

International Detention Coalition

Human rights for detained refugees,
asylum seekers and migrants

Alternatives to immigration detention

*Written submission on 'migrants in transit' to
the Office of the High Commissioner for Human Rights*

IDC SUBMISSION

www.idcoalition.org

Envisioning a world without unnecessary immigration detention

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ABOUT THE IDC

The International Detention Coalition (IDC) is a unique global network of over 300 non-governmental organisations, faith-based groups, academics and practitioners in more than 70 countries that advocate for and provide direct services to refugees, asylum-seekers and migrants in administrative detention. We are the only international member organisation focused explicitly on immigration detention and alternatives to immigration detention. With an international Secretariat based in Melbourne, Australia, the IDC works globally through Regional Coordinators in Africa, the Americas, Asia-Pacific, Europe, and the Middle East & North Africa (MENA).

BACKGROUND

Resolution A/HRC/29/2 on Protection of the human rights of migrants: migrants in transit, was adopted by the Human Rights Council on 2 July 2015. In paragraph 9, the Human Rights Council requests the Office of the High Commissioner for Human Rights to submit to the Human Rights Council before its thirty-first session a study on the situation of migrants in transit, including unaccompanied children and adolescents, as well as women and girls, in consultation with States and other relevant stakeholders, including regional organizations, civil society organizations and national human rights institutions.

Given the often long and multi-directional nature of international migration today, the concept of 'transit' would be understood in this study as the journey of migrants towards their intended destination, noting that migrants can remain in transit for weeks, months or even years. Some may never reach their intended destination. The study would seek to highlight that many migrants risk their lives in search of peace, security and a safe livelihood, and may be vulnerable to a range of human rights violations and abuses, including because they have become victims of fraud, destitute or "stranded" in the transit country. Children can be particularly at risk, whether they are travelling on their own or with their families or care-givers. Migrant women in transit often face specific gendered forms of discrimination and abuse including sexual and gender-based violence both in the public and private sphere.

The Office of the High Commissioner for Human Rights would accordingly be grateful to receive all relevant information for the preparation of this study.

In particular, views and information, including on particular laws, public policies or programmes, action plans or other relevant measures; would be welcome in relation to the following issues:

A. Exit restrictions in countries of origin and the externalisation of border controls which could have an impact on the human rights of migrants in transit.

B. Particular measures in countries of transit, including:

- a. Access to essential services in transit, such as health care and services, including sexual and reproductive health care;*
- b. Protection from violence, including sexual and gender-based violence, as well as abuse and exploitation of migrants in transit by State and non-State actors;*
- c. Specific measures to protect and ensure the best interests of all migrant children in transit, whether they are travelling on their own or with their parents/guardians;*
- d. Rescue of migrants in distress at land, sea and air borders, provision of immediate assistance and referral to adequate services;*
- e. Alternatives to immigration detention and protection against arbitrary detention;*
- f. Measures to ensure that any returns of migrants in transit are carried out in accordance with international law and standards, including the principle of non-refoulement and the prohibition of collective expulsion.*

C. The availability and adequacy of a human rights-based approach to transit migration, including:

- a. Governance of irregular migration, including avoiding the criminalisation of migrants in an irregular situation;*
- b. Measures to prevent and combat all forms of xenophobia, racism and religious intolerance against migrants;*
- c. Human rights-based approaches to border governance, including in the context of counter-smuggling measures;*
- d. Data collection measures to monitor the situation of migrants in transit, including on the number of migrants killed, injured or victims of crime while attempting to cross international borders.*

INTRODUCTION

1. The International Detention Coalition (IDC) welcomes the opportunity to make the following submission to the Office of the High Commissioner for Human Rights (OHCHR) in response to Human Rights Council Resolution A/HRC/29/2 on *Protection of the human rights of migrants: migrants in transit* and the subsequent request of the Human Rights Council for “a study on the situation of migrants in transit, including unaccompanied children and adolescents, as well as women and girls.”
2. In preparation for this study, OHCHR has requested “views and information” on a number of specific issues. This submission will address a number of the relevant issues, but focuses specifically on issue B(e):

Alternatives to immigration detention and protection against arbitrary detention;

About the IDC

3. The International Detention Coalition is a unique global network, of over 300 civil society organisations and individuals in more than 70 countries that advocate for, research, and provide direct services to refugees, asylum-seekers and migrants affected by immigration detention. The IDC works to ensure that the human rights of refugees, asylum-seekers and migrants impacted by immigration detention are respected, protected and fulfilled. It aims to bring about changes in legislation, policy and practice that prevent, mitigate and respond to the harms associated with immigration detention and that promote alternatives to detention. The IDC does this through network and capacity building, advocacy, awareness raising and campaigns, research and reporting.

Our program of research on alternatives to detention

4. In 2011, the IDC published the results of an unprecedented global research study into alternatives to detention. Entitled *There are Alternatives*,¹ this research was achieved through an extensive review of existing literature; an international online survey of 88 participants in 28 countries; and international field work in nine countries, including in-depth interviews with 57 participants and eight site visits.
5. A second study begun in 2013 to extend the research and to test the findings of the first study against a wider range of settings. The second study aimed to identify and describe alternatives in 20 additional countries. Four countries were selected from each of the following regions: the Americas; Asia-Pacific; Europe; the Middle East and North Africa; and South and East Africa. The selection strategy was designed to include a variety of States experiencing transit migration; large numbers of refugees, asylum-seekers, stateless persons or irregular migrants; and/or those with limited resources available to manage such populations. Data collection involved a literature review for each country and region; in-depth interviews with 71 participants from 18 countries, either in person or by Skype; and international fieldwork, conducted in Turkey, Indonesia, and Mexico.
6. We launched a Revised Edition of *There are Alternatives*,² in October 2015, on the margins of the 30th Session of the United Nations Human Rights Council. This Revised Edition updates and expands the original work using the insights and expertise accrued in the four years since the first Handbook was launched. In total, the IDC has now identified more than 250 examples of alternatives to detention in over 60 countries worldwide.
7. This submission is based on the results of the IDC’s program of research on alternatives to detention as well as the IDC’s experience working with IDC members, States, international and intergovernmental organisations, and a range of other key stakeholders.

¹ Sampson, R., Mitchell, G. and Bowring, L., *There are alternatives: A handbook for preventing unnecessary immigration detention* (The International Detention Coalition, 2011).

² Sampson, R., Chew, V., Mitchell, G., and Bowring, L. *There Are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention (Revised)*, (Melbourne: International Detention Coalition, 2015).

WHAT ARE ALTERNATIVES?

1. Despite the global increase in the use of immigration detention, “more governments are taking steps to explore and implement alternatives, ranging from scoping studies and small-scale pilot projects to significant policy developments and systemic change”³. There is also growing consensus on the need to research and understand the elements of successful alternatives to detention at the UN level and regional levels, as well as in a number of domestic contexts.⁴
2. This can be linked, among other things, to the mounting recognition that detention is expensive, damaging to individuals and does not deter irregular migration.⁵ Interest in alternatives has also stemmed from growing litigation on the illegal and arbitrary application of immigration detention, from challenges in managing complex cases and vulnerable individuals in places of immigration detention, and from increasing evidence that alternatives can be highly effective in achieving the migration management objectives of the State without resorting to the use of detention.

Defining alternatives to detention

3. There is frequent misunderstanding and confusion around the definition and proper role of alternatives to immigration detention. The phrase ‘alternatives to immigration detention’ (‘alternatives’ or ‘ATD’) is not an established legal term nor a prescriptive concept, but a fundamentally different way of approaching migration governance.
4. Alternatives shift the emphasis away from migration enforcement and control to a pragmatic and proactive approach focused on case resolution. An alternative approach respects refugees, asylum-seekers, and migrants as rights holders who can be supported and empowered to comply with immigration processes without the need for detention.
5. Alternatives, like migration governance more broadly, seek to respond to international migration in a way that protects fundamental rights, upholds state responsibilities, and promotes greater international cooperation.⁶
6. The IDC defines alternatives to detention as:

*Any law, policy or practice by which persons are not detained for reasons relating to their migration status.*⁷
7. Alternatives include, among other things:
 - Legal provisions which prohibit the use of immigration detention and/or guarantee rights to liberty and free movement regardless of legal status;
 - Assigning a case manager to help support individuals through the migration process;
 - Ensuring access, free of charge if necessary, to legal assistance;
 - Ensuring the right to work is respected, or otherwise providing material and social support throughout the migration process;
 - The provision of temporary residence permits until the migration process has been completed;
 - Shelters and open reception facilities;
 - Minimally appropriate reporting requirements;
 - Designated residence or other minimally appropriate restrictions on freedom of

³ Sampson, R.; Mitchell, G., *Global Trends in Immigration Detention and Alternatives to Detention: Practical, Political and Symbolic Rationales*, Journal on Migration and Human Security (2013), p. 98.

⁴ See generally, Sampson et al., *There are alternatives* (Revised, 2015); see also, Alice J. Edwards, *Back to Basics: The Right to Liberty and Security of Person and “Alternatives to Detention” of Refugees, Asylum-Seekers, Stateless Persons and Other Migrants*, UNHCR, available at: <http://www.unhcr.org/refworld/docid/4dc935fd2.html>.

⁵ International Detention Coalition (2015), *Briefing Paper: Does Detention Deter?*, available at: http://idcoalition.org/wp-content/uploads/2015/04/Briefing-Paper_Does-Detention-Deter_April-2015-A4_web_final_3.pdf.

⁶ OHCHR, *Migration and human rights: Improving Human Rights-Based Governance Of International Migration*, 9 (2013); see also Alexander Betts (ed.), *Global Migration Governance*, Oxford University Press, 2011; and Alexander Betts, *Global Migration Governance - the Emergence of a New Debate*, Global Economic Governance Program Briefing Paper (November 2010).

⁷ Sampson et al., *There are alternatives* (Revised, 2015), p. 2.

- movement;
- Release from detention provisions, such as bail or surety.

8. It is important to recognize that alternatives:

- *do not* only apply to persons in situations of particular vulnerability, such as children or refugees, but to all individuals at risk of immigration detention;
- *do not* only refer to accommodation models, but to a wide range laws, policies, and practices intended to ensure detention is a last resort;
- *do not* necessarily require the application of conditions or restrictions on liberty such as bail or reporting requirements;
- *do not* refer to ‘alternative forms of detention’.⁸

The IDC’s approach to alternatives

9. The IDC views alternatives as grounded in the fundamental right to liberty, which requires that any detention of refugees, asylum-seekers and migrants must be an exceptional measure of last resort and only resorted to when legal and absolutely necessary and proportionate in the individual case. The right to liberty of person is guaranteed to everyone, including refugees, asylum-seekers and migrants, irrespective of legal status.⁹
10. Rather than focusing on detention itself, we believe that successful alternatives take a preventive approach. In this way, alternatives rely on a range of strategies to keep individuals engaged in migration procedures while ensuring the right to liberty.
11. Although alternatives sometimes make use of residential facilities, the location of the individual is not of primary concern. Instead, the focus is on:
 - Screening and assessing each individual case;
 - Providing case management, legal advice and other mechanisms that support the individual to work towards case resolution;
 - Ensuring basic needs can be met;
 - Applying conditions or limited restrictions only where necessary.
12. While it is clear that the irregular entry of refugees, asylum-seekers and migrants should never be considered a criminal offence,¹⁰ it is important to acknowledge that the development of alternatives to detention is closely linked to concepts of ‘restorative justice’ and ‘alternative measures’ first articulated within the criminal justice context.
13. Such an understanding of ‘restorative justice’ and ‘alternative measures’ is instructive insofar as these approaches, like alternatives to detention, were intended not only to reduce the severity of sanctions, but to reduce “the overall volume of sanctions” including non-necessary restrictions or conditions.¹¹
14. Alternatives to detention should, like the restorative justice approach, seek to bring about “a fundamental change in the approach” to traditional enforcement and control models and should include a wide range laws, policies, and practices intended to “ensure that [reforms] lead to a reduction of imprisonment, with alternatives being used instead of [detention].”¹²

⁸ “Whether or not a person is being deprived of liberty does not depend on the name assigned by the state, but rather on the reality and severity of the restrictions imposed.” International Commission of Jurists (ICJ), *Migration and International Human Rights Law*, 2014, Practitioners Guide No. 6, Updated Edition, p. 176; *Amuur v. France*, ECtHR, *op. cit.*, fn. 45, para. 42; *Nolan and K. v. Russia*, ECtHR, *op. cit.*, fn. 472, paras. 93–96; *Abdolkhani and Karimnia v. Turkey*, ECtHR, Application No. 30471/08, Judgment of 22 September 2009, paras. 125–127; *Ashingdane v. United Kingdom*, ECtHR, Application No. 8225/78, Judgment of 28 March 1985, para. 42.

⁹ UN Human Rights Committee (HRC): *General Comment No. 35 on Article 9, Liberty and security of person*, (CCPR/C/GC/35), para. 3; Report of the Special Rapporteur on the human rights of migrants, François Crépeau, *Detention of migrants in an irregular situation*, para. 11, A/HRC/20/24; Human Rights Committee General Comment No. 31 (2004): “the enjoyment of Covenant rights is not limited to citizens of States Parties but must also be available to all individuals, regardless of nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State Party.”

¹⁰ 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;

¹¹ United Nations Office on Drugs and Crime, *Custodial and Non-Custodial Measures: Alternatives to Incarceration*, Criminal Justice Assessment Toolkit 3, November 2006, V.06-57969, available at: http://www.unodc.org/documents/justice-and-prison-reform/cjat_eng/3_Alternatives_Incarceration.pdf.

¹² *Ibid.*

15. A key finding of the IDC's research is that there are a variety of alternatives currently in use internationally that prevent unnecessary detention and that are being used to effectively engage and support populations in the community. Many of these alternatives may not be considered "alternatives to detention" in a traditional, narrow, or legalistic understanding of the term, but are nonetheless effective and appropriately considered as alternatives.
16. In line with these findings, the IDC has sought to expand current policy debates beyond a narrow interpretation of ATD by looking more broadly at a variety of laws, policies and practices that successfully ensure refugees, asylum-seekers and migrants their right to liberty, while at the same time ensuring safety, compliance and cost-effectiveness to the State.

KEY ELEMENTS OF SUCCESSFUL ALTERNATIVES

17. The IDC's research identified a number of key elements for ATD to be successful in terms of compliance (including with negative immigration decisions) and well-being outcomes. These include:
 - Individuals are informed and feel they have been through a fair process;
 - There is a focus on engagement and early intervention;
 - The ATD aims at holistic case resolution, not simply a focus on removal;
 - Individuals are able to meet their basic needs (housing, food, etc.);
 - Any conditions applied are not overly onerous / don't set people up to fail.
18. Many States that do utilize alternatives have focused on often unnecessarily restrictive or intrusive options, such as onerous reporting and monitoring, or other forms of restrictions on liberty. However, the IDC's findings indicate that overly onerous conditions actually have an adverse effect on compliance and successful case resolution outcomes. On the other hand, a number of countries have had success with community-based models with a focus on individual early intervention, need and risk assessments, case management, welfare assistance and independent legal advice.
19. Indeed, most successful alternatives to detention identified by the IDC were those that used constructive engagement rather than enforcement to ensure individuals comply and cooperate with migration authorities, thus reducing and eliminating the need for detention at all.¹³ Although such alternatives sometimes make use of residential facilities as part of a management system, the location of the individual is not of primary concern. Instead, the focus is on assessing each case and ensuring that the community setting contains the necessary structures and supports that will best enable the individual to work towards a resolution of their migration status together with migration authorities.
20. These alternatives tend to successfully screen and assess the migrant population¹⁴ so that they can better make informed decisions about available options. They use early intervention to support individuals throughout the bureaucratic administrative process via the provision of interpreters, legal assistance, and case managers who provide quality advice and assist the individual to explore all the legal options available to them, including both options to remain in the country legally and, if needed, avenues to depart the country safely.
21. Finally, these programs treat individuals with respect and dignity, ensuring that basic needs are met and working with individuals as part of the same "team", rather than through an adversarial process.
22. The IDC has found that some of the most effective alternatives use holistic case management to engage with individuals and work towards a resolution of their case without the need for

¹³ These findings have been supported by subsequent research in Europe and internationally, see Jesuit Refugee Service Europe, *From Deprivation to Liberty. Alternatives to Detention in Belgium, Germany and the United Kingdom* (December 2011), available at: <http://www.jrseurope.org/JRSEuropeFromDeprivationToLiberty20122011.pdf>; and Cathryn Costello & Esra Kaytaz, *Building Empirical Research into Alternatives to Detention: Perceptions of Asylum-Seekers and Refugees in Toronto and Geneva* (UNHCR, June 2013), available at: <http://www.refworld.org/pdfid/51a6fec84.pdf>.

¹⁴ Sampson et al., *There are alternatives* (Revised, 2015), p. 35.

detention. Case management can be understood as “a comprehensive and coordinated service delivery approach widely used in the human services sector to ensure a coordinated response to, and support of, the health and wellbeing of vulnerable people with complex needs.”¹⁵ Case managers form working relationships with individuals and families to empower, enhance their wellbeing and problem-solving capacities, resolve outstanding issues, provide information on how to obtain services and resources in their communities, and work towards the protection of people who are not in a position to do so themselves. When used properly, case management can contribute to ensuring that the elements of successful alternatives outlined above are in place.¹⁶ Satisfactory outcomes can therefore often be achieved without the imposition of onerous reporting or other restrictive conditions.

23. These experiences suggest that there are new alternative approaches States can explore, which have been used successfully in other countries to prevent unnecessary immigration detention and to effectively manage cases in the community in a humane, timely and effective manner.

BENEFITS OF ALTERNATIVES

1. When implemented properly, the IDC’s research finds that alternatives offer a range of benefits to states and migrants alike, including:
2. Compliance – ATD maintain high rates of compliance and appearance, on average 90% compliance. A study collating evidence from 13 programs found compliance rates ranged between 80% and 99.9%.¹⁷ For instance, Hong Kong achieves a 97% compliance rate with asylum-seekers or torture claimants in the community, and in Belgium, a pilot working with families facing removal had an 82% compliance rate.¹⁸
3. Cost Savings – ATD cost less than detention, on average 80% cost savings with an annual daily cost of around \$100/day. A cost saving of 93% was noted in Canada¹⁹ and 69% in Australia on alternatives to detention compared to detention costs²⁰. In addition independent returns in the EU and Australia save approximately 70% compared to escorted removals²¹.
4. Voluntary Return – ATD increase independent departure and voluntary return rates for refused cases, an average of 65% with up to 82% reported. Examples in Canada, Australia and the US of both refused asylum-seekers and irregular migrants demonstrated return rates of between 60% and 69%²², while Sweden reported an 82% rate of return from the community among refused asylum-seekers²³.
5. Additionally, successful alternatives can reduce wrongful detention and litigation; reduce overcrowding and long-term detention; better respect, protect and fulfil the human rights of migrants; improve integration outcomes for approved cases; and improve migrant health and welfare.

¹⁵ Sampson et al., *There are alternatives* (Revised, 2015), p. 47.

¹⁶ For key components of successful case management in the migration context, see: International Detention Coalition (IDC), *Case management as an alternative to immigration detention: The Australian Experience* (2009), p. 11, available at: <http://www.refworld.org/pdfid/4f3cc2562.pdf>.

¹⁷ Sampson et al., *There are alternatives* (Revised, 2015), p. 17.

¹⁸ *Ibid.*

¹⁹ *Ibid.*, p. 44.

²⁰ *Ibid.*, p. 40.

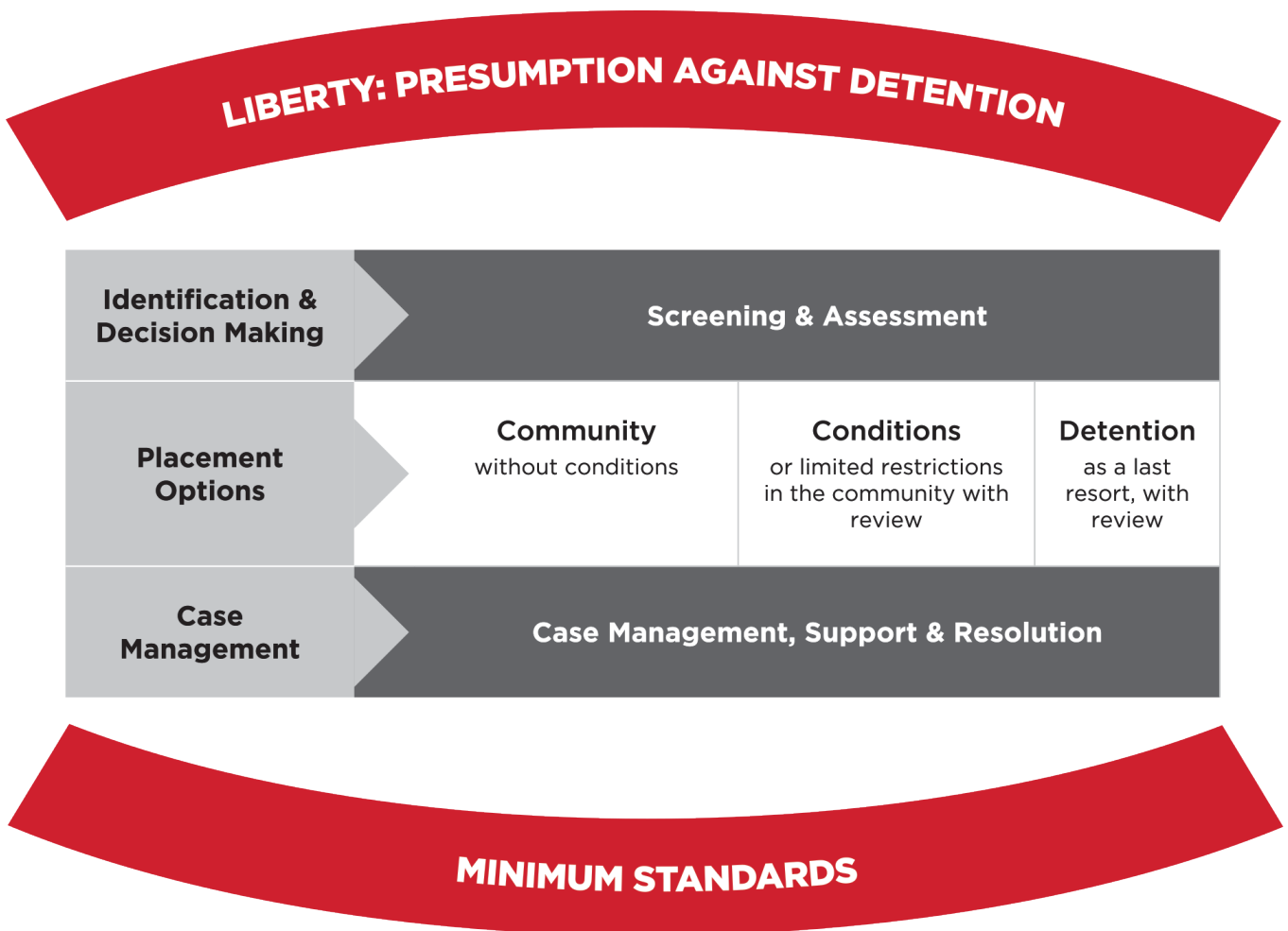
²¹ *Ibid.*, p. 52.

²² *Ibid.*, p. 39.

²³ *Ibid.*, p. 35.

THE COMMUNITY ASSESSMENT AND PLACEMENT (CAP) MODEL

6. Although States have a legal obligation to pursue alternatives to detention, there is very little guidance available on how this should be done. To assist in this area, the IDC has identified and incorporated a number of positive examples globally into a single framework, the Revised Community and Assessment Model (Revised CAP model). This model has been designed as both a theoretical and practical framework to assist States in their exploration and development of alternatives to detention.
7. The Revised CAP model identifies a number of core principles and processes that should be considered to ensure detention is always a last resort, while providing reassurance and confidence for the State and community that refugees, asylum-seekers, and migrants can be effectively supported and managed in the community.



8. **Liberty: Presumption against detention**

The right to liberty and a presumption against detention are the first of two principles that underpin the Revised CAP Model. The right to liberty is a fundamental human right, enshrined in all major international and regional human rights instruments. It is guaranteed to all persons, including refugees, asylum seekers, migrants and stateless persons, irrespective of their legal status. This right to liberty of person imposes a number of specific limitations on States' ability to detain, including the requirement that detention is justified by a legitimate State objective, is in accordance with the law, and is not arbitrary. Any system seeking to avoid unnecessary and arbitrary detention must be based on a presumption of liberty.

The research identified the following strategies to protect the right to liberty. These strategies are strongest when established in law; however, they can also be stated in policy or established in practice.

These include laws, policies and practices that:

- Establish a presumption of liberty
- Provide a mandate to apply alternatives in the first instance
- Only permit detention when alternatives cannot be applied
- Prohibit the detention of vulnerable individuals

9. **Minimum standards**

The second principle in the Revised CAP model is minimum standards. These minimum standards underpin all decision-making and placement processes in the Revised CAP model. There are a number of minimum standards which States must respect and uphold for all individuals, regardless of legal status. These minimum standards help to ensure the proper functioning of migration governance systems and the effectiveness of alternatives.

Without these minimum standards in place, alternatives are also less likely to achieve desired rates of compliance, case resolution and respect for human rights. Individuals are better able to remain in compliance with authorities if they can meet their basic needs while in the community. They are also more likely to accept a negative visa or status decision if they believe they have been through a fair immigration process; they have been informed and supported through the process; and have explored all options to remain in the country legally.

Minimum standards include:

- Respect of fundamental rights
- Basic needs
- Formal status and documentation
- Legal advice and interpretation
- Fair and timely case resolution
- Regular review of placement decisions

10. **Identification and decision-making**

Screening and assessment are crucial for ensuring effective migration governance. Individual screening and assessment are the only ways to ensure detention meets the tests of necessity and proportionality and is not arbitrary. Indeed, immigration authorities are increasingly using screening and assessment to 'screen out' those who should not be detained and to make informed placement and management decisions.

Through individual screening and assessment, governments can identify and evaluate risk, needs, vulnerabilities and strengths to make an informed case-by-case decision on how to place, manage and support an individual while their immigration status is being resolved. 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.

11. **Case management**

The majority of successful alternatives identified during this research rely on case management to work towards case resolution, while maintaining high levels of compliance with conditions and restrictions while in the community and improved health and wellbeing. Case management centres on understanding and responding to the unique needs and challenges of individuals and their context. Case management is designed to empower individuals to resolve issues independently and link with additional supports when needed. Case management relies on identifying all the needs and strengths of the individual; addressing those needs and building upon the strengths as able with available resources; and building resilience in the individual to deal with the range of outcomes before them.²²¹ Case resolution, in comparison, focuses solely on the outcome of the migration case. This responsibility sits with immigration authorities. However, case management can contribute to timely case resolution by identifying barriers to migration outcomes and working on shared solutions. Case resolution relies on a wide range of visa, residency and departure options.

12. **Placement options**

There are various placement options available to a State in supporting and managing an individual, pending case resolution. Placement in the community without conditions – or with liberty – is the preferred option in the majority of cases. Placement in the community with conditions is used as necessary and proportionate after individual screening and assessment has identified concerns. Finally, immigration detention may only be used as a measure of last resort in exceptional circumstances, provided the standards of necessity, reasonableness and proportionality have been met in the individual case.

Hosting transit migrants

Countries that host large numbers of non-citizens intending to transit within undocumented mixed migration experience particular pressures and challenges.²⁶² Governments of preferred destinations are increasingly working to thwart the journeys of those intending to reach their territory. However, migrants excluded from legal migration options and from full participation in local society are likely to accept greater risks to resolve their situation.²⁶⁴

Indeed, strict control measures do not resolve the factors motivating migration. Increased use of detention and other forms of enforcement increases the likelihood migrants will avoid authorities entirely, participate in unregulated or illegal activity or accept greater risks to continue the journey.²⁶⁵ One study in Libya concluded:

*The absence of a humane and orderly framework for handling migration flows in Libya is no doubt a contributing factor to the ever increasing numbers of migrants, asylum seekers and refugees willing to risk their lives in the Mediterranean to reach the safety of Europe.*²⁶⁶

While secondary movement cannot always be prevented, a range of strategies can be utilised by States to better understand, respond to and manage such mixed migration. In the first instance, screening and assessment assists in understanding factors driving migrant journeys. As shown in Section 6, all governments benefit from understanding these factors to ensure placement decisions are well informed and address identified concerns. For example, people who are migrating due to persecution, systemic violence or extreme poverty are seeking different outcomes to those who are seeking to reunite with family.

Understanding these motivating factors and identifying the likelihood that some migrants will remain in the system while awaiting an outcome assists in determining appropriate placement options, including shelters for children, victims of crime and trafficking and vulnerable groups and reception centres for asylum seekers.

There is evidence that migrants are less likely to abscond in a country they intend to transit if they can: meet their basic needs through legal avenues; are not at risk of detention or *refoulement*, and remain hopeful regarding future prospects.

In most instances, these transit community models retain the right to freedom of movement in the community; in some contexts, migrants are required to reside in specific towns (Box 13 Turkey) or to not enter border areas (airport or seaport) without permission (Indonesia).²⁶⁷ Conditions, such as reporting, are only applied as needed. The principles of case management and information about available options remains central, as seen in reduced levels of absconding in Thailand and Indonesia (Section 2.4.1).

THERE ARE ALTERNATIVES (REVISED EDITION)

Asylum seekers, refugees and migrants are less likely to abscond in a country they intend to transit if they can:

- Meet their basic needs through legal avenues
- Are not at risk of detention or refoulement, and
- Remain hopeful regarding future prospects.²⁶⁸

Examples of alternatives in countries hosting large numbers of transit migrants include Box 2 Poland and Croatia, Box 7 Hungary, Box 5 Panama, Indonesia, Israel and Malta, Box 8 Spain, Box 9 Romania, Box 13 Turkey, Box 19 Hungary, Box 22 Greece, Box 23 Slovenia and Box 26 Mexico.

Notwithstanding these strategies, complete control in all cases is unrealistic. Effective solutions include proactive, preventative mechanisms that address the root causes of migration and that build a stronger

international system of burden sharing, including transnational cooperation and regional solutions. The government of the United States recently announced a major funding initiative to address the root causes of irregular migration by unaccompanied children. The program aims to support the security, good governance and economic prosperity of countries in the Northern Triangle. As the Vice President, Joe Biden, stated in his announcement of the plan, “the cost of investing now in a secure and prosperous Central America is modest compared with the costs of letting violence and poverty fester.”²⁶⁹ Such a response reframes issues of irregular migration as an issue of international development and security. Detention does not effectively reduce mixed migration. Ultimately, managing undocumented migrants in transit requires understanding motivating factors to determine fair, timely and humane national responses, and for broader regional dialogue on longer-term solutions.

BOX 22

CLOSING DETENTION CENTRES IN FAVOUR OF ALTERNATIVES

GREECE

The Greek government started releasing people from detention in February 2015 as part of a policy of more humane treatment of migrants.²⁷⁰ For over ten years, Greece had systematically detained refugees, asylum seekers and migrants who entered the country irregularly, garnering heavy criticism for falling short of international minimum standards.

After visiting the notorious Amygdaleza detention centre, the Deputy Interior

Minister stated “Detention centres – we’re finished with them ... I’m here to express my shame, not as a minister but as a human being ... I couldn’t believe what I saw. I really could not believe it. This must change and it must change immediately.”²⁷¹

The announced policy changes include:

- The immediate revocation of the Ministerial Decision allowing for the prolongation of detention beyond 18 months

- The immediate release and referral to accommodation facilities of vulnerable groups, including unaccompanied minors
- The release of registered asylum seekers whose detention exceeds six months
- The immediate implementation of measures to substantially improve detention conditions
- The use of alternative measures to detention²⁷²