

Promising Practices In Alternatives To Detention For Children And Their Families:

International
Detention Coalition
Rights and dignity for all who migrate

Ideas For Strengthening Protection For Children And Their Families At Risk Of Immigration Detention In Thailand

February 2022



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A. Introduction

Since 2019, Thailand has been emerging as a global and regional leader in its efforts to work towards ending child immigration detention. On 21 January 2019, representatives of seven Thai Government agencies signed the *Memorandum of Understanding on the Determination of Measures and Approaches Alternatives to Detention of Children in Immigration Detention Centres* (the ATD MOU),¹ with Standard Operating Procedures (SOPs) to implement the ATD MOU following in September 2019. The general principles of the ATD MOU and SOPs are that children should not be detained unless there is an “absolute necessity”, that family-based care should be prioritised, and the best interests of the child must be informed in decision-making process. Some children and their family members released under the ATD MOU are supported in the community by NGOs who provide case management and facilitate access to services, in partnership with the Department of Children and Youth (DCY) of the Ministry of Social Development and Human Security (MSDHS).

Although Thailand has made significant progress, there are ways in which laws, policies and processes can be strengthened to better protect children and their families at risk of immigration detention. Thai law still permits the detention of children, and children continue to be arrested and detained in 2020 and 2021. Other significant issues faced by children includes: separation from their families with prohibitively high costs of bail for mothers and the general practice of excluding fathers from release under the ATD MOU; over-reliance on institutional care which may in some cases constitute alternative forms of detention rather than ATD; and the absence of a clear, systematic process by which all children, regardless of their country of origin and migration status, are screened, assessed, and referred to DCY and fully included in the national child protection system.

Through this research we seek to provide further support to the Royal Thai government, civil society, and other stakeholders in strengthening laws, policies, and practices to better

¹ Signed by the Royal Thai Police, the Ministry of Social Development and Human Security, the Ministry of Foreign Affairs, Ministry of Interior, Ministry of Public Health, Ministry of Education, and Ministry of Labour

protect children and their families in the context of migration. We begin by summarise global legal standards and principles that require an end to the use of immigration detention. We also outline the fundamental components of rights based ATD² for children and families, providing examples of promising practices for each of these components that may be of particular

interest in the Thai context. Through this, and the recommendations below, we hope to encourage further thinking in Thailand on how to best address gaps in the ATD MOU and SOPs, and ways in which these global promising practices could potentially be adapted to the Thai context.

Recommendations for Strengthening Laws, Policies and Processes to End the Immigration Detention of Children and their Families in Thailand

1. Establish a national law that clearly prohibits the immigration detention of all children and their families. In the interim, ensure that children and their families are not arrested and detained, and that rights-based ATD are provided regardless of their nationality, migration status, and background.
2. Establish a systematic and clear process by which all children, regardless of their migration status, are immediately referred to DCY, screened, assessed, and included in the national child protection system.
3. Establish holistic age assessment processes that comply with international standards.
4. Ensure that children are able to exercise their rights to be heard and have their views taken seriously in all matters affecting them. Ensure that in the implementation of the ATD MOU and case management procedures, they can participate in all decision-making processes that have a bearing on their lives, and to exert influence over such decisions in accordance with their age and maturity.
5. Increase awareness of, and adherence to, the ATD MOU and SOPs across all relevant government ministries, as well as at national and local levels of government and other implementing stakeholders.

² There is no universally recognised definition of ATD. For its global research on ATD, IDC reviewed “any law, policy or practice by which persons are able to reside in the community, without being detained for migration-related reasons.” This broad framing captures a wide range of options available to governments for developing systems to reduce and ultimately end detention through ATD.

6. Ensure a whole of society approach by increasing collaboration with local communities, civil society, the private sector, and other stakeholders in the provision of case management, care arrangements, and finding sustainable solutions for children and their families.
7. Respect children's rights to family life and family unity by allowing children to remain with their parents in the community. Allow the release of fathers as well as mothers and remove the requirement for bail. This will enable vital funding to be reallocated to support children and their families while they are in the community.
8. Ensure that unaccompanied children are appointed a guardian, that family reunification is prioritised where in the child's best interests, and that children are placed in community-based care instead of institutional settings. Where institutional settings are used, ensure these are a measure of last resort and do not constitute alternative forms of detention.
9. Respect and fulfil the right to education by ensuring that all refugee and migrant children can enrol in public schools, with language and other relevant supports to ensure they attend at an education level appropriate to their age.
10. Ensure that public hospitals provide access to healthcare to all refugee and migrant children and their families, regardless of their documentation and legal status, on the same basis as Thai nationals.
11. Ensure that Thailand's migration governance framework is gender responsive towards people from all genders and considers the specific needs of women and girls.
12. Train, monitor and supervise all staff working on implementation of the ATD MOU and SOPs on gender sensitivity and non-discriminatory practices when responding to refugee and migrant women and girls.
13. Through partnerships between different levels of government, civil society organisations, UN agencies and other relevant stakeholders, ensure effective monitoring and evaluation of the implementation of the ATD MOU on an annual basis to assess successes, challenges, and progress in implementation, and to use lessons learned to strengthen protection for children and families at risk of immigration detention in Thailand.

Thailand's Commitment to Ending Child Immigration Detention

On January 21, 2019, representatives of seven Thai Government agencies signed the ATD MOU, with SOPs to implement the ATD MOU following in September 2019. The MOU is a concrete outcome of one of the pledges made by Prime Minister Prayut Chan-o-cha at the September 2016 Leaders' Summit on Refugees and Migrants at the United Nations in New York, notably to end the immigration detention of refugee and asylum seeker children.

The general principles of the ATD MOU and SOPs include the requirement that children are not detained, unless there is an “absolute necessity”, and that detention be used as a measure of last resort and for the shortest time possible.³ The ATD MOU and SOPs also prioritise family-based care, with shelters as a measure of last resort and for the shortest time possible. Under the ATD-MOU, the best interests of the child must inform decision-making, with the SOPs requiring the establishment of a Multi-Disciplinary Working Group (MWG) to develop an individual care plan for each child, and coordinate with relevant service providers, including NGOs, to implement the care plan. Children and their family members released under the ATD MOU are then supported in the community by NGOs who provide case management and facilitate access to services, in partnership with DCY.

In developing the ATD MOU and its related SOPs, Thailand has taken important and commendable steps towards ending child immigration detention in line with international laws. Between October 2018 and September 2021, 259 children and their families were released from immigration detention.⁴ However, despite this important progress, important gaps remain, as discussed further in this report.

³ [Thailand's Response to the Questionnaire of the Special Rapporteur on the Human Rights of Migrants: Ending Immigration Detention of Children and Seeking Adequate Reception and Care for Them](#)

⁴ Jatuporn Rojanaparnich (Director General, Department of Children and Youth Ministry of Social Development and Human Security, Royal Thai Government), during Thailand's Intervention at the following side event: [Accelerating Process to End Child Immigration Detention in Line with the SDG Agenda including Targets 10.7 and 16.2, On the Occasion of the UNGA 76th Session](#), 15 October 2021.

B. International Consensus towards Ending Child Immigration Detention

At least 330,000 children are subjected to immigration detention every year, and 77 States are known to still detain children for migration-related reasons.⁵ This is despite growing international consensus that the immigration detention of children is never in the best interests of the child, is a violation of children's rights and always contravenes a child's best interests.⁶ Detention has a profoundly negative impact on the physical, developmental, emotional, and psychological health of children,⁷ and may constitute a form of cruel, inhuman, or degrading treatment of children.⁸ Even short periods of detention can have long-term, detrimental impacts on a child's cognitive development, and their physical and mental health.⁹ Some groups of children are particularly vulnerable in detention, such as unaccompanied and separated children, girls, children with disabilities, and children belonging to ethnic or social minorities, including the lesbian, gay, bisexual, transgender and intersex community.¹⁰

The consequences of detention can also be felt at a societal level¹¹ – resources are spent on detention that could instead be spent on community-based ATD that benefit host communities as well as migrant communities. Additionally, once children and their families are released from detention, societies must bear the financial and social costs of addressing the symptoms and consequences of detention. The risks associated with immigration detention have been exacerbated during the COVID-19 pandemic, placing children in detention at greater risk of infection.

In recent years, there has been mounting international consensus that States should work towards eliminating child immigration detention entirely. Although large numbers of children continue to be detained each year, in many countries, immigration detention is now rarely the first approach adopted by States towards migrant children.¹² According to the United Nations Global Study on Children Deprived of Liberty,

⁵ United Nations Special Rapporteur on the Human rights of Migrants, [Ending Immigration Detention for Children and Providing Adequate Care and Reception for them](#), 20 July 2020, UN document A/75/183, para 12

⁶ Committee on the Rights of the Child, [Report of the 2012 day of general discussion](#)", para. 32, as affirmed in the [Joint General Comment No. 4 \(2017\) of the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families/No.23 \(2017\) of the Committee on the Rights of the Child on State Obligations Regarding the Human Rights of Children in the Context of International Migration in Countries of Origin, Transit, Destination and Return](#)

⁷ See for example Laura CN Wood, [Impact of punitive immigration policies, parent-child separation and child detention on the mental health and development of children](#). *BMJ Paediatrics Open*. 2018;2(1), and International Detention Coalition (IDC), [Captured Childhood: Introducing a New Model to Ensure the Rights and Liberty of Refugee, Asylum Seeker and Irregular Migrant Children Affected by Immigration Detention](#), 2012, pp. 48-49.

⁸ United Nations Special Rapporteur on Torture, [Thematic Report on torture and ill-treatment of children deprived of their liberty](#), UN document A/HRC/28/68, 5 March 2015, paragraph 80

⁹ Kronick R, Rousseau C, Cleveland J., [Mandatory detention of refugee children: A public health issue?](#) *Paediatr Child Health*. 2011;16(8)

¹⁰ [Report of the Independent Expert Leading the United Nations Global Study on Children Deprived of Liberty, Global Study on Children Deprived of Liberty](#), UN Document A/74/136, 11 July 2019, para 39

¹¹ UNICEF Working Paper, [Alternatives to Immigration Detention of Children](#), February 2019

¹² UNICEF Working Paper, [Alternatives to Immigration Detention of Children](#), February 2019

as of 2018, 24 States do not, or claim not to, deprive children of liberty for migration purposes.¹³

The following are key international instruments and statements from UN bodies and special procedures that are most relevant to the need to end to child immigration detention and develop rights-based ATD:

- Objective 13(h) of the **Global Compact for Safe, Orderly and Regular Migration (GCM)** - through this, States have committed to work towards ending child immigration detention by ensuring the availability and accessibility of a viable range of non-custodial ATD that are in line with international law.
 - Para 60 of the **Global Compact on Refugees** - through this, States have committed to support the development of non-custodial and community-based ATD particularly for children.
 - The **2030 Agenda for Sustainable Development**, in particular SDG 16.2 which calls for an end to abuse, exploitation, trafficking, and all forms of violence against children. The SDGs also call for the elimination of all forms of violence against all women and girls in the public and private spheres (SDG 5.2), as well as orderly, safe, regular, and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies (SDG 10.7). States must ensure
- access to universal health coverage (SDG 3.8) and to provide all girls and boys with free, equitable and quality primary and secondary education (SDG 4.1).
- The **Convention on the Rights of the Child (CRC)**, and in particular: Articles 2 (respect and ensure rights to all children, without discrimination of any kind), 3 (the best interests of the child shall be a primary consideration in all decisions concerning them); 6 (right to survival and development of the child), 7 and 9 (the right to family unity), 12 (consideration of the child's views), 20 (special assistance for children deprived of parental care), 22 (children who are seeking asylum or recognised refugees), 28 (right to education). The **UN Committee on the Rights of the Child**, which oversees implementation of the CRC, has clarified that the immigration detention of children is **always a violation of children's rights, is never in their best interests, and is not justifiable**. This was reaffirmed in a joint comment made by the **Committee on the Rights of the Child and the Committee on the Migrant Workers** in 2017, in which they stated that "*child and family immigration detention should be prohibited by law and its abolishment ensured in policy and practice*".¹⁴ Although Article 37 of the CRC requires that children be detained only as a measure of last resort, the Committees have stated that the **'measure of last resort' in Article 37(b) of the CRC did not**

¹³ Manfred Nowak, The United Nations Global Study on Children Deprived of Liberty, [Global Study on Children Deprived of Liberty](#), 2020, pg, 455, 463. These are: Anguilla, Argentina, Benin, Brazil, Chile, Colombia, Congo, Costa Rica, Ecuador, El Salvador, Honduras, Ireland, Japan, Lao People's Democratic Republic, Liberia, Madagascar, Mauritius, Nicaragua, Panama, Peru, Qatar, Sao Tome and Principe, South Africa, Taiwan

¹⁴ [Joint General Comment No. 4 \(2017\) of the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families/No.23 \(2017\) of the Committee on the Rights of the Child on State Obligations Regarding the Human Rights of Children in the Context of International Migration in Countries of Origin, Transit, Destination and Return](#), para 10

apply to immigration detention as there are always non-custodial solutions available that could be applied.¹⁵

- The **Committee on Migrant Workers also** reiterated in 2021 that detention of children is *“always prohibited under international law.... it constitutes a child rights violation and contravenes the principles of non-discrimination, best interests of the child, right to life, survival and development, and participation, as well as every child’s right to liberty and family life.”*¹⁶
- The **UN Special Rapporteur on the Human Rights of Migrants** has also stated that “States are required to work towards the complete elimination of immigration detention of children by developing and implementing human rights-based non-custodial alternatives to detention”.¹⁷
- This stance against child immigration detention has been echoed by other international and regional human rights bodies, including the **Working Group on Arbitrary Detention**¹⁸ and the **UN Special Rapporteur on Torture**.¹⁹

At the **regional level**, ASEAN Member States have adopted the **ASEAN Declaration on the Rights of the Child in the Context of Migration** and its accompanying **Regional Plan of Action**.²⁰ Through these, ASEAN Member states have agreed that “in order to promote the best interests of the child, States should work to **develop effective procedures and alternatives to child immigration detention** to reduce its impact, and ensure that, where possible, **children are kept together with their families in a non-custodial, and clean and safe environment**” (Article 9). “The specific objective of [the] RPA is to encourage ASEAN Member States to ensure the protection of the best interests of the child as a primary consideration in all relevant policies and practices as they relate to children in the context of migration, and to further strengthen national systems to identify and respond to the specific needs of children in the context of migration....” (Para V).

¹⁵ [Joint General Comment No. 4 \(2017\) of the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families/No.23 \(2017\) of the Committee on the Rights of the Child on State Obligations Regarding the Human Rights of Children in the Context of International Migration in Countries of Origin, Transit, Destination and Return; Report of the Independent Expert Leading the United Nations Global Study on Children Deprived of Liberty, Global Study on Children Deprived of Liberty](#), UN Document A/74/136, 11 July 2019, para 91

¹⁶ Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, General Comment No. 5 (2021) on [Migrants’ Rights to Liberty, Freedom from Arbitrary Detention and their Connection with Other Human Rights](#), 23 September 2021, UN Document CMW/C/GC/5, para 40

¹⁷ United Nations Special Rapporteur on the Human rights of Migrants, [Ending Immigration Detention for Children and Providing Adequate Care and Reception for them](#), 20 July 2020, UN document A/75/183, para 13

¹⁸ Working Group on Arbitrary Detention, [Report of the Working Group on Arbitrary Detention](#), 2 July 2018, Un Document A/HRC/39/45, Annex, para 40.

¹⁹ United Nations Special Rapporteur on Torture and other Cruel, Inhumane or Degrading Treatment or Punishment, [Report of the Special Rapporteur on Torture and other Cruel, Inhumane or Degrading Treatment or Punishment](#), 23 November 2018, UN Document A/HRC/37/50, para 22.

²⁰ [ASEAN Declaration on the Rights of Children in the Context of Migration](#) (adopted 2019) and the [ASEAN Regional Plan of Action on Implementing the ASEAN Declaration on the Rights of Children in the Context of Migration](#) (adopted 2021)

Global and Regional Peer Learning on ATD for Children and their Families

To progress these global and regional standards and developments on ending child immigration detention, International Detention Coalition (IDC) has worked with partners to convene peer learning events between different levels of governments, civil society and UN agencies to share good practices, challenges and lessons learned in implementing ATD for children and families. The Royal Thai Government has played a leading role in many of these events, including co-hosting several exchanges, and has shared its successes and lessons learned from the ATD MOU with peer countries. This has in turn supported efforts to strengthen protection for children and families in other countries.

Examples of peer learning include the Regional Peer Learning Platform and Program of Learning and Action on Alternatives to Child Immigration Detention²¹, co-convened by IDC and the Asia Dialogue on Forced Migration, with participating government and civil society implementers from Thailand, Indonesia, Malaysia, Australia, and New Zealand. A further example is the Global Online Peer Learning Exchanges co-hosted by the UN Network on Migration Working Group on Alternatives to Detention (co-led by IDC, UNICEF, and UNHCR).²²

C. What do Rights-Based ATD for Children and their Families Look Like?

All children, without distinction, discrimination, or exception, are entitled to the rights contained in the Convention on the Rights of the Child (CRC). States must adopt a child-specific approach to migration practices, policies, and decision-making, including in the development and implementation of ATD. States must ensure, in accordance with Article 3 of the CRC, that the **best interests of the child** are the primary consideration in all decisions or actions concerning them. Globally, rights-based ATD for children and families are those

that uphold the rights and principles contained in the CRC, and in particular:

- Immigration detention is prohibited in law and/or policy, and children are not detained in practice
- Children are screened and assessed and referred into national child protection systems where child protection agencies assume primary responsibility for their care and protection.

²¹ For more information, see International Detention Coalition (IDC), [Asia Pacific Virtual Peer-Learning Workshops](#), 7 July 2021. The [launch of the Regional Peer Learning Platform](#) was held in Bangkok, Thailand in November 2019 and co-hosted with the Thai Ministry of Social Development and Human Security.

²² For further information, see United Nations Network on Migration, [Thematic Working Group: Alternatives to Detention](#). The Thai government has officially co-hosted all 3 global peer-learning events.

- Whole of government and whole of society approach - collaboration takes place between all levels of government, civil society, and other relevant actors
- Non-discrimination, including equal access to healthcare and education
- Case management is used to support children and families
- Respect for family unity and the right to family life - this means that children and their family members are all referred to community-based ATD.
- Unaccompanied children are provided with family-based care, rather than the use of institutions.
- Gender-sensitive and gender-responsive approaches are used, specifically and actively respond to the needs of children and adults of different genders, and in particular, to the needs of women and girls.

Each of these are discussed below, alongside promising examples from different country contexts that may be of particular interest in the Thai context

1. Immigration Detention is Prohibited in Law and/or Policy, and Children are Not Detained in Practice

As noted, one of the existing protection gaps in Thailand is that children continue to be arrested and detained for immigration offences. To end child immigration detention and build the foundations for rights-based ATD, it is important that national laws and/or policies establish a clear **prohibition of immigration detention**.

PROMISING PRACTICES

Some countries prohibit the use of immigration detention for **all children** in their laws and policies. This includes **Ireland, Mexico, Ecuador, Colombia, and Costa Rica**.

Other countries prohibit the use of immigration detention for **certain groups of children**, such as in **Turkey**, which hosts the largest numbers of refugees worldwide, but where the detention of unaccompanied children under 16 who are seeking international protection is prohibited in law.

Annex 1 provides a further snapshot of countries that prohibit or limit the use of immigration detention for children and their families.

2. Screening, Assessing and Referring Children into National Child Protection Systems, with National Child Protection Agencies Taking Primary Responsibility

In Thailand, the Immigration Bureau of the Royal Thai Police maintains complete discretion over whether a child is to be arrested, detained, deported, referred to DCY, and if the protective mechanisms within the ATD MOU are to be applied. Only once children are deemed by immigration to fall under the ATD MOU are they referred to DCY who then takes responsibility for decisions regarding a child's placement and ongoing protection and assistance. Best interest assessments and determinations are only conducted for children who fall under the ATD MOU.

There is therefore no systematic and transparent process by which all children, regardless of their country of origin and migration status are screened, assessed, and referred to DCY and fully included in the national child protection system. Without these processes in place, border enforcement approaches can take precedence over the rights and best interests of the child. Children who are not integrated into national child protection systems may also have their needs addressed in informal or parallel systems, which often provide much lower standards of protection. This also creates a scenario where resources may be duplicated and/or not used efficiently through the unnecessary establishment of parallel structures and programs.

By ensuring refugee and migrant children are **included without discrimination in national child protection systems**, Thailand can better harmonize protection

for all children, regardless of their status, in line with the CRC. Mainstreaming children in national child protection systems also means that **child protection and welfare authorities**, rather than migration/border enforcement agencies, take primary responsibility for the care and safety of refugee and migrant children.

Where children are **unaccompanied or separated**, Thailand has the added responsibility to promptly identify, register, screen and assess, and protect them until an adequate long-term solution is found. As with all children, any decisions must take their **best interests** into account, and they should be immediately referred to child protection authorities and integrated into the national child protection system. Thailand currently has no formal **guardianship** for unaccompanied and separated refugee and migrant children, and must ensure that guardians should be appointed for unaccompanied children (see page 23 below).

Age assessment procedures need to comply with international standards, including the following:²³

- only be used as a measure of last resort, where there are grounds for serious doubts over the person's age, and where other approaches have failed to establish the individual's age;
- only conducted where it is in the best interests of the child to do so;

²³ See for example: Council of Europe, [Age Assessment for Children in Migration: A Human Rights-Based Approach](#), December 2019; Refugee and Migrant Children's Consortium, [Age Assessment Proposals in the New Plan for Immigration](#), June 2021

- adopt a holistic approach, considering capacity, vulnerability and needs that reflect the actual situation of the person, as well as their ethnic and cultural background
- carried out in a safe, child- and gender-sensitive and gender-responsive manner, using the least invasive options available;
- adopting a ‘presumption of minority’ so that anyone claiming to be a child should be treated as such, and that States should ensure that the person has access to appropriate child protection services, education, housing and support while the age assessment procedures are being conducted. Where doubts remain about the child’s age after an assessment, they should be given the benefit of the doubt, and assumed to be a child;²⁴ and
- Not carried out immediately upon arrival of the child in the country or border areas, given that time will be needed to build trust with the child.

PROMISING PRACTICES

There are several countries where children are integrated into national child protection systems, with child protection agencies having primary responsibility for the care and protection of refugee and migrant children.

For example, in **Ireland**,²⁵ where the immigration detention of children is prohibited, children and their families as well as unaccompanied and separated children are integrated into the national child protection system, under the care of Tulsa, the Child and Family Agency. Tulsa, alongside the Social Work Team for Separated Children Seeking Asylum, provides access to social workers for **unaccompanied and separated children seeking international protection**. Social workers will conduct a social work and risk and needs assessment; they will work with the child to develop a care plan based on his or her needs and what is in their best interests, including whether an asylum application should be made, normally with the assistance of a lawyer. If it is decided that an asylum application will be pursued, the social worker will refer the child to the Legal Aid Board, who will arrange for a lawyer to provide legal advice and support to the child throughout the asylum process.²⁶ Newly arriving unaccompanied and separated children under 12 are placed in foster care, while those over

²⁴ [Joint General Comment No. 4 \(2017\) of the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families/No.23 \(2017\) of the Committee on the Rights of the Child on State Obligations Regarding the Human Rights of Children in the Context of International Migration in Countries of Origin, Transit, Destination and Return](#), Para 32(h)

²⁵ For further details, see [Submission of Ireland](#), Request for Information from the Special Rapporteur on the Human Rights of Migrants, pursuant to Resolution 34/21 of the Human Rights Council, Ending Immigration Detention for Children and Seeking Adequate Reception and Care for Them’, May 2020

²⁶ See UNHCR, [Asylum in Ireland: A Guide for Young People](#)

12 are placed in 1 of 3 residential intake units in Dublin with 24-hour staff care support. After assessment, they are then placed in an appropriate placement option, usually a foster family. On the other hand, **families with children who are seeking international protection** are initially directed to a reception centre, before being moved to more permanent State shelters known as 'Direct Provision' where they are provided with accommodation, meals, medical care and a weekly personal allowance. Families with children do not need to stay at these shelters and there is no restriction on their freedom of movement throughout the State. The Direct Provision system has, however, been widely criticised²⁷ and is anticipated to be replaced with a new reception and accommodation system that is more integrated into Ireland's national social support system.²⁸

In **Germany**, unaccompanied children are integrated into the national youth welfare system in the same way that other children are. As soon as the Federal Office for Migration and Refugees (BAMF) determines or suspects that someone is an unaccompanied asylum-seeking child, they must inform the local child and youth authorities who then take responsibility for the child – they appoint a legal guardian, find the child appropriate accommodation, and try to establish family links for the child. The provisions in Book VII of the Social Code, in which the Child and Youth Welfare Act is codified, are given precedence over the Asylum Act and Residence Act. For further details of the system of care and accommodation for unaccompanied children in Germany, see page 25.

In **Colombia**, laws and policies provide that children cannot be detained for migration-related reasons, because this contravenes the principle of the best interests of the child. Instead, migration guidelines require that undocumented unaccompanied and separated migrant and asylum-seeking children are referred to child protection services to guarantee their rights. The Colombian Family Welfare Institute will place the child in a temporary home until such time that their immigration status is resolved. According to a handbook on immigration control in respect of children (issued by the Colombian Migration Unit), unaccompanied children who enter the country without necessary documentation must be provided with a SC-2 permanency permit.²⁹

²⁷ See for example, research from the [Irish Refugee Council](#) on Direct Provision showing its particularly negative impact on vulnerable people including children

²⁸ In 2021, the government of Ireland published a [White Paper on Ending Direct Provision](#) proposing the abolishment of the Direct Provision system and replacing it with a series of alternative proposals for the reception and accommodation of people seeking international protection.

²⁹ Global Detention Project, [Columbia Immigration Detention Profile](#), December 2020

3. Whole of Government and Whole of Society Approach

One of the guiding principles in the **Global Compact on Migration (GCM)** is a whole-of-government approach, to ensure “horizontal and vertical policy coherence across all sectors and levels of government” (GCM, para 15). The GCM also makes it clear through another guiding principle that a whole-of-society approach should be implemented, to ensure “broad multi-stakeholder partnerships to address migration in all its dimensions by including migrants, diasporas, local communities, civil society, academia, the private sector, parliamentarians, trade unions, national human rights institutions, the media and other relevant stakeholders in migration governance” (GCM, para. 15).

The ATD MOU has instituted mechanisms for strengthened collaboration between the 7 government agencies, civil society, international organisations, and the private sector for the provision of assistance and protection to children arrested for immigration offences in Thailand. An effective referral system and strong partnership has been established between DCY and NGO service providers to support children released under the ATD MOU. However, there is still a lack of capacity and awareness of the ATD MOU and SOPs among some government ministries and at the local government level. Instead, there is heavy reliance on civil society to lead in implementation of the ATD MOU at the local and community levels, particularly in relation to the provision of case management services (see page 19). This work, however, is unfunded by the government leading to questions over the medium to longer-term sustainability of this approach.

Building on the strong partnerships that already exist between DCY and service providers, a critical next step will be to **strengthen and adequately resource local government actors to implement the ATD MOU.**

Partnerships with other stakeholders including local communities, civil society, the private sector, refugee and migrant communities and other relevant stakeholders can also be strengthened. In many countries, **local migration governance coupled with a whole of society approach** has become increasingly important, resulting in more holistic and innovative responses to children and families in the context of migration.

PROMISING PRACTICES

While children can be detained in **Sweden** for a maximum of 72 hours, or in exceptional circumstances, for another 72 hours (up to a maximum of 6 days), detention of children is rare, especially of unaccompanied children. Sweden uses a variety of ATD measures, notably community-based case management and open reception centres. The Swedish Migration Agency, National Board of Health and Welfare, Health and Social Care Inspectorate, and National Agency for Education are the key government ministries responsible for the reception and integration of unaccompanied children. In line with the tradition of local self-government, **municipalities** have a high degree of autonomy and are accountable for the care provision to those within their respective municipal borders.³⁰ The municipalities in turn fund and integrate civil society into migration management, recognising them as experts and contributors of innovative solutions. Civil society organisations have complemented local government efforts through work such as the provision of legal assistance, language support, and activities centred on building ties with local communities. This has been more pronounced since 2015, when Sweden experienced an influx of asylum seekers, during which time civil society played a critical role in filling gaps in public services. Although gaps still remain in coordination and state funding, there are examples of strong collaboration between different levels of government and civil society in providing reception and integration support for refugees in Sweden.

In **Mexico**, legal reforms in 2020³¹ reiterate that the detention of children for migration-related reasons is prohibited. These reforms also provide for the Department of Family Services (DIF) and the Offices for Child Protection on a federal and state level to take responsibility for protecting migrant children and determining their best interests. Unaccompanied children and families are to receive a temporary humanitarian immigration status and DIF are responsible for providing social assistance (housing, food, medical care), working in coordination and collaboration with municipal, state and federal levels of government and civil society actors. Mexico has also established the Commission for the Protection of Migrant Children and Asylum Seekers, involving multiple government ministries, the national human rights commission, UN agencies and civil society (currently represented by the International Detention Coalition). The role of the Commission is to dictate national policy for the protection of migrant children and asylum seekers in the country, including the National Protocol for the Protection of Migrant Children which it is rolling out across its 32 states.³²

³⁰ UNHCR Regional Representation for Northern Europe, [I Want to Feel Safe: Strengthening Child Protection in the Initial Reception of Unaccompanied and Separated Children in Sweden](#), December 2018, p 24

³¹ [Decree Amending Various Articles of the Migration Law and the Law on Refugees. Complementary Protection and Political Asylum, in the field of Migrant Children](#), 11/11/2020.

³² International Detention Coalition (IDC), [Law Reform Opens the Door to Effective Implementation of the National Protocol for the Protection of Migrant Children](#), 13 October 2020

In **Germany**, a multi-level federal working group on Migration and Public Health has been established to improve healthcare and access to information for migrants; this working group is coordinated by the Federal Government Commissioner for Migration, Refugees and Integration, and includes approximately 50 members from different branches of public and urban health systems of cities, Länder and the federal State.³³

4. Non-Discrimination, including Equal Access to Healthcare and Education

Thailand has several laws and policies that affirm the principle of non-discrimination and provide equal opportunities for children in the context of migration to access education and healthcare. The ATD MOU itself also emphasises the principle of non-discrimination.

The Public Education Act B.E. 2542 (1999) for example, provides that all individuals should have equal rights and opportunities to receive basic education for 12 years, provided by the State. The 2005 Resolution on Education for Unregistered Persons provides for the right to education and access to the public system at all levels for all children in Thailand, as well as their entitlement to a certificate of education upon completion of their studies. Thailand's universal health-care coverage scheme, launched in 2001, extended the provision of health care to all persons, including to cover migrant workers and their family members from Cambodia, Laos, and Myanmar.

However, despite Thailand's strong legal and policy framework, refugees and asylum seekers are often denied healthcare as non-Thai nationals. Health facilities in Thailand have reportedly turned refugees and asylum seekers away due to their lack of identification documents. Additionally, the Thai health

insurance scheme only covers Thai nationals and certain groups of migrant workers. There are also some practical barriers in accessing education, with some public-school officials refusing to enrol refugee and asylum-seeker children. A lack of language program support has also meant that some children have dropped out of school for example because of being placed at lower levels and being the target of bullying.

To address these gaps and ensure that the right to health and education is realised for all, Thailand must ensure that **refugee and migrant children can access public health on the same basis as Thai nationals** and regardless of their documentation and migration status. Thailand should also ensure learning opportunities are accessible for all children by **enhancing the national system and school capacity to include refugee and migrant children**. Children should be assessed and placed by their educational competencies, rather than language abilities. Training programs for teachers and school administrators should be developed on teaching and supporting children from refugee and migrant backgrounds, including strategies to address academic, linguistic, psychosocial, and social cohesion issues, and systems to liaise with refugee parents and communities.³⁴

³³ OECD, [Working Together for Local Integration of Migrants and Refugees](#), 2018

³⁴ Caarls, K., Cebotari, V., Karamperidou, D., Alban Conto, M. C., Zapata, J. and Zhou, R. Y. [Lifting Barriers to Education: Improving Education Outcomes for Migrant and Refugee Children in Latin America and the Caribbean](#). UNICEF Office of Research – Innocenti, Florence, 2021

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In **Ireland**, children and their families, and unaccompanied and separated children have the same access to healthcare as Irish citizens including medicine prescriptions, dental care, eyesight tests, pregnancy services and children's health.³⁵ They also have access to legal aid through the Legal Aid Board, including interpreters. Children of preschool age have access to preschool education on the same basis as Irish children, under the Early Childhood Care Scheme. Schooling is compulsory for children between the age of 6 and 16, and they are registered in mainstream primary or secondary schools in the vicinity of their accommodation. Children are first placed in a reception/transition program of education and are then transferred to mainstream education. When first placed in the transition program, an English language assessment is carried out, as well as an assessment of basic educational competencies. Schools are also provided with additional resources to support their capacity to manage students. The Department of Education and Skills also works with Tulsa, the Child and Family Agency, to engage local schools on issues specific to immigrant students, and to ensure proper support is available.

In **Portugal**, all children are treated without discrimination with regard to access to basic services such as health care and education - this is regardless of whether they are Portuguese or non-nationals.³⁶ The Portuguese government also views access to education as a critical social inclusion factor, and there have been proactive efforts by Portugal's Aliens and Borders Service to encourage school attendance among children born in Portugal to migrant parents, but not lawfully staying in the country. Under the 'go-to-school programme', residence permits for children and their parents are granted or renewed directly at school on the same day; at the same time, local awareness-raising activities are conducted for all actors of each school community.³⁷

In **Sweden**, all children, regardless of their immigration status, have the right to education and healthcare.³⁸ Although compulsory education requirements do not apply to asylum seeking children, all children seeking international protection have access to pre-school, compulsory school,

³⁵ For further details, see [Submission of Ireland](#), Request for Information from the Special Rapporteur on the Human Rights of Migrants, pursuant to Resolution 34/21 of the Human Rights Council, Ending Immigration Detention for Children and Seeking Adequate Reception and Care for Them', May 2020

³⁶ United Nations Special Rapporteur on the Human rights of Migrants, [Ending Immigration Detention for Children and Providing Adequate Care and Reception for them](#), 20 July 2020, UN document A/75/183, para 64

³⁷ UNHCR, UNICEF, IOM, [Access to Education for Refugee and Migrant Children in Europe](#), September 2019

³⁸ Applying for asylum is the only way that children can temporarily legalize their stay in Sweden - this is the condition to be allowed entry into and stay in Sweden legally. Children who are detected at the Border and who do not seek asylum are denied entry. If they are detected elsewhere in Sweden, they must apply for asylum to be able to access the safeguards and support in their municipality of arrival UNHCR Regional Representation for Northern Europe, I Want to Feel Safe: Strengthening Child Protection in the Initial Reception of Unaccompanied and Separated Children in Sweden, December 2018, p 24

school childcare, and upper secondary school. They are to a great extent integrated into regular schools. Children also have the right to lessons in their mother tongue on a regular basis, if there are more than 5 pupils with the same language in their area.³⁹ There are also possibilities for children to obtain residence permits to enable them to continue upper secondary education studies, if they meet the legal criteria. Refugee and asylum-seeking children are entitled to the same health care as all other children living in the county council area where they are seeking treatment.⁴⁰ COVID-19 vaccines have been made available for free to everyone in Sweden, including asylum seekers and undocumented migrants. Asylum seekers are also routinely screened for mental health needs, and people in need of further support may be referred for psychological counselling or psychiatric treatment with an interpreter present if needed. Local health authorities are the main providers of this support, along with the Swedish Red Cross.

In **Colombia**, where an estimated 1.7 million Venezuelan refugees and migrants live, approximately 460,000 are school-aged children.⁴¹ Venezuelans have access to the local education and emergency healthcare systems, regardless of their immigration status. In 2019, Colombia announced a resolution to grant nationality to children of Venezuelan parents born in Colombia since 2015, facilitating easier access to healthcare and education, while preventing a statelessness crisis in their country. This has since benefited more than 36,000 children.⁴²

In **France**, unaccompanied children are entitled to national health insurance, however children of undocumented migrants are not. Instead, they can access State Medical Assistance (Aide Médicale État – AME) free of charge, without having to meet residence or income criteria or any administrative requirements (except proof of identity). AME entitlement is one renewable year, and covers medical and dental costs, medicines, costs of any tests, hospitalisation and surgical operations, certain vaccinations, and costs linked to contraception and abortion; children have the right to 100% reimbursement of all their medical costs under AME and healthcare professionals are obliged to accept AME beneficiaries.⁴³

In **South Korea**, the Refugee Act (sections 31 and 42) provides that recognised refugees are entitled to the same level of social security as South Korean citizens, with healthcare for refugees funded by the government. Article 43 also requires that asylum seekers and their children are entitled to the same level of primary and secondary education

³⁹ Asylum Information Database, [Country Report: Sweden](#), 31 December 2020, p.76

⁴⁰ Asylum Information Database, [Country Report: Sweden](#), 31 December 2020, p.77

⁴¹ UNESCO, [Significant Efforts by Colombia Ensure that Nearly 200,000 Venezuelan Children and Youth Have Access to the Educational System](#), 25 May 2020

⁴² Government of Colombia, Directorate of Human Rights and International Humanitarian Law, [Response to the Questionnaire of the Special Rapporteur on the Human Rights of Migrants: Ending Immigration Detention of Children and Seeking Adequate Reception and Care for Them](#), 15 April 2020

⁴³ Bahar Makooi and Emma Wallis, [France: Sick Without Papers](#), InfoMigrants, 2019

as citizens. Undocumented children are also eligible to enter primary and secondary school as set forth in Enforcement Decree of the Elementary and Secondary Education Act, article 19. The Decree was amended in 2010 so that the school admission no longer requires non-citizen children to submit documents to provide their immigration status in Korea.

5. Case Management is used to Support Children and Families

Case management is a social work approach through which case managers provide and coordinate support for individuals as they are undergoing an immigration process. Case managers facilitate access to services to support an individual's health and well-being. Case management can vary in intensity of support, depending upon the needs of the individual, with more intensive support likely to be provided for people with added vulnerabilities, such as unaccompanied children. Case management can be provided by a range of stakeholders – social workers from social welfare or child protection authorities, civil society, or specialised staff from immigration. However, it is critical that case managers are not decision-makers on matters relating to an individual's immigration status.⁴⁴

By building trust in the system, providing stability and facilitating agency, case management is an efficient and cost-effective approach to governing migration without using immigration detention.⁴⁵ Case management supports engagement with refugees and migrants; this is contrasted with ATD that are enforcement-based, such as the use of bail or guarantors, or financial or criminal penalties for failing to report to immigration authorities. As the UN Special Rapporteur on the Human Rights of Migrants has clearly stated: *“To meet States’ commitment to eliminate immigration detention of children, whether unaccompanied or with families, a paradigm shift is required to transition away from a focus on enforcement and coercion due to the criminalization of migration and towards providing human rights-based alternative care and reception through engagement-based solutions, such as a case management approach.”*⁴⁶

⁴⁴ UNICEF Working Paper, [Alternatives to Immigration Detention of Children](#), February 2019

⁴⁵ United Nations Special Rapporteur on the Human rights of Migrants, [Ending Immigration Detention for Children and Providing Adequate Care and Reception for them](#), 20 July 2020, UN document A/75/183, para 56

⁴⁶ United Nations Special Rapporteur on the Human rights of Migrants, [Ending Immigration Detention for Children and Providing Adequate Care and Reception for them](#), 20 July 2020, UN document A/75/183, para 83

Case management-based alternatives can be highly successful in upholding the rights and well-being of refugees, asylum seekers and migrants, while also achieving strong rates of compliance with migration status determination processes and low rates of absconding.⁴⁷

Community-based case management is currently used on a limited scale to support children and mothers released under the ATD MOU. This is done pursuant to a partnership between DCY and Host International Thailand (Host Thailand) whereby Host Thailand implements and funds case management service. Through this, support has been given to 43 families (approximately 240 individuals) from the inception of the program in 2019 until the end of 2021. According to a recent independent evaluation of Host Thailand's program,⁴⁸ community-based case management has supported positive outcomes in Thailand, including greater resilience and well-being outcomes for children, greater access to education and other

services, as well as promoting social cohesion and diversity between refugee and local communities. The program has also been shown to be significantly less costly to run than immigration detention.

However, as noted on page 13, there is heavy reliance on Host Thailand to provide this case management support. Given the evidence both in Thailand and globally of the importance of case management approaches, greater investment and support is needed for case management services for children and families at risk of detention. The case management program currently established in Bangkok should be strengthened and expanded beyond Bangkok, with **longer-term government funding to ensure sustainability and greater involvement of local government in implementation.** This should be accompanied by coordination and support from the **local community and civil society organisations, as well as technical support and monitoring from the central government.**⁴⁹

⁴⁷ International Detention Coalition, *There are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention (Revised)*, 2015

⁴⁸ Roz Keaiting and Louise Bloom, *Evaluation of the HOST Thailand Community- Based Protection Project*, 2022

⁴⁹ Roz Keaiting and Louise Bloom, *Evaluation of the HOST Thailand Community- Based Protection Project*, 2022

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In the **United States**, the Family Case Management Program (FCMP) was implemented by the US Customs Enforcement and Immigration Service (ICE) from January 2016 to June 2017. It was established in response to families seeking asylum at the border. Through the program, families were channelled into a case management program instead of immigration detention. The FCMP's approach was to use case management to support individuals with their immigration or asylum cases, and to facilitate access to key services including but not limited to medical and legal services, education enrolment, English classes, and assistance with identification documents. "This core component was based on the premise that stable individuals are more likely to comply with their immigration obligations", according to ICE's final evaluation of the program.⁵⁰ The evaluation also showed that it was extremely effective in achieving the government's own goals of meeting immigration requirements and outcomes, with appearance rates of more than 99% at immigration appointments and court hearings. The FCMP also cost a fraction of the cost of immigration detention, at approximately USD38 per family per day, compared with \$798.43 per family unit per day in immigration detention.⁵¹

In **Australia**, although the Migration Act of 1958 provides for mandatory immigration detention for persons without a valid visa, the Australian government has made it a priority to remove children from immigration detention. As of 31 September 2021, there were no children in immigration detention in Australia.⁵² The Minister of Immigration can determine that children with families or unaccompanied children can live in the community while they resolve their immigration status, in designated residences and/or on bridging visas. Children and families are also able to access case management support through the Status Resolution Support Services (SRSS) Program while they resolve their immigration status; the Australian government contracts with civil society service providers to provide SRSS services. Children and families can also access support for other services including accommodation, education for school-aged children, health, and wellbeing including medication and access to specialised counselling, and a living allowance for families. It is noted however, that SRSS provision and funding for the SRSS Program has been significantly reduced over recent years.

⁵⁰ ICE, FCMP Close-Out Report, p. 19, cited in Women's Refugee Commission, [The Family Case Management Program: Why Case Management Can and Must Be Part of the US Approach to Immigration](#), 13 June 2019, p.7

⁵¹ Women's Refugee Commission, [The Family Case Management Program: Why Case Management Can and Must Be Part of the US Approach to Immigration](#), 13 June 2019, p.6

⁵² Australian Government, Department of Home Affairs, [Immigration Detention and Community Statistics](#), 30 September 2021

In **Greece**, METAdrasi a Greek NGO runs a Supported Independent Living (SIL) Programme for Unaccompanied Minors. This program is for asylum-seeking and refugee children between the ages of 16-18 and was launched in January 2018, in partnership with UNICEF. Safe housing is provided in the form of 124 apartments, with a total capacity to support 496 unaccompanied children, with 4 children per apartment.⁵³ The goal of the programme is to avoid the use of immigration detention for unaccompanied minors and through the use of case management and guardianship, support the growth of the children's independence, prepare them for adulthood, and facilitate their integration into Greek society.⁵⁴ Interdisciplinary support teams for the children consist of a social worker (case manager), mentor (to support the children socially, culturally, emotionally and educationally, acting as a role model), psychologist, lawyer, caretaker/night guard and an educator.

Since 2017, the **European Alternatives to Detention Network (EATDN)**⁵⁵ has been advocating for an end to immigration detention through piloting case-management based ATD and showcasing their effectiveness. A 2-year evaluation of 3 pilot projects⁵⁶ in the EATDN have demonstrated that case management had a positive impact on individuals' ability and capacity to work towards case resolution and to help them stay engaged in migration processes. Case management also had a significant impact on individual wellbeing and engagement.

6. Respect for Family Unity and the Right to Family Life

The ATD MOU prioritises family-based care, and the need for children to be returned to their families and integrated into society. However, in practice, children under the ATD MOU are often separated from their families. While mothers may be bailed out, bail costs are prohibitively high, at 50,000 THB (approximately 1,500 USD) with the costs of raising these funds falling almost exclusively on civil society. Fathers are not typically considered for release under the ATD-MOU, resulting in family separation, and pressure and increased

risk for mothers who find themselves as single heads of the household.

To implement rights-based ATD for children and their families, Thailand should strengthen its laws and policies to **ensure that family separation does not occur**. All children, regardless of their or their parents' migration status, have the right to grow up with their families. The right to family unity requires that Thailand not only to refrain from actions which would result in family separations but also to take measures

⁵³ UNICEF, [Building on Promising Practices to Protect Children in Migration Across the European Union](#), January 2019

⁵⁴ [Supported Independent Living Programme for Unaccompanied Minors METAdrasi, Greece](#)

⁵⁵ [European Alternatives to Detention Network](#)

⁵⁶ Ohtani, E. [Alternatives to detention: building a culture of cooperation – Evaluation of two-year engagement-based alternative to immigration detention pilot projects in Bulgaria, Cyprus and Poland](#), European Programme for Integration and Migration, 2020

to maintain family unity and reunite separated family members.⁵⁷ Children should never be separated from their parents or guardians unless it is considered in their best interests. Where children are accompanied, the need to keep the

family together is not a valid reason to justify the detention of the child. Instead, the right to liberty extends to the child's parents or guardians, and Thailand must provide **ATD for the entire family**.⁵⁸

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In **Ecuador**, the Organic Law on Human Mobility 2017 (amended 2021) explicitly provides for the right to family unity. In Article 2: *“When children’s or adolescents’ best interest requires keeping the family together, the mandate of non-deprivation of liberty shall be extended to the parents....”*

In **Belgium**, ‘Plan Together’, a project of the Jesuit Refugee Service Belgium,⁵⁹ is a community and rights based ATD pilot providing independent, holistic case management to families with children under 16 who are at risk of detention. It enables children to stay in a familiar environment/in their community while they and their parent(s) work towards case resolution with the assistance of two case managers visiting the families at their homes regularly. The overall objective of the pilot is to contribute to a reduction of the use of detention in general and to end child detention for migration-related reasons. Case management is tailored to the individual needs of each family member and the best interest of the child. It is not time-bound, and focuses on building a relationship of trust, building resilience of the families, and providing them with correct and clear information. It is geared towards exploring all options for a durable solution: legal stay in Belgium, in another EU Member State or voluntary return to their country of origin.

In **South Korea**, undocumented children can enrol in primary and secondary schools. Once an undocumented child enters a school, their deportation order is deferred until they graduate from secondary school. They are no longer subjected to arrest, detention, and deportation as their school enrolment status provides a de-facto temporary permission to stay in the country. Often this suspension of deportation order is extended to the family members of the child to maintain family unity.

⁵⁷ Convention on the Rights of the Child, preamble and arts. 3, 7–10, 16 and 18; International Covenant on Civil and Political Rights, art. 17; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 14

⁵⁸ United Nations Special Rapporteur on the Human rights of Migrants, [Ending Immigration Detention for Children and Providing Adequate Care and Reception for them](#), 20 July 2020, UN document A/75/183, para 23

⁵⁹ Jesuit Refugee Service Belgium, [Plan Together](#)

7. Unaccompanied children are provided with family-based care, rather than the use of institutions

Family and community-based care should be emphasised over ATD that utilise institutional settings (such as shelters) because institutionalisation can have a negative impact on children's health and wellbeing. This includes attachment disorders, cognitive and developmental delays, lack of social and life skills, and multiple disadvantages during adulthood.⁶⁰ This is a heightened risk for refugee, asylum seeking and migrant children, given that it can take many years for them to achieve a durable solution to their migration status. Given this, and the high costs associated with institutional care, this should only be used as a measure of last resort and for the shortest time possible. Family and community-based care on the other hand, is less costly, is centred on the needs and best interests of the child, having regard to their age, gender and background, and can better support integration into the community.

As noted above, the ATD MOU stipulates that family-based care must be prioritised, and that reception centres of MSDHS or privately-run reception centres should be the last resort and used for the shortest possible duration. However, in practice, family-based care has not been prioritised for many children, including unaccompanied children, and they have instead been placed in institutional settings for prolonged periods. Some of these institutional settings may also constitute **alternative forms of detention** rather than ATD, due to the inability of children and their mothers to leave the shelter or reception centre.

To address this, the Thai government should look to a range of family and community-based care models used globally. For example, **qualified guardians and foster carers** are critical in supporting unaccompanied children; investments in these structures can benefit national populations as well as migrant and refugee children. A strong, well-resourced, and trained network of guardians can respond to the needs of all children, preventing unnecessary institutional placement of children while also serving as a vital resource to prevent the immigration detention of unaccompanied and separated children.⁶¹

Supported Independent Living (SIL) is a good practice example for older adolescents who show higher levels of self-sufficiency. It is a form of small group care that centres on the provision of specialised support to young people depending on their needs without 24-hour live-in supervision. It can help older adolescents to develop independent living skills while also providing individual support to facilitate their access to a range of services (health, education, legal, or psychosocial).

⁶⁰ Keeping children out of harmful institutions. London: Save the Children, available at <https://resourcecentre.savethechildren.net/node/1398/pdf/1398.pdf>

⁶¹ UNICEF Working Paper, [Alternatives to Immigration Detention of Children](#), February 2019

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In **Cyprus** ‘semi-independent living units’ were launched in April 2020 for unaccompanied migrant children over the age of 16. The aims of the program are to facilitate the smooth transition for unaccompanied migrant children in Cyprus and to promote their inclusion in the local community and protect their rights. The program is managed and implemented by the Cyprus Social Welfare Services of the Deputy Ministry of Welfare (SWS), in collaboration with IOM. Unaccompanied minors have access to education and vocational training, health services, and psychosocial support. Local communities have played an important role in implementing this program, with program placement in rural areas and the involvement of community council members and schools to raise awareness on migration. The program has also created a network with employers from local business, as well as property owners on local housing. Through these networks, unaccompanied migrant children have been employed in local restaurants and processing sectors, and those who have aged out have attained secure and independent accommodation. SWS also fully funds “Hope for Children” CRC Policy Centre, a Cyprus NGO, to implement a foster care program for unaccompanied children seeking asylum/international protection. Through this program, over 100 children had been placed with foster parents who were from the same country of origin as the child, including members of the extended family of the children, and those who were not related to them at all, including local families. Through this program, foster families were evaluated and then provided training (based on the Model Approach to Partnerships in Parenting - MAPP Model) on theoretical and practical aspects such as parenting skills and understanding the background and needs of unaccompanied children and their legal rights. After placement, foster families and children were monitored with support provided on an ongoing basis.

In **Italy**, unaccompanied and separated children cannot be detained for immigration purposes, because their deportation is prohibited by law. The 2017 “Provision of Protection Measures” (Zampa) law in Italy established a revised legal framework for the protection and care of unaccompanied migrant children, with clear procedures for age assessment and identification. The law also introduced a voluntary guardianship scheme; voluntary guardians are citizens appointed in coordination with the Juvenile Courts and selected and trained by the Ombudsman for Children. They are responsible for the child’s well-being and supporting the child through their asylum application and beyond if their claim is refused. As of 31 December 2018, there were over 3,000 volunteer guardians enrolled in the Juvenile Court system.⁶² They are supported by different third-party initiatives, including Never Alone, which supports guardians during difficult phases of the child’s case and the Pass4You project, which provides technical support to help guardians access embassies and

⁶² Save the Children, [Protection Beyond Reach: State of Play of Refugee and Migrant Children’s Rights in Europe](#), 2020, p.4

consulates,⁶³ and the Guardian Support and Monitoring Unit, which is supported by UNICEF and promotes cooperation between guardians, reception centres and local services.⁶⁴ These initiatives working together have achieved 4,000 trained voluntary guardians with the capacity to support 7,000 unaccompanied children.⁶⁵

In the **Netherlands**, the Dutch Ministry for Justice and Security, Central Agency for the Reception of Asylum Seekers (COA) in partnership with the Nidos Foundation (the national guardianship institution for unaccompanied and separated children in the Netherlands), launched a new reception model for unaccompanied and separated children in 2016.⁶⁶ Through this model, which is fully funded by the Dutch government, children under 15 or those older but deemed particularly vulnerable are placed with foster families who have a similar migration background, with Nidos Foundation providing support to the families. Children over 15 are placed either in small, child-friendly living arrangements with assistance depending on their age and needs. The assistance is aimed towards either integration of children in the Netherlands, or return to their country of origin, depending on their status. Access to education is mandatory for children and is usually arranged within 1 month after arrival in the Netherlands. For the first 3 months up to the first 2 years after arriving in the Netherlands, children attend special transitional classes where they focus on learning Dutch and learning Dutch culture, before entering the regular education system. All unaccompanied and separated children are appointed guardians who visit them once a month.

In **Germany**, as noted on page 12, unaccompanied children are integrated into the national youth welfare systems in Germany. They are first placed in a reception centre for a maximum of 6 months, though youth welfare authorities will try to assign unaccompanied minors as soon as possible to foster families or specialised facilities. The federal government has an allocation procedure that distributes unaccompanied children evenly across all states and municipalities using a quota system. Youth welfare authorities work with ‘free welfare’ organisations such as Caritas and the Red Cross to provide a continuum of care to unaccompanied minors. According to the Federal Law on Social Benefits and the Children and Youth Services Act, the German government is required to collaborate with and financially support these organisations whenever and wherever possible to provide social services such as the provision of shelter, language training and job placement opportunities.

⁶³ Never Alone, ‘[Support to the Voluntary Guardianship System](#)’

⁶⁴ European Commission, ‘Building a Guardianship System in Italy’ https://webgate.ec.europa.eu/protecting-children-in-migration/content/building-guardianship-system-italy_en

⁶⁵ UNICEF, [The Importance of the ‘Human Factor’ for Refugee and Migrant Unaccompanied Children in Italy: The Palermo Model of Volunteer Guardianship](#), December 2019

⁶⁶ For further details of this model, see European Migration Network, [Children in Migration: Netherlands National Contribution to the EMN Study on ‘Children in Migration’](#), August 2021

In **Sweden**, since 2006, the responsibility for the reception and integration of unaccompanied children has been decentralised to the 290 local municipalities, who are in turn responsible for ensuring accommodation, health and social services, and family tracing/reunification. As described on page 14 above, local municipalities assume responsibility for the reception and integration of unaccompanied children, and to arrange for their access to accommodation, health and social services. After placement in temporary accommodation, the Swedish Migration Agency will assign every unaccompanied child to a municipality who will appoint a guardian and investigate the child's needs and make decisions on where the child should be placed, whether this is in a foster home, with relatives of the child if appropriate, or in special accommodation for unaccompanied children. Unaccompanied children aged 16 and over are provided with clothes, medicine, and access to leisure activities. Every municipality has a "chief guardian", whose role it is to assess a person's suitability to be a guardian, and to formally appoint them into this role. Guardians are reimbursed for their costs and receive a nominal fee from municipalities. They are frequently offered basic training courses, whether provided by NGOs, the Migration Agency, or national organisations for guardians that organise courses and facilitate guardians to exchange views and experiences.⁶⁷ Sweden grants temporary residence permits of 3 years for refugees, and 13 months (with the possibility of renewal) to asylum seekers. Unaccompanied minors can convert their residency status to permanent status, but only if they can show they are self-supporting through employment-related income.

8. Gender-sensitive and gender-responsive

Migration governance, including ATD, must specifically and actively respond to the needs of children and adults of different genders; they must be gender-sensitive and gender-responsive. Women, girls and gender non-conforming refugees, asylum seekers and migrants are likely to experience multiple and intersectional forms of discrimination in their migration journey. Gender-based discrimination and inequalities can arise due to gender-norms such as gender-specific roles within families, communities and broader society. Migrant and refugee girls may

experience greater discrimination or be at greater risk of violence, exploitation or trafficking especially if they are unaccompanied. They are also often reluctant to report SGBV and other types of violence as a result of their insecure migration status and the absence of firewalls for accessing basic services and justice. Gender-based discrimination also intersects with discrimination based on other factors, such as age, migratory status, ethnicity, religion, sexual orientation, disability, and race.

⁶⁷ Asylum Information Database, [Country Report: Sweden](#), 31 December 2020, p.57

The Global Compact on Migration sets a roadmap for gender-responsive migration governance,⁶⁸ to recognize women and girls as agents and drivers of change. The **Global Compact on Refugees** calls on States and relevant stakeholders to adopt and implement policies and programs to empower girls and women in refugee and host communities, and to promote equality of access to services and opportunities - while also taking into account the particular needs and situation of boys and men. The **Gender + Migration Hub** provides guidance to governments, civil society and other stakeholders to ensure migration and other relevant policies are gender-responsive and align with the guiding principles of the GCM.

However, a global analysis of immigration laws and policies has shown that many gaps remain. Immigration legal and policy frameworks in some countries do not make any reference to gender. In others, laws and policies recognise the specific needs of women and girls, for example in relation to access to safe and suitable housing, or services for survivors of sexual and gender-based violence; women are framed within a lens of vulnerability rather than agency, and often referred to in the same category as children and other vulnerable groups.⁶⁹

Regarding ATD specifically, there is a lack of data on the perspectives and experiences of women and girls in ATD policies, programming and evaluation. Publicly available evaluations on the effectiveness of ATD pilots or programs have not been conducted with a gender-sensitive lens; integral elements of ATD such as case management, case resolution support, engagement with authorities, and access to services including legal advice or interpretation have not been adequately examined

having regard to the intersectional identities, strengths, and vulnerabilities of women and girls. While more attention has been paid to the specific needs of children, particularly those who are unaccompanied or separated, the differentiated needs of girls, boys, women, men, and those who identify with other genders have not been adequately addressed. This is also the case in Thailand, where the **ATD MOU and SOPs are largely silent on gender**, apart from a few brief references to placement options for boys and girls. Thailand should ensure that its **migration governance framework, including the ATD MOU and upcoming National Screening Mechanism is gender responsive** towards people from all genders and considers the specific needs of women and girls. Thailand should also ensure that all staff working on implementation of the ATD MOU are **trained, monitored and supervised** on gender-sensitivity and non-discriminatory practices. The **ASEAN Declaration and Regional Plan of Action on Children in the Context of Migration** (referred to in page 7

⁶⁸ Gender-responsive programming deliberately responds to the needs of adults and children of different genders, assessing the gendered context and taking measures to actively address specific needs. Gender-responsive social protection interventions aim to effectively reach girls, boys, women, and men specifically to achieve gender equality outcomes- UN Women, [Policies and Practice: A Guide to Gender-Responsive Implementation of the Global Compact for Migration](#), 2021

⁶⁹ Special Rapporteur on the Human Rights of Migrants, [Report of the Special Rapporteur on the Human Rights of Migrants: Good Practices and Initiatives on Gender-Responsive Migration Legislation and Policies](#), UN Document A/74/191, 18 July 2019, para 33

above), which Thailand was instrumental in advocating for at the ASEAN level, calls on member states to implement child-sensitive and gender-responsive border governance policies (para 4)

and to ensure allocation of “well-trained and child-and gender-sensitive human resources” to address the rights and needs of children in the context of migration (para 5).

Promising Practices

Canada uses a Gender-based Analysis Plus (GBA+) tool to provide capacity building and policy evaluation tools for government and policymakers on the ways in which women, men, and gender-diverse people, in interactions with other intersecting axes of identity such as race, ethnicity, religion, age, and mental or physical identity, may experience State policies, programmes and initiatives.⁷⁰ The GBA+ Unit within Immigration, Refugees and Citizenship Canada (IRCC) promotes and supports the Department’s application and implementation of GBA+, and IRCC is required under the Immigration and Refugee Protection Act to report on GBA+ in the Annual Report to Parliament on Immigration. Canada has also developed a Gender Results Framework in 2018; this is a whole-of-government tool designed to track how Canada is performing in gender equality, define what is needed to achieve greater equality, and determine how progress will be measured moving forward.⁷¹

Uruguay issued its Migration Policy Framework Document in 2016. The national migration strategy for Uruguay is gender-sensitive, incorporating a “cross-cutting gender perspective [that] pays particular attention to the different difficulties faced by men and women in their migratory processes, historical power inequalities and all forms of violence against women”.⁷²

The Government of **Mexico** has established a technical group for incorporation of gender-responsive data into its migration policies through the Ministry of Interior. Data is collected to ensure women migrants are able to effectively access their rights through incorporation of gender perspectives and affirmative action in the country’s administrative rules and public policies.⁷³

In **Nicaragua**, the protection of survivors of sexual or gender-based violence are enshrined under the 2008 Refugee Protection Act. Article 10 of this act definitively states that SGBV victims cannot be detained and ATD must be implemented to provide them with the assistance and support needed.

⁷⁰ [Government of Canada, Immigration, Refugees and Citizenship Canada, Gender-Based Analysis Plus](#)

⁷¹ [Government of Canada, Women and Gender Equality Canada: Gender Results Framework](#)

⁷² International Organization for Migration (IOM), [Migration Governance Indicators Profile 2020 – The Eastern Republic of Uruguay](#), 2021’

⁷³ Gender + Migration Hub project, [Initial Data: Mexico](#)

ANNEX 1

SNAPSHOT OF NATIONAL LAWS THAT PROHIBIT/LIMIT THE DETENTION OF CHILDREN

Country	Summary of Provisions
<p>Costa Rica</p>	<p>Costa Rica prohibits the detention of all children. Decree No. 36831-G on the Regulation of Refugees states “<i>Under no circumstances shall minors be detained, be they accompanied, unaccompanied, or separated</i>” (Article 47).</p>
<p>Cyprus</p>	<p>Cyprus’ 2000 Refugee Law prohibits the detention of children seeking asylum: “The detention of an applicant for the sole reason of his status as an applicant is prohibited, as is the detention of a minor applicant” (Article 9(F)).</p> <p>Unaccompanied children must be taken into the care of the Director of Social Welfare Services: “In case the applicant is an unaccompanied minor, the authorities before which the application is submitted and / or the competent official shall immediately notify the case to the Head who immediately notifies the case to the Director of the Social Welfare Services Department, who acts as guardian of the said minor and takes all the necessary measures, under this Law and the Regulations issued under it, on behalf and in the interest of the minor” (Article 10(1))</p> <p>“The best interests of the child are a primary concern in the application of the provisions of this Law concerning international protection and minors.” (Article 10(1A))</p>
<p>Ecuador</p>	<p>Ecuador’s Organic Law on Human Mobility 2017 (amended 2021) prohibits the detention of all children. “<i>In view of the best interests of children and adolescents, in all processes and procedures linked to human mobility, the rules contained herein shall be considered, such as the principle of children’s and adolescents’ specialization, the right to have a family, family cohabitation, and to be consulted on matters that affect them. Their detention due to administrative migration infringements shall not be ordered under any condition. When children’s or adolescents’ best interest requires keeping the family together, the mandate of non-deprivation of liberty shall be extended to the parents, regardless of alternative measures that may be issued for migration control.</i>” (Article 2)</p>

Country	Summary of Provisions
<p>Ireland</p>	<p>The Immigration Act 1999 further specifies that a child cannot be detained. Ireland’s International Protection Act 2015 further prohibits the detention of anyone who applies for international protection who is under 18.</p> <p>“[Detention pending deportation] shall not apply to a person who is under the age of 18 years” (Section 5(4)(a) Immigration Act 1999)</p> <p>“[Detention of an asylum applicant] shall not apply to a person who has not attained the age of 18 years” (Part 3, section 20(6) International Protection Act 2015)</p>
<p>Mexico</p>	<p>The Law on the Rights of Children and Adolescents provides “No children may be arrested, detained or deprived of their liberty for [...] an act that the laws do not designate as a crime”. Regulations to the LGDNNA state that no migrant child, unaccompanied or accompanied, should be detained in immigration detention centres because it is never in the best interest of the child.</p> <p>On 11 November 2011, the Mexican Congress passed Reforms to the Law on Migration and the Law on refugees, Complementary Protection and Political Asylum. These reiterate that “In the case of migrant children and adolescents... the rights and principles established in the Law on the Rights of Children and Adolescents and its Regulations, including that of non-deprivation of liberty for migratory reasons, shall be guaranteed” (Article 6).</p>
<p>Nicaragua</p>	<p>Nicaragua’s Refugee Protection Law 2008 excludes asylum seekers with special needs from detention, including unaccompanied and separated children. Instead, such children are referred to assistance and support services. “Asylum seekers with special needs, such as... unaccompanied or separated children...may not be detained and must be immediately referred to an institution that can provide necessary support”.</p> <p>Such protection from detention is reinforced in the Migration and Foreigners Law 2008. “Refugees and applicants for recognition of the status of Refugee are exempt from the application of the provisions on expulsion or deportation, arrest by entry or irregular presence and extradition, according to what is established in Law No. 655, ‘Refugee Protection Act.’”</p>

Country	Summary of Provisions
Poland	<p>The Polish Act on Granting Protection to Foreigners 2003 prohibits the detention of unaccompanied children who apply for asylum. Article 88a(3) states that “an applicant or a person on whose behalf an application is made shall not be placed in a guarded centre or detained if they... are an unaccompanied minor.”</p>
Spain	<p>Spanish's Organic Law 2000 (as amended in 2011) prohibits the detention of unaccompanied minors and requires that child protection authorities assume responsibility for their care.</p> <p>“In cases in which Security Forces locate an undocumented foreign national whose minority of age cannot be established with certainty, he or she shall be given, by those agencies competent for the protection of minors, the immediate attention required, in accordance with what has been established in legislation regarding the legal protection of minors, making this immediately known to the Department of the Public Prosecutor, which will provide a determination of the subject’s age, with the collaboration of the appropriate health institutions, which, on a priority basis, will carry out the necessary examinations.</p> <p>Once the subject’s age has been determined, in the case that he is a minor he shall be entrusted by the Department of the Public Prosecutor to the competent agencies for the protection of minors” (Article 35)</p>
Sweden	<p>The detention of children is restricted under the Swedish Aliens Act 2005.</p> <p>“A child may not be detained for more than 72 hours or, if there are exceptional grounds, for a further 72 hours” (Chapter 10, Section 5)</p> <p>“A child may not be separated from both its custodians by detaining the child or its custodian. A child that does not have a custodian in Sweden may only be detained if there are exceptional grounds” (Chapter 10, Section 3)</p>

Country	Summary of Provisions
<p>Switzerland</p>	<p>The Swiss Federal Act on Foreign Nationals and Integration Act 2005 prohibits the immigration detention of children under 15:</p> <p>“In no event may any detention order in preparation for departure, detention pending deportation or coercive detention be issued in respect of children or young people who have not yet attained the age of 15” (Art 80(5))</p> <p>“The detention of children and young persons under 15 years of age is not permitted” (Art 80A(5))</p>
<p>Turkey</p>	<p>Turkish law does not explicitly prohibit the detention of unaccompanied minors seeking international protection, but requires that they are placed in “suitable accommodation facilities”.</p> <p>Article 66 of the Law on Foreigners and International Protection Law 2014 states:</p> <ol style="list-style-type: none"> a. The best interest of the child shall be the primary consideration in all actions related to unaccompanied children. The provisions of the Child Protection Law N^o 5395 of 03/07/2005 shall apply as of the date the application is received. b. The Ministry for Family and Social Policies shall place unaccompanied children in suitable accommodation facilities, in the care of their adult relatives or a foster family, taking the opinion of the unaccompanied child into account. c. Children over 16 years of age may be placed in reception and accommodation centres, provided that suitable conditions are available. d. Siblings shall be accommodated together to the extent possible, taking into account the interest of the children, their age and level of maturity. They shall not be transferred to a different accommodation facility unless compelling [reasons exist].

About IDC

IDC is a powerful global network of 400+ organisations, groups, individuals, as well as representatives of communities impacted by immigration detention, based in over 100 countries. IDC members have a wide range of specialisations related to immigration detention and alternatives to detention, including academia, law, research, policy, direct service, advocacy, and community organising.

IDC staff work nationally and regionally in Africa, the Americas, Asia Pacific, Europe, the Middle East and North Africa, and at the global level. Staff coordinate with members and partners on advocacy, research, coalition and capacity building, as well as create opportunities for national, regional and global collaboration to reduce immigration detention and further rights-based alternatives to detention.

IDC Mission

IDC advocates to secure the human rights of people impacted by and at-risk of immigration detention. In partnership with civil society, UN agencies, and multiple levels of government, we strategically build movements, and influence law, policy and practices to reduce immigration detention and implement rights-based alternatives to detention.

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