GAINING GROUND

Promising Practice to Reduce and End Immigration Detention

May 2022

International
Detention Coalition
Rights and dignity for all who migrate

This paper was written to provide an overview of practical examples and recent developments in the field of alternatives to detention (ATD), in order to highlight promising practice and encourage further progress in this area. It aims to inspire and embolden governments, local authorities, international organisations, civil society and community actors and other stakeholders, with steps they can take to move away from the use of immigration detention.

About International Detention Coalition (IDC)

IDC is a powerful global network of 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 and end immigration detention, and further rights-based alternatives to detention (ATD).

Our Vision

A world where immigration detention no longer exists and people who migrate live with rights and dignity.

Our 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 and end immigration detention, as well as implement rights-based ATD.

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Our Values

› **Solutions-Focused** We strategically adapt our approaches to context, and develop pragmatic solutions that are grounded in everyday reality and experience

› **Innovation** We continually innovate our understanding and practices, through curiosity, learning, and exploring new possibilities

› **Collaboration** We engage in collective thinking and group-centred processes that facilitate an active exchange of ideas and contributions

› **Respect** We listen closely and with empathy to diverse perspectives, share and accept critique, and treat one another with dignity

› **Representation** We prioritise diversity, inclusion, and the leadership of people with lived experience of detention, in order to ensure accountability in our work

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Introduction

Immigration detention represents one of the most flagrant human rights violations of our time. Through its widespread use, people on the move are deprived of their liberty in frequently sub-standard conditions where they may languish for months or even years awaiting processing of their cases or deportation. The impact of immigration detention on people's physical and mental health, in the short and long term, is severe and has been well documented.[1] These damaging impacts extend to entire families and communities, and reflect a growing global trend of policies and practices that criminalise migration and migrant communities, as well as those who support them.[2]

Further, it is critical to view the impacts of immigration detention through an intersectional lens. This means understanding that people have diverse and intersecting identities, and are impacted in very specific ways. This includes acknowledging and addressing the specific experiences of migrant women, girls, transgender, gender diverse, and LGBTI+ communities, alongside the layered harms of also facing discrimination based on race, ethnicity, religion, disabilities and culture, among other factors.

Given the devastating impacts of immigration detention on people, families and communities, international law restricts its use. According to binding universal human rights treaties, as well as customary international law, everyone has a right to liberty and security of person and shall not be subjected to arbitrary detention.[3] Immigration detention must only ever be used as a last resort, for the shortest period of time, and only where justified by a legitimate purpose.[4] Despite this, many governments continue to rely on immigration detention as a central tool of migration management. Moreover, whilst immigration detention is a relatively new phenomenon, its use has expanded over recent decades, and in a number of countries the detention estate continues to grow. This is

despite the fact that detention has proven to be an overly expensive and ineffectual way of managing migration.[5] It is rarely conducive to case resolution – a shared objective of governments and migrants – or to finding durable solutions for people on the move.

Since 2008, International Detention Coalition has worked alongside its members across the globe to strategically build movements and influence law, policy and practices to end immigration detention and implement rights-based alternatives to detention (ATD). As set out in our flagship report, *There Are Alternatives*, ATD shift the emphasis of migration management away from security and restrictions towards a pragmatic, proactive and solutions-based approach focused on case management, case resolution and human rights.[6] There are currently a number of States that do not use detention as part of their migration governance systems (see below), and IDC believes that such practice should be promoted in order to encourage non-detention of people on the move as the norm. As detailed in IDC's 2022 position paper, *Using ATD as a Systems Change Strategy Towards Ending Immigration Detention*, IDC believes in alternative approaches that respect refugees, migrants, people seeking asylum and others on the move as rights holders with agency, who can be supported through immigration processes while living in the community, without restrictions or deprivations of liberty.

In recent years, IDC has seen a number of states begin to recognise that effective and feasible alternatives to detention do exist. This has led to shifts that include the adoption of laws and policies enshrining non-detention or setting out ATD, the introduction and scaling of community-based pilot projects, establishing screening, assessment and referral mechanisms that help to reduce the use of detention, as well as the development of alternative care arrangements for children which - in the best cases - integrate migrant children directly into national child protection systems. Yet too often there continues to be a lack of awareness among governments, local authorities, civil society actors and other stakeholders of these alternative approaches, or the steps that can be taken to gradually move away from the use of immigration detention.

This paper provides an overview of practical examples and recent developments in the field of ATD, in order to highlight promising practice and encourage further progress in this area. It aims to inspire and embolden governments, local authorities, international organisations, civil society and community actors and other stakeholders, with steps they can take to move away from the use of immigration detention.

This paper is not intended to be a comprehensive mapping of practice, and nor will all of the examples given be relevant for all contexts at all times. IDC knows from our work with members in different parts of the world that efforts to reduce and end detention are highly context-specific, and that an analysis of national- and local-level dynamics is essential.

The examples included here represent a snapshot of current initiatives, and also serve to highlight some of the gaps and challenges that still exist. The promising practices identified here range from rights-based ATD initiatives and programmes to other developments in law, policy and practice that - while perhaps not always ATD *per se* - represent promising steps towards reducing and ending immigration detention. What they all have in common is that they contain some of the elements that IDC sees as necessary for states to move away from detention as a tool of migration governance. IDC hopes that by showcasing such examples we will contribute to the sharing of ideas, experiences, challenges and progress in this critical area of migration policy.

Methodology and Acknowledgements

This paper is based on a review of 47 countries carried out by IDC around the world. Data collection was undertaken in five regions (Africa, the Americas, Asia-Pacific, Europe and MENA) through desk research and outreach to IDC members, partners, and other stakeholders. A set of short country profiles, produced following the data collection stage, are available in an annex published alongside this briefing paper. Countries were selected based on a number of criteria, including:

› Indications that there is existing or recent promising practice in working towards reducing and ending immigration detention and/or an increased use of alternatives;

› Presence of an IDC member or partner;

› The ability to access up-to-date information through our network of members, partners and contacts.

The data for the Asia Pacific country profiles was partly taken from the Immigration Detention and Alternatives to Detention in the Asia Pacific region report produced by IDC in collaboration with the UN Network on Migration. Data for the Middle East and North Africa (MENA) country profiles was partly taken from a mapping report on child immigration detention in the MENA region produced by IDC in collaboration with UNICEF MENA.

IDC would particularly like to express our gratitude to the individuals, organisations, and UN agencies who assisted in gathering the information presented in this paper and its annex.

IDC'S POSITION ON ATD

IDC envisions a world where immigration detention no longer exists and people who migrate live with rights and dignity. With this vision at the core of our work, IDC recognises the relevance of ATD as an academic and legal concept, but first and foremost, IDC approaches ATD as **a systems change strategy to reduce and end immigration detention, and build migration governance systems that ensure dignity and human rights.** Further, IDC understands ATD as a range of laws, policies and practices by which people at risk of immigration detention are able to live in the community, without being detained for migration-related reasons.

For IDC, **ATD can involve a range of interventions in areas of migration governance that ensure liberty and rights, individual screening and assessment, placement options, and case management to facilitate fair and timely case resolution.** Based on this holistic approach to ATD, IDC's Community Assessment and Placement (CAP) model provides practical building blocks for developing rights-based ATD.

IDC's strategy - which is tailored to the specific contexts where we work in different parts of the world and very different realities – involves bringing about change in different areas of migration governance through rights-based ATD, with the intention to reduce detention and **progressively build systems for the long term that do not rely on detention.** This can include a range of interventions that operationalise local solutions for people at risk of detention to live in the community while their migration case is being resolved.[7]

Recent developments towards reducing and ending immigration detention

Over recent years, there has been growing momentum at the national, regional and global levels to move away from the use of immigration detention as a migration governance tool by expanding the use of alternatives to detention. Some of this has been propelled by the COVID-19 pandemic, which had a profound impact on international migration and migration governance.[8] Many of the promising developments are not substantively new; for many years, ATD has been included in international law as a key legal safeguard to prevent arbitrary detention and ensure the right to liberty.[9] Moreover, increased enthusiasm around and use of ATD has not led in all cases to an associated reduction in immigration detention, which continues to be used widely by many governments. Yet this momentum is nonetheless indicative of a growing recognition that migration management systems that do not make use of immigration detention - or use immigration detention to a lesser extent - are possible, and that effective alternatives exist.

Key Developments at the Global Level

Perhaps the most significant development at the global level when it comes to working towards reducing and ending immigration detention has been the adoption of the Global Compact for Migration (GCM) in December 2018. The GCM includes a specific objective around using immigration detention only as a last resort – in line with human rights law – and working towards alternatives.[10]

The GCM is the first intergovernmental agreement to cover all dimensions of international migration. With Objective 13 of the GCM, States reiterated existing human rights obligations and

provided guidance to operationalise them by committing to "Use immigration detention only as a measure of last resort and work towards alternatives," with the 164 governments that adopted the GCM agreeing to "prioritize noncustodial alternatives to detention that are in line with international law" and to "promote, implement and expand alternatives to detention, favouring non-custodial measures and community-based care arrangements, especially in the case of families and children."[11] This obligation on the part of States to put in place alternatives to immigration detention was echoed in the UN Committee on Migrant Workers General Comment (GC) No. 5, published in September 2021, which restated that States have an "[o]bligation to consider alternatives to detention before imposing detention in each individual case."[12] The GC No.5 particularly promoted "community-based non-custodial measures that include case management and other forms of support, are adapted to the specific needs and vulnerability of each person or family, and which allow people to live freely in their communities" (see below for more on what IDC sees as promising practice, in line with this).

Particular emphasis has been put on ending detention of children, and under Objective 13h of the GCM, States unequivocally agreed to action their commitment by "working to end the practice of child detention in the context of international migration", reflecting the principle (also set out in human rights instruments) that detention of children is in all cases a violation of their rights.[13] This echoed the joint GCs - issued in November 2017 by the UN 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 - which, providing authoritative guidance on international human rights standards, affirmed that the detention of children because of their or their parents' migration status constitutes a child rights violation and always contravenes the principle of the best interests of the child. The joint GCs clarified that the 'last resort' principle does not apply to immigration detention of children and called for States to cease the practice and allow children "to remain with family and/or guardians in non-custodial, community-based contexts while their immigration status is being resolved." More recently, the Special Rapporteur on the human rights of migrants concluded in his 2020 report that the immigration detention of children is "effectively avoidable."[14] This was echoed in 2021 by the Special Representative of the Secretary-General on Violence against Children, who reasserted that "[d]etaining children is never in their best interest and is a form of violence that violates their rights," urging States to end child immigration detention and put in place rights-based alternatives.[15] The Global Compact on Refugees has further reinforced this momentum by prioritising "the development of non-custodial and community-based alternatives to detention, particularly for children."[16]

THE UN NETWORK ON MIGRATION WORKING GROUP ON ALTERNATIVES TO DETENTION

The United Nations Network on Migration Working Group on ATD was established following the adoption of the GCM, tasked with promoting the development and implementation of non-custodial, human rights-based ATD in the migration context and with supporting implementation of Objective 13 of the GCM. It is co-led by UNHCR, UNICEF and IDC and its members include representatives of civil society organisations, migrant communities, young people, local governments, and UN agencies working on immigration detention and ATD across the world.

In addition to producing policy guidance on ATD, including in response to the COVID-19 pandemic,[17] a key activity undertaken by the Working Group on ATD has been the convening of periodic global peer learning exchanges. These peer learning exchanges bring governments, UN agencies and civil society actors from all global regions together and provide a space to discuss experiences with regard to the implementation of Objective 13 of the GCM, share challenges and concerns, identify promising practices, and explore opportunities for continued multi-stakeholder cooperation and whole-of-society approaches. These exchanges have been sponsored by a number of governments championing Objective 13, including Colombia, Ghana, Nigeria, Portugal and Thailand. They are carried out under 'Chatham House Rule', allowing for honest and open exchanges between participants, with synthesis reports subsequently produced to capture key opportunities, challenges, learnings, and opportunities for progress and support.

Key Developments at the Regional Level

There have also been a number of regional developments around ATD and reducing immigration detention:

In **Africa**, there has been growing interest in alternatives to detention in recent years with regional processes working towards ATD, both directly and indirectly, and a number of African states implementing ATD measures.[18]

As part of the 2016 Migration Dialogue for Southern Africa (MIDSA), fifteen Southern African governments committed to "develop and implement" alternatives to detention, as well as to implement MIDSA Regional and National Action Plans to oversee progress.[19] The States are Members of the Southern African Development Community (SADC), the first sub-regional mechanism in Africa to focus explicitly on alternatives as a way to reduce immigration detention. Momentum around ATD is also reflected in a trend towards a stronger presumption of liberty in the region. The African Union Free Movement Protocol was adopted in 2018 and there are a number of initiatives to facilitate lawful

migration within economic and political regional blocs in Africa.[20]

At the same time, there is a need to close the gap between legal and policy frameworks and their implementation throughout the region. A key challenge is the criminalisation and increasing securitisation of migration in the region - sometimes fuelled by xenophobia - which contributes to restrictive migration policies and a greater emphasis on immigration detention in some countries. Disregard for laws regulating immigration detention is also common, with procedural safeguards and time limits for detention being ignored, meaning people are detained arbitrarily.

Nevertheless, it should be noted that most countries in Africa do not normally detain non-citizens. There is growing recognition among African states of the key role migration plays in integration and development,[21] as well as the contribution migrants make to host economies when they are permitted to work and trade to meet their basic needs.[22] Examples show that funding for migration governance and ATD can be used to further advance host community infrastructure rather than developing parallel systems, which cause isolation and contribute to anti-migrant sentiment.[23] There is an opportunity for African countries to build on the array of existing practice within the region,[24] to further develop locally grown ATD solutions which strengthen development and freedom of movement while reducing immigration detention.

In the **Americas**, the regional principles and standards adopted by the Inter-American Commission on Human Rights (IACHR) are unequivocal in stating that immigration detention must be used as a last resort and non-custodial community-based ATD should be used in the first instance.[25] The regional position on ATD was clearly developed in two consecutive IACHR thematic reports on the United States and on Mexico, the two countries that rely most on immigration detention.[26]

In **South America**, immigration detention remains an exceptional measure, either a last resort, rare, or limited to removal cases. Furthermore, laws in some South American countries prohibit immigration detention (see below). Regional integration instruments allow for ease of movement and often access to residence within member countries. Many countries have issued regularisation programs for legal stay, work permits, and access to services or other ad hoc permits for recently displaced Venezuelan nationals; the case of Colombia is especially notable considering the large scale of the regularisation programme for Venezuelans (see below) .

By contrast, the complex migration demographics and well-funded immigration enforcement infrastructures in **North America** have meant that immigration detention has retained its mandatory character and continues to be used in the first instance to deprive hundreds of thousands of people -

including children - of their liberty. Positive trends can be identified, such as concerted efforts to comply with legal limits, border and detention protocols and case-by-case risk assessments, that show an interest in detecting profiles and needs to determine detention, liberty or more appropriate case management programs. In addition, through national pilot programs, the governments of Canada, Mexico and the United States have, to varying degrees in recent years, been open to exploring non-custodial community-based ATDs. Where pilots have been set up in collaboration with civil society and UN agencies, and based on case management, they have shown positive outcomes that provide the evidence advocates seek to challenge these governments to rely less on immigration detention in the first instance.

Another positive trend identified is the common interest across the region in keeping children out of detention as per the international obligation adopted by the majority of States. That said, the practical implementation of referral mechanisms, the adoption of alternative care arrangements and durable solution outcomes through case resolution, continue to be a challenge, even more so where countries do not have established communities that can receive and integrate significant numbers of unaccompanied children and families.

In the migration corridors of **Mexico-Central America and the Caribbean**, where migrant and refugee children are in particularly vulnerable situations, there have been joint efforts by states, civil society and UN agencies to foster both national and regional protection responses. In Mexico, for example, the country that receives the second highest number of children both in transit and as destination, civil society advocacy and technical support has been critical to the progress made in recent years (see the box on Mexico below).

On a regional level, civil society organisations work together with UN agencies and member states of the Regional Migration Conference (CRM) to foster the establishment of a regional protection mechanism for migrant and refugee children on the move.[27] To date the CRM has adopted Regional Guidelines for the Comprehensive Protection of Children in Migration Contexts and in 2021 adopted an Operations Guide to Apply the Best Interests of the Child in Human Mobility Contexts, together with expert training for State authorities, including on ATD screening and referral mechanisms.[28]

While these positive developments point towards important shifts in migration governance systems in the region, it cannot be denied that the detention estates of principally the United States and Mexico continue to expand. In the United States, in particular, serious concerns remain over increased funding for detention centres and the private prison enterprise, and even more so with the recent expansion of immigration control over immigrant populations through mechanisms such as electronic monitoring, facial recognition and other digital technologies, publicised

by the government as 'ATD' when in reality they are alternative forms of detention. In Mexico, concerns remain over detention conditions and access to asylum and other legal remedies from detention, as well as the fact that immigration detention is still legal and a first resort in the case of asylum seekers.

In **Asia-Pacific,** there is widespread use of arbitrary detention with many countries using it as a de facto measure. Indefinite or prolonged detention is also an issue across the region. The detention of children and their families as well as other groups in situations of vulnerability is prevalent, however there has been important progress towards ending child immigration detention and developing community-based ATD in a number of countries in the region. Several countries either do not detain children in practice, or have introduced policies to restrict the use of detention for children and their families. An increasing number of governments have also been working with civil society, international organisations and other stakeholders to test, develop and strengthen community-based ATD, through which people are able to live in the community and access fundamental rights and services, with tailored case management support.

The Regional Peer Learning Platform and Program of Learning and Action on Alternatives to Child Immigration Detention co-convened by IDC and the Asia Dialogue on Forced Migration has provided an important peer learning mechanism, bringing together government and civil society ATD implementers from 5 countries in the region: Thailand, Indonesia, Malaysia, Australia and New Zealand. Held under Chatham House Rule, the Regional Platform has provided participants with a space to discuss and share learnings, successes and challenges in ATD implementation. Launched in 2019, the Peer Learning Platform has convened 5 times as of April 2022 around topics relevant to ATD implementation, including mainstreaming child protection, case management, access to education, and government civil society partnerships.

Also at the regional level, ASEAN Member States have adopted the ASEAN Declaration on the Rights of the Child in the Context of Migration[29] and its accompanying Regional Plan of Action.[30] Through these, ASEAN Member States have agreed that in order to promote the bests interests of the child, they will work to develop "effective procedures and alternatives to child immigration detention….and to ensure, where possible, children are kept together with their families in a non-custodial, and clean and safe environment."

In **Europe,** a number of States have introduced ATD into legislation. This is particularly the case for Member States of the European Union who have transposed into national law the requirement set out in both the Recast Reception Conditions Directive and the Returns Directive to use detention only where non-coercive measures cannot be applied.[31]

Recent years have shown increased momentum around ATD in Europe, and in 2019 a conference on Effective Alternatives to Detention of Migrants was held in Strasbourg, organised jointly by the Council of Europe, the European Commission, and the European Migration Network.[32] This milestone event contributed to the growing regional momentum around engagement-based ATD and included high-level participation from national government representatives, the EU, and the Council of Europe. This was followed by the publication and adoption of a Council of Europe handbook outlining key principles and processes to implement ATD, based on the Council's 2018 in-depth analysis of legal and practical aspects of effective ATD. The handbook aims to provide user-friendly guidance to governments on how to develop alternatives that allow States to manage migration without over-reliance on detention.[33] At the EU level, meanwhile, the regulation establishing the 2021-2027 Asylum and Migration Fund included the potential provision of funding for case management-based ATD programmes, with high levels of co-financing intended to incentivise such initiatives.[34] Civil society advocacy, particularly on the part of the European Alternatives to Detention Network, has helped to advance the agenda on ATD at both the national and regional level.[35] In particular, some promising partnerships have emerged between national/local authorities and civil society actors which show the potential for scaling up case management-based ATD. Notably, the recent response to the conflict in Ukraine - which has

seen several millions of people flee into neighbouring countries - has provided further evidence that immigration detention is not a necessary or integral part of migration governance systems at all. The activation of the Temporary Protection Directive, which allows refugees to stay in the EU for up to three years with access to the labour market and education, is evidence that where there is political will governments are able to put in place mechanisms that allow for people on the move to acquire legal status without risk of detention.[36] However, concerns remain regarding what some call the "double standards" of the response to the conflict in Ukraine,[37] including the differentiated treatment of people fleeing Ukraine on the basis of ethnicity and skin colour as well as the stark contrast between those arriving from Ukraine and people fleeing other countries, who are systematically pushed back upon arrival at Europe's borders and often subject to detention.[38]

Despite some progress, immigration detention continues to be widespread in Europe and particularly in the EU. There are concerns that the proposed EU Pact on Migration and Asylum will further expand the use of *de facto* and arbitrary detention.[39] Moreover, the EU and its Member States directly and indirectly encourage immigration detention in third countries (both European and non-European) as part of a policy of 'externalisation' of migration controls, which includes funding construction of detention centres and providing support to detention-related activities.[40] When it comes to ATD in legislation and practice,

governments tend to focus on initiatives based on enforcement rather than engagement (see below), with a few notable exceptions where attempts have been made to introduce case management-based programmes.

In the **Middle East and North Africa** region, a number of countries continue to criminalise migrant communities and particularly people with irregular status. Border push-backs and immigration detention are employed widely as an approach to address irregular migration, and their use is linked to EU border externalisation policies which target a number of countries in the region - particularly in North Africa - in an attempt to keep migrants and refugees in the region and prevent people from travelling onwards to Europe. Therefore, the detention of migrants and refugees (including children) has been of concern in most countries in the region, where many people are arbitrarily detained in poor conditions that do not meet international standards, in some cases for indefinite periods.

In recent years, there have been significant efforts to build and strengthen child protection systems in order to ensure the inclusion of refugee and migrant children that contribute towards reducing and taking steps to ending child immigration detention. This has included the development and setting up of Standard Operating Procedures, coordination mechanisms and referral pathways between a range of different stakeholders, including between governments, civil society organisations, and UN agencies.

Additionally, there are ongoing efforts by governments, supported by UN agencies, to develop child protection case management frameworks. Several such initiatives started as a response to the Syrian refugee crisis. In terms of alternative care options, while governments are obliged to provide them, in practice this provision is limited due to a lack of capacity and resources. Therefore, many countries continue to prioritise nationals for such care options over refugees and migrants.

When it comes to ATD, there is a well-established practice of informal community hosting for refugees and migrants, through community leaders, with efforts in recent years to formalise these initiatives. Such community-based responses often exist on a continuum alongside formal and informal structures, and are pivotal in contexts where instability and resource limitations cause government protection services to be fragile and inconsistent. Additionally, they have been successful in building bridges between communities and the formal system in some countries, where distrust can exist between refugee and migrant communities and the authorities.

COVID-Related Developments

The consequences of the COVID-19 pandemic have been far-reaching and often devastating for some of the most vulnerable groups, and people in immigration detention or at risk of detention have often been denied their basic rights in the name of public health. Such measures have included closing access to immigration detention

centres and facilities for visitors and service providers, including legal professionals; increasing restrictive internal measures such as solitary confinement; suspending or delaying legal and administrative proceedings; and a heightened risk of deportation without due process or automatic detention on arrival. A number of States have also used the pandemic to justify restrictions on borders and arrivals, including of people seeking asylum, in addition to criminalising certain groups and curtailing freedom of movement; public health measures have often been used as the justification for these restrictions.

Yet the pandemic has also provided an opportunity for momentum around ATD and reducing detention. A number of promising responses and practices have demonstrated how ATD can be utilised to reduce public health concerns, while supporting compliance with human rights standards and the provision of, and access to, essential services.[41] In certain cases, governments suspended detention orders or removal orders, and in a number of countries people were released *en masse*, with immigration detention centres either closing partially or entirely. In others, previously existing ATD were used during the pandemic to facilitate the release of large numbers of people from immigration detention. Certain countries have put in place amnesties, extended visas, and offered temporary status to irregular migrants. These mechanisms, including underutilised laws and policies that permitted releases from detention into community-based ATD and

case management in ATD instead of detention, were often quickly deployed and well adapted to the circumstances of the pandemic. More coercive and restrictive conditions such as reporting or designated residence requirements were not applied at all or modified, for instance through the use of telephone rather than in-person reporting or significantly reduced frequency of in-person reporting. Provision of temporary legal status was also a common element of the COVID-19 response in a number of countries. Portugal, for instance, took the decision to grant people with a pending residence application a temporary residence permit, giving tens of thousands of migrants access to health care, social services, unemployment benefits and the labour market on the same footing as Portuguese citizens.[42]

The progress seen during the height of the pandemic was not without fault, however. In many instances governments failed to pair the release of migrants from immigration detention with the necessary provision of services, meaning that individuals were frequently released into destitution. Moreover, as the peak of the pandemic came to an end, rather than incorporating some of these positive developments into the 'new normal,' we instead saw a backsliding on the part of many governments. Detention centres were reopened and the numbers of people being detained started to rise once more; in some cases, states even decided to build new immigration detention centres. The promising developments

and opportunities created by the pandemic, despite having repeatedly shown how harmful and unnecessary detention is as a part of migration governance, have struggled to maintain momentum. Nonetheless, they have provided clear and tangible examples of the types of measures that governments can use instead of immigration detention.

THE USE OF DIGITAL TECHNOLOGIES

A number of different kinds of technology are already being used in different areas of migration management, including in immigration detention and when it comes to ATD. Governments across the world have been exploring the use of digital technology in this area for some years, accelerated by the COVID-19 pandemic which enhanced the need to develop mechanisms to ensure engagement with authorities where physical presence was not always possible.

The use of technology, if it is ethical and done in a way that respects the human rights and dignity of individuals, need not be harmful *per se.* However, given the heightened vulnerabilities of those at risk of or subject to immigration detention - in addition to questions such as data use and storage and informed consent - there are considerable risks involved.

Reporting to the authorities over the phone is one way that governments have integrated digital technologies into ATD. This can be an effective way of allowing people to keep in contact with case workers, without the stress of in-person reporting or the costs of having to travel long distances. However, where such initiatives involve voice or facial recognition software they can be overly invasive, as well as having high levels of inaccuracy which can lead to mistakes.[43] This can result in anxiety and uncertainty amongst those reporting - especially if there are conditions attached to their compliance with such reporting.

Electronic tagging is another way in which certain governments have attempted to reduce the number of people in immigration detention. This involves attaching a device to a person's body, often around the ankle, and frequently uses GPS technology to track their location at any given time or require them to be next to a base unit at set times. IDC classifies electronic tagging as an alternative *form* of detention rather than an alternative *to* detention, as it substantially curtails (and sometimes completely denies) liberty and freedom of movement, leading to *de facto* detention. It is often used in the context of criminal law and has been shown to have considerable negative impacts on people's mental and physical health, leading to discrimination and stigmatisation.

What does 'promising practice' look like?

In our position paper on ATD,[44] IDC set out the following five principles to follow when using alternatives as a systems change strategy:

1. Respect for Human Rights

ATD must respect human rights and support the agency, empowerment and leadership of people to effectively and actively navigate the complex migration processes that directly impact their lives and futures. Approaches to ATD should use an intersectional and gender responsive approach that upholds the full humanity and dignity of each person, recognising that people at risk of immigration detention experience multiple and intersectional violations of their human rights. Crucially, ATD must not create new harms or further violations of rights. They must not be used to expand enforcement or surveillance, and to place restrictions on individuals who would not otherwise be detained or at risk of detention.

2. Reducing Immigration Detention

IDC believes that ATD must operationalise local solutions for people at risk of or in detention to live freely, without being detained for migration-related reasons. Approaches that run parallel to existing immigration detention systems, without impacting use of detention or the size of the immigration detention estate, by nature do not reduce immigration detention.

3. Based on Engagement not Enforcement

An approach rooted in engagement means moving away from coercive approaches, which often emulate those from the criminal justice field and are an extension of government enforcement and security-based migration policies that ultimately criminalise migrants. Instead, the focus must be on engaging and working with people towards just and fair resolution of their case, in particular through case management. ATD should build trust, support empowerment, and promote agency and wellbeing so people can actively participate in processes that affect their rights and futures.

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NON-CUSTODIAL ENFORCEMENT-BASED ALTERNATIVES

Certain governments make partial or extensive use of what IDC considers to be 'enforcement-based' ATD, in law or practice (or both). Such measures include:

› Regular reporting to the authorities (in person or virtually);

› Designated residence;

› Bail, bond, guarantor or sureties;

› Surrendering travel documents.

Whilst these mechanisms might allow people to comply with immigration requirements without being in a detention setting, they usually imply constraints on people's freedom of movement. IDC does not consider these to be rights-based, according to the principles set out above. Such mechanisms are rooted in restrictions and enforcement, are often based on criminal justice models, and are more concerned with controlling and surveilling migrants than engaging with and supporting them. The aim of enforcement-based measures is often to respond to States' concerns around compliance (see below), but there is little evidence that they are effective in helping people resolve their cases and find durable solutions.

In terms of whether such measures can be considered promising practice, again the answer must come back to specific localised contexts; in countries where detention is used in the first instance or on a massive scale and the government is reluctant to envisage any kind of alternative, such measures allow individuals to comply with immigration requirements without being detained, and may be a step towards building confidence around ATD. In other contexts, IDC's ambition is to move away from enforcement-based measures and towards case management-based approaches.

4. Provision of Holistic Support

ATD must be centred around holistic community-based support to help people achieve stability, navigate complex systems, as well as ensure basic needs, access to services and wellbeing. Based on an individual's needs and strengths, ATD should provide and/or facilitate access to a range of services, including healthcare, counselling, employment and education opportunities, and community support structures.

5. Never Involve Deprivation of Liberty

Measures that amount to deprivation of liberty - either individually or cumulatively - are simply de facto detention, sometimes referred to as 'alternative forms of detention,' regardless of whether they are

labelled ATD by governments or not. Examples include closed shelters or reception facilities, remote or physically isolated locations in which natural geography is used to severely curtail freedom of movement and access to rights, sometimes coupled with strict curfews, screening at international borders or transit zones where restrictions go beyond typical screening and identification processes, overly onerous conditions or restrictions, and electronic monitoring or tagging. The latter is increasingly used by governments and has been incorrectly labelled an 'alternative to detention,' despite the substantial or complete deprivation of freedom of movement and liberty involved.

ENSURING GENDER-RESPONSIVE APPROACHES THAT PUT LIVED EXPERIENCES FRONT AND CENTRE

In addition to the five key principles for using ATD as a strategy for systems change, it is also essential that efforts to reduce and end immigration detention respond to the diverse and intersecting identities of people on the move. This includes acknowledging and addressing the specific experiences of migrant women, girls, transgender, gender diverse, and LGBTI+ communities, alongside the layered harms of also facing discrimination based on race, ethnicity, religion, disabilities and culture, among other factors.

Gender-sensitive and gender-responsive approaches are essential to specifically and actively respond to the needs of women, girls and gender-diverse people, and indeed such approaches are a guiding principle of the GCM, which sets out a road-map for gender-responsive migration governance that recognises women, girls and gender-diverse people as agents of change. Certain countries have recognised gender equality as a specific principle within their approach to migration management. This includes Canada, which has applied a feminist 'lens' to policymaking and considers gender, diversity and intersectionality as a key part of its migration policy.[45] As a GCM champion country, Mexico has also been vocal regarding the importance of gender-responsive approaches. Uruguay, meanwhile, issued a Migration Policy Framework document in 2016 based on respect for human rights, non-discrimination, social integration, respect for diversity, gender equality, and the comprehensive protection of migrants. Similarly, Ecuador's National Plan on Human Mobility in 2017 includes a focus on rights and a gendered lens.

For IDC, it is the leadership of our members, partners and people with lived experience of immigration detention - and particularly women, girls, transgender, gender diverse, and LGBTI+ communities - that is key to developing successful alternatives that truly work for the people and communities that we work with.

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The examples of promising practice identified in this paper have all been selected with the above principles in mind. Where possible, the practices identified align with these principles and reflect the approach set out in IDC's Community Placement and Assessment (CAP) model. However, many of the initiatives identified include only certain elements of the CAP model, or are only partially in line with the principles outlined above or constitute progress in this direction. Moreover, we recognise that *promising* practice is not the same as good practice (and certainly does not suggest perfect practice). Nor are developments in terms of ATD implementation a reason to ignore other, more problematic elements in a country's approach to managing migration and even in ATD themselves. As a result, along with each promising example provided we have tried to highlight some of the elements that remain of concern and which will need to be addressed.

The context-specific nature of ATD means that the examples highlighted here will not be relevant in every context, and nor will they be universally 'replicable.' Across the world, immigration detention use varies greatly, and is dependent on specific political, historical, and migratory contexts. Moreover, different countries will be at different stages of the process towards implementing ATD and reducing use of detention as a tool of migration management. This makes it challenging to compare practice across countries, as what may be identified as a promising development in one country might be 'business as usual' in another. This being said, a strength of using ATD as a strategy is that approaches can be tailored to specific, complex realities, and can address unique gaps and opportunities. There may be elements of some of the examples cited here that can be adopted and shaped to other contexts. It is also worth noting that, whilst the use of ATD is not relevant to countries that do not use immigration detention at all, their approaches can provide learning and inspiration for others.

NON-DETENTION AS BEST PRACTICE

A number of countries do not include detention as an element of their migration governance frameworks at all, instead placing the focus on guaranteeing freedom of movement with access to rights, services and support. For IDC, these examples constitute best practice and are the ultimate source of inspiration in the work to reduce and end immigration detention. Examples of frameworks that do not rely immigration detention at all include those of Ecuador, Uruguay, and some regional responses.

In January 2017, Ecuador closed all immigration detention centres, a decision followed by the adoption of the Law on Human Mobility, which operationalised the right to migrate as included in the Constitution. Migrants in Ecuador, regardless of status, have the right to work and access social services and health while their migration procedure is ongoing.

In Uruguay, there are no immigration detention centres and no reported cases of individuals in detention for reasons related to migratory status. Article 9 of the Immigration Law guarantees access to services and health regardless of status. Through case management processes all regularisation options are explored; while they wait for a decision people are issued with a provisional certificate which allows them to work and access social security services.

Some regional responses between countries in South and Central America have also ensured non-detention by coordinating around individual cases, facilitating communication between child protection departments, engaging with civil society, sharing information to prepare community housing options for those crossing borders, or issuing ad hoc permits to grant legal stay and access to work (the latter has particularly been the case in response to the displacement of Venezuelans). These regional responses are not only an example of ways to avoid the use of immigration detention but also of how to implement the GCM by finding solutions to migration governance challenges through international cooperation and support, and whole-of-society approaches.

Examples of best practice such as these show in practice how systems that prioritise freedom of movement, regularisation, access to rights, adequate services, and support in the community work. This is not to say that these frameworks are perfect, however; there are still challenges to overcome in order to ensure sustainability and full access to rights and services. These challenges and gaps include lack of Standard Operating Procedures (SOPs) and protocols to ensure communication between relevant departments, lack of capacity, inadequate funding, and insufficient coordination between neighbouring States in the case of regional responses, which have left many people in the move without access to education, health, work and housing in practice.

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Promising practice and positive steps forward

In diverse corners of the world, IDC has identified promising practices which go some way to ensuring that people at risk of immigration detention are able to live in the community with the support they need, without being detained for migration-related reasons. These include:

› The **provision of legal status and documentation** that allow people to live in the community either temporarily or permanently, thus ensuring that they are not at risk of immigration detention and - in the best cases - giving them access to rights and services;

› **Enshrining non-detention and ATD in law and policy** in order to ensure that legal frameworks limit or prevent immigration detention;

› **Screening, assessment and referral mechanisms** that provide for individualised assessments to determine appropriate placement options according to needs and vulnerabilities;

› **Strengthening child protection systems and alternative care arrangements** in order to ensure children are not detained and are integrated into existing mainstream child protection systems; and

› The implementation of **case management-based ATD programmes** that provide holistic, community-based support for people at risk of detention.

Given the challenge of bringing together practice across five regions of the world, these categories aim to loosely group the types of efforts that are being put in place to move away from immigration detention, rather than providing a strict typology of ATD. They reflect the following elements, outlined in IDC's CAP model:

• The establishment of a **presumption against detention** in law, policy and practice;

• Putting in place appropriate mechanisms for **identification and decision making**;

• Making individualised decisions around **placement options**,

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which in the best cases include **case management support and resolution**;

- Ensuring **minimum standards** that include respect of fundamental rights, provision of basic needs, access to formal status and documentation, legal and advice and interpretation, fair and timely case resolution, and regular review of placement decisions.

Many of these categories overlap, and in order to truly build effective systems the full range of approaches should be adopted and combined. As noted above, in certain regions particular approaches will not be relevant due to specific legal and political frameworks. In all cases, these developments are context-specific and respond to the specific needs of that particular country or region; any attempts to replicate practice will need to consider contextual differences if they are to have any chance of success. Importantly, whilst the examples outlined below show elements of *promising* practice, there are still further improvements to be made before many of these initiatives can be characterised as good practice.[46] This may include increasing resources, strengthening people's access to services and rights, and ensuring that ad hoc or stand-alone initiatives are integrated into migration governance processes as 'business as usual,' in tandem with a wider review of other less promising aspects of national systems.

A number of these promising practices have been introduced by national and local authorities in the relevant countries; others - notably a number of examples of alternative care arrangements and case management-based support - include both government schemes and projects carried out by non-government organisations and/or UN agencies. In some of the most positive cases, a range of governmental and non-governmental actors come together to collaborate on such initiatives, thereby showcasing effective whole-of-government and whole-of-society approaches.[47]

Provision of Legal Status and Documentation

There are a range of initiatives that are put in place by governments across the world to provide people with legal status and documentation. Programmes that allow people to regularise their migration status - either temporarily or permanently - are the most effective way of reducing and ending immigration detention. By ensuring that people are able to stabilise their migration status within the country, and widening options for case resolution, risk of detention is reduced and potentially eliminated. Moreover, in the best cases such programmes facilitate people's access to rights and services that may otherwise not be available to them (such as the right to work, healthcare, and education).

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Promising practice differs across countries and regions, and includes initiatives that specifically target migrant workers as well as those introduced in response to a specific humanitarian crisis. Some provide people with long-term or even permanent status, while others allow people in an irregular migration situation to obtain some kind of permission to reside in the community, along with documentation, while their immigration cases are being resolved or while they are preparing to voluntarily depart from the country.

In all cases, the most effective approaches include clear and transparent legal and regulatory frameworks, providing for solutions that foster stability, respect family unity, and promote non-discrimination.[48]

BRAZIL PROVIDING PROTECTION TO VENEZUELANS

Since 2016, the Brazilian Government has been running programs to grant protection to Venezuelan nationals.[49] These include the introduction of a two-year renewable temporary resident permit that gives Venezuelans present in Brazil access to employment, health care and education. This permit facilitates access to services without having to undergo a more complex and burdensome asylum application and process. Since early 2020, Venezuelans have not had to undergo an individualised procedure to access international protection.

Despite having closed the borders to foreign nationals during the COVID-19 pandemic, Brazil did not restrict entry for Venezuelans based on humanitarian grounds. According to a 2021 report, there were over a quarter of a million Venezuelans in the country.[50] The vast majority had regular stay and were able to access employment. In April 2021, through 'Operation Welcome' (Operação Acolhida) over fifty thousand Venezuelans (mostly families) were assisted to voluntarily resettle in over six hundred cities across Brazil.[51] This resettlement included provision of materials, educational kits, and cultural orientation. Such relocations were coordinated by the federal government in partnership with local governments, the Regional Inter-Agency Coordination Platform (R4V), and civil society organisations. These measures were not interrupted by the COVID-19 pandemic.

COLOMBIA INTRODUCTION OF THE TEMPORARY PROTECTION STATUTE

In 2016, a Special Permanence Permit was created to allow Venezuelan nationals to access medical services in Colombia. In March 2021, given that at least half of Venezuelan nationals still had irregular status in Colombia, a Temporary Protection Status (TPS) was developed for Venezuelans in Colombia. This operates as a regularisation programme and includes the right to work and access services.[52] For those with regular status, people seeking asylum and those who hold a 'safe-conduct' permit (and thus have requested a visa), this scheme grants them 10 years to apply and acquire a residence visa.[53] Venezuelan nationals in an irregular situation may also be eligible if they entered Colombia before 31 January 2021. The Status is also available for those who enter via a legal port of entry within two years of its introduction.[54]

The 10-year timeframe of the Status will give most Venezuelan people — both those with regular and irregular status — time to settle, comply with requirements, and apply for a regular residence visa. To access the TPS, biometric information must be provided to the registry office (RUMV in Spanish) via a smartphone app and in-person appointments. There are some worries about the cost of acquiring the TPS and also around subsequent socio-economic integration. The Statute's protection finishes when the person acquires a regular residence visa.

The Temporary Protection Status introduced in 2021 has been hailed as an "extraordinary example of humanity, commitment towards human rights, and pragmatism" by the UN High Commissioner for refugees. The scale of the initiative is particularly notable, and in January and February 2022 alone 500,000 Venezuelan refugees and migrants were issued with Temporary Protection Permits. This positions Colombia at the forefront of the response to the Venezuelan crisis in the Americas.

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ECUADOR REGULARISATION FOR VENEZUELANS WITH IRREGULAR STATUS

The humanitarian crisis in Venezuela has displaced hundreds of thousands of people to Ecuador. In response, in 2019 the Ecuadorian government put in place a programme which allowed those who entered the country between August 2018 and July 2019 to regularise their situation through a temporary humanitarian visa.[55] It benefitted around a third of the Venezuelan nationals thought to be residing in an irregular situation in Ecuador. One important factor was the affordability of the programme, which cost people just $50 USD and as a result was widely accessible.

NAMIBIA INTRODUCING LEGAL PROTECTIONS FOR VICTIMS OF TRAFFICKING

Since 2018, Namibia has introduced important protections for victims of trafficking, which contribute to preventing their detention. Under the Combating of Trafficking Act (2018), victims of trafficking are to be provided with protection and assistance, including being placed "in a safe place," and documentation which temporarily regularises their stay. Victims of trafficking are also given immunity from prosecution, including for immigration-related offences.

PORTUGAL RIGHTS TO REGULARISATION FOR NON-CITIZENS

In 2017, changes were made to the Immigration Act that introduced "subjective rights to regularisation:" upon fulfilment of certain conditions, non-citizens would be eligible for a residence permit with visa exemption.[56] This was further expanded in 2019 to include not just those who had arrived legally but all those working in Portugal who had been registered with social security for at least 12 months. Moreover, people are automatically provided with a social security number in Portugal, regardless of their legal status, which means that migrants are able to access social support and facilitates their subsequent entry into the regularisation process.

In response to the COVID-19 pandemic, Portugal took the decision to grant people with a pending residence application a temporary residence permit, giving tens of thousands of migrants access to health care, social services, unemployment benefits and the labour market on the same footing as Portuguese citizens.[57]

SOUTH KOREA PROTECTION AGAINST DETENTION AND DEPORTATION OF CHILDREN

The Ministerial policy of the Justice Ministry provides protection against detention and deportation for undocumented children who have resided in South Korea for long periods of time. In the past, this policy did not grant legal status to the children or provide a pathway to legalisation, but only functioned as a temporary suspension of a deportation order. However, a newly enforced policy - effective from 1 February 2022 until March 2025 - grants permission to stay to undocumented children both in schools and out of school as well as their parents. It also provides a pathway for legalisation of the status of undocumented children who are long-term residents of South Korea. Parents are also able to seek employment under this visa for the purpose of supporting their children.

TAJIKISTAN AN AMNESTY LAW FOR PEOPLE WITH IRREGULAR STATUS

An Amnesty Law, which came into effect on 7 January 2020, allows non-citizens who have entered Tajikistan before the end of 2016 and are living in the country with irregular status to regularise their stay and obtain a residence permit. After three years of obtaining the residence permit, it is also possible to apply for Tajik citizenship under this new law. Some 20,000 people, the majority being part of the stateless population in Tajikistan, are expected to be able to obtain legal status in Tajikistan through this provision and therefore will no longer be subjected to immigration penalties such as fines and imprisonment.[58]

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Enshrining Non-Detention and ATD in Law and Policy

Another important step towards reducing and ending immigration detention is ensuring that non-detention and non-custodial ATD are enshrined in law or policy. A number of countries include important legal safeguards against detention of all or some groups in their legislation. These include several Central and South American countries - including Ecuador and Uruguay - that promote non-detention as the default (see above), as well as other countries such as Colombia, Ireland, Malawi and Mexico that include specific legal provisions preventing the detention of children. Other countries require alternatives to detention to be considered or applied before a decision to detain is made.

Whilst developments in laws and policies certainly represent a step forward in terms of moving away from the use of immigration detention, and may indicate a broader shift in mindsets and approaches to migration governance, the effectiveness of such laws and policies in preventing unnecessary detention relies on good implementation. There must be functioning mechanisms to monitor implementation and ensure accountability for non-compliance, as well as adequate due process for people engaging with such systems.

MALAWI PROTECTIONS AGAINST THE DETENTION OF CHILDREN

Malawi has important protections in place against child immigration detention. Malawian law states that no child shall be imprisoned for any offence.[59] In addition, children are not to be held in pre-trial detention except in very limited circumstances. These provisions effectively preclude the immigration detention of children.[60]

Furthermore, Malawian law includes migrant children in the mainstream child protection system. The law specifies that welfare of the child is *the* paramount consideration in decisions concerning children. Unaccompanied migrant children fall in the category of children in need of care and protection and come under the responsibility of the Ministry of Gender, Children, Disability and Social welfare which has Social Welfare Offices at the District level. The local authorities have an obligation to provide accommodation for unaccompanied and separated children. However, a lack of government-run shelters means children are often placed in accommodation run by non-governmental organisations (NGOs).

MEXICO LEGAL PROHIBITION AGAINST IMMIGRATION DETENTION OF CHILDREN

In September 2020, the Mexican Congress took the important step of approving legislative reforms to its Immigration and Refugee Laws that prohibit the detention of all children for reasons related to their migration status. This legislative change was the result of more than a decade of advocacy on the part of civil society organisations, international partners, government authorities, and communities. The new reforms came into force in January 2021.

These legislative reforms were also a confirmation of the transfer of responsibility for migrant children from the National Migration Institute (INM), with a mandate for immigration enforcement, to the National System for the Protection of Children, which in 2014 was set up with a mandate for protection of all children in the country. Children now cannot be detained in immigration detention centres and must be referred to the relevant child protection authorities. The Department of Family Services (DIF) and the Offices for Child Protection (PPNNAs) are responsible for protecting migrant children and determining their best interests. The new provisions designate the Social Assistance Centres (national shelter system) of the DIF as the appropriate facilities to temporarily house them. Mexican legislation also establishes that migrant children and their families should receive temporary humanitarian immigration status to protect them while the PPNNAs develop an individualised plan.

To fully achieve their aims, the legal reforms will need strong implementation protocols that allow for timely screening, referral and non-custodial community placement of children and families, where appropriate case management and case resolution are prioritised. This will require adequate government funding to strengthen the child protection and national shelter systems.

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TURKEY THE INTRODUCTION OF ATD IN LEGISLATION

New amendments to the Law on Foreigners and International Protection adopted by law no. 7196 in December 2019 included changes to Article 57 governing pre-removal detention and created the newly added Article 57(A). This for the first time introduced the concept of "Alternatives to Detention" into Turkish law. Seven specific alternatives are included in the law:

1. residence at a specific address,

2. working on a voluntary in public benefit services,

3. reporting duties,

4. family-based return,

5. return counselling,

6. financial guarantees; and

7. electronic monitoring.

The introduction of such measures into legislation represent a positive step forward in ensuring that ATD are provided for in legal and policy frameworks. In particular, the inclusion of case management-based support is promising. However, the implementing regulation – which is expected to provide crucial guidance as to the procedures and criteria by which the authorities will apply these alternatives – has not yet been published. The use of ATD in Turkey therefore continues to be limited and discretionary. Concerns remain that ATD in Turkey is framed specifically in the context of returns, leaving little room for other outcomes, as well as the inclusion of certain types of electronic monitoring such as tagging. IDC regards electronic tagging as an alternative *form* of detention, given the extent to which it curtails – or even completely denies – people's liberty and freedom of movement.

Screening, Assessment and Referral Mechanisms

Similarly to developments in law and policy, the implementation of screening, assessment and referral mechanisms is a key element in ensuring that processes are in place to identify the specific vulnerabilities of refugees and migrants and to refer them to appropriate placement options or support services. Moreover, individual screening and assessment are the only ways to ensure detention meets the tests of necessity and proportionality - meaning that improved screening,

referral and assessment mechanisms can help to reduce cases of arbitrary detention.

Screening and assessment can occur at all stages in the migration process, including prior to making a placement decision and at periodic intervals during such placement. Ongoing periodic reassessment is crucial to review and adjust placement decisions and to ensure any conditions on their placement are still necessary. IDC and UNHCR have developed guidelines on best practice for identifying and addressing vulnerabilities.[61]

NAMIBIA A NATIONAL REFERRAL MECHANISM FOR VICTIMS OF TRAFFICKING

To support implementation of the 2018 Combating of Trafficking Act (see above), an NRM and SOPs were launched in 2019.[62] The NRM establishes a national coordination mechanism and sets out guiding principles for assisting and protecting victims of trafficking. The SOPs define detailed procedures for the identification and referral, care and long term rehabilitation of victims of trafficking. State social workers are responsible for identifying victims of trafficking at the "earliest possible moment," as well as conducting risk assessments, defining immediate needs, providing information and referring identified victims to services and assistance.

Under the SOPs, non-Namibian victims of trafficking are entitled to a period of reflection during which they can receive immediate support and accommodation in a shelter. Furthermore, in line with the Child Care and Protection Act (2015), the SOPs emphasise that a child who is a potential victim of trafficking "is considered to be a child in need of protective services, which include placing the child in suitable alternative care [or] a safe place." A number of forms and templates are provided in the Annex, including screening and identification forms, template letters and an interview checklist.

Since their launch, the government has conducted training on the NRM and SOPs.[63] The police and immigration officials reportedly use anti-trafficking pocket manuals outlining the SOPs and NRM. According to IOM, the NRM and SOPs are operational and there are cases in which victims are identified and referred for assistance in practice.[64]

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TUNISIA SCREENING AND REFERRALS OF VULNERABLE MIGRANTS AND VICTIMS OF TRAFFICKING

In Tunisia, NGO-run screening and referral mechanisms are in place for migrants to reduce their risk of detention, including within detention centres.[65] NGOs conduct monitoring visits to some detention centres and refer vulnerable cases to specialised ministries. However, NGOs lack access to regular detention centres and juvenile centres where migrant children are also detained.

The government has also taken steps to reduce trafficking and enhance screening and referral mechanisms with the introduction, in December 2021, of a National Referral Mechanism (NRM) which provides a platform for multi-sectoral co-operation for identifying and referring vulnerable migrants, including victims of human trafficking and particularly women and children.[66]

ZAMBIA FORMALISING BEST INTERESTS DETERMINATION PROCESSES FOR CHILDREN

In 2019, the Zambian government launched "Guidelines for Best Interests Determination for Vulnerable Child Migrants in Zambia."[67] These guidelines aim to formalise and operationalise BID processes and improve the quality and consistency of services for migrant children, in line with the NRM and international, regional and national standards.

The NRM and associated guidelines have strengthened the identification and referral of migrants in vulnerable situations by first line officers and service providers, and improved coordination and collaboration among State and non-State actors in providing protective assistance. According to the UN Network on Migration, they have "successfully diverted many migrants in vulnerable situations from the detention system."[68] The establishment of shelters and reception facilities has further helped to ensure that vulnerable groups, including newly arrived asylum seekers and children, avoid immigration detention.

From 2021 to 2023, the Zambian government, UNICEF and UNHCR are implementing a $1.5 million national programme to strengthen child protection systems and provide alternatives to immigration detention in the country, as part of the 'EU Global Promotion of Best Practices for Children in Migration' programme.[69]

ZIMBABWE A NATIONAL REFERRAL MECHANISM FOR VULNERABLE MIGRANTS

In December 2019, the Government of Zimbabwe launched an NRM for Vulnerable Migrants. The NRM reportedly seeks to "support frontline officials in the identification, protection and referral of vulnerable migrants in a manner that secures the full enjoyment of migrants' rights as enshrined in international, regional and national frameworks."[70] The NRM reportedly stipulates guidelines for frontline officials and "links together stakeholders involved in identification, referral, assistance, repatriation and monitoring, and defines clear roles for each, along with the procedures to follow, to ensure the protection of vulnerable migrants' human rights." The NRM was developed by the Ministry of Public Service, Labour and Social Welfare, with support of IOM in consultation with a range of stakeholders involved in "migration, child care and protection at the district, provincial and national level."[71] Following its launch, the government reportedly conducted training on its NRM for 128 government and civil society representatives from seven districts.[72]

Strengthening Child Protection Systems and Alternative Care Arrangements

Immigration detention is never in the best interests of the child. According to international legal standards, detention in itself - even for a short period - constitutes a child rights violation and is a form of violence against children, who should never be detained for reasons related to their or their parents' migration status. Despite this, children continue to be detained across the world for immigration-related reasons, whether they are accompanied by adult family members or not.

There have been notable steps forward in recent years when it comes to strengthening child protection systems and developing alternative care arrangements for children and families with children who otherwise would face the very real risk of immigration detention. Such practice is in line with States' commitment within the GCM, noted above, to "[work] to end the practice of child detention in the context of international migration."

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EGYPT TOWARDS APPLYING ALTERNATIVES TO DETENTION IN PRACTICE

In 2020, the National Council for Childhood and Motherhood (NCCM) adopted SOPs to protect and assist child asylum seekers and refugees.[73] The SOPs refer these children into protection systems as an ATD.[74] In particular, they create a pathway into alternatives including case management and service provision, instead of detention. The SOPs include procedures for identification and referral, according to which law enforcement officers immediately refer children to child protection authorities. They specify that "The goal of identifying child asylum-seekers, refugees and victims of migrant smuggling and trafficking in persons is to rapidly rescue them, respond in a timely manner to the risks that surround/ might surround them, and provide them with immediate assistance and protection."[75] After referral, child protection authorities are responsible for assessing the child's situation within 24 hours, ensuring medical care and coordinating actions with specified organisations including registration and placement.

In addition to the NCCM, NGOs and UN agencies play a "significant role" in the provision of alternative care arrangements in Egypt,[76] particularly for the most vulnerable unaccompanied asylum seeking children.[77] This includes a well-established practice of community hosting supported by international organisations, NGOs and community organisations. Refugee service providers offer a range of programmes to assist unaccompanied refugee and asylum seeking children in Egypt, including community hosting programs. These programs match vulnerable children with hosts from their own communities.[78] Refugee service providers identify potential host families through community outreach activities, conduct assessments of hosts, and provide training and material support, for both short or longer-term arrangements.[79] Case managers support children to address their needs while they are being hosted and follow up with house visits to monitor the wellbeing of the child and the host.

JORDAN STRENGTHENING SYSTEMS TO PROTECT MIGRANT CHILDREN

Over recent years, Jordan has made significant efforts to strengthen its child protection system. A key feature of the government's approach is that it does not discriminate between children based on nationality or identity; instead vulnerability is used as the fundamental criteria for defining prevention and response.[80] As such, refugee and migrant children benefit from child protection mechanisms and services alongside Jordanian children. While the arrival of a large number of Syrian refugees to the country impacted on government services, it also provided an impetus for systemising and further developing child protection mechanisms, with UN agencies and international NGOs providing significant funding and expertise.[81]

There are a number of alternative care arrangements for unaccompanied and separated refugee children set out in policies in Jordan.[82] One example is a foster care programme for unaccompanied and separated children which was initially developed from an informal practice within refugee camps. More recently, NGOs have started matching children with families from an established pool of those who were interested and qualified, and UNHCR supervised care arrangements.[83] In 2015, in order to formalise and sustain these arrangements, procedures were put in place by NGOs and authorities through the development of SOPs which also include the role of case managers, Ministry of Social Development, BID Panel and Juvenile Courts.[84]

In 2016, members of the Child Protection Sub-Working Group (chaired by UNHCR and UNICEF) promoted efforts to strengthen data management information systems across organisations working on refugee child protection, and released SOPs for BID of refugee children in Jordan.[85] These "helped to establish functional BID panels throughout the country," comprising members of the Government of Jordan, UN agencies and NGOs.[86] While BID panels for children were previously held between non-governmental actors, the Jordanian authorities are playing an increasingly active and now key role in these panels.[87]

MEXICO HOSTING MIGRANT CHILDREN IN A COMMUNITY SETTING

In recent years, the Mexican government has taken steps towards positive structural change when it comes to detention of children. The key shift came in 2014-2015, when the country established a national child protection system that covers all children irrespective of their migration situation, consisting of a policy entity and an operational body of national, state and local child protection officers. This prompted a shift in perspective towards child protection authorities having responsibility for migrant and refugee children and away from the mandate of immigration enforcement authorities.

These structural changes have been accompanied by initiatives to ensure alternative care arrangements for children. These include a joint government-civil society alternative to detention pilot program that ran in Mexico City and Tapachula in 2015-2016, with technical advice and coordination from IDC. This watershed moment enabled the development of preliminary criteria and procedures for interinstitutional coordination among a range of stakeholders, as well as operational mechanisms and protocols for screening and referral of unaccompanied children out of detention and their placement in community care. IDC and partner civil society organisations and UN agencies have also worked to strengthen, expand and improve capacity, infrastructure, care and services in government-run reception shelters for unaccompanied children along the migration route. The first government-run shelter for refugee children was established in the southern border state of Tabasco, followed by others such as Tin Otoch in the northern state of Sonora.

In 2019, Mexico set up a National Commission for the Protection of Migrant and Asylum Seeker Children that brought together relevant authorities, UN agencies and 3 civil society organisations, among them IDC, to develop and implement policy to protect migrant and refugee children. The Commission adopted a National Protocol for the Comprehensive Protection of Migrant Children, which mandates procedures, protocols and instruments to attend to the needs of each migrant child so that decisions are taken in their best interests, within a national mechanism that provides for screening, evaluation and referral to appropriate community settings. Central to the National Protocol is the recognition that detention is never in a child's best interests and that the commitment and coordination of all levels of government is necessary to prevent it and operationalise the National Protocol.

MOROCCO WORKING TO PILOT ALTERNATIVE CARE FOR CHILDREN

In Morocco, since 2021 two NGOs have been piloting accommodation centres as alternative care, in Teouan and Oujda cities, with the support of UNICEF. These centres provide holistic support for children in need using a global approach, which facilitates access to education, legal advice and training. The centres are open to national and non-national children alike, without discrimination. The pilots will run for two years and hope to inspire other civil society organisations to adopt a holistic non-discriminatory approach.[88]

There are no Best Interest Determination (BID) procedures in Morocco even for nationals, and UNICEF is currently developing SOPs with the government for this purpose for all children.[89] Moreover, emergency initiatives have been rolled out for the most vulnerable children, including reforms to the child protection system and the introduction of alternative care for children without parental care, children living on the streets, and migrant children.[90] In addition, the country has a referral mechanism - established in late 2021 - that establishes clear links between social welfare, protection and justice mechanisms and which includes all children without discrimination on the basis of nationality.[91]

THE PHILIPPINES MOVING CHILDREN OUT OF DETENTION AND INTO CHILDCARE FACILITIES

In the Philippines, undocumented and separated children are generally not detained and instead referred to the Department of Social Welfare and Development who legally assume the role of guardian and are responsible for providing housing, healthcare, and other support services.[92] Coordination mechanisms established among the Department of Social Welfare and Development, local social welfare officers and other relevant government agencies likewise safeguard the protection of children. While this is primarily intended for children in conflict with the law, the policy and practice of the Public Attorney's Office is to extend the application of this provision to all detained children.

THAILAND CROSS-GOVERNMENT COOPERATION ON ALTERNATIVES TO DETENTION OF CHILDREN

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*),*[93] with SOPs to implement the ATD MOU following in July 2020. The general principles of the ATD MOU and SOPs[94] 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. The best interests of the child must inform decision-making, and the child's opinion must be taken into consideration. The ATD MOU and SOPs also prioritise family-based care, with shelters as a measure of last resort and for the shortest time possible.

The SOPs also require the establishment of a Multi-Disciplinary Working Group (MWG), composed of Immigration officials, competent officers under the Child Protection Act of 2003, and representatives from UNHCR, UNICEF and IOM. The MWG is required to consider ATD and develop an individual care plan for each child, and coordinate with relevant service providers to implement the care plan.[95] Registered NGOs work in partnership with the Ministry of Social Development and Human Security (Department of Children and Youth) to support screening and assessment processes.'[96] Children released under the ATD MOU are supported by two NGOs, Host International Thailand and Step Ahead.

The ATD MOU and its related SOPs mark important steps towards ending the immigration detention of children in Thailand. Between October 2018 and September 2021, 259 children and their families were released from immigration detention.[97] However despite this important progress, there are a number of key gaps with the ATD MOU. Firstly, it does not prevent the immigration detention of children; rather, its provisions come into effect once a child has been arrested and detained. Secondly, mothers are still required to be bailed out, which has led to the separation of children from their mothers due to the inability of mothers to pay bail. Thirdly, fathers are not considered for release under the ATD-MOU, resulting in family separation, and pressure on mothers who find themselves as single heads of the household. Lastly, children who are released under the ATD MOU and who turn 18 are at risk of re-detention.[98]

TUNISIA PROVISION OF ALTERNATIVE CARE FOR UNACCOMPANIED AND SEPARATED CHILDREN IN CHILD PROTECTION CENTRES

In collaboration with UN agencies and civil society organisations, the Tunisian government provides alternative care arrangements and accommodation for unaccompanied and separated children. According to the IOM office in Tunisia, unaccompanied and separated children are placed in state-run shelters, known as Child Social Protection Centres, run by the Ministry of Social Affairs. There are currently two centres of this kind, which provide alternative accommodation for vulnerable children. IOM reports that one of the centres is open and children are allowed to leave and come back at their will, while in another centre children need to obtain permits before they leave. Such strict rules around leaving the centres curtail the children's right to liberty.[99]

Case Management-Based ATD Programmes

The most successful ATD programmes use case management across all stages to ensure a holistic, coordinated and comprehensive approach to each case. The case management approach centres around understanding and responding to the unique needs, challenges, and capacities of the individual by building on their strengths and skills, while identifying vulnerabilities or protection concerns, and addressing their specific needs. The approach promotes well being and resilience by facilitating access to support services and networks, and also encourages engagement with migration systems in order to work towards case resolution. Such programmes target people already in detention or at risk of detention, and aim to ensure that people's cases can be effectively processed in the community, with access to rights and services that allow people to live in dignity.

There has been considerable momentum towards implementing case management-based ATD in recent years. In particular, ATD programmes that bring together a range of stakeholders - including government actors, local authorities, civil society organisations and UN agencies - have shown the effectiveness of community-based approaches that adopt a 'whole-of-society' approach (see below). Civil society-led ATD programmes have advantages when it comes to independence and ensuring the trust of migrant communities; however, limited resourcing of such initiatives often means that they remain relatively small and struggle to scale up. Governments can support such

initiatives by providing for additional funding, as well as by embedding such programmes into migration and social care systems in order to ensure that larger numbers of people are able to benefit from them. Partnering with civil society partners can help ensure the provision of independent case management

that provides 'firewalls' or legal and procedural boundaries between ATD and immigration enforcement. The emergence of government/civil society partnerships around case management-based ATD is therefore a particularly encouraging step forward.

BELGIUM PROVISION OF INDEPENDENT, HOLISTIC CASE MANAGEMENT

In Belgium, 'Plan Together' - a project of the Jesuit Refugee Service Belgium - is a community and rights-based ATD pilot providing independent, holistic case management to families with minor children 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 who visit the families at their homes regularly.

The overall objective of the pilot is to contribute to a reduction in 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, strengthening the families' resilience, and providing them with correct and clear information about their cases. The programme 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.[100]

'Plan Together', though currently small in scale, has shown the potential to be extremely effective in supporting people throughout their immigration cases. There is evidence that families are better informed about migration processes, including their own legal situations, and are more able to engage with the resolution of their cases. The pilot has also led to a positive dialogue between JRS Belgium and a range of stakeholders, including legal professionals, local authorities, ombudspersons, and government representatives.

BULGARIA PROMOTING INDIVIDUALISED CASE MANAGEMENT

Since 2017, the Centre for Legal Aid - Voice in Bulgaria, an NGO based in Sofia, has been carrying out an ATD pilot project that aims to promote the use of individualised ATD as a mainstream recourse for government institutions, and to further develop the case management model as a tool for the successful implementation of ATD.[101]

The pilot has worked with 103 people since 2017 who would otherwise have been detained or at risk of being detained. CLA-Voice in Bulgaria works according to the principles of holistic case management in order to help to stabilise people in the community and avoid (re)detention while they work to resolve their case. Along with the case management support provided to individuals, CLA-Voice in Bulgaria undertakes advocacy to promote the use of case management and to promote a positive and engagement-based approach to migration management, including through the introduction of legal pathways to regularisation.

Through the implementation of their pilot, CLA-Voice in Bulgaria has regular contact with the Ministry of the Interior and there is a willingness to collaborate on the part of the authorities. Moreover, as a result of the pilot's success they have been approved to work on a case management programme for people in vulnerable situations in returns procedures, under national Asylum, Migration and Integration Fund resources, for the period October 2019 to October 2022. However, in order to ensure that this is sustainable it is necessary that the Bulgarian authorities integrate case management-based ATD into their broader toolkit for migration management, something that they have to date not been willing to formalise.

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CYPRUS PILOTING ALTERNATIVES TO DETENTION

Since 2017, the Cyprus Refugee Council (CyRC) has been implementing a pilot ATD project, in line with the organisation's objective to provide assistance and support to individuals in asylum and migration procedures. The main aim of the pilot is to reduce immigration detention, promote engagement-based ATD, and contribute to the growing evidence and momentum on ATD at a national and regional level.[102] In order to achieve this, CyRC provides individualised, holistic case management to encourage trust, engagement and collaboration with the system, work towards case resolution, and reduce the use of detention in Cyprus.

The pilot has allowed for increased engagement with a wide range of stakeholders in Cyprus, including with the authorities. In October 2020 the Civil Registry and Migration Department (CRMD) appointed a staff member specifically tasked with examining the use of alternatives to detention. This individual has positively engaged with CyRC consistently since their appointment, in order to increase the authorities' understanding of case management-based ATD and also to discuss individual cases. This has led to individuals being released from detention into the pilot. However, engagement with the CyRC pilot continues to be on an ad hoc basis and no formal government support has been forthcoming, despite the pilot's positive outcomes. Concerns have also emerged around requests made on the part of the government for CyRC to combine their pilot with more enforcement-based elements. Despite signs of positive engagement on the part of the government, alternatives to detention tend to be neglected as a consideration when detention orders are made.[103]

GREECE PUTTING IN PLACE COMMUNITY-BASED ALTERNATIVES

Since 2019, the NGO HumanRights360 has been implementing a community-based ATD pilot in Greece. This is the first case management-based ATD being undertaken in the country, and through the pilot HumanRights360 has been constructively engaging with both municipal and national authorities to promote a shift away from detention as the default option. They are also working to highlight the importance of individualised assessment before imposing detention, and to ensure respect of current legal frameworks. By placing and supporting individuals and families in the community while they navigate the migration process, the pilot also aims to ensure that people are able to effectively engage with these processes as well as improve social cohesion.[104]

Through their holistic approach to case management, HumanRights360 specifically targets migrants with irregular status and those at risk of becoming irregular. Case managers link people to legal, psychosocial, and other key support services, as well as helping to ensure that people's basic needs are met. Unfortunately, there has been no proactive engagement on the part of the Greek government with the pilot, though there has been some positive outreach made to the Athens police and other authorities, with whom HumanRights360 has established and maintained close communication and collaboration regarding individual cases.[105]

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ITALY PROVISION OF HOLISTIC CASE MANAGEMENT TO MIGRANTS AT RISK OF DETENTION

In 2019, the Italian Coalition for Civil Liberties and Rights (CILD) and Progetto Diritti established a pilot Alternative to Detention project. The pilot provides holistic case management to migrants at risk of detention with the aim to promote the well-being and social inclusion of undocumented migrants. Beneficiaries include individuals from diverse backgrounds who face different types of barriers towards resolving their migration status. The pilot aims to support migrants to resolve their cases while strengthening national evidence and increasing ATD practice among CSOs in Italy.[106]

The evidence gathered through case management has been crucial in strengthening advocacy around ATD with both institutional and civil society stakeholders. The pilot project has established a wide network of allies, and to date almost three quarters of beneficiaries have managed to resolve their cases. However, to date the Italian government has failed to engage with efforts to promote rights-based ATD based on the principles of case management and support in the community. While ATD pilots have attracted attention from institutional stakeholders, limited human and financial resources have prevented more concrete collaboration. Such pilots therefore remain small in scale and their sustainability is challenged due to a lack of government support.

MALAYSIA ATD FOR UNACCOMPANIED AND SEPARATED CHILDREN

SUKA Society, a Malaysian child rights NGO, implements an ATD program for unaccompanied and separated children. Established in 2015, the Community Placement and Case Management (CPCM) Program runs independently of government and uses a holistic case management approach centred around child wellbeing, safety, permanency, and case resolution. Children are placed in safe and stable housing, in kinship/informal foster care among families from their communities. SUKA offers a continuum of services to support children in their programme in order to achieve a durable solution or case resolution (resettlement to a third country, independent living for those who become adults, or returning home if and when it is safe to do so).[107]

The CPCM is an example of an effective community-based ATD that supports children at risk of immigration detention. A 2019 evaluation of the CPCM Program found that the programme had significantly improved the overall wellbeing, safety and stability of children. It cost 90% less than immigration detention and achieved 100% compliance rates.[108]

POLAND 'NO DETENTION NECESSARY'

Since 2017 the Association for Legal Intervention (SIP) has been piloting the 'No Detention Necessary' project, an innovative approach to detention alternatives in Poland.

Based on IDC's Community and Assessment and Placement (CAP) model, those leaving detention centres or at risk of detention are offered support in the form of case management, alongside legal and psychological counselling. The support offered by case managers includes information provision, mediation between the administrative authorities and individuals, assistance in dealing with access to services and basic needs.

The project works primarily with people who are in returns procedures, and through it SIP has been liaising with the Border Police in order to secure people's release from immigration detention into the pilot. The majority of people are also on the government's official alternative to detention programme, and required to report regularly to the authorities (at least once a month). However, the government's scheme does not offer case management.

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SPAIN SUPPORTING MIGRANTS RELEASED FROM DETENTION DURING THE COVID-19 PANDEMIC

During the pandemic, Spanish-based NGO Fundación Cepaim opened its centres to migrants who had been released from detention, essentially establishing with their Humanitarian Reception Programme an unofficial de facto ATD programme.[109]

Fundación Cepaim works with people to address social and residential exclusion, as well as facilitating their integration. People are accommodated at private apartments and are provided monthly allowances and in-kind support to cover their nutrition and other basic needs. Individuals are assigned a case manager and supported holistically by a team that includes lawyers, psychologists, mediators, social workers and volunteers. They are provided with legal assistance and information on regularisation schemes, as well as Spanish classes to improve their language skills and other assistance to facilitate their integration and social inclusion.[110]

The shelters are completely open, with people able to come and go freely. Moreover, during the pandemic the government of Spain granted extraordinary work permits for migrants to work in the agricultural sector, which gave many people the opportunity to take up employment.

UNITED KINGDOM SUPPORTING MIGRANTS WITH COMPLEX NEEDS IN THE COMMUNITY

The Detention Action Community Support Project has been working since April 2014 with migrant men with previous convictions, who have barriers to removal and have experienced or are at risk of long-term detention. Participants had been detained for periods ranging from three months to four years, following completion of prison sentences. After the person has been admitted to the project following a risk assessment, the project coordinator and the participant draw up a transition plan which sets out goals, actions and steps the participant can take. The project coordinator contacts the participant at least once a week, but the intensity and frequency of engagement varies depending on circumstances and needs. The project coordinator also seeks to address the issues raised by participants by advocating on their behalf to a range of statutory and non-statutory bodies.

The project aims to demonstrate that alternatives to detention can be effective for migrants with complex needs and risk factors who would otherwise face indefinite detention. The project aims to reduce the risk of absconding and reoffending of young male ex-offenders with barriers to removal, assisting them to meet the conditions of their release and avoid long-term detention. Through one-to-one case management, participants develop skills and confidence to stabilise their lives, participate in the community, and maintain contact with the authorities.[111]

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UNITED KINGDOM COMMUNITY ENGAGEMENT PILOTS

In 2018, the UK Government announced the creation of a Community Engagement Pilot (CEP) Series, which set out to test approaches to supporting people to resolve their immigration cases in the community.

Following a successful bid process, the NGO Action Foundation was granted the contract for the first of the pilots. The Action Access pilot ran between 2019 and 2021 and supported 20 women seeking asylum in a community setting in Newcastle-upon-Tyne in the North East of England. With one exception, prior to joining the pilot all of the women had been detained in Yarl's Wood Immigration Removal Centre. Upon joining the pilot, the women were provided with shared accommodation, received one-to-one support from Action Foundation staff, and were supported to access legal counselling. The women also benefited from Action Foundation's broader program of activity such as its free English language classes and weekly community gatherings, facilitating socialisation, signposting and referrals.

The purpose of the project was to improve voluntary engagement with the immigration system, particularly for those who would otherwise be detained, while being supported in the community to resolve their immigration case in a humane and cost-effective way.[112] The King's Arm Project is currently implementing the second CEP project.

Moving towards a 'whole-of-society' approach

One of the key guiding principles of the GCM is the 'whole-of-society' approach to migration governance. This approach was intended 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."[113]

The participation and leadership of migrants, refugees and other people on the move and their communities - including leaders with lived experience of detention - in migration governance is essential in order to ensure rights-based and responsive approaches that are informed by directly impacted communities. The involvement of civil society organisations and non-governmental organisations (including those that are migrant-led), meanwhile, can create important bridges between States and migrant communities. Grassroots actors and direct services providers often have far better access to communities than government authorities, given the trust-based relationships and connections that they have worked to establish over long periods of time. Bringing together a diverse range of stakeholders can thus help to ensure that initiatives to reduce and end detention are as effective as possible.[114] Of course, joint initiatives must include appropriate firewalls to avoid transforming non-governmental actors into *de facto* border enforcement agents. Attention must also be paid to ensure that such participation is based on meaningful shifts of power to communities and people with lived experience and that this it is neither tokenistic nor instrumentalised.

IDC has identified a number of promising partnerships that are emerging or have emerged between national or local government authorities and civil society organisations in different regions:

› The **Government of Thailand** has worked closely with civil society to implement the ATD MOU (see above). Two NGOs, Host International Thailand and Step Ahead, provide holistic case management support in the community for children and their mothers who are released under the MOU. There is also broad collaboration and consultation between government ministries on ways to strengthen the MOU, including through regular consultations between the Coalition on the Rights of Refugees and Stateless Persons (CRSP, a national civil society network) and the various implementing government agencies.[115] Thai government ministries have also worked closely with UNICEF and IDC to develop a framework to monitor and evaluate the MOU, as well as collaborating with IDC, UNICEF Thailand and Terres des Hommes to support children and youth lived experience advocates to share their views on the GCM and the ASEAN Declaration on the Rights of Children in the Context of Migration, with ATD being one of the key areas of focus.

› In April 2021, the **Malaysian government** approved an ATD pilot for the release of unaccompanied and separated children from immigration detention centres into the care of the Ministry of Women, Family and Community Development (MWFCD).[116] The pilot is a collaboration between implementing government agencies and civil society organisations to support unaccompanied and separated children released from immigration detention to temporary shelter arrangements. Under this partnership, SUKA Society and Yayasan Chowkit (YCK) will work with the Malaysian government to screen and prioritise children for release from immigration detention. Once released, children will be placed in the care of SUKA Society and YCK, who will assume responsibility for the care and protection of the child, develop a care plan and assess the best interests of each child. The ATD Pilot follows several years of coordination and discussions between government and civil society organisations, beginning with a tripartite working group to operationalise ATD for children, comprising different government agencies, the national human rights commission (SUHAKAM) and civil society organisations (SUKA Society, Yayasan Chow Kit and IDC).[117]

› Through its National Commission for the Protection of Migrant and Refugee Children, the **Mexican government** has recognised the importance of partnering with civil society to establish and implement national policy for the protection of migrant and refugee children, thereby preventing their

detention. Having a seat on the National Commission has allowed civil society organisations to have a positive influence on the design, adoption, implementation and monitoring and evaluation of the National Protocol (see above). National roll-out of the SOPs has involved strengthening capacity and coordination mechanisms among relevant local authorities, supported by IDC and civil society partners. This has included working closely with state and local immigration and child protection authorities, providing training on the specific stages of the National Protocol, promoting the adoption of state-level working groups and SOPs, and advising on public shelter models and strategies for alternative care. This dialogue and exchange between authorities and civil society has helped to ensure better-informed government decision-making and improved outcomes for migrant and refugee children.

› In 2018, a progress report into the welfare in detention of vulnerable persons urged the **UK Government** to "demonstrate much greater energy in its consideration of alternatives to detention."[118] Shortly after its publication, and as a result of ongoing advocacy on the part of civil society organisations in the UK, the Government announced the creation of a Community Engagement Pilot (CEP) Series, which set out to create government-civil society partnerships to test approaches

to supporting people to resolve their immigration cases in the community. The first pilot, 'Action Access,' ran between 2019 and 2021 and supported 20 women seeking asylum in a community setting in the North East of England. The evaluation of the pilot was overwhelmingly positive and there was "a genuine collaborative relationship between the Home Office, the UN Refugee Agency (UNHCR) and Action Foundation [the pilot implementer]," which demonstrated the potential of such partnerships.[119] A second pilot is currently underway in partnership with King's Arms Project.[120]

› In 2020, the **Belgian government** committed to fund a number of pilot projects to support irregular migrants to work towards durable solutions.[121] This includes providing people with access to services as they work to regularise their status, which will serve to reduce their risk of immigration detention. To date, the government has supported the establishment of a civil society-led learning network and begun to pilot its approach with local authorities, including the city of Ghent. Efforts on the part of the government to introduce pilot projects to find durable solutions for undocumented migrants show an openness on the part of the Belgian government to engage with a diverse range of actors, in line with the 'whole-of-society' approach promoted within the GCM.

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› In **Egypt**, UNICEF and the National Council on Childhood and Motherhood (NCCM) work in partnership to prevent child immigration detention, provide support for detained children, and advocate for their release. According to UNICEF, "[o]ngoing advocacy efforts between NCCM, the Ministry of Social Solidarity, the Public Prosecution office, and the Ministry of Interior (MoI) aim to provide alternatives to detention and identify alternative care options for children" arrested for reasons related to their migration status.[122] Additionally, the government is making efforts to strengthen its child protection mechanisms. This includes strengthening Child Protection Committees (CPCs) - which are established by the government - and case management units through building a social work force, developing systems-wide procedures and referral pathways and establishing a Child Helpline, with the support of a range of actors including UNICEF, UNHCR and civil society organisations.[123]

› Efforts are ongoing between the **Government of Jordan**, civil society organisations and UN agencies towards improving the child protection system and making it more inclusive of refugees and migrants. In 2016, members of the Child Protection Sub-Working Group promoted efforts to strengthen data management information systems across organisations working on refugee child protection, and released SOPs for Best Interests Determinations of Refugee Children in Jordan.[124] These SOPs "helped to establish functional BID panels throughout the country," comprising members of the Government of Jordan, UN agencies and NGOs.[125] While BID panels for children were previously held between humanitarian agencies, the Jordanian authorities are playing an increasingly active and now key role in these systems.[126] Additionally, a case management system was piloted from 2013 onwards, with the support of UNICEF and other NGOs, as a system to be used by the Family Protection Department, The National Council for Family Affairs, and the ministries of Social Development, Health and Education.[127]

Establishing the effectiveness of alternatives

In *There Are Alternatives*, three main criteria were set out for assessing the 'effectiveness' of ATD. These were:

› **Improved Respect for People's Rights and Wellbeing**

TAA established that ATD are better placed to uphold the rights of asylum seekers, refugees, stateless persons, irregular migrants and other people on the move. They avoid the harms of detention, reduce exposure to overcrowding and long-term detention, and enable greater access to programs that support health and welfare. The report also found that effective case management in the community is more likely to uphold fundamental civil, political, economic, social and cultural rights, thereby contributing to improved individual wellbeing and self-sufficiency.

› **Cost and Affordability**

TAA found that alternatives have been shown to be up to 80% cheaper than detention and that in the majority of cases detention is significantly more expensive than the available alternatives. The difference in costs were explained due to a number of factors including lower operating costs and the avoidance of litigation and compensation claims resulting from wrongful detention or harmful impacts.

› **Compliance and Engagement**

One of the major concerns of governments when it comes to ATD is whether they will result in reduced compliance and that people who may be considered a 'flight risk' may stop engaging with the authorities. However, TAA showed that alternatives can achieve high compliance rates, achieving up to 95% appearance rates. The study found that ATD – and particularly those incorporating case management and legal advice – also assist in achieving efficient and sustainable outcomes by building confidence and trust in the immigration process. This can improve final immigration outcomes.

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Many of the examples of promising practice set out above show potential for addressing one or more of these elements. A number of them have already been formally evaluated and demonstrate how alternatives to detention and other positive developments in reducing detention can be better for people's health and wellbeing, more cost effective, and help to resolve people's migration cases. For instance, a 2020 evaluation of the case management-based pilot ATD initiatives in Bulgaria, Cyprus and Poland showed a high level of engagement with the pilots on the part of participants, 86% of whom remained engaged across the three countries.[128] It also demonstrated improvements in people's ability and capacity to work towards resolving their cases.

In 2022, an evaluation of the government-civil society ATD partnership in the UK found compelling evidence that participants experienced more stability and better health and wellbeing outcomes whilst being supported by Action Access in the community than they had received while in detention. Evidence from this pilot suggests that these outcomes were achievable without decreasing compliance with the immigration system.[129] It also found evidence to suggest that the cost of supporting people in the community could be half that of holding them in detention.

A 2019 evaluation of a community placement and case management programme run by SUKA Society for unaccompanied and separated children at risk of immigration detention in Malaysia found that the programme had significantly improved the overall wellbeing, safety and stability of children. At the same time, the programme cost 90% less than immigration detention and achieved 100% compliance rates.[130] Similarly positive results were demonstrated through a recent independent evaluation[131] of a community-based ATD programme implemented by Host International Thailand, through which children and mothers released from immigration detention are supported with case management and other services. Children and their mothers in the programme experienced greater resilience and wellbeing outcomes, including through improved access to education and other services. The programme has also promoted greater social cohesion between refugee and local communities, and is significantly less costly to run than immigration detention.

For those that have not been formally evaluated, interviews with a number of stakeholders suggest that they show promise if scaled up or strengthened, particularly when it comes to ensuring adequate resourcing and engagement from a range of governmental and non-governmental actors.[132]

Conclusion and recommendations

Across the world, and often in the face of extremely restrictive and challenging political environments, efforts are ongoing on the part of a number of governments, local authorities, civil society actors and UN agencies to reduce and end the use of immigration detention. The promising practices identified within this paper are illustrative of just some of the recent attempts to move towards migration governance systems that allow people to resolve their cases in the community, guaranteeing them access to their rights, agency, and the services they need.

The examples included here range from rights-based ATD initiatives and programmes to other developments in law, policy and practice that represent positive steps towards reducing and ultimately ending immigration detention. What they all have in common is that they contain some or all of the elements that IDC sees as necessary for States to gradually move away from detention as a tool of migration governance.

Despite some positive momentum, and notwithstanding the significant - and growing - body of international and regional standards that set out to end child detention and to limit the use of detention for people on the move, there is still a long way to go before non-detention and ATD become the 'new normal.' The upcoming International Migration Review Forum (IMRF) in May 2022 will give States the opportunity to gather for the first time to review progress on the guiding principles and commitments they made within the GCM. It presents an opportunity to harness momentum around ATD and to ensure that promising practice can be replicated and scaled up. It will also be critical that efforts continue well beyond the IMRF, and that they ultimately lead to concrete steps towards reducing and ending immigration detention. It is only through such actions that migrants, refugees and other people on the move will truly be able to live with rights and dignity.

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In particular, governments and States should work towards:

Setting up programmes that reduce and end people's risk of immigration detention in the short and long terms

› Introduce long-term regularisation schemes that allow for people with irregular migration status to gain legal residence and access to rights and services.

› Put in place clear and accessible programmes that allow for the provision of formal status and documentation for people awaiting a decision on their migration case.

› Ensure that appropriate and adequately resourced screening, assessment and referral mechanisms are in place in order to allow for identification of vulnerabilities and to determine placement options.

Increasing the use of rights-based, community-based ATD for people at risk of detention

› Incorporate provisions around case management-based ATD into legislation and policy.

› Pilot and scale up case management-based and rights-based alternatives to detention that provide holistic, individualised support to people as they work to resolve their cases in the community. Where possible, partnerships should be established with civil society organisations and grassroots groups in order to ensure that case management provision is independent and reflects the needs of migrant communities.

› Ensure that adequate funding is available for non-custodial solutions, and prioritise these approaches over immigration detention when it comes to resource allocation.

Putting in place alternative care arrangements for children

› Ensure that alternative care arrangements are in place for children on the move and that these programmes are provided with adequate funding and safeguards.

› Integrate migrant children into existing national child protection systems and ensure that children are able to remain with family and/or guardians in non-custodial, community-based contexts while their immigration status is being resolved.

› End detention of all children, in legislation and in practice, in line with GCM and international human rights law commitments.

Ensuring that efforts to reduce and end immigration detention put engagement and human rights front and centre

› Avoid the use of de facto detention and alternative forms of detention – including electronic tagging – that still deprive people of their liberty.

› Ensure that efforts to reduce and end immigration detention respond to the diverse and intersecting identities of people on the move, including by ensuring that they are gender-sensitive and gender-responsive.

› Build the understanding and capacity of officials to apply appropriate protection tools and processes, including screening and vulnerability assessment tools.

Ensuring the collection and publication of ethical, credible data and sharing of practices

› Strengthen responsible and ethical collection of data on migrants, refugees and other people on the move - particularly when it comes to immigration detention - and ensure information sharing with relevant governmental and non-governmental actors while respecting privacy and firewalls.

› Conduct mapping in the country context to identify risk factors for immigration detention, as well as to identify strengths and gaps in existing practice which could support context-specific, rights-based ATD for migrants, refugees and other people on the move.

› Engage in peer learning initiatives, to draw learning and ideas from other countries and regions on promising practices to reduce and end immigration detention, including learning from countries that do not use immigration detention as a migration governance tool as the ultimate best practice.

Promoting whole-of-government and whole-of-society approaches

› Work closely with civil society organisations, grassroots groups, local authorities and UN agencies in order to further whole-of-society approaches to reducing and ending immigration detention.

› Meaningfully engage with grassroots groups and leaders with lived experience in order to ensure that the views and voices of those with lived experience of immigration detention are put front and centre.

› Ensure coordination between government departments in order to put in place coherent, whole-of-government approaches to migration governance that respect the rights of migrants, refugees and other people on the move.

Ultimately ending the use of immigration detention

› Incorporate provisions around non-detention into legislation and policy.

› End detention of all children and ensure that migrant children are integrated into mainstream child protection systems

› End the use of immigration detention as a tool of migration governance, and explore other options to ensure that people are able to resolve their cases in the community with access to their rights and to the support and services they require.

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Notes

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2   Hudson, B. (2007) 'The criminalisation of migration', *Criminal Justice Matters,* 70(1), pp. 35-36; Amnesty International (2020) 'Punishing compassion: Solidarity on trial in Fortress Europe', EUR 01/1828/2020 (London). Under international law, the criminalisation of irregular entry or stay is not a legitimate objective on which to base detention. Irregular entry and stay should never be considered criminal offences (see e.g. Report of the Special Rapporteur on the human rights of migrants, François Crépeau, Detention of migrants in an irregular situation, para. 9, A/HRC/20/24).

3   Binding universal and regional human rights treaties, as well as international customary law, establish that everyone has a right to liberty and security of person, including the non-derogable guarantee that no one shall be subjected to arbitrary arrest or detention. See UN Human Rights Council, Report of the Working Group on Arbitrary Detention, 24 December 2012, A/HRC/22/44 § 51: "[...] the prohibition of arbitrary deprivation of liberty is part of treaty law, customary international law and constitutes a jus cogens norm. Its specific content, as laid out in this deliberation, remains fully applicable in all situations." Article 9(1) of the International Covenant on Civil and Political Rights states that "no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law." See International Covenant on Civil and Political Rights. Treaty Series, 999, 171, United Nations (General Assembly).

4   The prohibition of arbitrary detention presupposes that immigration detention must only ever be used as a last resort. The Working Group on Arbitrary Detention Revised Deliberation No. 5 on deprivation of liberty of migrants has reiterated that "[a]ny form of administrative detention or custody in the context of migration must be applied as an exceptional measure of last resort, for the shortest period and only if justified by a legitimate purpose, such as documenting entry and recording claims or initial verification of identity if in doubt." See UN Working Group on Arbitrary Detention, Revised Deliberation No. 5 on deprivation of liberty of migrants, 7 February 2018.

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11 Ibid.

12 UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), Joint General Comment No. 5 (2021) on migrants' rights to liberty and freedom from arbitrary detention, CMW/C/GC/5.

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