

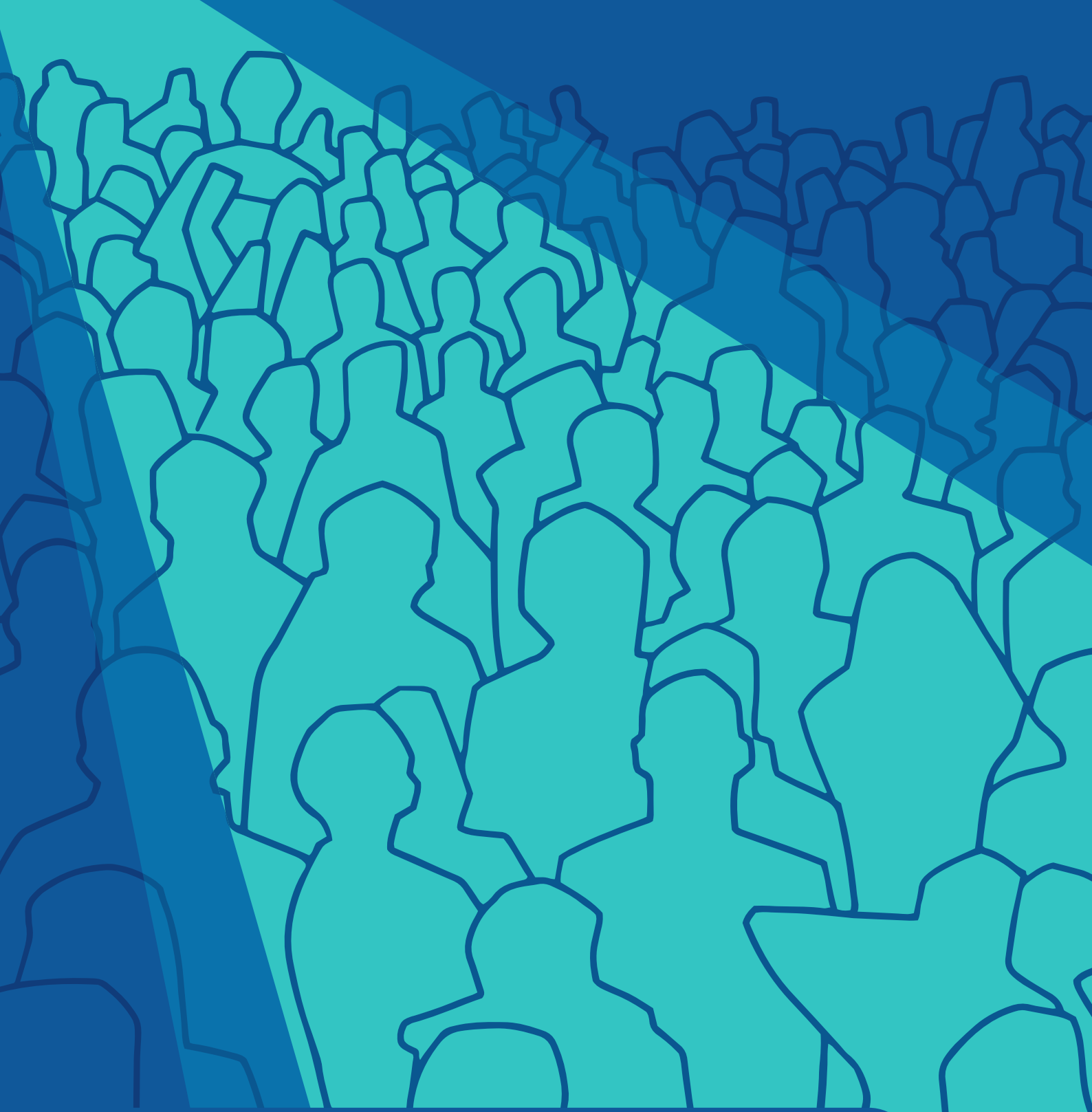


JESUIT REFUGEE SERVICE
EUROPE

VISITING
MIGRANTS
IN DETENTION

HOW
IT IS and
HOW
IT SHOULD BE

BASED ON THE JRS EXPERIENCE
IN 14 EUROPEAN COUNTRIES



Publication date: April 2023

ABOUT JRS

JRS is an international Catholic organisation with a mission to accompany, serve and advocate for the rights of refugees and others who are forcibly displaced. In our 23 country offices in Europe, we do that by providing psychosocial and pastoral support in detention centres, legal counselling, education for children and adults, and many social and cultural activities as well as by advocating for structural changes in policies and legislations both at national and European level.

 You can learn more about our work at <https://jrseurope.org/>

This report is part of the "**Detention under the Spotlight**" project, which was possible thanks to the support of **Oak Foundation**.

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INTRODUCTION

Deprivation of liberty is inherently harmful to human dignity and has a negative impact on both physical and mental health. For this reason, JRS advocates for the establishment of alternatives and, ultimately, an end to the use of detention in migration-related purposes. In today's reality, however, detention is used all over Europe at different stages of migration procedures. In some cases, migrants travelling irregularly are detained upon arrival, usually with the purpose of identification, prevention of irregular entry and removal from the territory. Migrants, including asylum seekers, can be detained with the purpose of being transferred to another European state, in application of bilateral agreements or the EU so-called Dublin regulation¹. Finally, detention is used with the purpose of enforcing returns of migrants found irregularly in the territory of a country.

For as long as immigration detention remains a reality, JRS will keep working to accompany detained migrants and advocate for the respect of their rights and for humane detention conditions. Currently, JRS staff and volunteers access places of detention on a regular basis in 11 European countries (Belgium, Germany, Luxembourg, Kosovo, Malta, North Macedonia, Portugal, Romania, Slovenia, Spain, UK). In the past, JRS visited detention in three additional countries —Croatia, Ireland and Italy— and strives to resume visits in the near future².

Detention visitors are sometimes the only contact with the external world that detained migrants have. Meeting a visitor can literally change the life of detained people —thanks to the intervention of a visitor, people sometimes obtain the legal aid they need to resolve their immigration status, and can then be released. In other cases, the visitor's intervention ensures people receive the medical care they need. For some people, knowing someone will visit them makes their imprisonment a little more bearable.

1 Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)

2 When it comes to Ireland, it must also be noticed that the country, so far, does not have dedicated immigration detention centres as established by the EU Reception Conditions Directive, except at a police station opened at Dublin airport in 2022, with facilities to temporarily detain passengers refused leave to land. Moreover, while the authorities have designated some areas of some prisons and all police stations to be used for immigration detention, such facilities are rarely used. In this sense, the majority of migrants currently detained in prisons are there for criminal reasons. JRS Ireland also used to visit such migrants held in prisons.

VISITING MIGRANTS IN DETENTION: HOW IT IS AND HOW IT SHOULD BE

For all these reasons, the importance of detention visitors' role should not be underestimated, and the right for detainees to meet them should be guaranteed.

The purpose of this report is to give an overview of the current situation on the ground when it comes to visitors' access to detention centres in Europe. We collected and analysed information based on the direct experience of JRS country offices in the abovementioned 14 European states. In those countries where JRS is currently not visiting, the information provided is based on past experience (when this is the case, reference to a certain country will be marked with *). In some countries, JRS only visits one or few of the existing detention centres, so we do not see the full picture about detention in Europe. However, the information at our disposal already offers sufficient material for reflection on good practices and room for improvement.

Based on this overview, in November 2022, during the annual meeting of the JRS Detention Visitors Support Group (DVSG), we reflected with JRS detention visitors on what elements are necessary for them to properly accompany people in detention. JRS's point of view, as described in this report, reflects the views expressed during that discussion.


ALLOWING VISITORS INTO DETENTION CENTRES: A LEGAL OBLIGATION

While there is no internationally legally binding obligation to allow visits into detention centres, there is a general understanding that the right of detainees to be visited by family members and legal counsellors is an intrinsic part of the right to respect of family life, and the right to be able to challenge the lawfulness of the deprivation of liberty³.

For EU Member States, clear obligations exist in EU legislation to ensure that family members, legal advisors and persons representing relevant non-governmental organisations have the possibility to visit asylum seekers and migrants in detention⁴. Such visits may be subjected by authorization, and non-governmental organisations may need to be recognized by the Member State concerned.

3 See Annex 1.

4 See Annex 1.



In all the countries under examination in this report, both EU Member states and not, some form of legal obligation exists to allow people detained for migration purposes to receive visits. Such obligation is usually included in the national relevant legal instrument governing the detention of asylum seekers or irregular migrants (DE, ES, LU, MK) or in some related implementing acts (BE, HR, IE, IT, KO, MT, PT, RO, SI, UK)⁵.

When it comes to visits of family members and friends of the detainees, the modalities (visiting hours, identity, and security checks) are usually established by the rules governing each detention centre. The JRS experience does not indicate major obstacles posed to such visits; however, their feasibility in practice depends on a number of factors, including how remotely located some centres are (e.g. some centres in Germany) and how largely administrations or single centre directors recur to their discretion of refusing access (this is mentioned as a caveat for instance in the UK). In many cases, in practice, detainees simply do not have family or friends in the country who can visit them, or if they do, their legal status might also prevent them from visiting.

When it comes to visits to detention centres carried out by visitors—either professionals or volunteers—on behalf of civil society organisations, the way in which such a right to receive visits is implemented in practice varies greatly from country to country and, in some cases, even between different detention centres in the same country.

WHO ARE DETENTION VISITORS AND WHAT DO THEY DO?

At JRS, we speak about **'detention visitors'** to refer to **people who, on behalf of a civil society organisation, professionally or on a voluntary basis, regularly visit people held in detention facilities for reasons related to their immigration status and procedure.** Depending on the country, the organisation on behalf of whom they carry out visits and the agreements with the responsible authorities, detention visitors might have different mandates.

JRS detention visitors, including within the same country office, often have different backgrounds: some visitors are volunteers; some are doing it on a professional basis; some have a legal background; some are social workers; some

5 For an overview of the national legal basis, see Annex 2.

are consecrated people. The common denominator in all the countries **where JRS visits detention** is that **visitors' main role is to offer a listening ear**. In many cases, visitors are the only contact with the outside world for detainees. JRS visitors seek to establish a relationship of trust, by providing a space for detainees to talk about what they want and need.

In addition, **in most of the countries, the visitor's role is to provide information and/or legal support to detainees** (BE, DE, ES, HR*, IT*, LU, MK, MT, PT, RO, SI, UK) **and to provide psychosocial support** (BE, ES, HR*, IE* LU, KO, MT⁶, SI, PT). Generally, JRS visitors try to answer detainees' questions, whether these are about their legal situation (e.g. asylum or other immigration procedures, detention status) or about other matters (e.g. medical needs). They often also perform an important role of **acting as a bridge between the detainees and the outside world** (e.g. their lawyers, their family, doctors, other organisations). In many cases, JRS visitors support detainees by **mediating between them and the management or the staff in the centres** about their needs. When JRS visitors do not have the knowledge to provide answers to detainees, they always try to refer them to those who can.

In some countries, JRS is allowed to **organise activities** for groups of detainees (LU, PT); in others, JRS also **provides medical care** (KO⁷). In Portugal and in the UK, JRS staff and visitors offer logistical **support to look for post-release accommodation** for those detainees who can leave detention.

Finally, in several countries JRS visitors also offer **pastoral care** to detainees (DE [partly], HR*, SI, PT, UK).


JRS'S POINT OF VIEW

Detention visitors' role as a 'listening ear' and a 'bridge to the outside world' must be acknowledged by relevant authorities

The role of detention visitors is different from that of a lawyer or other (civil society) service providers (e.g. medical staff). Their task is firstly that of offering human contact and a neutral space to talk. By doing this, and thanks to their independent position as civil society actors,

6 This is not the case in centres run by Detention Services

7 In the past this also used to be the case in Malta.



they can establish relationships of trust and might learn things that are relevant for the persons' migration status or physical or mental well-being. In these cases, with the consent of the concerned person, they will bring such information to those who can follow up on it, be it outside the centre or to the attention of the centre's staff or management. The centres' management and the relevant authorities should recognize this particular position of detention visitors and proactively engage in a dialogue with them.

Detention visitors are not detention monitors but can witness and report

Their role is to be there for the detainees, accompany and support them. However, in performing their role, they witness and observe situations, and they might become aware of violations of detainees' rights. When this happens in individual cases, they will try to address the problem through the appropriate channel (i.e. liaising with the centres' staff and/or management, informing detainees on how to file a complaint, informing the detainee's lawyer). If certain problems appear to have a structural nature, such observations support the advocacy for systematic and structural change.

ACCREDITATION TO DETENTION CENTRES

In nine of the 14 countries under examination, organisations wishing to systematically carry out visits to migrants in detention centres as a part of their mission need to have some kind of formal recognition/ accreditation from the authorities to do so.

The procedures to apply for accreditation and the criteria according to which it is granted vary largely from country to country.

In most countries, the application for accreditation needs to be done at the level of the immigration national authorities or administrations (BE, HR*, LU, MK, KO, RO). In some countries the application is submitted to the regional or local authorities, or the police (DE, IT*). Finally, in some situations permission to visit is requested directly from the direction of the centre that one wishes to visit (ES, IE*).

In Malta, there appears to be no way for civil society organisations to obtain a form of general accreditation to systematically visit detention

centres. The different detention service providers establish procedures for visit that, however, imply permission to visit specific detained persons must be sought in advance.

In the UK, NGO visitors can visit either as ‘social visitors’ (i.e. the same as family and friends) or as **‘welfare visitors’**. No prior checks or clearance is required to visit as a ‘social visitor’. When it comes to ‘welfare visits’, this implies the possibility of going to the centre’s ‘welfare office’ and receive detainees who wish to see visitors. To conduct a welfare visit, criminal record checks are required. This is a recent development and was previously not required. In the experience of JRS UK, this fits into a more general discussion to tighten requirements for NGOs to access detention centres. For the moment, still, no specific accreditation as organisation is needed. JRS UK currently conducts its visits in the detention centres in Harmondsworth and Colnbrook through **semi-formal agreements with the centre management**, who are private contractors.

In Portugal and Slovenia, no specific formal recognition is required for visitors belonging to civil society organisations to be able to access detention centres in a systematic way. Detention visitors from the civil society may visit detainees by following the existing procedures for legal representatives or family and friends. When it comes to **JRS Portugal**, the situation is exceptional in the sense that they are allowed, by virtue of a **Memorandum of Understanding** with the Portuguese Immigration Service (SEF), to have a **permanent presence inside the detention centre** in Porto (USHA). JRS Slovenia has a semi-formal agreement with the police, and it has been custom since 2003 that JRS visits the detention centre for foreigners on a weekly basis.

The level of formality of an accreditation procedure is also very different from country to country. This can range from the signing of a formal Memorandum of Understanding or Protocol the relevant authority—e.g. ministry or public administration (IT*, KO, MK, RO)—to a request made to and approved by the relevant authority via email (BE, LU).

In all countries where a formal accreditation to access detention centres is required, individual accreditations for each visitor are also needed. The level of personal information and checks required to grant accreditation to individuals can vary from simply identity documents to also the provision of criminal records certificates and CVs.

In all the countries under examination, the authorities that grant accreditation to organisations and visitors can also decide to revoke it

or not to renew it. In some cases, there are procedures they have to follow; however, in most cases, there is no clear possibility or procedure to challenge the decision to revoke or not to renew accreditation. An exception is Spain, where accreditation must be requested from the director of each detention centre, and if it is refused or revoked, organisations can appeal to the responsible supervisory judge.

JRS'S POINT OF VIEW

People in immigration detention have the right to receive visits from whomever they wish. Accreditation procedures should not restrict such right.

People in detention should always be able to request and obtain a visit from representatives of organisations that are not accredited as regularly sending detention visitors to the centre. Similarly, there should not be a limit on the number of organisations that can request and obtain accreditation from the detention centres.

Any form of permission or accreditation system to allow civil society organisation to systematically send visitors to detention centers should:

Be granted by independent (human rights) bodies

At present, in all the countries examined, the decision about whom to allow to visit detention centres is always taken by those same authorities or administrations that are running such centres, be it the centre's directors, the immigration offices or the relevant ministries. The same authorities also have the power to deny, revoke or terminate such permission. This is problematic because it places a lot of power and discretion on such authorities. This can impact the freedom of organisation to—publicly—denounce shortcomings in detention conditions or violations of detainees' rights they might detect during their visits. For this reason, the accreditation for organisations to visit detention centres should be the task of independent bodies (e.g. national human rights commissions) that have the relevant knowledge to assess organisations' expertise and an interest in ensuring that the detainees can enjoy the right to receive visits.

Be based on transparent procedures and criteria


The requirement of a formal accreditation cannot become an obstacle for organisations to access detention centres. The formalities to accomplish this should be kept to the minimum and should be clearly spelled out in publicly available sources. The criteria for eligibility should only concern the relevance of the organisations' mandate and services provided for the accompaniment of people in detention. Any background and security check requested on the organisation and on individual visitors should respect a necessity and proportionality test. Accreditation procedures should also include a possibility to challenge an eventual decision to refuse or revoke accreditation in front of an independent competent (judicial) authority.

Grant a formal role to detention visitors

Being formally accredited as an organisation that is allowed to visit detention centres must imply an official recognition of one's expertise to provide accompaniment and support to detained migrants. It also must place the organisation in an official, recognized position to address potential issues detected in the course of the visits with the centre's management and/or the immigration authorities. Official procedures of formal accreditation should therefore preferably be in place at the national level, in order to guarantee the same treatment for all organisations and all detainees in all detention centres in a country.

DETENTION VISITS: HOW OFTEN?

How often and at which moments visitors can access detention centres varies from country to country, and often also between different centres in the same country. Having a formal accreditation as organisation visiting detention and/or as individual detention visitor does not always mean having the possibility to go to the centre unannounced. **JRS visitors are only able to enter detention centres unannounced, as JRS representatives, in Luxembourg, Romania and Portugal.** In Romania, visitors can go every day between 9am and 8pm. In practice, JRS conducts visits in the framework of different projects and usually, depending on the project workplan, they visit on a weekly, monthly, or quarterly basis. Although they do not have to make a request to the centre beforehand, they usually inform them that they will go. The case of Portugal is exceptional, in the sense that JRS has an office in the centre by virtue of a Memorandum of Understanding. The office is open from



9.30am to 5.30pm and the JRS social workers that run it can go in and out of the centre as they see fit to carry out their work. Other staff or volunteers from JRS Portugal can also go in and out of the centre during working hours with prior approval from the centre's management. In addition, a group of volunteers visits the centre every Sunday afternoon from 4.30pm to 6.30pm.

In most countries, JRS carries out visits at fixed times that are agreed upon in advance with the management of each centre (BE, DE, ES, IT*, KO, MK, SI, UK). In the UK, when visitors go to see specific people as 'social visitors', they need to book a visit in advance, and this will take place during regular visiting hours, as applies to family or friends of the detainee. In most cases, when JRS visits at fixed times, visits happen **on a weekly basis**. In a few countries (ES, KO, MK), JRS visits twice a week or even more often.

In addition to the fixed times, in several countries JRS visitors can also visit on a case-by-case basis, upon request of a detainee (ES, DE, IE, KO, MK, UK) or upon request of the detention centres to visit specific people (DE, KO, MK).

In Malta, access is currently only granted upon request to see a specific detainee, and solely to provide professional legal services. In some cases, it is granted only with some delay, which is problematic because visitors might not be able to be present in certain key moments for detainees (e.g. pending immediate deportation). Also, as **contact with the outside world is extremely limited** for people in detention in Malta, **there is no possibility of a formal or systematic way of providing detainees with information about the services provided by JRS or other civil society organisations**, or to identify any individuals who may be vulnerable. As a consequence, it is less likely that detainees will contact JRS. JRS Malta depends on word of mouth, meetings with other detainees, and a very restricted telephone service to be able to access detainees.

JRS'S POINT OF VIEW

Accreditation as organisation visiting detention should grant free access to detention centres

Fixed visit times, preferably at least on a weekly basis, are a good practice: detainees can be informed by the centre's staff that accredited visitors will be present at those times, and detainees can go and see them if they want. **However, for a qualitative accompaniment of people in detention it is important that**

VISITING MIGRANTS IN DETENTION: HOW IT IS AND HOW IT SHOULD BE

visitors are also able to enter the centre outside such moments without prior warning or request of permission from the centre's management. This is important in case a specific follow up with a detainee is needed (e.g. if the visitors have information that they urgently need to communicate to the detainees, or if deportation is imminent and the detained person needs to see a visitor and cannot wait until the following week).

The possibility to visit the centre unannounced also fosters transparency about the detention conditions as it reduces the possibility that certain potentially problematic situations are temporary solved or put out of sight when it is known that visitors come along.

It is understandable and acceptable, from an organisational point of view, that the detention centre establishes timeframes within which visits can be carried out during the day, provided this does not unduly restrict access to visitors. **As a rule, visits should be possible at least during working hours (9am to 5pm), including during weekends and bank holidays,** eventually with a break during lunch time if this is needed to respect the centre's regime. In addition, visiting moments in the evenings are highly desirable. This would not only make it easier for members and friends to visit (as it might be difficult for them to take off from work during the day), but also for detention visitors who do this on a voluntary basis, along with their regular work.

WHERE DO VISITS TAKE PLACE?

In most of the countries where JRS is currently carrying out visits, JRS visitors meet detainees in a common room or in designated visiting areas, where they also have their conversations (BE, DE, ES, KO, LU, MK, PT, SI, UK). In such rooms, other detainees, as well as guards, can be present and in earshot at the same time.

In several countries, JRS visitors can also go to a separate, more private room, to have a conversation face-to-face if they consider it necessary and/or if the detainee so wishes (BE, ES, KO, LU, MK, PT, RO, SI).

In Malta, detainees are brought handcuffed from their sleeping quarters to a room where they meet the JRS legal officers. Handcuffs are only removed in the room, sometimes at the request of the visitors.

JRS'S POINT OF VIEW

Detention visitors should always have access, during their visits, to common rooms when detainees are present

This should always be the case when detention visitors come to the centre at fixed moments (see above). This way, people in detention know that visitors will be present in the common room and can approach them freely if they wish to talk. Having access to common rooms also means that visitors can more easily approach detained people they have not met yet, and give them information about their role and the support they can provide.

Private rooms for face-to-face conversation should always be available for detention visitors

Conversations with detention visitors can be about very personal and private matters. To build a relationship of trust, it is important that people can speak freely and in a confidential setting, without fearing being overheard by the guards or by other detained people. For this reason, it is important that separate rooms are always available for detention visitors to have private, face-to-face talks when they consider it fit or when the detained people ask for it. Detainees should always be allowed to move to such rooms with the detention visitors.

WHO CAN BE VISITED?

In most countries under examination (BE, ES, KO, MK, PT, RO, SI, UK), detained migrants can approach JRS visitors when they are in the centre if they want to. These are the same countries in which JRS visits at fixed times and has access to a common space or designated visiting area. In these cases, detainees know JRS visitors will be present and can either freely reach the common room where they know they will find them or can ask to be taken there by the centre's staff (ES).

In the same countries, except for the UK, JRS visitors can also approach detainees when visiting the centre without previous contact. In the UK this is different, as the JRS visitors sit in the 'welfare room', which is not a common room as such, but a room where detainees know they will find the visitors. JRS visitors themselves cannot usually freely move from their desks to approach people.

VISITING MIGRANTS IN DETENTION: HOW IT IS AND HOW IT SHOULD BE

In most cases it is also possible for JRS to see people that request to visit a specific detained person in advance. In some countries—and from some centres—JRS might also receive lists of detained people in advance and request to meet with some of them.

In Germany and Malta, JRS visitors can only see people who requested a visit in advance or that they asked to visit in advance.

In at least half of the countries under examination (BE, DE, ES, IT*, KO, RO, UK), JRS visitors are never able to visit certain categories of people—namely, people held in isolation cells and/or people in quarantine for medical reasons, e.g. contagious diseases (this category has increased as a result of the Covid-19 pandemic, see below).

JRS'S POINT OF VIEW

Detention visitors should be able to approach all detainees

Obviously, detention visitors should respect the wish of detained people to talk with them or not. However, it is important that detention visitors can approach all detainees even without an explicit request from their side. People in detention might be reluctant to talk with detention visitors. This is normal as they have sufficient reasons not to trust people from organisations they do not know. Some people might not be ready to talk to a visitor the first time they see them but might feel this need later, and it is important they know that the visitors will be available.

Detention visitors should receive information from the centres about arrivals and departures of detained people

This could be done through lists, in the understanding that detention visitors will only use the information they receive about the detainees for the purpose of approaching new people and follow up on the visits they have previously carried out with others. Such list should also include people that are in solitary confinement or in medical wards or quarantine. It should be possible for detention visitors to also reach out to these people and establish a contact if they so wish.

Detention centres' staff should systematically inform new detained people about the possibility of receiving visitors

Detention centres' staff should be proactive and facilitate the organisation of a visit when a detained person asks for it. Similarly, they could suggest to the visitor to approach specific people when they consider it might be needed.

IMPACT OF COVID-19 ON DETENTION VISITORS' ACTIVITIES

As previous JRS research shows⁸, the measures taken to limit the spread of Covid-19 in 2020 led to a suspension of detention visits in most of the countries under examination (BE, DE, ES, HR, IE, IT, MT, SI, UK). In most countries where visits could continue during the first lockdown period (more or less between March and June 2020), the conditions for accessing the centres and meeting with detainees changed. This was also the case for most countries in the periods following the first lockdown, from late 2020 to early 2022, with measures changing periodically, depending on the pandemic situation. So, the JRS country offices reported differences in the procedures to physically access the centres changed (e.g. following health protection measures, such as wearing personal protective equipment—DE, IE, MT, UK), limitations of visits to certain areas or places in the centre (BE, ES, KO, MT, UK), limitations to the number of people who could be met by visitors at the same time (i.e. not in group—BE, ES, KO, MT, RO, UK), and limitations of visits at specific moments or time frames (ES, KO, MT, RO, UK).

The conditions for the visits of JRS North Macedonia and the permanent presence in the detention centre for JRS Portugal were not impacted by the Covid-19 pandemic, apart from visitors being required to wear personal protective equipment and observe regular Covid-19 prevention measures such as keeping distances and washing hands.

In most countries under examination, after the lifting of the Covid-19 prevention measures, visits carried out by JRS visitors have gone back to the modalities they had before the Covid-19 pandemic. **In Croatia, the**

8 JRS Europe, 'Covid-19 and Immigration Detention: Lessons (Not) Learned', 2021. <https://jrseurope.org/en/resource/covid-19-and-immigration-detention-lessons-not-learned/> [last accessed 24/02/2023]

agreement that JRS had with the Ministry of Interior to visit the pre-removal detention centre of Jezevo expired in October 2021. The **requests** made by JRS Croatia **for renewal**—first in September 2021 and then in May 2022—**were refused due to ‘epidemiological reasons’**. While this could still be acceptable in 2021, it is hard to see how this can be justified in May 2022, as all Covid-19 measures were lifted in Croatia in April 2022. According to the latest ECRE AIDA country report on Croatia, the Croatian Red Cross did not experience difficulties accessing detention centres in 2021, however some other NGOs, such as also the Centre for Peace Studies, have faced obstacles accessing detention centres⁹. While it is difficult to say this with certainty, the experience of JRS indicates that the Covid-19 pandemic might have been used as an excuse to limit NGOs’ access to detention centres.

Similarly, in Italy, the long-standing agreement that JRS had with the local Prefettura, to visit the detention centre of Ponte Galeria, in Rome, expired during the period of enactment of the Covid-19 prevention measures.

The procedure to renew the agreement was long delayed, with repeated, unexpected, requests from the side of the Prefettura to provide details on the organisation’s activities in order to evaluate the application for renewal. **At the time of writing, JRS Italy has not been able to obtain a renewal and resume the visits.**

In **Malta**, JRS’s access to the Safi Detention centre was changed and limited already before the Covid-19 health crisis. During the pandemic, all visits were suspended. Currently, JRS has more regular legal access than during the enforcement of Covid-19 prevention measures. However, **JRS is still not able to access common spaces in the detainees’ quarters, nor to have group sessions.** Moreover, JRS is still **unable to provide psychosocial support to detainees in Safi Barracks or Hal Far Initial Reception Centre.** While the trend of restricting access to detention started before the pandemic, it is clear that the pandemic offered an extra reason to introduce further restrictions and that those are now difficult to be undone.

In JRS **UK’s** experience, it took a **long time for visits to return to pre-Covid-19 modalities**, although this could vary also from one centre to another. JRS UK experienced difficulties accessing social visits, often with little warning, where Covid-19 restrictions were given as an excuse for disruptions even though Covid-19 measures were no longer in place in wider society. Currently, social visits have returned to pre-Covid-19 modalities. However, there are conversations taking place at policy level about a tighter access in general.

9 ECRE, AIDA report, Country report Croatia, last update 22/04/2022 - <https://asylumineurope.org/reports/country/croatia/detention-asylum-seekers/detention-conditions/access-detention-facilities/> [last accessed 27/02/2023]

CONCLUSIONS

HOW DETENTION VISITS SHOULD BE

Our research shows that the legal obligation to allow people in detention centres to receive visits from relevant non-governmental organisations results in a large range of implementations in different countries, sometimes also among different detention centres in the same country.

In most of the countries examined in this report, JRS has a well-established relation with the relevant authorities and the role of our visitors is recognised. However, as we have seen in Croatia and Italy, matters can change. In the case of Croatia, a situation such as the Covid-19 pandemic was used as pretext to stop or tighten the possibility for organisations to access detention centres even after such situations have ended. In the case of Italy, the responsible authorities have so far not given any justification or explanation on the change in attitude towards the possibility for JRS (and others) to visit the detention centre as they long used to do. In both cases, JRS has no way of challenging such change in front of an impartial actor.

Detention visitors, from JRS or other organisations, are often the only contact with the outside world for people in immigration detention, particularly when they do not have family or friends who can visit them. JRS detention visitors are, first and foremost, there to offer a listening ear. Along with this, they fulfil many important roles, depending on the national context, and they often play a mediation role between the detainee and other formal institutions or services, be it the centre's staff, management or even their lawyers.

Detainees should be able to enjoy their rights to receive visits, including by relevant civil society organisations. Detention visitors, in turn, should be able to access detention centres in a way that allows them the possibility to establish a trustful relationship with detainees, and to follow up on their questions and specific needs when required.

FOR THESE REASONS, IN JRS'S POINT OF VIEW

- **The relevant national authorities and administration must:**
 - Acknowledge the specific role of detention visitors in offering a 'listening ear' and creating a 'bridge' to the outside world and the centres' management and staff;
 - Acknowledge and accept that detention visitors are not monitors but can witness and report violation of detainees' rights.

VISITING MIGRANTS IN DETENTION: HOW IT IS AND HOW IT SHOULD BE

- **People in immigration detention have the right to receive visits from whomever they wish. Accreditation procedures should not restrict such right.**
- **Any required permission or accreditation to allow civil society organisations to systematically send visitors to detention centres should:**
 - Be granted by independent (human rights) bodies;
 - Be based on transparent procedures, spelled out in publicly available sources. The formalities to accomplish this should be kept to a minimum;
 - Be based solely on criteria concerning the relevance of the organisations' mandate and services provided for the accompaniment of people in detention;
 - Include the possibility of appealing against a refusal or a revocation of accreditation in front of independent (judicial) authorities;
 - Grant a formal role to accredited visitors to address potential issues detected in the course of the visits with the centre's management and/or the immigration authorities.
- **Accreditation as organisation visiting detention should grant visitors free access to detention centres. Fixed visit times, at least on a weekly basis, are a good practice, but visitors must also be allowed to enter the centre outside such times without prior warning or request of permission from the centre's management.**
- **Detention visitors should always have access, during their visits, to common rooms when detainees are present.**
- **Private rooms for face-to-face conversation should always be available for detention visitors.**
- **Detention visitors should be able to approach all detainees with their consent.**
- **Detention visitors should receive information from the centres about arrivals and departures of detained people.**
- **Detention centre's staff should systematically inform new detained people about the possibility to receive a visitor.**

ANNEX 1

INTERNATIONAL AND EUROPEAN LEGAL FRAMEWORK

INTERNATIONAL LEVEL

- **UNGA, Body of principles for the protection of persons under any form for detention or imprisonment, 1988¹⁰**
 - ▶ **Principle 18 (3):** The right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel may not be suspended or restricted save in exceptional circumstances, to be specified by law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order.
 - ▶ **Principle 19:** A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations.

EUROPEAN LEVEL

- **Case law of the European Court of Human Rights:**
 - ▶ No explicit reference to the right to receive visits.
 - ▶ However, an essential part of the prisoners' right to respect for family life is that the authorities should enable and if need be, assist prisoners in maintaining contact with their close family.
 - ▶ Right to freely confer with a lawyer – but no explicit reference to right to be visited.

See: Guide on the case-law of the European Convention on Human Rights.¹¹

¹⁰ <https://www.ohchr.org/en/instruments-mechanisms/instruments/body-principles-protection-all-persons-under-any-form-detention#:~:text=No%20person%20under%20any%20form,or%20degrading%20treatment%20or%20punishment.> [last accessed 09/03/2023]

¹¹ https://www.echr.coe.int/Documents/Guide_Prisoners_rights_ENG.pdf [last accessed 09/0/2023]

EUROPEAN UNION:

- **DIRECTIVE 2013/33/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 June 2013 laying down standards for the reception of applicants for international protection (recast) (EU Reception Conditions Directive)**

- ▶ **Art. 10(4)** – Member States shall ensure that family members, legal advisers or counsellors and persons representing relevant non-governmental organisations recognised by the Member State concerned have the possibility to communicate with and visit applicants in conditions that respect privacy.

Scope of application: applicants for international protection.

- **DIRECTIVE 2008/115/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (EU Return Directive)**

- ▶ Art. 16(4) - Relevant and competent national, international and non-governmental organisations and bodies shall have the possibility to visit detention facilities (...) Such visits may be subject to authorization.

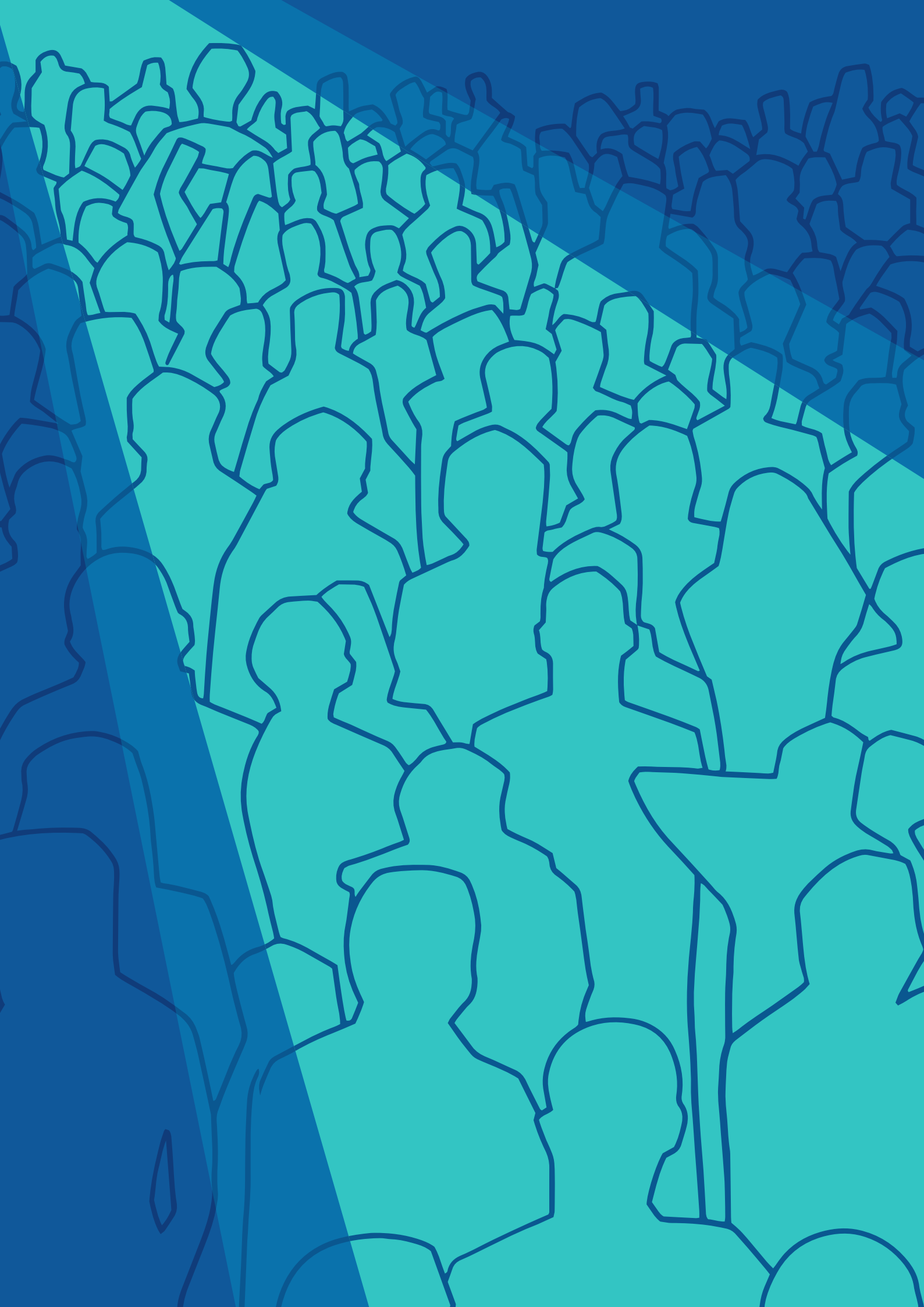
ANNEX 2 NATIONAL LEGAL FRAMEWORKS

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| BELGIUM | <p>Royal Decree of 2 August 2002 determining the regime and regulations to be applied in the places on the Belgian territory managed by the Immigration Office where an alien is detained, placed at the disposal of the government or withheld, in application of article 74/8 §1 of the Aliens Act, art. 34 and 37 for the right of detainees to receive visits from family and/or friends and art. 44 and 45 concerning the possibility for civil society organisation to access detention places</p> |
| CROATIA | <p>Ordinance on stay in the Reception Centre for Foreigners, Official Gazette 101/2018 i 57/2019, art. 22 and art. 26.</p> |
| GERMANY | <p>Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory (Residence Act), section 62a(2).</p> <p>The permission to “contact” legal representatives, family members, the competent consular authorities and the relevant aid and support organisations is usually interpreted as including the right to receive visits. Further details are regulated, by law or practice, at the level of the 16 federal states.</p> |
| IRELAND | <p>Statutory Instrument No. 230/2018 – European Communities (Reception Conditions) Regulations 2018, Section 19(4)</p> |
| ITALY | <p>Decree of the President of the Republic of 31 August 1999, n.394, art.21</p> <p>Decree of the Minister of Interior of 20 October 2014, n. 12700, art. 5 and 6</p> <p>Legislative decree 286/1998 (Testo Unico Immigrazione), art. 13 and 14</p> |

VISITING MIGRANTS IN DETENTION: HOW IT IS AND HOW IT SHOULD BE

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| KOSOVO | Regulation no. 03/2014 on operation of the detention centre for foreigners, Article 22 |
| LUXEMBOURG | Law of 28 May 2009 regarding the creation and organisation of the detention centre, article 15 |
| MALTA | Reception of Asylum Seekers Regulations (Subsidiary Legislation 420.06 of the Laws of Malta), art. 6A(5) |
| NORTH MACEDONIA | Law on International and temporary protection, art. 22 and art. 63, 64, 65, 66 Law on Foreigners, art. 159, 161 and 163 Law of free legal aid, art. 40 |
| PORTUGAL | Regulation of temporary installation centres and spaces similar to temporary installation centres, art. 12 and 15 |
| ROMANIA | Emergency Ordinance 194/2002, art. 104/2 and 104/4 Regulation of 30 July 2014 of the Ministry of Interior, art. 11/ 1(a) and art. 13 |
| SLOVENIA | International Protection Act, art. 4 |
| SPAIN | Organic Law 4/2000 on the rights and freedoms of foreigners in Spain and their social integration, art. 62 bis Royal Decree 162/2014, of 14 March, approving the regulations on the operation and internal regime of detention centres for foreigners. |
| UNITED KINGDOM | Detention Centre Rules 2001 The Short-term Holding Facility Rules 2018 Detention Service Orders |







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