

# GLOBAL **NEXTGEN** INDEX

Protecting the liberty of our next generation, today.

Comparative Report from 22 Countries

## Trends to end child immigration detention

Published June 2018



 **END** IMMIGRATION  
DETENTION  
OF CHILDREN

## Introduction

The Global NextGen Index has been developed to hold countries accountable for their commitment to work towards ending child immigration detention in the [UN Global Compacts on Migration and Refugees](#). The Index uses annual scorecards to evaluate **22 countries** on their progress to implement alternatives to immigration detention, with scores being determined by the Country Committees made up of non-government organisations working on the issue of immigration detention of children. See a [full list of Country Committees here](#). Throughout November 2017 – January 2018, Country Committees gathered data to answer the [Scorecard Questionnaire](#) utilizing existing publicly available research, as well as on-the-ground experience of civil society professionals in the area of child detention. This data creates a baseline and will be updated annually going forward. This report analyses trends that have emerged from the 22 Scorecards.

Ending child detention is a process, and it requires significant systematic reform with effective referral and integration in order to ensure that the rights of migrant children are being protected and fulfilled. Recognising this complexity, scores were divided into six categories, which together provide a comprehensive analysis of State commitment and implementation as they work towards ending child immigration detention.

<b>Score Composition</b> <b>100</b> Bonus points + 15 / - 15		
	Countries have been scored out of 100 possible points that determine the progress a country is making towards ending child immigration detention	
	Average	Possible
Treaties	17.5	20
National laws	2.75	10
Processing	10.4	26
Placement	9.25	12
Rights	9.25	20
Oversight	4.5	12
<b>TOTAL</b>	<b>46.75</b>	<b>100</b>
Points off	-0	-15
Bonus points	0	15

## Score composition

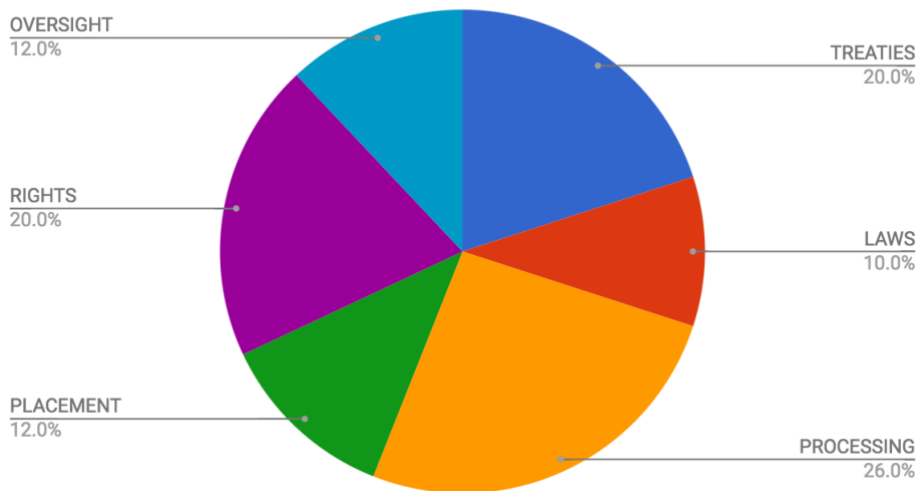
The recommendations from these scores are tailored to national context, with the intention of being able to provide clear recommendations for States wishing to improve their score, uphold their international obligations and protect the liberty of children.

The six categories are defined as:

- **Treaties:** ratification of the core international treaties under international law that are relevant to the issue of child immigration detention. Some countries may be in the process of ratification, but points were only allocated where treaties were already ratified.
- **National Laws:** Any laws that prohibit child immigration detention. Some countries are in the process of law reform, or may have policy in place that prevents child immigration detention. However, this section was about rewarding the codification of this practice into domestic law.
- **Processing:** Identifying any policies or practices to process children who are at risk of being detained on the basis of their immigration status
- **Placement:** Identifying policies and practices that place children in the community, instead of in immigration detention
- **Rights:** Identifying policies or practices that fulfil the rights of children who are at risk of, or in, immigration detention
- **Oversight:** Identifying policies or practices that enable monitoring of children who are at risk of, or in, immigration detention

- **Points Off:** Up to 15 points can be subtracted from the total scores, based on the numbers of children detained, time limits in place on detention, the length of time children spend in detention and other issues of concern
- **Bonus Points:** Up to 15 points can be added to the total scores based on national political commitments, respect for international human rights, any pilot projects that the government may have in place to evaluate the value of alternatives to detention, or other ways that the government is making progress towards ending child immigration detention.

**FIGURE 1: Score Compilation**

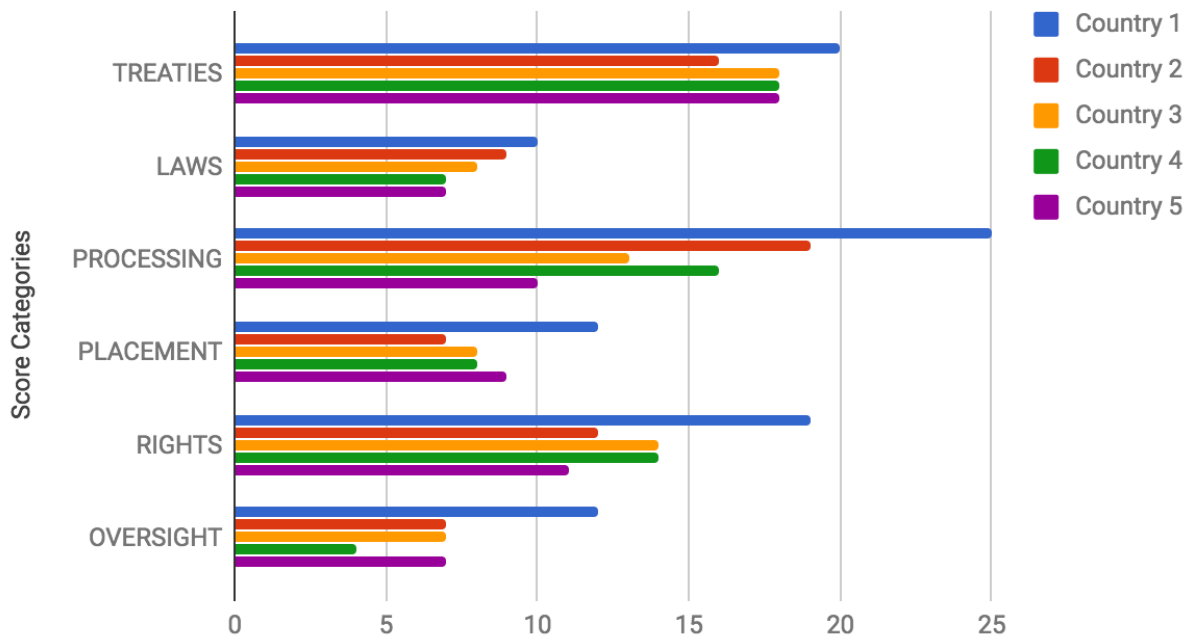


Of the possible 100 points, the largest amount of points were allocated to the 'processing' category as it contains a number of interventions that can be implemented by States to support children and strengthen migration systems. Best Interest Determinations (BIDs) are key to this section as they outline the formal process which includes procedural safeguards designed to determine the child's best interests, and they must be conducted at various points throughout a process (as opposed to a Best Interest Assessment, BIA, which can be undertaken at a specific point in time). Case Management has also been a significant proportion of points in this category, as it presents a holistic approach to working with migrants and refugees to address their complex challenges and needs, which has been shown to be an effective way to engage migrants in the process and increase compliance rates.

## What did countries do to score the highest?

The top five performers in the NextGen Index included three States from Europe (all members of the European Union), one from the Americas region and one from Africa. They all performed well across all categories, with notable strengths seen in the Processing and Treaties categories.

FIGURE 2: Top 5 Performers by Score Categories



A number of key trends can be seen in the top performing States:

- **Laws were in place** to protect children, especially children who migrated without their families, recognizing the particular vulnerability of this demographic.
- **Clear processes provided children with access to mainstream systems** and care, tailored to the specific needs of migrant children, also saw States outperform.
- These processes were often coordinated by social welfare services, and utilised Case Management to ensure that a holistic framework was being applied and the most efficient use of State resources was being applied to an individual case.
- **Robust oversight** was also a common practice in many of the top performing countries, ensuring that the laws were being applied in a manner that was non-arbitrary in nature.
- Another common factor in leading scores was the State's **commitment to transparency by publishing statistics** that were, crucially, disaggregated by age to ensure that systems are both transparent and accountable.
- The top performers also showed strong **commitment to international law** through ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Optional Protocol to the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (OPCAT).

Providing access to mainstream systems was a trend that was seen in top performers, and was identified as a cost effective way to provide support. In one of the Africa countries in the top performing category stated that "Access to public health facilities is open to all persons residing in the country including all types of migrants, even those in police custody." In one of the top performing Europe countries states, "unaccompanied minors are accommodated through the same state care system as citizen children through foster care or occasionally small residential care centres." Extending the mandates of these services to include migrant children also provides an opportunity for States to harness economies of scale and potentially strengthen service provision.

**States who performed well often had laws in place to protect children and robust oversight mechanisms which included collecting disaggregated statistics to ensure that systems are transparent and accountable, and easily measured for efficiency.**

## What did countries do that scored the lowest?

The lowest five performers in the NextGen Index saw two countries from the Middle East and Northern Africa (MENA) Region, one country from Asia Pacific and two countries from the Africa region. As can be seen in figure 3, countries with the lowest scores displayed a distinct lack of laws to protect children from immigration detention – four out of five of the lowest scores had no laws at all to prevent children from immigration detention. Many of these countries lost significant points for the practice of detaining children, which appears to be in correlation to the low scores for systems that prevent child detention. Scores for placement options were comparably low and the amount of oversight was also significantly low.

A number of key trends can be seen in the lowest performing States:

- Often the processes for supporting migrant children were ad-hoc in nature, with no clear articulated processes and little oversight of the implementation of processes. In particular, few documented processes around Best Interest Determinations existing in low-performers.
- Outdated methodologies were often utilised by low-performing States, such as relying on wrist x-rays for age determination processes, a practice that has been shown to be invasive and inaccurate.
- In all of the States in the lowest five performers, statistics were not gathered to determine numbers of children in immigration detention, meaning that these States are missing the opportunity to ensure that systems are both transparent and accountable.
- In some States, progress has been made on normative statements but they lost significant marks in the assessment of placement and in the points off section, where implementation of normative laws is assessed.

Even in some States which had significant laws and treaties towards ending child detention, country committees highlighted conflicting parts of law that are yet to be tested to show that the rights of the child are superior. Often areas where these conflicts existed meant that the States were marked poorly.

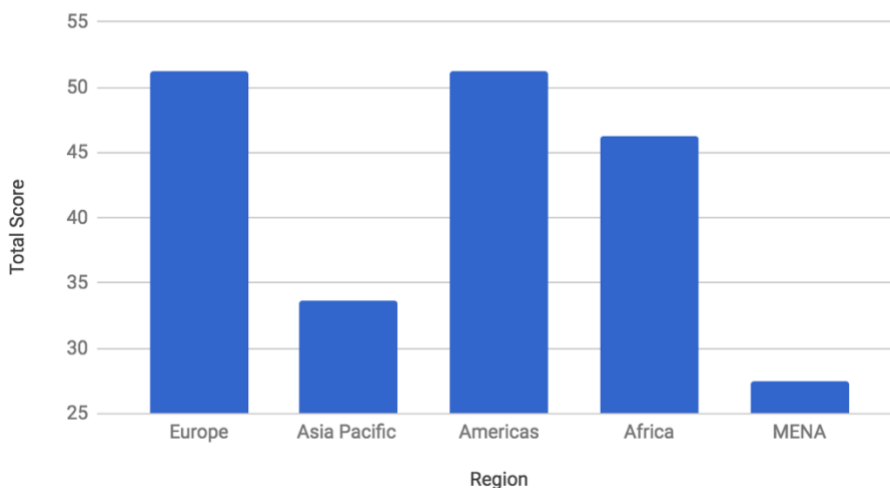
**“Detention is never in the best interests of a child, however all of the lowest performing countries did detain children...”**

Detention is never in the best interests of a child, however **all of the lowest performing countries did detain children** in some circumstances, and a number of countries detained all children as mandatory practice. One country from the Africa region highlighted some of the challenges of this practice stating "the detention facilities are not very child friendly. There are no separate facilities for children during age assessment, and so children and youth are held in detention with non-related adults. Age assessment can take a very long time, and so children are detained for long periods before being transferred to children's homes after assessment." Resources were often highlighted as a challenge, even in States that had a high level of commitment and structures set up to support migrant children, the funding to provide services continued to be a roadblock towards implementation.

Low scores provide room for improvement, relatively small adjustments could have a significant impact on the ability of States to support children appropriately and meet their international obligations.

## Regional trends

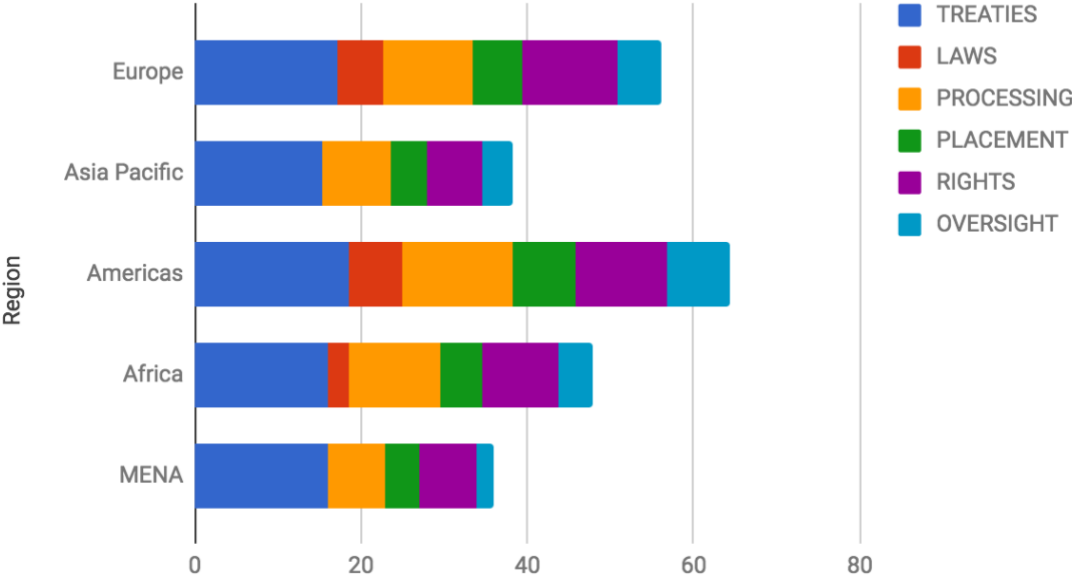
FIGURE 4: Average Total Scores by Region



Participating countries from the Americas and the Europe Regions performed best, and both regions have significant regional human rights mechanisms in place which have clarified their positions on the issue of child detention. In the Americas the Inter American Court of Human Rights (IACtHR) Advisory Opinion OC-21/14 clarifies that in the context of migration, deprivation of liberty can never be understood as a measure that responds to a child's best interest. In Europe the Parliamentary Assembly for the Council of Europe (PACE) Recommendation 2056 and Resolution 2020 and several country reports from the Commissioner for Human Rights for the Council of Europe have emphasised that it is never in a child's best interest to be detained. The Asia Pacific Region, which has come in as the second last region in terms of performance and the lowest in the Treaty section, has no regional human rights framework, which may explain the low performance in this category.

Analysing regional performance by categories reveals several trends, as can be seen in Figure 5. Both the Asia Pacific and the MENA region **do not have any national laws that prohibit child immigration detention** in any of the countries in their regions in the NextGen Index. The oversight category also received significantly low scores in the Asia Pacific and MENA region. The leading regions, the Americas and Europe, saw significant points allocated to the processing and rights categories, reflecting the array of clearly articulated processes and policies that enable children to live in the community while awaiting migration outcomes.

**FIGURE 5: Average Categories Performance by Regions**

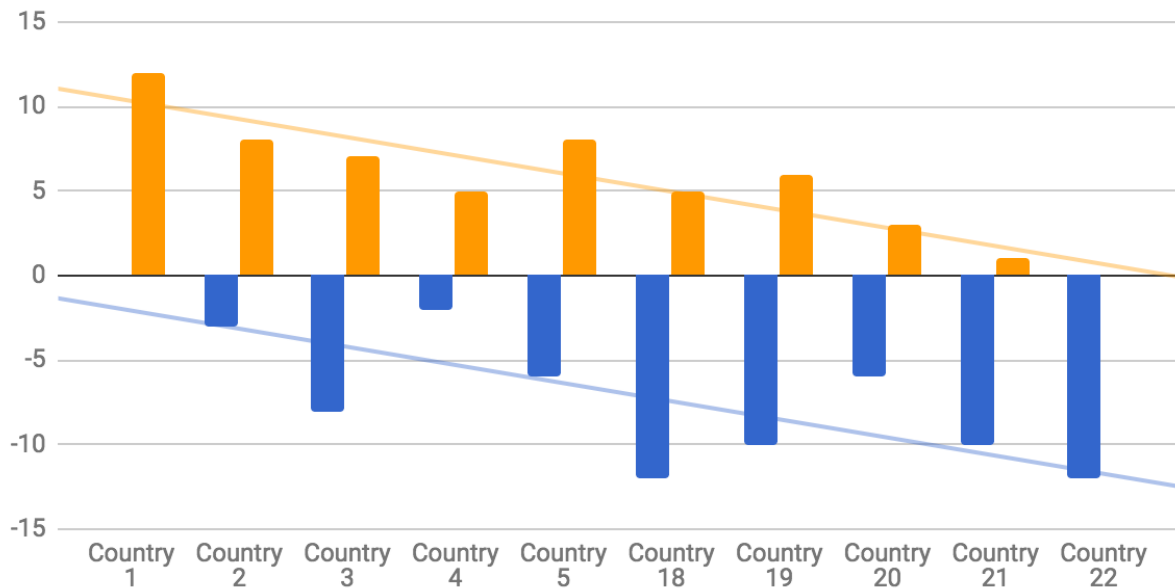


Regional Human Rights Frameworks can assist in the uptake of systems to support child migrants, providing guidance and support for States.

## Points off and Bonus points

**FIGURE 6: Points Off & Bonus Points**

5 Top and 5 Bottom Performers



Unlike other parts of the NextGen Index scoring process, the points off and bonus points category exhibited a wide range of variability in answers, and demonstrated less regional trends than other areas of the Index.

Up to 15 points could be subtracted from total scores. The majority of these accounted for whether states detain children, and if there are checks and balances in place to ensure that in those cases where States are in contravention to international law and do detain children, that they are doing so in a manner that is non-arbitrary and that significant oversight is in place.

Points could also be subtracted for the ‘areas of other concerns’ category, which often highlighted cases where children were detained with unknown adults and reports of sexual assault and harassment were widespread. One of the lowest performing states stated “children were detained in underground facilities with adults, where 20 persons would share the same cell, with no access to air, sun or running water...”

Up to 15 points could be added recognising steps States have already taken towards ending child immigration detention. National political commitments made towards ending child detention were acknowledged – one of the top 5 countries during the Third Thematic Session on Safe, Orderly and Regular Migration in June of 2017 said, “We strongly believe that detention should not be used as a border management and deterrence tool against migrants. Particularly, we believe the Global Compact should call for the need to expeditiously end detentions of migrant children and adolescents, given that such measure is never in their best interests...”

Pilot projects were seen in more than a third of the countries involved in the Index and they contributed positively to scores. Widespread concerns were expressed that the small pilots need thorough monitoring and evaluation to ensure that they are implemented successfully, and that pilots need a viability plan in order to scaled-up. For those countries who have already tested and implemented alternatives to detention, they may have been at a disadvantage in this section, which aims to reward States for taking measured approaches towards improving migration governance.

**“children were detained in underground facilities with adults, where 20 persons would share the same cell, with no access to air, sun or running water...”**



## Conclusion

States who performed well in the NextGen Index often had laws in place to protect children and robust oversight mechanisms which included collecting disaggregated statistics to ensure that systems are transparent and accountable, and easily measured for efficiency. Clear processes around Best Interest Determinations were also a leading factor in States receiving a high score. Regional trends were observed, with top-performing regions displaying similar performance across categories that outlined clear processes and policies that enable children to live in the community while awaiting migration outcomes. The NextGen Index will be published annually, and low scores provide room for improvement - relatively small adjustments have the potential to significantly impact the ability of States to support children appropriately, save on costs and meet their international obligations.

Find out more at [www.next-gen-index.org/](http://www.next-gen-index.org/)

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