 2014, there were 2,369 people detained in Holot.<sup>339</sup> Human Rights Watch concluded that “Holot is a detention centre in all but name”. The Defense Ministry built the centre, the IPS guards it, a four-metre high fence surrounds it and the law states that ‘residents’ must report three times a day and must be inside between 10pm and 6am.<sup>340</sup> Moreover, as Holot is not defined as a prison, there is no judicial overview of the detention and no possibility of release other than being recognized as a refugee, which is, as described above, a rare occurrence in Israel.<sup>341</sup>

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*“Lots of people have mental problems because they were in Saharonim and I am also afraid of getting those problems because I remember how before I reached Israel the Bedouin tortured me in Sinai [on my way to Israel] for ransom. They dripped molten plastic onto my back, beat me with sticks and whipped me with cables and I saw two other Eritreans tortured to death. And now I have been in prison for so long.”*

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*“Life here in Holot is the same as in Saharonim [Detention Centre]. I was in the first group they took from Saharonim to Holot, on December 12. I have been detained since I came to Israel on November 17, 2012. Lots of people have mental problems because they were in Saharonim and I am also afraid of getting those problems because I remember how before I reached Israel the Bedouin tortured me in Sinai [on my way to Israel] for ransom. They dripped molten plastic onto my back, beat me with sticks and whipped me with cables and I saw two other Eritreans tortured to death. And now I have been in prison for so long. I sleep in a room with nine other people in five bunk beds. We share one toilet and a basin in the corner of the room behind a small wall. It is very cold inside. We don't have a heater in the bedroom, only the guards have heaters. We only get two thin blankets so I am cold at night. I claimed asylum in Saharonim in July 2013 but have not yet had a reply”.*

Eritrean man interviewed by Human Rights Watch in Holot, January 10, 2014<sup>342</sup>

Out of the 2,369 detainees in June 2014, 1,680 were citizens of Sudan (71.4% of the detainees) and 672 were Eritreans (28.6% of the detainees).<sup>343</sup> Reportedly, Israel prefers to detain Sudanese nationals over Eritreans due to the fact that while Eritreans find it difficult to agree to ‘voluntary return’ to their country, many Sudanese tend to leave the country.<sup>344</sup>

### ‘Voluntary’ return of migrants

Indefinite detention together with minimal prospects for refugee protection are said to put pressure on asylum-seekers/migrants to leave Israel, despite the risk of persecution upon return to their countries of origin.<sup>345</sup> In fact, encouraging them to leave voluntary is part of Israel's policy. All those

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337 Kovaliyov-Livi and Rozen, 2014, p. 3.

338 RMMS, 2013i.

339 Kovaliyov-Livi and Rozen, 2014, p. 3.

340 Human Rights Watch, 2014f, p. 27.

341 Kovaliyov-Livi and Rozen, 2014, p. 3-4.

342 Human Rights Watch, 2014f, p. 28-29.

343 Kovaliyov-Livi and Rozen, 2014, p. 4.

344 Ibid, p. 7.

345 RMMS, 2014g.

detained are being encouraged to voluntarily return to their countries of origin and are offered a grant of USD 3,500 if they agree to leave. This amount was increased from USD 1,500 in early 2014.<sup>346</sup>

While summoned to Holot, asylum seekers receive a proposal to join the voluntary leave program. They receive a voluntary leave booklet that elaborates their possibilities. Essentially, if they are unwilling to leave, they will be indefinitely detained in Holot. Eritrean asylum seekers receive a booklet that offers them the possibility to return to Eritrea, Uganda, or Rwanda.<sup>347</sup>

Departure figures kept on rising since December 2013. An estimated 1,705 asylum seekers departed in February 2014, up from 780 that departed in January 2014, 325 in December 2013 and 63 in November 2013.<sup>348</sup> By the end of June 2014, at least 6,400 Sudanese and at least 367 Eritreans had officially left Israel for their home countries.<sup>349</sup>

Sudanese migrants explained to the Hotline for Refugees and Migrants<sup>350</sup> that by leaving Israel they take a calculated risk; they believe that with the USD 3,500 provided by the Immigration Authority they may succeed to immediately escape to a neighbouring African country or find their way to a refugee camp where their families live.<sup>351</sup>

Nevertheless, the voluntariness of such departures has been called into question in a country where the alternatives to 'voluntary departure' are the minimal prospects for refugee protection as well as imminent long term detention in prison like facilities.<sup>352</sup> Refugee advocacy groups are reported to have denounced Israel's removal of some Eritreans who were held in detention for nearly a year without access to legal representation. The advocacy groups questioned the voluntary nature of the returns and the safety of returnees in Eritrea.<sup>353</sup> Israel, according to a September 2014 Human Rights Watch report, has used the insecure legal status of refugees as a pretext to detain or threaten to detain them indefinitely, and has thereby coerced thousands into leaving Israel.<sup>354</sup>

*"As Israel cannot deport them to their home countries, we should lock them up to make their lives miserable."*

Israel's policies are, according to Human Rights Watch, well summed up in the words of former Israeli Interior Minister Eli Yishai<sup>355</sup>

*"As Israel cannot deport them to their home countries, we should lock them up to make their lives miserable."*

### **Israel's migrant detention policy criticized**

Israel's policy of categorizing asylum-seekers as infiltrators and detaining them elicited strong criticism from civil society and human rights activists.<sup>356</sup>

346 RMMS, 2014i.

347 Kovaliyov-Livi and Rozen, 2014, p. 20.

348 RMMS, 2014i.

349 Human Rights Watch, 2014f, p. 3.

350 Formerly the Hotline for Migrant Workers and from here referred to in the text as Hotline.

351 Kovaliyov-Livi and Rozen, 2014, p. 7.

352 IRIN, 2014a; RMMS, 2014h.

353 RMMS, 2013g.

354 Human Rights Watch, 2014f, p. 5.

355 Ibid, p. 5.

356 RMMS, 2014i.

In 2013, it was reported that approximately 2,000 individuals, including a number of children and other vulnerable individuals – some of whom may have been trafficking victims – were detained under the Amendment. These included older persons, persons with disabilities, pregnant women, single mothers, unaccompanied minors, and those suffering from poor physical or mental health who were unable to work and are dependent on the capacities of their communities and NGOs to support their basic needs.<sup>357</sup>

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*“Let us not allow the name – ‘open facility’ – to lead us astray. The requirement to show up for three daily head counts, combined with the center’s great distance from the area’s towns, eliminate almost any possibility of regularly leaving the detention center.”*

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*“Let us not allow the name – ‘open facility’ – to lead us astray. The requirement to show up for three daily head counts, combined with the center’s great distance from the area’s towns, eliminate almost any possibility of regularly leaving the detention center.”*

Israel’s High Court of Justice on 22 September 2014<sup>358</sup>

Although the Israeli government claims that the Holot facility “operates in a completely different capacity than a prison facility [...] both in term of infrastructure and services provided as well as aspects relating to the perception of its operation”,<sup>359</sup> Hotline concluded in a June 2014 report that “the *de facto* policy deprives asylum seekers of basic freedom of movement and confines their lives to the prison walls.”<sup>360</sup> The Knesset’s legal advisor, Eyal Yinon, stated that using the 1954 *Infiltration Law* to deal with the African refugees entering Israel “poses difficult legal problems” and “it is impossible to detain people for an unlimited amount of time”<sup>361</sup>

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*“The most terrible thing in Holot for me is that I am in prison more than two years. The most terrible thing is that it is unlimited, this is the problem.”*

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*“The most terrible thing in Holot for me is that I am in prison more than two years. The most terrible thing is that it is unlimited, this is the problem. I am a human being. I cannot spend my entire life in prison. This is indignity to people. Holot is located at the middle of the desert, we are being separated from our community in Israel and from anything that can enable us to communicate with society in Israel [...] I feel that I am not a human being. I have done nothing in my life that justifies being in prison even for one second”.*

Detainee in Holot, interviewed by Hotline<sup>362</sup>

Hotline further reported that in Holot facility there are asylum seekers who speak fluent Hebrew and whose sudden summons to Holot forced them to leave workplaces where they have worked for years, apartments they rented and sometimes studies for which they paid for in advance.<sup>363</sup> Moreover, the *Anti-Infiltration Law* states that people with medical conditions that might deteriorate due to incarceration are not to be imprisoned. However, the Hotline researchers met many asylum seekers with chronic and new conditions who are not receiving proper attention and care in Holot.<sup>364</sup>

*“Ten people live together in every room. There’s no privacy. There’s noise and a bad atmosphere. I couldn’t sleep since I got here. In Saharonim,*

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357 US Department of State, 2014, Country Report Israel, p. 14.

358 Human Rights Watch, 2014g.

359 Kovaliyov-Livi and Rozen, 2014, p. 3.

360 Ibid, p. 16.

361 Hotline for Migrant Workers, 2012, p. 7.

362 Ibid, p. 21.

363 Ibid, p. 9.

364 Ibid, p. 15.

*the rooms are very crowded, but at least there was shade outside of the cells. Here in Holot, you go outside and you are in the desert. It's either crowded or cold. In the summer it will probably be very hot".*  
 Detainee in Holot, interviewed by Hotline<sup>365</sup>

The developments as described above fuelled large-scale demonstrations by African migrants/asylum seekers in Israel for several days in January 2014. In January 2014, for example, 20,000 took part in a demonstration in Tel Aviv and up to 15,000 protested outside the US and European embassies and the UNHCR.<sup>366</sup> In June 2014, nearly 1,000 migrants/asylum seekers staged a protest march and sit in near Israel's southern border with Egypt, demanding Israeli authorities to uphold their rights and release them from detention.<sup>367</sup> UNHCR also made a statement that Israel's incarceration of migrants caused "hardship and suffering" and was not in line with the *1951 Refugee Convention*, of which Israel is a signatory.<sup>368</sup>

In early 2014, the legality of the new amendment to the *Anti-Infiltration Law* – reducing detention to 1 year but effectively promoting indefinite detention for asylum seekers who cannot be returned to their countries of origin – was challenged.<sup>369</sup> After Holot facility was established and asylum seekers were summoned to detention there, Hotline and private lawyers started filing administrative petitions to the district courts on behalf of asylum seekers summoned to Holot. The petitions argued, among other things, that: Holot is a detention facility; the *4th Amendment* contradicts the earlier Supreme Court verdict; the law demands that a proper hearing will be conducted before summons are issued for Holot; the Ministry of Interior ignored humanitarian reasons or health problems that might worsen in Holot; and that the Ministry did not take into consideration that some of those summoned to Holot filed asylum requests months and even years ago and did not receive a reply.<sup>370</sup>

Most summonses that were challenged in court were suspended. Several district court judges criticized the Ministry of Interior for their policy of not holding hearings prior to issuing summonses to detention.<sup>371</sup> On 1 April 2014, the Supreme Court held a hearing regarding the NGOs' petitions against the *4th amendment* to the *Anti-Infiltration Law*.<sup>372</sup>

In May 2014, a Central District Court suspended orders requiring 13 Eritrean and Sudanese asylum seekers to report to the Holot detention facility until their asylum claims are adjudicated. The criteria established for persons to be detained at the Holot centre are based on an asylum seekers arrival date in Israel. This was challenged by the court as targeting asylum seekers who have been residing in Israel for long periods with permission and are already settled. Detention without hearing was also challenged by the court as contravening the principles of natural justice, particularly in situations that

365 Hotline for Migrant Workers, 2012, p. 12.

366 Guardian, 2014b.

367 RMMS, 2014k.

368 Guardian, 2014a.

369 RMMS, 2014h.

370 Kovaliyov-Livi and Rozen, 2014, p. 22.

371 Ibid, p. 22.

372 Ibid, p. 24.

may curtail fundamental freedoms. Finally, the court noted that detention orders should bear an explanation.<sup>373</sup>

Consequently, the Israeli State agreed to accept the Supreme Court's offer for a change in the procedure of issuing summonses to Holot. Under the new (3 month pilot) procedure, the Ministry of Interior holds a hearing for each asylum seeker before issuing a summons, giving an opportunity to present their personal case and to be represented by an attorney.<sup>374</sup> Detention orders will only be issued in circumstances where a claim to asylum has failed.<sup>375</sup>

In addition to specific criticism regarding the *Anti-Infiltration Law* and Holot detention facility, there has been previous criticism regarding detention of migrants in Israel. In 2012, for example, the Israeli Public Defender described the conditions in the internment camps where migrants were held, especially at Saharonim prison, as substandard, crowded and unsanitary.<sup>376</sup> In this prison, where migrants who arrive from Egypt are still initially detained, women and children are detained in the same sections as men.<sup>377</sup>

In 2013, NGOs reported a lack of access to medical, legal, and social services in detention centres for irregular migrants.<sup>378</sup> Nevertheless, the ICRC is allowed to regularly monitor IPS facilities.<sup>379</sup>

Furthermore, despite the fact that hundreds of female asylum seekers have been subjected to abuse and rape by smugglers before they came to Israel, no gynaecological services were available at the Saharonim internment camp.<sup>380</sup>

Hotline also reports how in recent years dozens of asylum seekers and migrants have been transferred from their designated detention facilities (Saharonim, Ktzi'ot, Givon) to prisons intended for criminal prisoners, such as Ela, Eshel, Dekel, Ohalei Kedar, and Nitzan. They were transferred for undetermined periods of time and because they required special supervision, for example because they have attempted suicide, are HIV+, are suffering from serious psychiatric or medical problems, have attempted to escape, were assaulted by fellow prisoners in other detention facilities or they were punished due to breaches of the public order in the detention facility.<sup>381</sup> According to Hotline, the decision to transfer detainees from detention facilities for migrants is arbitrary and is not subject to a fixed and uniform protocol; neither is setting the length of their stay in the criminal prison. At times, migrant detainees are simply forgotten there.<sup>382</sup>

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373 RMMS, 2014k.

374 Kovaliyov-Livi and Rozen, 2014, p. 22.

375 RMMS, 2014k.

376 Hotline for Migrant Workers, 2012, p. 15.

377 Ibid, p. 15.

378 US Department of State, 2014, Country Report Israel, p. 5.

379 Ibid, p. 5.

380 Hotline for Migrant Workers, 2012, p. 16.

381 Hotline for Refugees and Migrants, 2013, p. 3.

382 Ibid, p. 4.

### Conclusion: immigration detention in Israel compared with international standards

Article 4 of the Optional Protocol to the UN Convention against Torture (OPCAT) defines deprivation of liberty as “any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority”. The UNHCR Revised Guidelines on detention of asylum seekers defines detention as “confinement within a narrowly bounded or restricted location, including prisons, closed camps, detention facilities or airport transit zones where freedom of movement is substantially curtailed”. According to the UN Working Group on Arbitrary Detention, detention is the “the act of confining a person to a certain place, whether or not in continuation of arrest, and under restraints which prevent him from living with his family or carrying out his normal occupational or social activities.”<sup>383</sup>

In Holot, detainees need to be present during the night and need to report three times a day to the designated office and present an identification card to an Israeli Prison Service (IPS) employee as proof of his presence in the facility. There are (inconsistent) punishments for absence, such as a transfer to Saharonim prison or deprivation of allowances or the right to leave Holot between roll calls.<sup>384</sup> Acquiring the necessary exit permits proves difficult.

*“They say Holot is not a prison, but getting out of here is as hard as getting out of prison. I’ve asked to leave for a whole day several times and was never given permission. I wanted to visit my friends in Tel Aviv and they wouldn’t let me. Usually there’s no one at the Immigration Authority offices, which is where we’re supposed to ask for permits”.*

Detainee in Holot, interviewed by Hotline<sup>385</sup>

As such, Holot could clearly be classified as a detention centre. Although an elaborate legislative review of Israel’s policy and practices is beyond the scope of this research, immigration detention in Israel is not used as a measure of last resort and it could be labelled as arbitrary and excessive, not being subject to independent period review and lasting for indefinite periods of time.

Furthermore, Israel’s policy restricts the free movement of refugees, there are reports of children in detention, and of *refoulement* of Eritrean refugees while there could be substantial grounds for believing that they would be in danger of being subjected to torture. Israel also openly stated it is using detention as deterrence, which is in contravention of international law. UNHCR Guidelines on detention state that deterring others from seeking asylum, or dissuading those who have already lodged their claims from pursuing them, is not a legitimate purpose to justify detention.<sup>386</sup>

As such, Human Rights Watch concluded in September 2014 that “confining Eritreans and Sudanese to Holot breaches the international law prohibition on arbitrary detention.” First, because Holot is a specific circumscribed

383 UN Working Group on Arbitrary Detention, 2013, p. 6.

384 Kovaliyov-Livi and Rozen, 2014, p. 13.

385 Ibid, p. 15.

386 UNHCR, 2012.

location and people held there are prevented from carrying out their normal occupational and social activities. Second, people are detained there under a blanket immigration detention policy under the *2013 Amendments to the Anti-Infiltration Law* and related procedures authorizing the detention of Eritreans and Sudanese who entered Israel before May 31, 2011. Third, detainees are held for no lawful purpose such as facilitating deportation (which is not possible in the case of Eritreans and Sudanese). Fourth, detainees are held indefinitely, which is automatically unlawful. Fifth, there is no effective remedy to challenge the decision to detain.<sup>387</sup>

Hotline also concludes that Israeli policies and actions toward asylum seekers are inconsistent with Israel's obligation to comply with international human rights treaties, which it signed and ratified, notably the obligation of *non-refoulement* found in the *Refugee Convention* and the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT). Israel's policy and inflammatory rhetoric of government officials, according to Hotline, also violate the *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD), and the ICCPR.<sup>388</sup>

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*"Sudanese are a cancer in our body."*

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*"Sudanese are a cancer in our body"*  
Member of the Knesset in May 2012<sup>389</sup>

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*"Infiltrators are a threat to the social fabric of society, our national security, our national identity ... and ... our existence as a Jewish and democratic state."*

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*"Infiltrators are a threat to the social fabric of society, our national security, our national identity ... and ... our existence as a Jewish and democratic state."*  
Prime Minister Benjamin Netanyahu<sup>390</sup>

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*"In four cases, interviewees said that while queuing, officials simply told them and others in the queue to leave Israel. A Sudanese man said an Arabic-speaking official walked up and down the queue shouting, 'It's now time to go back to Eritrea and Sudan. You are not refugees. You now have enough [money] and we will pay you to leave.'"*

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Sudanese man, interviewed by Human Rights Watch in Tel Aviv, January 12, 2014<sup>391</sup>

All asylum seekers who have entered Israel since June 2012 have been imprisoned in harsh conditions, with little chance of being released, which violates the *Refugee Convention*.<sup>392</sup>

Human Rights Watch further concluded in September 2014 that "Eritreans and Sudanese who agree to leave Israel for their own countries under threat of indefinite detention if they stay, should be considered victims of *refoulement*, that is, victims of a breach of the prohibition against forcibly returning 'in any manner whatsoever' a refugee or asylum seeker to a risk of persecution, or anyone to likely torture or inhuman and degrading treatment."<sup>393</sup> Israel's openly stated policy of doing everything it can to

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387 Human Rights Watch, 2014f, p. 38.

388 Hotline for Migrant Workers, 2012, p. 4.

389 Human Rights Watch, 2014f, p. 6.

390 Ibid, p. 6.

391 Ibid, p. 58.

392 Hotline for Migrant Workers, 2012, p. 4.

393 Human Rights Watch, 2014f, p. 5.

encourage Eritreans and Sudanese to leave the country has also led it to breach Israeli and international law's prohibition on arbitrary detention.<sup>394</sup>

Moreover, the fact that migrants – who are not criminals and who have never been convicted in a criminal court - are detained together with criminals violates both international and Israeli law, including the amended *Anti-Infiltration Law*, which states: “Taking into account the circumstances and the amount of time spent in detention, an infiltrator will be held in appropriate conditions so as not to harm his or her health and dignity” (section 30 B(B)), and “An infiltrator held in custody will be detained in a separate cell from prisoners serving criminal sentences or awaiting criminal trials” (section 30 B(C)).<sup>395</sup>

The effects of prolonged detention are especially disastrous for torture survivors.<sup>396</sup> This is a particularly vulnerable group. Detention may aggravate mental health issues experienced; closed detention centres may share characteristics with the environment in which they experienced torture.<sup>397</sup> Many migrants in Israel are, as briefly mentioned in this section, victims of torture in the Sinai. In 2012 it was estimated that about 5,000 to 7,000 torture survivors reside in Israel.<sup>398</sup> Yet, out of 1,543 asylum seekers who entered Israel between June and the end of September 2012, only 30 shared their experiences in the torture camps in Egypt with the Administrative Tribunal. It is likely many are reluctant to reveal what they have undergone in Sinai and are unaware of the fact that being recognized as a victim of torture might result in their release from prison.<sup>399</sup> Nevertheless, this means that many migrants in detention in Israel are victims of torture. According to Hotline there is an “utter lack of mental health support and treatment for victims of persecution, massacre, torture and rape, who arrive in Israel from depths of distress.” These individuals are then likely to be detained for an unlimited period of time as they cannot be deported back to their countries of origin.<sup>400</sup>

On 22 September 2014, Israel's High Court of Justice ruled that the law establishing Holot facility is void. The ruling gives the government 90 days to close the facility or change the legal framework. According to the court the policy has a cumulative effect amounting to detention. The court also declared void the provision that allows the government to detain newly arrived ‘infiltrators’ for a period of one year. Israel's Interior Minister reportedly said he could not accept the verdict and that the government should amend Israel's *Basic Law* on human dignity, which was the foundation for the High Court's ruling.<sup>401</sup>

394 Human Rights Watch, 2014f, p. 9.

395 Hotline for Refugees and Migrants, 2013, p. 3.

396 Hotline for Migrant Workers, 2012, p. 4.

397 FMR, 2013, p. 8.

398 Hotline for Migrant Workers, 2012, p. 4.

399 Ibid, p. 5.

400 Hotline for Refugees and Migrants, 2013, p. 5.

401 Human Rights Watch, 2014g.

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*"I cannot accept the verdict of the High Court [which, if implemented, would mean] we won't have a Jewish democratic state because our borders will be overrun... with illegal infiltrators."*

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*"I cannot accept the verdict of the High Court [which, if implemented, would mean] we won't have a Jewish democratic state because our borders will be overrun... with illegal infiltrators."*

Interior Minister Gideon Sa'ar<sup>402</sup>

It was also reported that the Knesset will now embark on a fight against the High Court. In October 2014, the Knesset debated a proposal to amend the *Basic Law*.<sup>403</sup> A variety of approaches were proposed but no specific formulation was adopted. Those in attendance decided to emphasize the judicial oversight initiative by the state, in accordance with the High Court ruling. Moreover, every person summoned to the detention facility will be given the opportunity to officially seek asylum. It was also decided to cancel the decree ordering those staying at the facility to present attendance in the afternoon hours – an issue which the court criticized in its ruling.<sup>404</sup>

### 3.11 Saudi Arabia<sup>405</sup>

#### Mixed migration context

The Kingdom of Saudi Arabia is a major destination country for migrants. An estimated 9 million migrant workers (regular) fill manual, clerical and service jobs, including 1.4 – 2 million migrant domestic workers.<sup>406</sup> In terms of irregular migration, the Kingdom of Saudi Arabia acts as the greatest magnet in the Horn of Africa and Yemen region, attracting migrants from Ethiopia, Eritrea, Kenya, Somalia, Ethiopia and Yemen as well as migrants (many more in fact) from other countries around the world, such as Indonesia, the Philippines, Nepal and India.<sup>407</sup> Within the Horn of Africa, Ethiopia is the major source country for labour migration to Saudi Arabia. Over the last three years, between 100,000 and 200,000 Ethiopian migrants migrated to Saudi Arabia annually through regular labour migration, with irregular Ethiopian migration to Saudi Arabia estimated to be double that size.<sup>408</sup>

#### The use of immigration detention in Saudi Arabia

Although its economy relies heavily on immigrant labour, Saudi Arabia also struggles with irregular migration and has been one of the most active countries in the region implementing measures to restrict migration. Examples are the construction of the Saudi-Yemen barrier, military patrols along the border in search of illegal immigrants and the dozens of observation posts that were built along the border. One Saudi official was quoted in the media as saying 126,000 people were caught trying to enter Saudi Arabia in the first half of 2013; most are from Yemen, Ethiopia, Somalia and Bangladesh.<sup>409</sup> Saudi Arabia has also made vigorous efforts to

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402 Human Rights Watch, 2014g.

403 International Middle East Media Centre, 2014.

404 Ynet News, 2014.

405 This section draws heavily on the recently published RMMS study *'The Letter of the Law: regular and irregular migration in Saudi Arabia in a context of rapid change'*, 2014. For a detailed account on Saudi Arabian migration policy - including the 'Saudization policy, the crackdown on irregular migration and the mass deportations - refer to this report.

406 RMMS, 2014a, p. 9-10.

407 Ibid, p. 16.

408 Ibid, p. 9-10.

409 RMMS, 2014a; Business Week, 2013.

detect and deport those who have overstayed their visas and those with illegal visa status.<sup>410</sup>

In 2012, it was reported that Saudi Arabian authorities were becoming increasingly aggressive in their treatment of irregular migrants.<sup>411</sup> Irregular migrants, including many Ethiopians, who enter the country face the risk of imprisonment and deportation if caught by Saudi authorities. If not deported, irregular migrants might be detained, often in Jizan prison, close to the border with Yemen. Respondents in a 2012 DRC/RMMS study reported appalling conditions in prison, including poor sanitation, limited food and water, no access to medical care and violent beatings by the prison guards.<sup>412</sup>

*"I found a job in a farm for USD 100. I worked 25 days then the owner of the farm delivered me to the police and they took me to jail for 5 days, my cell was a bathroom, then they moved all prisoners to another jail where I stayed 34 days. They beaten us and treated us worse than animals. Even for requests of food they were not answering. One day one of the prisoners in my cell died, the wardens took him and just threw him out of the prison like a bag of rubbish. I was released on Yemeni border and I went to Haradh in Yemen where I stayed 3 days, but I decided to go back to Saudi Arabia. I walked for 3 days and arrived with other 2 people to a place called Khamis Mshait but unfortunately we were arrested again by police, I spent in jail 13 days exposed to physical assaults and hunger. I was transferred again to Jizan prison where I spent 33 days, at the end of which I was released on the Yemeni border and I went again to Haradh".*

16 year old Ethiopian boy, interviewed by DRC/RMMS in Yemen, 2012<sup>413</sup>

*"I found a job in a farm for USD 100. I worked 25 days then the owner of the farm delivered me to the police and they took me to jail for 5 days, my cell was a bathroom, then they moved all prisoners to another jail where I stayed 34 days. They beaten us and treated us worse than animals"*

### Detention monitoring

Apart from testimonies as presented above (see also the next section) not much is known about detention conditions in Saudi Arabia. During 2013, no independent human rights observers visited prisons or detention centres. The government did permit some foreign diplomats to visit prison facilities to view general conditions. The last prison visit conducted by an independent human rights organization was a 2006 visit by Human Rights Watch. The government does however permit the governmental Human Rights Commission (HRC) and the quasi-nongovernmental National Society for Human Rights (NSHR) to monitor prison conditions. In 2013, the NSHR brought deficiencies regarding health care to the attention of the Ministry of Interior.<sup>414</sup>

### 'Saudization' and the crackdown on irregular migration

During the last months of 2013 and early 2014, Saudi Arabia implemented strong measures to protect the labour market and curb irregular migration in the context of its 'Saudization' policy (replacing migrant workers with Saudis). After a deadline for migrants to either leave voluntarily or regularize their migration status, Saudi authorities started to carry out

410 Shah, 2009, p. 11.

411 DRC and RMMS, 2012, 51.

412 Ibid, p. 44.

413 DRC and RMMS, 2012, p. 44.

414 US Department of State, 2014, Country Report Saudi Arabia, p.6.

labour inspections and arrests of irregular migrants. Hundreds of thousands were arrested. Workers who did not have the required documentation or those who were not working for their legal employers were detained.<sup>415</sup> Over the course of several months, over 160,000 Ethiopians and 40,000 Somalis were deported to Addis Ababa and Mogadishu.<sup>416</sup> Although some of the deportees had spent 2-3 years in detention, most were rounded shortly before their deportation.<sup>417</sup>

IOM reported that, according to the government of Ethiopia, there were, as of late 2013, 64 detention centres holding Ethiopian irregular migrants in Saudi Arabia.<sup>418</sup> The Saudi media reported that the authorities were spending 1 million Saudi Riyals [USD 266,652] everyday by mid-November for shelters, food and drinks, transportation and mobile clinics for the upkeep of detained illegal Ethiopians.<sup>419</sup> However, Human Rights Watch reported that Ethiopians were being held in makeshift detention centres without adequate food or shelter. Saudi guards gave the detainees only one small meal of rice per day, and provided no access to medical attention. Many had been left without shelter during heavy rainfall in Riyadh in November 2013.<sup>420</sup>

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*“The police arrested me because I was illegal. They brought me to prison and I spent 8 days in prison. In prison they tied me because I was very sick. But people were allowed to visit me, give me food.”*

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*“The police arrested me because I was illegal. They brought me to prison and I spent 8 days in prison. In prison they tied me because I was very sick. But people were allowed to visit me, give me food”.*

15 year old Ethiopian girl, interviewed in Addis Ababa by RMMS, 31-01-2014<sup>421</sup>

Yemeni and Somali workers deported from Saudi Arabia after November 2013 spoke of terrible detention conditions prior to deportation. They described overcrowding, insufficient food and potable water, as well as beatings by prison guards. Ethiopian nationals in Riyadh told Human Rights Watch in November 2013 that thousands of foreign workers were being held in makeshift detention facilities without adequate food and shelter before being deported.<sup>422</sup> Many had been detained for weeks, with a lack of access to air, daylight and medical assistance. They were also exposed to sweltering heat. With one exception, none of the detention centres had bedding and detainees slept on the floor. None of the returnees interviewed by Human Rights Watch had been allowed to speak with UNHCR to discuss possible refugee claims.

One Somali migrant told Human Rights Watch he was detained for 57 days in five different detention centres. One of the centres had two toilets for 1,200 people, including dozens of children. In another centre in Riyadh, the detainees had to fight over food as there was so little.<sup>423</sup>

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415 RMMS, 2014a; Human Rights Watch, 2013b.

416 RMMS, 2014c.

417 RMMS, 2014a, p. 68.

418 IOM, 2014a.

419 Arab News, 2013.

420 Human Rights Watch, 2013c.

421 RMMS, 2014c, p. 25.

422 Human Rights Watch, 2014d, p. 69-70.

423 Ibid.

*“The family threw me on the street and then the police arrested me and took me to prison. I came back only with these clothes, no money. Seven months I worked for them, but they gave me nothing”.*  
15-year old Ethiopian girl, interviewed by RMMS in Addis Ababa, 30-01-2014<sup>424</sup>

Migrants in Sana’a told RMMS about friends in Saudi Arabia who were held by Saudi authorities with 500 other migrants in a detention centre near Jizan. They said that every day 30 new migrants arrived at the centre, and detainees were not asked any questions. They were held and they suffocated, as there was no ventilation and no windows. The migrants said the lack of windows were so people outside could not see them. They added that there are many of these detention centres in Saudi Arabia.<sup>425</sup>

Furthermore, there have been reports from migrants who had their belongings (gold, shoes) confiscated in detention centres in Saudi Arabia, before they were put in planes for deportation.<sup>426</sup> It was alleged, beatings and other abusive treatment continued during the deportation process. People were rounded up on the streets in Saudi Arabian cities and were placed on planes directly without their belongings. This included heavily pregnant women. Many returnees in Ethiopia showed signs of severe beatings.<sup>427</sup>

*“They took me from the house because I was sick. They wanted to send me back to my country, but I refused because I was afraid they would take me to the police. Then they just left me in the middle of the road. The police took me to a camp with other returnees. All my belongings are still with the family in Saudi Arabia”.*  
17-year old Ethiopian girl, interviewed by RMMS in Addis Ababa, 31-01-2014<sup>428</sup>

Even after the peak of this massive crackdown on irregular migrants, the Saudi authorities continue to arrest and detain irregular migrants, as they also used to do before the operation. In August 2014, it was reported that the police in Saudi Arabia arrested 400 mostly African irregular migrants south of Riyadh. They were arrested for “various offences, such as overstaying their visas, running away from sponsors and looking for employment”. According to the Saudi authorities, nearly 547,000 migrants have been deported in 2014 and more than 13,000 migrants are still being held at detention centres across the country awaiting completion of their deportation procedures.<sup>429</sup>

### **Conclusion: immigration detention in Saudi Arabia compared with international standards**

Although Saudi Arabia has not signed the *ICCPR* and the *Refugee Convention*, it could be argued that Saudi authorities still act in contravention of several other international obligations to which the state is party. For example, as presented in chapter 2, Saudi Arabia is a party to the *Arab Charter on*

*“The family threw me on the street and then the police arrested me and took me to prison. I came back only with these clothes, no money. Seven months I worked for them, but they gave me nothing.”*

424 RMMS, 2014a, p. 70.

425 Ibid, p. 50.

426 RMMS, 2014a, p. 70.

427 Ibid, p. 10.

428 Ibid, p. 70.

429 AFP, 2014.

*Human Rights*, which states, among other things that “everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest, search or detention without a legal warrant” and that “Anyone who is arrested shall be informed, at the time of arrest, in a language that he understands, of the reasons for his arrest and shall be promptly informed of any charges against him. He shall be entitled to contact his family members.”

Mass arrests and detainment of irregular migrants – an estimated 13,000 migrants are still being held in dozens of detention centres – could be considered as arbitrary detention. In contrast to group detention, non-arbitrary detention requires an individualized assessment, which has clearly not been made. Furthermore, detention must be subject to independent periodic review - another requirement to avoid arbitrary detention – which is not the case in Saudi Arabia. Such practices also violate the *Universal Declaration of Human Rights*, which provides that everyone has the right to liberty, and states that no one shall be subjected to arbitrary arrest, detention or exile.

Furthermore, based on migrant testimonies included in this chapter, it becomes clear that children have been detained as well without prompt access to legal and other appropriate services, which violates the *Convention on the Rights of the Child*.

Migrants reported appalling conditions in detention centres and beatings and other forms of abuse. Further, the Saudi authorities did not consider any refugee claims of the 160,000 Ethiopian and 40,000 Somalis that were deported. This is particularly concerning for the Somali deportees, who may risk life-threatening situations or inhuman and degrading conditions in south-central Somalia. Which in turn suggests the likely violation of principle of non-*refoulement* and the provisions in the *Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment* (CAT).

Finally, Saudi Arabia’s detention of migrants is not in line with the 2012 *UNHCR Guidelines on the Applicable Criteria and Standards relating to Detention*, as well as other guidelines and principles described in chapter 2. Clearly, detention is not used as a measure of last resort, but is instead routine practice. Further, alternatives to detention are not considered and there is no system for independent monitoring in place.





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## RMMS Mixed Migration Research Series - explaining people on the move

- Study 1: **Migrant Smuggling in the Horn of Africa & Yemen:** *the political economy and protection risks* (June 2013)
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- Study 5: **Going West:** *contemporary mixed migration from the Horn of Africa to Libya & Europe* (June 2014)
- Study 6: **Blinded by Hope:** *Knowledge, Attitudes, and Practices of Ethiopian migrants* (June 2014)
- Study 7: **Abused & Abducted:** *the plight of female migrants from the Horn of Africa in Yemen* (October 2014)
- Study 8: **Behind bars:** *the detention of migrants in and from the East & Horn of Africa* (February 2015)

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The use of immigration detention is widespread in the main destination and transit countries chosen by migrants (including refugees and asylum seekers) from the Horn and East Africa. Instead of being a measure of last resort, detention (often on an arbitrary basis) is often a first response in some of these countries. Immigration detention is used for a variety of reasons, which commonly includes: controlling migration flows, as a deterrence measure for future migrants, security reasons (such as identity and health checks), or protection of the labour market.

*Behind bars: the detention of migrants in and from the East & Horn of Africa*, the 8th study in RMMS's *explaining people on the move series*, illustrates that detention of migrants can also be the result of chaotic or dysfunctional processes. Additionally, the arrest and detention process can provide the opportunity for illicit rent-seeking behaviour by certain state officials and therefore form part of the growing irregular migration economy. Despite the difficulty of obtaining data from some countries, this study seeks to: elaborate on the scale of the use of detention, the types of detention, detention conditions, and the effect of detention on migrants. It also seeks to explain relevant international legislation as well as possible alternatives to detention.



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