

# Promising Practices In Alternatives to Detention for Children and their Families:

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

### Research Summary

#### 1. Introduction

Since 2019, Thailand has been emerging as a global and regional leader in its efforts to work towards ending child immigration detention. On January 21, 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), 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 inform decision-making. 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).

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 at the United Nations in New York to end the practice of immigration detention of refugee and asylum seekers children. Although Thailand has made significant progress since, there are still areas where laws, policies and processes need to be strengthened to better protect children and their families who are at risk of immigration detention. Between October 2018 and September 2021, 259 children and their families were released from immigration detention. However, children continue to be subject to immigration detention in Thailand, as the ATD-MOU only comes into effect once a child has been arrested and detained. Children may be released with their mothers, though the mothers must be bailed out at a prohibitively high cost. Fathers are not typically considered for release under the ATD-MOU, resulting in family separation, and pressure on mothers who find themselves as single heads of the household.

## 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 right 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.
6. Ensure a whole 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 right 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 supporting 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 fulfill the right to education by ensuring that all refugees and migrant children can enrol in public schools, with language and other relevant supports to ensure the attendance at an education level appropriate to their age.
10. Ensure that public hospitals provide access to healthcare to all refugees 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.

## Growing International Consensus towards Ending Child Immigration Detention

Detention has a profoundly negative impact on the physical, developmental, emotional, and psychological health of children. Even short periods of detention can have long-term, detrimental impacts on a child's cognitive development, and their physical and mental health. The consequences of detention can also be felt at a social-level resources are spent on detention that could instead be spent on community-based ATD that benefit host communities as well as migrant communities. 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.

In recent years, there has been mounting international consensus that States should work towards eliminating child immigration detention entirely. For example, States have agreed in **Objective 13(h) of the Global Compact for Safe, Orderly and Regular Migration (GCM)** to end child immigration detention by ensuring the availability and accessibility of a viable range of non-custodial ATD that are in line with international law. Similarly, in para 60 of **the Global Compact on Refugees**, States have agreed to develop non-custodial and community-based alternatives to detention, particularly for children.

The **UN Committee on the Rights of the Child** oversees implementation of the Convention on the Rights of the Child, which is the key international treaty on children’s rights. They have clarified that the immigration detention of children is **always a violation of children’s rights, is never in their best interests, and is unjustifiable**. Although Article 37 of the CRC requires that children be detained only as a measure of last resort, the Committee on the Rights of the Child and the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families has confirmed that the **‘measure of last resort’ in Article 37(b)**

**of the CRC did not apply to immigration detention.**

Through the **ASEAN Declaration on the Rights of the Child in the Context of Migration** and its accompanying Regional Plan of Action, ASEAN states have also 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).

## 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 Detention<sup>1</sup>, 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).<sup>2</sup>

<sup>1</sup> 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.

<sup>2</sup> 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.

## 1. What do Rights-Based ATD for Children and their Families Look like?

### (A) Immigration Detention is Prohibited in Law and/or Policy, and Children are Not Detained in Practice

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**.

The national laws of **Ireland, Mexico, Ecuador, Colombia, and Costa Rica** prohibit the use of immigration detention for all groups of children. 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 asylum-seeking children is prohibited in law. This is also the case in **Cyprus**.

### (B) Screening, Assessing and Referring Children into National Child Protection Systems, with National Child Protection Agencies Taking Primary Responsibility

Refugee and migrant children should be **included without discrimination in national child protection systems**, 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**, States have the added responsibility to promptly identify, register, screen and assess, and protect them until an adequate long-term solution is found. **Age assessment** procedures should comply with international standards. They must only be used as a measure of last resort, where there are grounds for serious doubts over the person's age, and where it is in the child's best interests to do the assessment. They must be conducted in a holistic, safe, child-and gender-sensitive manner.

In **Ireland**, children and their families as well as unaccompanied and separated children are integrated into the national child protection system, under the care of Tusla, the Child and Family Agency. In **Germany**, unaccompanied children are integrated into the national youth welfare system, with child and youth authorities taking responsibility for the child – they appoint a legal guardian, find appropriate accommodation, and work to establish family links. 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.

### (C) Whole of Government and Whole of Society Approach

**Local migration governance** has become increasingly important, with **civil society and municipal/local level government collaboration** gaining traction in many countries and resulting in more holistic and innovative responses to children and families in the context of migration.

In **Sweden**, 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. Unaccompanied children and families are assigned to municipalities, who are accountable for the care of those within their respective municipal borders. The municipalities work closely with civil society, recognising them as experts and contributors of innovative solutions. In **Mexico**, legal reforms in 2020 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. 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 is currently being implemented across the 32 states.

## (D) Non-Discrimination, Including Equal Access to Healthcare and Education

National legislation should provide for refugee and migrant children to have **equal access to the same rights as other children** without discrimination. This includes the requirement that all children can access the same level of **healthcare and education**, regardless of their immigration status.

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. In **South Korea**, refugees are entitled to the same level of social security as South Korean citizens, with healthcare for refugees funded by the government. Asylum seekers and their children are entitled to the same level of primary and secondary education as citizens. In **Colombia**, where an estimated 1.7 million Venezuelan refugees and migrants live, approximately 460,000 are school-aged children. They have access to education and emergency healthcare. Since 2019, the government has also granted nationality to more than 36,000 children of Venezuelan parents born in Colombia.

## (E) Case management is used to support children and families to access services while they are undergoing the immigration process

Case managers provide and coordinate access to services to support health and well-being for individuals as they are undergoing an immigration process. Case management can be provided by social workers, civil society, or specialised staff from immigration authorities; however, case managers are not decision-makers on matters relating to an individual's immigration status. Case management-based alternatives have been shown to be highly successful in upholding the rights and well-being of refugees, asylum seekers and migrants, while also achieving strong rates of compliance with migrat status determination processes and low rates of absconding.

Since 2017, the **European Alternatives to Detention Network (EATDN)** 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 projects in the EATDN (in Bulgaria, Cyprus and Poland) demonstrated that case management had a positive impact on individual 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. In the **United States**, the Family Case Management Program (FCMP) diverted families seeking asylum at the border into a case management program instead of immigration detention. Case managers facilitated access to medical and legal services, education enrollment, English classes, and assistance with identification documents. In **Greece**, METAdrasi a Greek NGO runs a Supported Independent Living (SIL) Program for Unaccompanied Minors. The goal of the program is to avoid the use of immigration detention for unaccompanied minors and through the use of safe housing, case management and guardianship, support the growth of the children's independence, prepare them for adulthood, and facilitate their integration into Greek society.

## (F) Respect for Family Unity and the Right to Family Life

All children, regardless of their or their parents' migration status, have the right to grow up with their families. Children should never be separated from their parents or guardians unless it is considered in their best interests. The need to keep the family together is not a valid reason to justify the detention of the child. Instead, States must provide ATD for the entire family.

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 **South Korea**, undocumented children can enroll in primary and secondary schools. Once an undocumented child enters a school, their deportation order is deferred until they graduate from secondary school. Often this suspension of deportation order is extended to the family members of the child to maintain family unity.

## **(G) Unaccompanied children are placed in family-based care, rather than institutions.**

Institutionalisation can have a negative impact on children's health and wellbeing. This, and the high costs associated with institutional care means this should only be used as a measure of last resort and for the shortest time possible. Investments in qualified guardians and foster carers can benefit national populations as well as migrant and refugee children. Supported independent living is a good practice example for older adolescents, and centres on the provision of specialised support to develop independent living skills,

In **Cyprus** 'semi-independent living units' for unaccompanied migrant children over the age of 16 is managed and implemented by the Cyprus Social Welfare Services of the Deputy Ministry of Welfare (SWS), in collaboration with IOM. Children have access to education and vocational training, health services, and psychosocial support. Local communities and employers have played an important role in implementing this program. SWS also funds 'Hope for Children' CRC Policy Centre, a Cyprus NGO, who implement a foster care program for unaccompanied children, through which over 100 children have been placed with foster parents from the same country of origin as well as local families. In **Italy**, unaccompanied and separated children cannot be detained for immigration purposes. Through a voluntary guardianship scheme, citizens are 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.

## **(H) Gender-sensitive and gender-responsive approaches are used, specifically and actively respond to the needs of children and adults of different genders**

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. 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, but they are framed within a lens of vulnerability rather than agency.

**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, programs and initiatives. The GBA+ Unit within Immigration, Refugees and Citizenship Canada (IRCC) promotes and supports the Department’s application and implementation of GBA+.

**Uruguay’s** Migration Policy Framework and national migration strategy 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”.

## **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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