

There are alternatives

A handbook for preventing
unnecessary immigration
detention (revised edition)

*Including the Revised
Community Assessment and
Placement model (CAP)*

**International
Detention Coalition**

Human rights for detained refugees,
asylum seekers and migrants

The International Detention Coalition (IDC) 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.

Coalition members are supported by the IDC Secretariat office, located in Melbourne, Australia, and regional staff based in Berlin, Germany, London, United Kingdom, Geneva, Switzerland, Mexico City, Mexico and Kuala Lumpur, Malaysia.

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ISBN Paperback: 978-0-9871129-8-9

ISBN PDF version: 978-0-9871129-9-6

Published by the International Detention Coalition
Melbourne, Australia

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

Design and layout by Haydn Jones Communication Design

The views expressed in this document are those
of the authors.

This report is available online at <http://www.idcoalition.org>

Acknowledgements

The revised edition of this Handbook was written by Dr. Robyn Sampson of the Swinburne Institute for Social Research at Swinburne University of Technology as well as Vivienne Chew, Grant Mitchell and Lucy Bowring of the International Detention Coalition (IDC). Research for this revised edition was undertaken by Adele Cubbitt, Elba Coria Marquez, Gisele Bonnici, Ben Lewis, Jem Stevens, Vanessa Martinez, Leeanne Torpey, Libby Zerna, Katherine Wright, Caroline Stephens, Athena Rogers, Jocelyne Cardona, Ahmed Correa, Beth Edgoose, Danielle Grigsby, Shaista Kiran, Thais Pinheiro, Catherine Stubberfield, Natasha Warchalok and Rosario Rizzo Lara.

The IDC would like to express gratitude to all the interviewees who made time in their busy schedules to contribute to this research.

The IDC gratefully acknowledges the financial support of the Open Society Foundation, Oak Foundation, Ford Foundation, Planet Wheeler Foundation, CAMMINA, and AVINA, which made this Revised Edition possible.

The first edition of this Handbook was a collaboration with the former La Trobe Refugee Research Centre of La Trobe University in Melbourne, Australia. The original research was undertaken by Robyn Sampson as part of her doctoral studies, which were made possible by a La Trobe University Post Graduate Award. Her work on the revised edition was made possible by a grant of the Emerging Research Priorities scheme of Swinburne University of Technology.

We would like to thank the former and current members of the International Detention Coalition Advisory Group and other IDC members for their support and comments on an earlier draft of this report.

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Preface

What's new in the revised edition?

The International Detention Coalition first published *There Are Alternatives* in 2011. This revised edition updates and expands the original work using the findings from a new piece of research and the insights and expertise accrued in the four years since the first Handbook was launched. Begun in 2013, the new research focused on 20 additional countries. It sought to identify alternatives in a wider range of countries including those experiencing 'transit' migration, those hosting large populations of refugees, asylum seekers, stateless persons or irregular migrants, and/or those with limited resources available to manage such populations. Seventy-one participants were interviewed from government, non-government organisations and international bodies. This Revised Edition contains a number of additions including:

- A Revised Community Assessment and Placement (CAP) Model. While the core elements of the CAP Model remain the same, the model has been redesigned to provide a clearer indication of overarching principles and standards, and the key processes of identification and decision-making, case management and placement.
- New and updated country case studies based on further research. New additions expand our knowledge of alternatives in countries experiencing transit migration, large numbers of irregular migrants and/or those with limited resources available for migration management.
- A revised and strengthened definition of 'alternatives to detention' which incorporates the broad range of persons who may be subject to or at risk of detention by virtue of their immigration status.

Our approach

This Handbook is written from the perspective that in developing strong migration governance systems, States should exercise their authority at international borders in line with their human rights obligations. In particular, they should seek to govern borders in a way that:

- Treats all asylum seekers, refugees and migrants humanely and in compliance with international and national law
- Benefits local populations and minimises national security concerns
- Achieves case resolution in a timely manner
- Ensures cost effectiveness

Migration governance objectives cannot be achieved with a rigid control-and-enforcement approach. A more comprehensive and holistic approach is needed that is tailored to each country's specific context. This Revised Handbook is designed to assist in this process and to contribute to current policy debates. The Handbook presents mechanisms that prevent unnecessary detention and manage and resolve cases in a fair, timely and humane manner from a community setting. Policy makers and other stakeholders will be able to draw upon our conceptual framework to assess current practice and explore options. Further, the Handbook can act as a resource for stimulating debate in international and regional forums by establishing concepts and presenting concrete examples for consideration.

Executive summary

Introduction

This Handbook was written in response to the growing interest of governments, civil society and other stakeholders in finding reliable, cost-effective and humane ways of managing asylum seekers, refugees and migrants outside of detention. Immigration detention is a growing phenomenon as governments strive to regulate unwanted cross-border migration. Detention capacity continues to expand despite well-established concerns that it interferes with human rights, harms health and wellbeing and causes unnecessary human suffering. Further, detention is an expensive policy that is difficult to implement and regularly fails to fulfil its objectives.

Over the past five years, the International Detention Coalition (IDC) has undertaken a program of research to identify and describe alternatives to immigration detention ('alternatives'). This Handbook collates the findings of this research to offer governments a way of moving forward with this difficult area of policy.

The Handbook works to instrumentalise protections enshrined in international law and to strengthen systems so that:

- Detention is shown to be legal, necessary and proportionate in the individual case;
- Detention is only used as a last resort in exceptional cases;
- Community options are as effective as possible.

The case for alternatives

Defining alternatives to detention

The phrase 'alternatives to immigration detention ('alternatives')' is not an established legal term nor a prescriptive concept, but a fundamentally different way of approaching the governance of migration. Alternatives shift the emphasis away from security and restrictions to a pragmatic and proactive approach focused on case resolution. An alternative approach respects asylum seekers, refugees and migrants as rights holders who can be empowered to comply with immigration processes without the need for restrictions or deprivations of liberty.

With this in mind, 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.

The IDC's approach to alternatives

It is important to note that the IDC considers that alternatives:

- Do not apply only to vulnerable individuals such as children or refugees
- Do not refer only to accommodation models
- Do not *necessarily* require the application of conditions such as bail/reporting
- Do not refer to alternative forms of detention

Further, when we take an international perspective and compare existing migration policy and practice across different contexts, we find:

- Most countries do not use detention as the first option in the majority of cases;
- A number of countries rarely resort to detention, if at all.

Benefits of alternatives

The research has identified several benefits in restricting the application of detention and prioritising community-based management options. The key benefits are that:

Alternatives are more affordable than detention

Alternatives have been shown to be up to 80% cheaper than detention. In the majority of cases, detention is significantly more expensive than alternatives. Alternatives have much lower operation costs than detention, increase independent departures (compared to deportations) and avoid litigation and compensation claims resulting from wrongful detention or harmful impacts.

Alternatives are more humane

Alternatives are better placed to uphold the rights of asylum seekers, refugees, stateless persons, irregular migrants and other migrants. They can avoid the harms of detention, reduce exposure to overcrowding and long-term detention, and enable greater access to programs that support health and welfare. Effective management in the community is also more likely to uphold fundamental civil, political, economic, social and cultural rights, thereby contributing to improved individual wellbeing and self-sufficiency. This ensures

asylum seekers, refugees and migrants are better able to contribute to society if residency is secured, or better equipped for facing the challenges of departure from the country.

Alternatives are highly effective

Alternatives can achieve high compliance rates, achieving up to 95% appearance rates and up to 69% independent departure rates for refused cases. Alternatives, particularly those incorporating case management and legal advice, also assist in achieving efficient and sustainable outcomes by building confidence in the immigration process and reducing unmeritorious appeals. This can improve final immigration outcomes, be that integration for individuals granted status or departure for refused cases.

Common characteristics of successful alternatives

The research identified common characteristics of successful alternatives and, where able, established the reasons why these factors contributed to positive compliance, case resolution, cost, and health and wellbeing outcomes. Successful alternatives rely on a range of strategies to keep individuals engaged in immigration procedures while living in the community. Although such programs sometimes make use of residential

A COMPARISON OF DETENTION AND ALTERNATIVES

Detention	Alternatives
→ Is costly	→ Cost less than detention
→ Is harmful to health and wellbeing	→ Support health and wellbeing
→ Interferes with human rights	→ Respect and fulfill human rights
→ Does not encourage participation in case resolution processes	→ Strengthen participation in case resolution processes
→ Is not an effective deterrent	→ Improve voluntary and independent departure rates
→ Can contribute to decisions to undertake secondary movement	→ Can help stabilize vulnerable individuals in transit
→ Can expose governments to litigation for unlawful detention and for the impacts of detention on health	→ Avoid wrongful detention and reduce overcrowding and long-term detention

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.

The most effective laws, policies and practices for preventing unnecessary detention determine (i) whether detention is truly necessary in an individual case and (ii) how best to manage and support the individual in the community to achieve case resolution. These and other core characteristics are brought together in the Revised Community Assessment and Placement model (Revised CAP).

Key elements of successful alternatives

The IDC's program of research has identified the main elements of successful alternatives in terms of cost, compliance and wellbeing outcomes. These include:

- Using screening and assessment to tailor management and placement decisions.
- Providing holistic case management focused on case resolution.
- Focusing on early engagement.
- Ensuring individuals are well-informed and trust they have been through a fair and timely process.
- Ensuring fundamental rights are respected and basic needs are met.
- Exploring all options to remain in the country legally and all avenues for voluntary or independent departure.
- Ensuring any conditions imposed are not overly onerous.

These lessons are brought together in the Revised CAP model.

Research to date suggests asylum seekers, refugees and migrants:

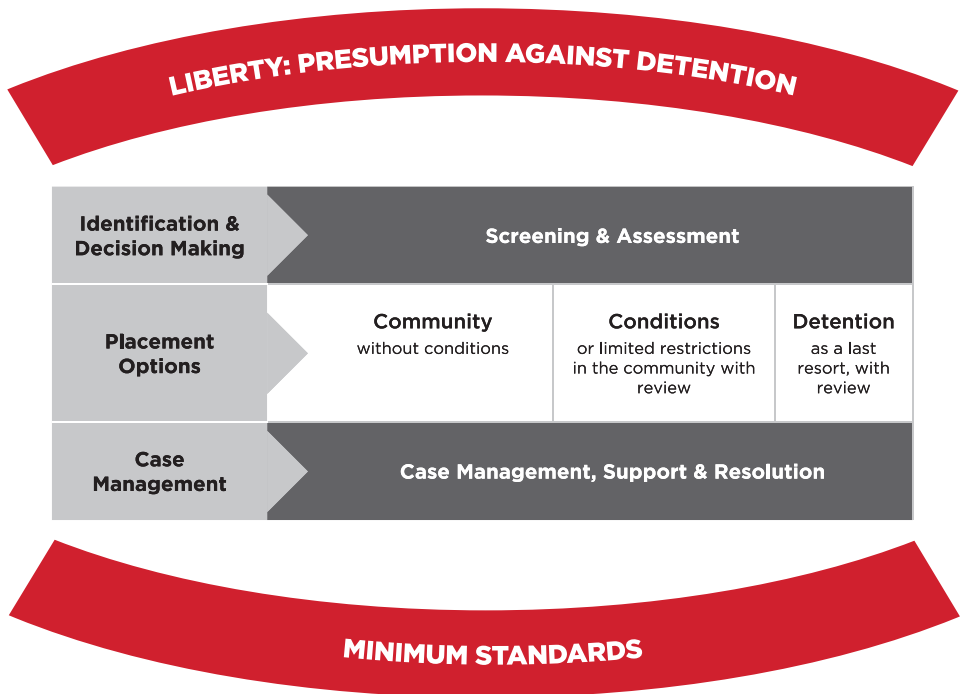
- Rarely abscond while awaiting the outcome of a visa application, status determination or other immigration process, if in their intended destination.
- Are better able to comply with requirements if they can meet their basic needs while in the community.
- Are more likely to accept and comply with a negative decision on their visa application, status determination or other immigration process if they trust:
 - They have been through a fair and efficient process
 - They have been informed and supported through that process
 - They have explored all options to remain in the country legally
- Appear 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.
- Further, while secondary movement cannot always be prevented, screening and assessment can assist in understanding motivating factors and facilitating registration with authorities. However, complete control in all cases is unrealistic. Solutions for such situations include proactive preventative mechanisms that address the root causes of irregular migration and build a stronger international system of burden sharing.

Community Assessment and Placement: Introducing the Revised CAP model

Using a strengths-based approach, the IDC’s program of research identified alternatives in a range of countries and incorporated these into one framework. The Revised Community Assessment and Placement Model (Revised CAP model) is a tool for governments, civil society and other stakeholders to build systems that ensure detention is only used as a last resort and that community options result in optimal outcomes. The Revised CAP model combines the overarching principles of liberty and minimum standards with the key processes of identification and decision-making, placement and case management.

The Revised CAP Model can be used to:

- Analyse and assess existing laws, policies and practices in order to identify gaps, needs, priorities and goals
- Obtain ideas about what is possible and, using these, develop, expand or improve alternatives in local contexts
- Facilitate dialogue with officials in different arms of government, between States and across stakeholders
- Guide the decision-making process to ensure immigration detention is only used as a last resort
- Train officials, practitioners and stakeholders on how to work towards ending unnecessary detention and how to develop and implement alternatives



Liberty: Presumption against detention

The first overarching principle of alternatives is the right to liberty including a presumption against detention. The right to liberty of person is a fundamental human right, enshrined in all major international and regional human rights instruments. It is guaranteed to all persons irrespective of legal status including refugees, asylum seekers, undocumented migrants and stateless persons. The right to liberty of person imposes a number of specific limitations on States' ability to detain, including that detention is justified by a legitimate State objective, is in accordance with the law, and is not arbitrary. In many countries, a migrant's right to liberty is preserved throughout the migration process. In these countries, immigration officials are prevented from using confinement when other options suffice.

The right to liberty and a clear presumption against detention are established by adopting 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

Minimum standards

The second principle underpinning alternatives is minimum standards. There are a number of minimum standards which States must respect and uphold for all individuals, regardless of legal status. These minimum standards also help to ensure the proper functioning of migration governance systems and the effectiveness of alternatives. Without minimum standards in place, alternatives are less likely to achieve desired rates of compliance, case resolution and respect for human rights.

Minimum standards include:

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

Identification and decision-making

Successful migration governance programs understand that refugees, asylum seekers, stateless persons, irregular migrants and other non-citizens without legal status are a highly diverse population with different needs and motivations. Differentiating between these different groups will ensure informed decisions about management and placement options. Such decisions can be reviewed and adjusted as needed with regular review.

Through screening and ongoing assessment, authorities can identify and assess levels of risk and vulnerability as well as the strengths and needs of each person. The research identified several areas of assessment including:

- Legal obligations
- Identity, health and security checks
- Vulnerability
- Individual case factors
- Community context

Case management, support and resolution

The most successful alternatives use case management across all stages to ensure a coordinated and comprehensive approach to each case. Case management centres on understanding and responding to the unique needs and challenges of the individual and their context. Case management builds on an individual's strengths, identifies vulnerability or protection concerns, and addresses needs as able. The approach promotes coping and wellbeing by facilitating access to support services and networks. By ensuring timely access to

all relevant information and meeting other serious needs as able, case management also builds confidence in the immigration process and promotes informed decision-making by both the individual and government decision-maker. Case management can range in intensity from limited engagement with self-sufficient migrants through to intensive support for complex cases and/or for return preparation.

Case resolution is not the same as case management, although they often overlap. Case resolution is focused on finding a permanent or temporary migration outcome. While this responsibility ultimately sits with immigration authorities, case management can contribute to timely case resolution by identifying legal, practical and personal barriers to likely outcomes and working on shared solutions. Case resolution can draw from a range of solutions including various visa and departure options. These include, *inter alia*, regularisation programs, humanitarian or protection visas, other permanent visas, short-term 'bridging' visas, departure to a third country, return to a different area of the country of citizenship, and additional resources to support sustainable return.

Placement options

There are various placement options available to the State in managing an individual pending case resolution. These include placement in the community without conditions or placement in the community with such conditions as determined to be necessary and proportionate in the individual case. Immigration detention is included as the measure of last resort to be used in exceptional cases, provided the standards of necessity, reasonableness and proportionality have been met.

Community without conditions

Liberty – or unconditional placement in the community – is the preferred placement option and is appropriate for the majority of cases. This includes when there is no legal basis to detain and when such placement will meet a State's legitimate aim, such as ensuring completion of a legal migration process. Satisfactory outcomes are often achieved when unconditional placement in the community is supported with minimum standards and case management. An individual placed in the community without conditions may nonetheless be responsible for ensuring their good status and active participation in the applicable migration procedure. This might include appearing at immigration appointments, hearings or interviews, undertaking acts to assist in achieving case resolution, and respecting standard visa or residency requirements. The requirement of normal participation in migration procedures differs from conditions or restrictions on freedom of movement, as the latter are more onerous and impact on a person's right to liberty and freedom of movement.

Conditions or limited restrictions in the community

If, following screening and assessment, serious concerns arise about unconditional placement in the community, there are a range of additional mechanisms that can be introduced to promote ongoing engagement and compliance with authorities. As conditions invariably involve some restrictions on an individual's right to liberty, these must always be shown to be necessary, reasonable and proportional in the individual case.

Conditions may include the following mechanisms:

- Monitoring
- Supervision
- Surety and other consequences for non-compliance

Detention as a last resort

International human rights law and standards make clear that immigration detention should be used only as a last resort in exceptional cases after all other options have been shown to be inadequate in the individual case. The use of confinement with people in an administrative procedure is highly controversial due to its negative impact on health, wellbeing and human rights. Detention should be avoided entirely for vulnerable individuals and be in accordance with international, regional and national law and standards. This includes the requirement that the standards of necessity, reasonableness and proportionality have been met in the individual case. Notwithstanding these serious concerns, detention is included here to be used only as a last resort for exceptional cases after a comprehensive process has determined before an independent judicial authority that all other options will not address the identified concerns.

Detailed information on areas of detention that require vigilance and oversight to avoid arbitrary and excessively harmful detention are available elsewhere.² The broad areas of concern include detention and immigration procedures; treatment and safeguards; safety, order and discipline; material conditions; activities; health care; personnel/staffing; and persons in situations of risk/vulnerability.

Conclusion

Dealing with irregular migration is an everyday area of governance. As the Revised Handbook shows, with effective laws and policies, clear systems and good implementation, asylum seekers, refugees and migrants can be managed in the community in most instances. Screening and assessing the cases of individuals subject to, or at risk of, detention enables authorities to identify needs and introduce appropriate supports and, as needed, conditions in the community. Through these approaches, authorities can manage people in the community in the majority of cases without the financial and human cost that detention incurs. The Revised Handbook shows cost-effective, reliable and humane alternatives are employed in a variety of settings to the benefit of a range of stakeholders affected by this challenging area of policy.

Key findings

International human rights laws and standards make clear that immigration detention should be used only as a last resort in exceptional cases after all other options have been shown to be inadequate in the individual case. This Handbook provides readers with the guidance needed to successfully avoid unnecessary detention and to ensure community options are as effective as possible. This edition presents the Revised Community Assessment and Placement model (Revised CAP model) alongside new and updated country examples. While the basic elements of the original CAP model remain the same, the revised model separates the overarching principles from the bureaucratic processes involved.

There are alternatives

There is a range of alternatives to detention that governments can draw upon to reduce unnecessary detention and increase the success of community-based management. Many solutions exist. In fact, the IDC has identified more than 250 examples in over 60 countries. This includes countries with large numbers of asylum seekers, refugees and migrants and fewer resources.

Alternatives can be applied in the majority of cases

Detention is rarely necessary while working with asylum seekers, refugees and migrants towards satisfactory case resolution. Placement options range from open accommodation in the community with minimal requirements for low-risk groups through to intensive supervision and case management for populations of highest concern, such as non-citizens facing deportation after completing a prison sentence.

Alternatives are more affordable

Alternatives are up to 80% cheaper than detention due to lower running costs. They also eliminate costly litigation and compensation claims.

Alternatives are more humane

Alternatives are less harmful than detention. Community placement supports health and wellbeing and upholds human rights. Alternatives are not only more humane, but also see asylum seekers, refugees and migrants better placed to move forward with their life once their migration status is resolved, whether it be integration or departure.

Alternatives are highly effective

Alternatives achieve effective case resolution outcomes. Alternatives have been shown to achieve up to 95% appearance rates and up to 69% voluntary and independent return rates for refused cases.

1. Introduction

1.1 Governing migration

The governance of migration is evolving in response to changes in the patterns and make-up of migrant populations. The number of migrants crossing national borders has increased over recent decades.³ It is well documented that migration is associated with a range of social and economic benefits for destination countries as well as for those who migrate.⁴ Governments have recognised these benefits by developing avenues to enable legal migration for a variety of purposes including employment, education, family reunion and tourism. Regular migration flows through these legal avenues far outweigh irregular movement.⁵ However, significant migration does occur outside of legal channels. In 2010, the International Organisation for Migration (IOM) estimated 10-15% of the world's 214 million migrants were undocumented, the majority of whom had become irregular after first travelling via legal avenues.⁶

The regulation of migration is a core function of modern governments, resulting in a range of systems to govern the movement of foreigners on a nation's territory. Despite the success of many of these systems in managing large movements of people well, some people have come to believe migration is out-of-control. Such perceptions are often linked to concerns about national security and crime, job availability, and the erosion of cultural identity and traditions.⁷ In these situations, irregular migration can become a point of contention and political debate, making the regulation of migration a challenging and sensitive area of policy.

Although managing migration is a constantly changing and complex task, it is an everyday phenomenon and a normal part of operating a government. All countries are facing the

dilemma of monitoring legal migration programs and managing irregular migrants while also ensuring protection is available for asylum seekers, refugees, stateless persons and vulnerable individuals.

1.2 The use of detention in migration governance

The use of immigration detention has been growing over the last twenty years as governments strive to control borders.⁸ In some countries, concerns about national security and terrorist attacks have justified the expansion of detention.⁹ Whatever the cause, many countries have intensified efforts to reduce the number of asylum seekers, refugees and irregular migrants on their territory.¹⁰ Detention has become a core element of this trend. Previously, detention was restricted to short periods during deportation. Now, it is used by several countries on-arrival or for the duration of claims processing. Increasingly, destination countries are investing in the capacity of neighbouring transit countries to intercept and detain foreigners on the move.¹¹ This 'externalization' of border control is evident in the European Union, which has been investing significantly in the capacity of its neighbours including Ukraine, Libya and Turkey to detect, detain and deter asylum seekers, refugees and migrants who are planning irregular onward travel to Europe.¹² Similar dynamics can be seen in the political and financial investments made by the United States in the detention capacities of Guatemala and Mexico, and by Australia in Indonesia, Nauru and Papua New Guinea.¹³ As a result of such trends, it is estimated that hundreds of thousands of people are detained around the world, although the number of detainees at any one time is unknown.¹⁴

1.3 Concerns regarding immigration detention

Immigration detention is used by governments as both a migration governance tool and as a political tool.¹⁵ As a tool for managing irregular migration, it is used to limit the entry of irregular migrants to the territory; for identity, health and security checks and other screening processes; to hold individuals with no valid visa while their status is assessed; and to ensure compliance with negative visa application outcomes, namely deportation.

Detention is also sometimes used by governments in an attempt to address broader social and political issues, such as deterring future asylum seekers and irregular migrants, to provide a sense of control over borders for citizens, and to respond to political pressure.¹⁶ In this sense, detention is a symbolic act used to convey a message to a range of people who are not being detained themselves. While these are important and complex issues impacting governments, there are serious concerns about the use of detention for these purposes. The use of detention for these reasons is unsupportable given:

- Detention is not an effective deterrent
- Detention does not support case resolution, including departure or integration
- Detention has been shown to harm health and wellbeing
- Detention interferes with human rights
- Detention is expensive

1.3.1 Detention is not an effective deterrent

There is no empirical evidence to suggest that the threat of being detained deters irregular migration.¹⁷ Rather, existing evidence, and government and judicial statements¹⁸ suggest a policy of detention is neither effective nor reasonable in deterring refugees and irregular migrants. Despite increasingly tough detention policies being intro-

duced over the past 20 years, the number of irregular arrivals has not reduced.¹⁹

There is no empirical evidence to suggest that the threat of being detained deters irregular migration

Several studies have been undertaken to establish which factors most impact the choice of destination of asylum seekers and irregular migrants.²⁰ According to this research, the principal aim of asylum seekers and refugees is to reach a place of safety.²¹ Most asylum seekers have very limited understanding of the migration policies of destination countries before arrival and are often reliant on people smugglers to choose their destination.²² Those who are aware of the prospect of detention before arrival believe it is an unavoidable part of the journey, that they will still be treated humanely despite being detained, and that it is a legitimate right of States if undertaken for identity and health checks.²³ Rather than being influenced primarily by immigration policies such as detention, most refugees choose destinations where they will be reunited with family or friends; where they believe they will be in a safe, tolerant and democratic society; where there are historical links between their country and the destination country; where they can already speak the language of the destination country; or where they believe they will be able to find secure work quickly due to general levels of prosperity.²⁴ One study also found that the majority of refugees who had experienced detention did not pass on a message of deterrence to people overseas as the relief of escaping persecution and reaching a place of safety overrode the trauma and sense of rejection they had experienced as a result of detention.²⁵ This evidence shows detention has little impact on destination choices.

1.3.2 Detention does not support case resolution

Immigration detention can be ineffective and counterproductive at ensuring compliance with immigration processes. Immigration detention can negatively impact case resolution because the risk of detention and deportation will often deter people from engaging with authorities in the first place. Further, the mental and physical harms caused by detention impact an individual's ability to comply with immigration processes. Immigration detention is usually experienced as an extreme injustice, as detainees feel they are treated like criminals despite believing they are innocent of any crime.²⁶ This feeling of injustice can saturate their experience of the assessment process and lead them to believe that their case has not been fairly heard. This can make it difficult to work towards return for those who have been found not to have protection needs. Deportation can be extremely difficult to achieve if the person does not want to comply, even with detained populations.²⁷

Impact of detention on case resolution

Detainees are often held in detention during an administrative process associated with their migration status. This may include (initial) assessment of their protection claims, assessment of reasons to remain in the country, and preparation for departure from the country. Detention does not, in and of itself, contribute to the resolution of these administrative issues. As one study on the Netherlands shows, detention does not change the intentions of detainees to either stay or leave the country; however, if a detainee was already predisposed to depart the country, detention will sharpen this intention.²⁸

Moreover, detention can reduce the ability of detainees to contribute to case resolution processes by reducing their access to the outside world and eroding mental

health and energy levels.²⁹ This can reduce their ability to organize administrative issues, such as sourcing documents to prove their identity, or to access legal advice regarding future prospects.

Impact of detention on departure

In relation to departure, detention also fails to guarantee departure outcomes for persons with no right to remain in the country. Many factors influence a person's willingness to return to their country of origin, most of which fall outside the influence of domestic policies.³⁰ Detention does not easily overcome these broader issues to result in return decisions.³¹ In terms of deportation, there is a gap between the number of migrants detained for deportation purposes, and the number of those who are actually deported.³² This is because deportation is a complex process involving multiple countries, agencies, and companies. People who are stateless are most likely to stagnate in detention for long periods with little to no control over the blockades preventing their deportation.³³

Research in the United Kingdom has shown indefinite detention does not usually lead to deportation; instead, if deportation has not been achieved within one year, it is unlikely to occur.³⁴ Further, migrants who are facing punitive restrictions such as detention are more likely to feel they have nothing to lose and seek unlawful avenues to stay in the country.³⁵

Impact of detention on integration

With respect to integration, a significant proportion of detained migrants are released with temporary or permanent residency, taking their experience of detention with them as they re-enter society. Immigration detention affects integration upon release in a range of ways. Detention has significant impacts on mental health and sense

of self that subsequently affect integration.³⁶ These are discussed further below.

These affect a person's ability to live satisfying and productive lives and to develop trusting relationships. Work, study, family and friendships are all affected. Concentration and memory are also affected by long periods in detention, subsequently impacting language acquisition and work or study outcomes.³⁷

1.3.3 Detention has been shown to harm health and wellbeing

Another major concern is that the potential impact of detention on the health of those detained is so severe that its use as a message of deterrence and control cannot be justified. This is similarly the case with the use of detention as a blanket response to groups of migrants in particular circumstances.

Research has demonstrated that being in detention is associated with poor mental health including high levels of depression, anxiety and Post-Traumatic Stress Disorder (PTSD)³⁸ and poor quality of life.³⁹ One study found clinically significant symptoms of depression were present in 86% of detainees, anxiety in 77%, and PTSD in 50%, with approximately one quarter reporting suicidal thoughts.⁴⁰ Further, mental health deteriorates the longer someone is detained.⁴¹ The impact on children is particularly disturbing, especially as the consequences for their cognitive and emotional development may be life-long.⁴² For adults, it has been found that the debilitating impacts of detention extend well beyond the period of confinement, especially for those detained for prolonged periods.⁴³ Options that do not rely on confinement are all the more important in light of this evidence.

Impacts such as these not only affect the life experiences of former detainees; they also create a greater burden on the

receiving society. For example, mental health impairment increases reliance on health care and, potentially, social welfare systems. The lifetime health costs of long term detention have been estimated at an additional AUD \$25,000 per person.⁴⁴

1.3.4 Detention interferes with human rights

The use of detention for the purposes of deterrence or political gain is inconsistent with international human rights law. Human rights law establishes the right to liberty and protection from arbitrary detention.⁴⁵ Further, detainees are at greater risk of human rights abuses due to their placement in an institution of confinement. As detention interferes with an individual's human rights, it must be applied only in those circumstances outlined in law; in proportion to the objectives underlying the reason for the detention; when necessary in that particular case; and applied without discrimination.⁴⁶ Less restrictive measures must be shown to be inadequate before detention can be applied. As such, detention must be shown to be necessary in each individual case rather than being applied *en masse*. The Handbook works to instrumentalise the protections enshrined in international law by identifying the ways in which governments can ensure detention is only ever applied as an exceptional measure.

1.3.5 Detention is expensive

Immigration detention is an incredibly expensive policy to maintain, due to the capital costs incurred with building detention infrastructure and the costs of personnel required to operate an institution. This is significantly more expensive than community-based management programs. The cost savings are detailed in the Section 2.4.2 on *Cost Benefits* later in the Handbook.

Detention is a highly problematic policy for governments. It fails to fulfil the aim of deterrence, is counterproductive to case resolution, causes serious harm and suffering for those detained, often fails to fulfil rights and is an overly expensive option in light of the alternatives. The issues of political authority and public sentiment that sometimes arise in relation to irregular migration are best addressed without recourse to detention. Strong leadership and confidence in the effectiveness of migration policy and its implementation can counteract some of these concerns.

1.4 Our program of research on alternatives

This Revised Handbook draws from the IDC's program of research on alternatives and from the expert knowledge of IDC secretariat staff and members developed during their engagement with governments over the past five years. An overview of these sources of information is provided here. A detailed description of the research methods is provided in Appendix I.

The First Edition of the Handbook, published in 2011, came out of a study conducted in 2009/2010. Data collection for that study included a detailed literature review; an Internet-based survey; and international fieldwork in nine countries, conducted by Dr Robyn Sampson. The field work consisted of in-depth interviews with 57 participants and eight site visits.

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 by Adele Cubbitt, in Turkey, Indonesia, and Mexico.

An additional piece of research on detention and alternatives in Mexico was undertaken by the IDC Americas office in 2012. That study involved field research and interviews with 32 participants from government and from local, regional and international non-government organisations.

Finally, the IDC secretariat staff and member groups have developed a significant body of expert knowledge on alternatives. IDC staff and members have run and/or attended a series of major international, regional and national roundtables and consultations on alternatives that have elicited valuable information and insights that have informed the revision of this Handbook.

2. The case for alternatives

2.1 Alternatives to detention defined

The term ‘alternatives to immigration detention’ (‘alternatives’) does not have an established legal definition, nor is it a prescriptive concept. As a relatively recent term, it is not defined in the same way by all stakeholders.⁴⁷ Some stakeholders, like the IDC, maintain an expansive definition that incorporates a range of options available to a State to avoid detention. Other stakeholders limit the definition of alternatives to conditions, such as reporting, or to specific accommodation models.

The IDC’s program of research reinforces the benefits of an expansive definition of alternatives. The IDC defines alternatives to immigration detention (‘alternatives’) as:

Any law, policy or practice by which persons are not detained for reasons relating to their migration status.

This definition strengthens and clarifies the definition put forward in the first edition of the Handbook. The language is simplified and a wider range of people at risk of immigration detention is encompassed. In line with this definition, this Handbook focuses on engagement, rather than enforcement, as the best approach for developing effective and humane systems for governing migration. It respects asylum seekers, refugees and migrants as rights holders who can be empowered to work towards case resolution without the need for unnecessary restrictions or deprivations of liberty or freedom of movement.

A more restrictive approach to alternatives is often concerned with control rather than engagement and collaboratively working

toward case resolution. More specifically, narrower definitions may overlook the strengths of the existing range of everyday policies or practices used to support and manage people in the community. For example, a majority of countries in South America and the European Union do not normally detain asylum seekers on arrival. Instead, they protect and support them in open reception centres in the community while their claims for protection are processed. These open reception centres are not generally viewed by those States as an alternative to detention, as they do not generally detain asylum seekers. However, if applied in other countries or applied in that country with a different group of migrants then it would be considered an alternative to detention.

Similarly, several countries only use detention as an exceptional measure in a small number of cases and/or for short periods. Their system ensures most people remain in the community with freedom of movement. Rather than identifying those people in detention who are eligible for an alternative, these countries only use detention as the last resort. Their earlier options are not seen as ‘alternatives to detention,’ as detention has not been contemplated. However, they could be an alternative for other States that do detain those people.

Failing to include such policies and practices in this Handbook would unnecessarily limit insights into the most effective models for reducing the use of detention and restrictions on liberty in the first place. A broad conceptual and practical approach to alternatives allows for wide-ranging discussions and increases understanding of those policies that reduce the need for detention and other restrictions. By adopting this approach, we hope to stimulate discussions about whether people currently in detention really need to be there, and whether existing systems for managing people outside of detention can

be translated into a program of response for those groups currently detained.

In this Handbook we use the term ‘migrant’ to refer to the broad range of non-citizens who may be at risk of detention worldwide. This can include, inter alia, stateless persons, trafficking victims, labour migrants, visa over-stayers and irregular migrants. We use this term because detention is applied to a wide range of individuals without migration status across the world. The breadth of the term ‘migrant’ further highlights the importance of screening and assessment to understand the vulnerabilities and risks in each individual case.

2.2 The IDC’s approach to alternatives

It is important to note that the IDC considers that alternatives:

- Do not apply only to vulnerable individuals such as children or refugees
- Do not refer only to accommodation models
- Do not require the application of conditions, such as bail/reporting
- Do not refer to alternative forms of detention

Such views can contribute to concerns that implementing alternatives is an overwhelming task that requires substantial investment in new resources; that alternatives encourage or require restrictions on liberty; and that discussing alternatives normalises detention.

Alternatives do not need to be anything more than what already happens to people in the community: any community measure is or *can be considered* an alternative. Where effective community measures are operating, the key is to ensure all migrants – including refugees, asylum seekers, stateless persons and irregular migrants – are integrated into such programs.

It is also important to draw a clear distinction between alternatives, and alternative *forms*

of detention. Some forms of management substantially curtail or completely deny liberty and freedom of movement. This includes some types of electronic monitoring, strict curfews and other movement controls. Whether this is an intended or unintended outcome, these are regarded in this Handbook as a form of detention and as such are included in Section 8.3 *Detention as a last resort, with review*.

2.3 What do we already know about alternatives?

Despite the growing use of detention globally, recent years have also witnessed a growing momentum around exploring and implementing alternatives.⁴⁸ Research has gradually developed to respond to government interest in more detailed information about alternatives and the relative effectiveness of different strategies. However, the large proportion of existing studies have focused on alternatives for asylum seekers,⁴⁹ thereby excluding major groups of migrants currently detained. Some consideration has been given to interpreting international human rights frameworks that provide a mandate for alternatives.⁵⁰ However, systematic assessment of national programs is minimal,⁵¹ with evaluations by government generally restricted to assessments of pilot programs.⁵² While non-government organisations have stepped in to bridge this gap when able,⁵³ the lack of access to government statistics has resulted in smaller studies. The lack of initiative or disclosure by governments in evaluating their migration governance programs has restricted productive dialogue, as the effectiveness of alternatives in different contexts and in terms of different objectives is not always known.

Notwithstanding the growing use of detention in relation to migration matters, an overview of existing policy and practice at the international level highlights that there are extensive systems in operation designed to work with asylum seekers, refugees and migrants in a

community setting while a migration issue is being resolved. By maintaining a broad approach to alternatives we find that:

- Most countries do not use detention as the first option in the majority of cases.
- A number of countries rarely resort to detention, if at all.
- Countries are increasingly developing and implementing alternatives.

Most countries do not rely *primarily* on detention to manage asylum seekers, refugees and migrants while resolving their migration matter. For instance, a large proportion of irregular migrants in many countries are tourists or short-term visitors who overstay their visa.⁵⁴ These people are rarely detained but rather provided with avenues to resolve their situation via independent departure or application for another visa or migration status. Further, in countries with large numbers of mixed migrants and migrants intending to transit, the vast majority were at *risk of* detention, rather than actually being detained. This was most evident in countries where there were high numbers of irregular migrants, and where it was recognised that the cost of detention and the number of migrants who might be detained are just too great. Despite a growing reliance on detention, most countries still do not use detention as the first option in the majority of cases. In fact, a number of countries rarely resort to immigration detention, if at all.⁵⁵ This is important to acknowledge and draw on as a source of expertise that might be applied with other migrants.

2.4 Benefits of alternatives

The IDC's program of research has focused on policies and programs that reduce the use of detention, while keeping in mind costs, compliance rates, effective and timely case resolution, as well as a concern to uphold health, wellbeing and human rights. There

are several benefits in restricting the application of detention and prioritising community-based management options. Alternatives:

- Improve compliance with immigration and case resolution processes
- Cost less than detention
- Reduce wrongful detention and litigation
- Reduce overcrowding and long-term detention
- Increase voluntary or independent departure rates
- Respect, protect and fulfill human rights
- Can help stabilise vulnerable individuals in transit
- Improve integration outcomes for approved cases
- Improve individual health and wellbeing
- Improve local infrastructure and other migrant support systems

Although there is no consistent data available on each of these outcomes, information collected during the program of research and from existing studies has been included throughout the Handbook as able. In particular, the research focused on compliance and case resolution, cost, and health and wellbeing. These are discussed in more detail below.

2.4.1 Compliance and case resolution

Research shows that most people usually do the right thing and follow the rules most of the time.⁵⁶ This tendency to comply with a legitimate authority with minimal intervention holds true for non-citizens in relation to migration laws.⁵⁷ Indeed, one comparative study of asylum seekers in Canada and Switzerland found four motivational factors contribute to compliance: 1) the refugee predicament and fear of removal; 2) law-abidingness and commitment to obey the law; 3) trust in the refugee determination process and perceptions of fairness in the host country; and 4) a desire to avoid irregular residence, with

attendant hardship and vulnerability.⁵⁸ Alternatives that build trust in the fairness of the immigration process can promote compliance as well as more efficient and sustainable immigration decisions. In turn, this can improve final outcomes whether this is integration for those granted status or independent departure for refused cases.

The data on rates of compliance support these general claims. The available data are most substantive for those still awaiting a final visa or status decision in their preferred destination:

- One study collating evidence from 13 programs found compliance rates among asylum seekers awaiting a final outcome ranged between 80-99.9%.⁵⁹
- In the **United States**, migrants in the ISAP community supervision program appeared at scheduled court hearings 99% of the time and at removal hearings 95% of the time.⁶⁰
- In **Canada**, a supervision program with a mixed group of high-risk detainees maintained a 96.35% retention rate in the 2009-2010 financial year⁶¹ and a 94.31% retention rate in the 2013-2014 financial year.⁶²
- In **Australia**, a case management pilot with vulnerable migrants recorded a 94% compliance rate over a three year period.⁶³ Meanwhile, migrants issued with bridging visas maintained a compliance rate of approximately 90% in 2009-2010.⁶⁴
- In the **United Kingdom**, people released from immigration detention on temporary admission, temporary release or bail had a compliance rate of 90.8% in 2013, and 91.9% between January and September 2014.⁶⁵

For those not in their preferred destination, it appears community placement can also be effective in many cases if the individual can meet their basic needs, remain hopeful

about future possibilities and is not at risk of detention or deportation. For example:

- **Hong Kong** maintains a 97% compliance rate with asylum seekers and torture claimants, despite the disincentive that those with successful claims are not allowed permanent residency status (see Box 14 Hong Kong).
- In **Indonesia**, shelters for unaccompanied refugee and asylum seeking children have seen very low absconding rates of 14% in 2013, and 6% in 2014.⁶⁶ Children are supported in these shelters while awaiting confirmation of refugee status from UNHCR Indonesia and a durable solution.
- In **Thailand**, an NGO-run program provides financial assistance and a caseworker for unaccompanied refugee and asylum seeking children in the community. Where needed, children are referred to health, psychosocial and legal services. Although relatively recently established, the program has seen very low absconding rates of 3%, with only 6 out of 186 children having absconded between September 2014 to May 2015. Of these, most absconded immediately after registration, before a caseworker had been assigned and prior to any assistance being provided to them.

In addition, solid compliance and departure rates can be achieved with groups who are required to depart the country.

- In the **United States**, migrants in removal proceedings who are in a supervision program comply with removal orders 84% of the time, compared with only 13% for those without support or supervision.⁶⁷ This supervision program is built on the back of a pilot project in the late 1990s which almost doubled the rate of compliance with final orders: 69% of participants in intensive supervision complied with a final order compared with 38% of the comparison group released on bond or parole (Box 24).

- In **Australia**, a case management pilot with vulnerable migrants achieved a 93% compliance rate. In addition, 60% of those not granted a visa to remain in the country departed independently despite long periods in the country and significant barriers to their return (Box 16).
- In **Sweden**, a caseworker system with asylum seekers has been highly successfully in achieving effective case resolution. The vast majority of persons required to leave the country depart without the need for detention and deportation procedures. In 2012, 68% of third country nationals ordered to leave the country departed voluntarily or through an Assisted Voluntary Return program.⁶⁸ In 2011, the equivalent figure was 63% (Box 21).
- In **Belgium**, an evaluation of family units revealed that since the inception of the project, the vast majority of families (70% to 80%) stayed engaged in immigration processes, with high rates of voluntary return and relatively low rates of absconding (Box 18).

These figures demonstrate the ability of community management programs to sustain significant levels of compliance with a range of populations. It should also be stressed that compliance is with immigration processes and not with the alternative *per se*. Not all alternatives require ongoing engagement or are linked to immigration processing. Indeed, migrants are more likely to cease complying with alternatives for practical and personal reasons, such as the cost of travel to fulfil reporting requirements or lack of information about the process.⁶⁹

2.4.2 Cost benefits

Significant cost benefits are also achieved by prioritising alternatives.⁷⁰ If cases can be managed in community settings without a reduction in immigration processing times, cost savings will be inevitable.

Avoiding unnecessary cases of detention and reducing the length of time someone is detained are key strategies for reducing the costs associated with detention.

Community management programs described in this report were much less expensive than detention to operate on a day-to-day basis. Table 1 provides a snapshot comparison of the cost of alternatives compared to detention in several countries. Further, an independent study found that the United States could save over \$1.44 billion of its \$2 billion detention budget by detaining only noncitizens with serious crimes and otherwise using alternatives.⁷¹

Table 1 Comparing the cost of detention and alternatives

Country	Cost of Detention (per person per day)	Cost of Alternative (per person per day)
Australia	AU\$655 ⁷²	AU\$8.80 ⁷³ to AU\$38 ⁷⁴
Austria	€120 ⁷⁵	€17 to €24 ⁷⁶
Belgium	€180- €190 ⁷⁷	€90 to €120 ⁷⁸
Canada	CA\$179 ⁷⁹	CA\$10-12 ⁸⁰
Hong Kong	n/a	HK\$108 ⁸¹
Indonesia	n/a	US\$8 ⁸²
United States	US\$158 ⁸³	US\$10.55 ⁸⁴

More efficient systems can also reduce the overall cost of operations. Assisted voluntary departures cost less than escorted deportations: in the European Union independent departure to another country within the EU costs €300-600 compared with up to €1,500 for escorted deportations.⁸⁵ Forced removal has been estimated to cost ten times more

than independent departure in the United Kingdom at £1,100 compared with £11,000.⁸⁶ Similarly, the Australian government reported that the 'non-common' costs of an assisted independent return from the community are approximately one third of those of a 'locate, detain and remove' case: approximately \$1,500 compared with \$5,000.⁸⁷ Finally, preventing or reducing cases of wrongful or arbitrary detention avoids costly litigation. The United Kingdom paid out over £2 million over the three years to 112 individuals for wrongful detention.⁸⁸ Meanwhile, the Australian government paid out over AU\$16 million in compensation to former detainees over a ten year period.⁸⁹ Finally, Australian research has found that the lifetime additional health costs of the trauma of detention to be AU\$25,000 per person.⁹⁰

2.4.3 Protecting health and wellbeing

Protecting health and wellbeing is the third factor used to assess the success of alternatives. As detailed in Section 1.3.3, detention erodes health and wellbeing and this effect intensifies over time. It is well established that the health and wellbeing of people who are detained, or have previously been detained, is significantly poorer than comparative groups who have never been in detention.⁹¹ Damaging experiences particular to detention include confinement, an overwhelming sense of injustice, broken relationships and isolation from society.⁹² The impact of detention on the cognitive and emotional development of children is even more significant due to the long-term impacts on their lives.

Community assessment and placement promotes better health and wellbeing outcomes when compared with immigration detention. All people awaiting an immigration outcome experience stress and anxiety,⁹³ and placement in the community placement does not take away this uncertainty. However, as one study shows, placement

in the community assists "in improving the wellbeing of [migrants] when compared with ... detention and does not exacerbate existing trauma."⁹⁴ Further, former detainees reported that community placement was less harmful due to several factors including a more 'natural' environment; not having to live in close quarters with people who are angry or distressed; freedom to have privacy and time to oneself; and freedom to make choices about daily life, including what to eat and when, who to visit and how time is spent.⁹⁵ As one mother stated, "in detention our son was bored, he didn't play with the other kids, he cried, he just said, 'I want to get out'. But here he is doing much better. It has made a big difference being in the community."⁹⁶

Appropriate management in the community is more likely to uphold human rights and support wellbeing, ensuring people can contribute fully to society if residency is secured or better able to face difficult futures such as return.⁹⁷

2.5 Common characteristics of successful alternatives

The IDC's program of research has found that the most significant and effective strategies for preventing unnecessary detention are those that determine (i) whether detention is truly necessary in the individual case, and (ii) how that individual would best be supported to achieve case resolution while located in a community setting. A range of strategies keep individuals engaged in immigration procedures while living in the community. This approach to alternatives means the location of the individual is not of primary concern. Instead, the focus is on breaking down the population with screening and assessment and ensuring the community setting contains the necessary support mechanisms and structures that will best enable the individual to work with authorities towards case resolution.

2.5.1 Elements of successful alternatives

The IDC's program of research has identified the main elements of successful alternatives in terms of cost, compliance and wellbeing outcomes. These include:

- Using screening and assessment to tailor management and placement decisions
- Providing holistic case management focused on case resolution
- Focusing on early engagement
- Ensuring individuals are well-informed and trust they have been through a fair and timely process
- Ensuring fundamental rights are respected and basic needs are met
- Exploring all options to remain in the country legally and all avenues for voluntary or independent departure
- Ensuring any conditions imposed are not overly onerous

These lessons are brought together in the Revised CAP model.

2.5.2 Understanding the population through screening and ongoing assessment

Successful alternatives approach migrants as a highly diverse population with different needs and motivations.⁹⁸ This is well established in the concept of 'mixed migration' that informs strategies to manage migrants at the point of entry.⁹⁹ Those currently at risk of detention worldwide include, inter alia, refugees; asylum seekers; persons who cannot be returned to their country of origin due to a recent natural disaster, violent conflict or lack of cooperation of their own government; individuals who have been working 'illegally' as a result of being trafficked into prostitution; tourists who have overstayed a short-term visitor's visa; stateless persons who are not eligible for a substantive visa but who are unable to return to their country of birth; international students who have breached a condition of

their education visa; and migrants who have committed a crime and are facing deportation. In addition, recognised refugees crossing borders without papers and undocumented asylum seekers awaiting a refugee determination face risks of detention or *refoulement* despite the international obligations owing to them. Identifying and distinguishing these different populations ensures authorities respond appropriately and effectively.

The following key findings are particularly relevant to understanding the differences among migrant populations:

→ Individuals rarely abscond while awaiting the outcome of a visa application, status determination or other immigration process, if in their destination country.¹⁰⁰ As shown in Section 2.4.1, a majority of migrants want to remain engaged with authorities in order to secure the best outcome for their migration case. This reinforces the conclusions of previous research that "...asylum seekers who reach their 'destination' country are unlikely to abscond because they have a vested interest in remaining in the territory and in complying with the asylum procedure."¹⁰¹ Such a conclusion is also implicit in the extraordinary lengths people go to in order to reach their destination and in the difficulties destination governments face in achieving deportation and sustainable repatriation.¹⁰²

→ Individuals are better able to remain in compliance if they can meet their basic needs while in the community.¹⁰³ Individuals living in stable accommodation appear to be in a better position to remain in contact with authorities and handle the complexities of immigration procedures than those who had become impoverished or homeless.¹⁰⁴ Policies that restrict access to housing, basic welfare or health care have not been associated with increased rates of independent departure or deterrence outcomes.¹⁰⁵ Instead, these policies have been associated with poorer health, with

serious consequences for authorities working towards case resolution including return.¹⁰⁶ However, case management programs that work with clients to meet their basic needs have been associated with higher rates of voluntary or independent departure or other case resolution.

→ Individuals are more likely to accept and comply with a negative decision on their visa application, status determination or other immigration process if they believe they have been through a fair and efficient process; they have been informed and supported through that process; and they have explored all options to remain in the country legally.¹⁰⁷ Community management programs are found to sustain significant levels of compliance with a range of populations. For example, a return preparation program in Belgium (Box 18) ensures clients review all options to remain in the country legally to achieve strong compliance and departure outcomes. Conversely, a family return pilot project that was unable to achieve its aims due to an overwhelming feeling of injustice and lack of confidence in the immigration process: “families within the project [felt] that they were poorly, if not unfairly, treated within the asylum procedure and [were] not therefore willing to engage in discussion about return, but [were] rather looking for other ways to remain.”¹⁰⁸

→ While the issue of transit continues to be of concern to many governments, there is evidence that individuals appear less likely to abscond in a country of ‘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.¹⁰⁹ The findings of one large survey of 34 countries supported “the common sense conclusion that improving reception conditions and integration prospects in [transit] states will directly raise the rate of compliance with

asylum procedures.”¹¹⁰ Research with migrants who intended to transit Libya concluded that “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.”¹¹¹ As noted in Box 14 Hong Kong achieves a 97% compliance rate with asylum seekers or torture claimants in the community, despite the fact those with successful claims are not offered permanent residency.¹¹² While secondary movement cannot always be prevented, screening and assessment can assist in understanding motivating factors and facilitating registration with authorities. However, complete control in all cases is unrealistic. The pull of onwards travel is especially compelling for people seeking family reunification or who have other pressures to undertake secondary movement. For these reasons, countries must invest in preventative mechanisms that address the root causes of irregular migration and build a stronger international system of burden sharing.

These findings highlight the importance of understanding the diversity within the population of refugees, asylum seekers, stateless persons and irregular migrants as well as understanding those contexts that promote good outcomes for a range of stakeholders. These findings have been used to develop the Community Assessment and Placement model to prevent unnecessary detention and support case resolution from a community context. Further evidence for these findings are incorporated through the report in the relevant sections.

2.5.3 Holistic case management focused on case resolution

Successful alternatives engage with and support individuals through the immigration process, often with case managers. Early engagement by case managers can reduce unnecessary detention by identifying risks, vulnerabilities and needs that may impact a person's capacity to remain engaged with authorities. It also supports informed immigration decisions by ensuring all relevant information is available to authorities. It further assists in understanding and navigating the immigration process and the case resolution options available to them, promoting trust in the system. Case managers can also promote coping and wellbeing by making referrals to interpreters, legal advisors, health professionals and other services as required. This in turn helps to promote their compli-

ance with their immigration obligations and/or any conditions or restrictions while in the community. They can also assist the individual to achieve timely and fair case resolution and to prepare them for immigration decisions, including integration or departure from the country. See also Section 7.1.

Research to date suggests asylum seekers, refugees and migrants

- Rarely abscond while awaiting the outcome of a visa application, status determination or other immigration process, if in their intended destination.
- Are better able to comply with requirements if they can meet their basic needs while in the community.
- Are more likely to accept and comply with a negative decision on their visa application, status determination or other immigration process if they trust:
 - They have been through a fair and efficient process
 - They have been informed and supported through that process
 - They have explored all options to remain in the country legally
- Appear 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.
- Further, while secondary movement cannot always be prevented, screening and assessment can assist in understanding motivating factors and facilitating registration with authorities. However, complete control in all cases is unrealistic. Solutions for such situations include proactive preventative mechanisms that address the root causes of irregular migration and build a stronger international system of burden sharing.

3. Community Assessment and Placement: Introducing the Revised CAP model

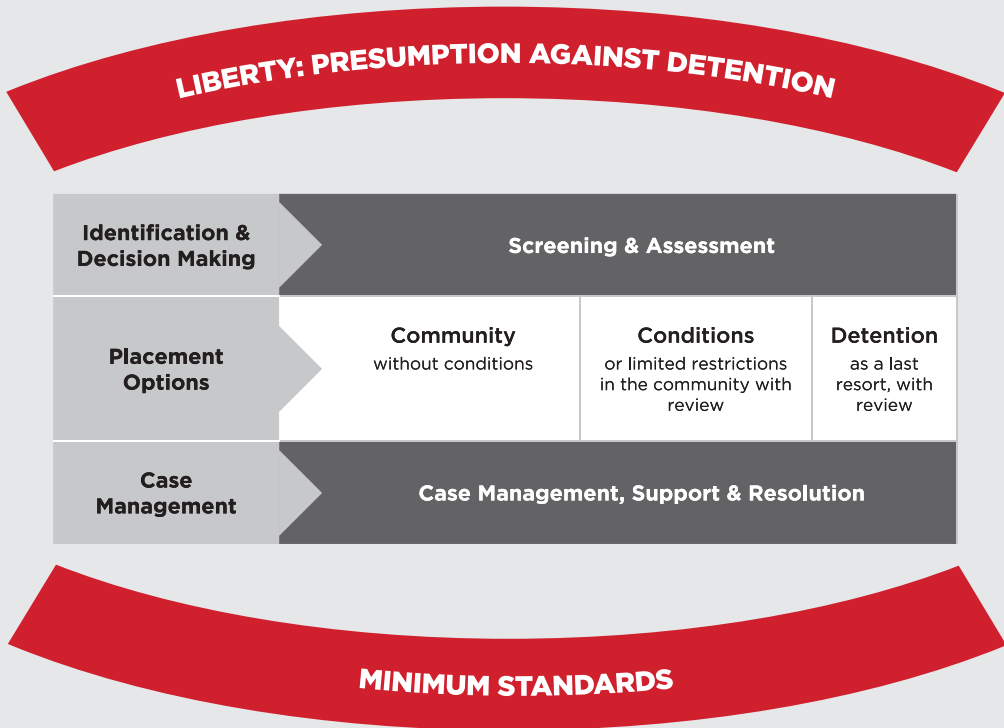


Figure 1: The Revised CAP model - Community Assessment and Placement

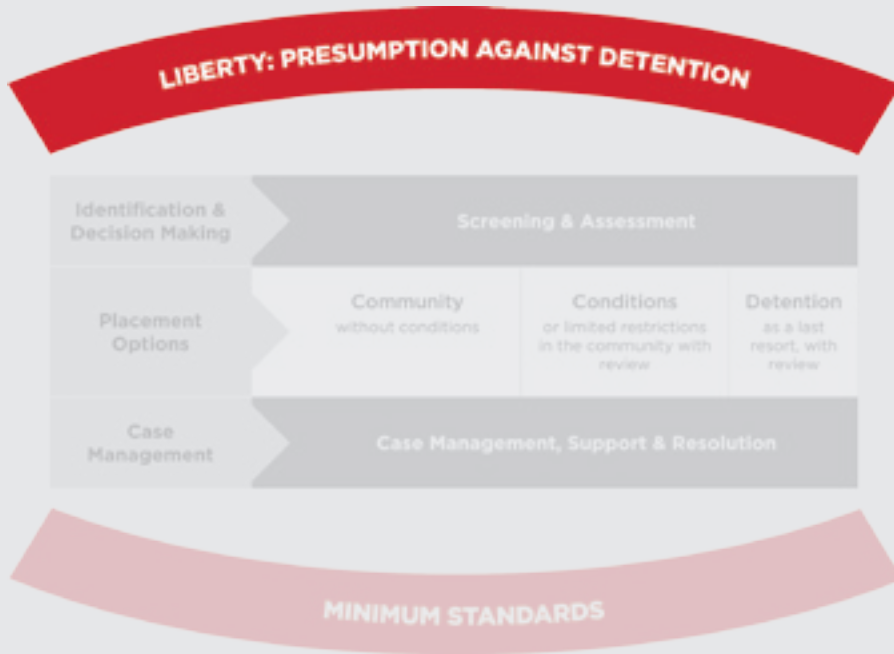
The Revised Community and Assessment Model (Revised CAP model) identifies the principles and processes that prevent unnecessary detention and support community-based options. The Revised CAP model, seen in Figure 1, is a practical tool for governments and other stakeholders to develop effective and humane systems for governing irregular migration. It is a non-prescriptive framework that assists governments in reviewing and analysing their current migration governance framework and in exploring alternatives that work in their context. In the Revised CAP model, the principles of liberty and of minimum standards underpin the three processes of decision-making, placement and case management. The model, while built upon the IDC's program of research, also reinforces the normative international standards relating to the detention of asylum seekers, refugees, stateless persons and irregular migrants.¹¹³

The Revised CAP Model can be used to:

- Analyse and assess existing laws, policies and practices in order to identify gaps, needs, priorities and goals
- Obtain ideas about what is possible and, using these, develop, expand or improve alternatives in local contexts
- Facilitate dialogue with officials in different arms of government, between States and across stakeholders
- Guide the decision making process to ensure immigration detention is only used as a last resort
- Train officials, practitioners and stakeholders on how to work towards ending unnecessary detention and how to develop and implement alternatives

The following sections describe each of the components of the model in detail and present descriptive case studies of these principle and processes in action. These case studies and break out boxes offer practical examples of implementation in different contexts.

4. 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.¹⁴ 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

4.1 Establish a presumption of liberty

A presumption of liberty, or a presumption against detention, is an effective means of ensuring detention is only used as a measure of last resort in exceptional circumstances. A presumption of liberty upholds each individual's right to freedom of movement and helps to prevent immigration officials from resorting to confinement when other options are at their disposal.¹¹⁵ A presumption of liberty is strongest when established in law or detailed in policy. All laws, policies and other materials establishing a presumption against detention should be made widely available in writing to ensure consistent implementation. Further, in order to be most effective, governments should undertake training and guidance on implementation with enforcement officers and the judiciary.

Countries that operate with a strong presumption of liberty for all persons include Argentina, Brazil, Costa Rica and Venezuela. In these countries, national laws strongly espouse the principle of non-discrimination and do not distinguish between nationals and non-nationals for the purposes of access to and enjoyment of fundamental rights. Such laws provide detention be used only as an exceptional measure of last resort and/or where necessary, and provide for alternatives to be used in the first instance.

4.2 Mandate to apply alternatives in the first instance

A presumption of liberty is strengthened when alternatives are clearly specified and established in law or policy. Legally prescribed alter-

BOX 1

A PRESUMPTION OF LIBERTY IN LAW

ARGENTINA

The Argentine Immigration Law (Law 25.871), enacted in January 2004, recognises that migration is a human right, and extends constitutional and human rights protections to all persons in the country irrespective of their legal status. Article 6 of Law 25.871 also guarantees all persons the right to non-discrimination, and access to education, medical and social services. Immigration detention is limited in law and practice to rare instances, and is generally only permissible after a final order of deportation has been issued.¹¹⁶ Article 61 of Law 25.871 states that

before deportation, a person must be given the opportunity to explore all options to regularise their status, within a set deadline. Migration decisions are made by immigration authorities but are reviewable by a court, with no detention during this period. Legal aid is available throughout the deportation process.

Deportation and detention are both decisions that must be ordered by a court, with detention used only as a final resort after all other remedies are exhausted. Under Regulation 616/2010 accompanying Law 25.871,

detention orders can only be issued as a precautionary measure before a final immigration decision where there is a risk of non-compliance with a deportation order. Article 70 of Regulation 616/2010 provides that detention orders can only be issued for a maximum of 45 days to effect deportation where a removal order has been finalised; within this period, after the first 15 days of detention, immigration authorities must provide a detailed report every ten days to the courts justifying the extended detention period.

natives provide officials with clear options for people to remain in the community while their immigration status is being resolved. Several countries maintain laws and policies that mandate, or require, alternatives to be considered or applied before a decision to detain is made (such as in Argentina (Box 1), Austria and Costa Rica). Others encourage authorities to consider alternatives before using detention (such as in Canada, Hong Kong, Indonesia, Ireland and Japan). The effectiveness of such laws in preventing unnecessary detention relies on good implementation.

A clear example of this mandate can be found in the European Union (EU). Through transposing of the Returns Directive¹¹⁷ and the recast Reception Conditions Directive¹¹⁸ in their national legislation, Member States are required to ensure that detention is used as a

measure of last resort, only to be applied after non-custodial alternatives to detention have been examined. As a result of these Directives, almost all EU Member States now provide for alternatives in national legislation (see Box 2 Poland, Croatia and New Zealand as examples).

4.3 Only permit detention when alternatives cannot be applied

Laws or policies that establish a presumption of liberty may do so by allowing the use of immigration detention as an exceptional measure, only when alternatives cannot be applied in the individual case. Such laws can ensure decision-makers and immigration officials review less restrictive measures for each case and establish clear reasons why such measures cannot be applied in the individual case. This ensures

BOX 2	ALTERNATIVES TO DETENTION IN LAW	POLAND, CROATIA AND NEW ZEALAND
	<p>Poland has passed legislation providing for a mandate to consider alternatives to immigration detention. The <i>New Act on Foreigners</i> entered into force on 1 May 2014. It is modelled on Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (the Returns Directive). Article 398 of the <i>New Act on Foreigners</i> provides for the Polish Border Guard authority to apply any one or more of the following:</p> <ul style="list-style-type: none"> → Reporting at specified intervals to the Polish Border Guard; → Lodging a security deposit, no lower than twice the amount of the minimum wage stipulated by minimum wage law; → Surrendering of travel documents; and → Directed residence at a location specified by the authorities. <p>Croatia nominates several alternatives to detention in its national legislation, which was introduced in</p>	<p>2012. These include the duty to surrender documents, to deposit sureties, to reside at a designated address and to undertake regular reporting.¹¹⁹ Further, a book of rules provides additional guidance to officials regarding implementation.¹²⁰</p> <p>Section 315 of New Zealand’s Immigration Act 2009 outlines specific conditions that may be applied to a person who would otherwise be subject to detention, including reporting, guarantors and undertaking actions towards case resolution.</p>

officials must demonstrate the particular reasons why detention is deemed necessary for those individuals facing detention.

A presumption of liberty is strongest when established in law, although it can still be established in policy or in the practice of immigration officials to not detain unless necessary

Evidence of such consideration may be required to be submitted when a detention decision is being made or reviewed in court. Where it is not articulated in law, a presumption of liberty can still be established in policy or in the practice of immigration officials to not detain unless necessary, as seen in Box 1 Argentina and Box 21 Sweden. In several jurisdictions, courts have

ordered authorities to revisit their procedures to ensure they can demonstrate the reasons for detention and why a more lenient measure has not been applied.¹²¹

4.4 Prohibit the detention of vulnerable individuals

Additionally, many countries protect the right to liberty for certain vulnerable individuals. These States either prohibit the detention of vulnerable individuals in law or direct officers to apply alternatives to those individuals. While countries vary in their identification of vulnerability, this can include unaccompanied children, children traveling with family, pregnant women, the elderly, persons with mental or physical illnesses, refugees and asylum seekers, and/or stateless persons. Examples of such laws and policies include Box 3 China, Box 7 Hungary, Box 11 Zambia, Box 12 the United States, Box 13 Turkey, Box 14 Hong Kong and Box 18 Belgium. Further information on identifying vulnerability is provided in Section 6.3.

BOX 3

PROHIBITING THE DETENTION OF VULNERABLE INDIVIDUALS

CHINA

The People's Republic of China's (China) *Exit and Entry Law*, which came into effect on 1 July 2013, aims to limit the use of immigration detention for vulnerable individuals. The *Exit and Entry Law* excludes certain vulnerable migrants from detention including minors under 16 years of age, persons with disabilities, persons with serious illnesses, pregnant women, and those over 70

years of age. The *Exit and Entry Law* also contains provisions allowing refugees and asylum seekers to stay in China after obtaining an identification card from public security authorities.

Additionally, the July 2012 revisions to the *Procedural Provisions for the Handling of Administrative Cases by Public Security Organs* also excludes other individuals from detention including:

those who voluntarily ask for inspection by entry-exit department, pay fines, and buy tickets to voluntarily return to their home country; those who entered through irregular means and stayed, received no help from family members or embassies; survivors of trafficking; and foreigners married to Chinese nationals, especially those with children born in China.

Ensuring the right to liberty for child migrants

Refugee, asylum seeking and irregular migrant children are, first and foremost, children. States are required to consider their best interests as the primary consideration in all decisions impacting upon them and to uphold their rights without discrimination. Indeed, the UN Committee on the Rights of the Child ('CRC Committee') has concluded:

The detention of a child because of their or their parent's migration status constitutes a child rights violation and always contravenes the principle of the best interests of the child. In this light, States should expeditiously and completely cease the detention of children on the basis of their immigration status.¹²²

Further, the detention of a migrant child to maintain family unity may violate the principle of the best interests of the child, the child's right to be detained only as a measure of last

resort, and the right to not be punished for the acts of his or her parents. Alternatives should be applied to the whole family, with detention only in very exceptional circumstances.¹²⁴

Evidence shows that detention can have a profound and negative impact on the health and development of young people. Children in detention are at risk of depression and anxiety and frequently exhibit symptoms of Post-Traumatic Stress Disorder.¹²⁵ Detained children have higher rates of suicide, suicide attempts and self-harm, mental disorder and developmental problems. Even very short periods of detention can undermine a child's psychological and physical wellbeing and compromise their cognitive development. A recent study has reinforced these concerns, concluding: "Detention is highly distressing and often traumatic [for children]. On the basis of our findings, children, regardless of immigration status, should be protected from detention and should also be spared forced separation from their parents."¹²⁸

The IDC supports the Global Campaign to End Immigration Detention of Children. More details can be found at <http://endchilddetention.org>

The Child Sensitive Community and Assessment Placement Model (CCAP)

The IDC's program of research has identified several mechanisms that States can use to ensure that the rights of irregular migrant children are protected while awaiting case resolution. These are laid out in the IDC's Child-Sensitive Community Assessment and Placement Model (CCAP).¹CCAP provides governments and other stakeholders with further details on how to actualise CAP specifically in the context of children. The core components of CCAP are as follows:

Prevention

This systemic aspect protects children from detention by establishing in law or policy that children should not be detained.

Screening, Assessment and Referral

Within hours of coming into contact with a child, authorities must undertake a best interest assessment and place them in an appropriate community setting that takes into account age, gender and cultural background. This component includes screening the individual to determine their age (with a full age determination only when there are serious doubts as per Box 4), assigning a guardian to unaccompanied or separated children (see Box 5), allocating a caseworker to children who are travelling with their families, undertaking an intake assessment and placing the child and their family into a community setting.

Placement and Case Management

Involves an exploration of the migration options available to the child and their family, a full best interest determination, and an assessment of the protection needs of the child and/or their family.

Reviewing and Safeguarding

This step ensures that the rights of children and their best interests are safeguarded through regular independent review of any decisions taken including placement, conditions applied and legal status.

Case Resolution

The realisation of a sustainable migration solution for the child and their family.

More details on CCAP can be found in the IDC Publication *Captured Childhood*. <http://idcoalition.org/ccap>

BOX 4

AGE ASSESSMENTS

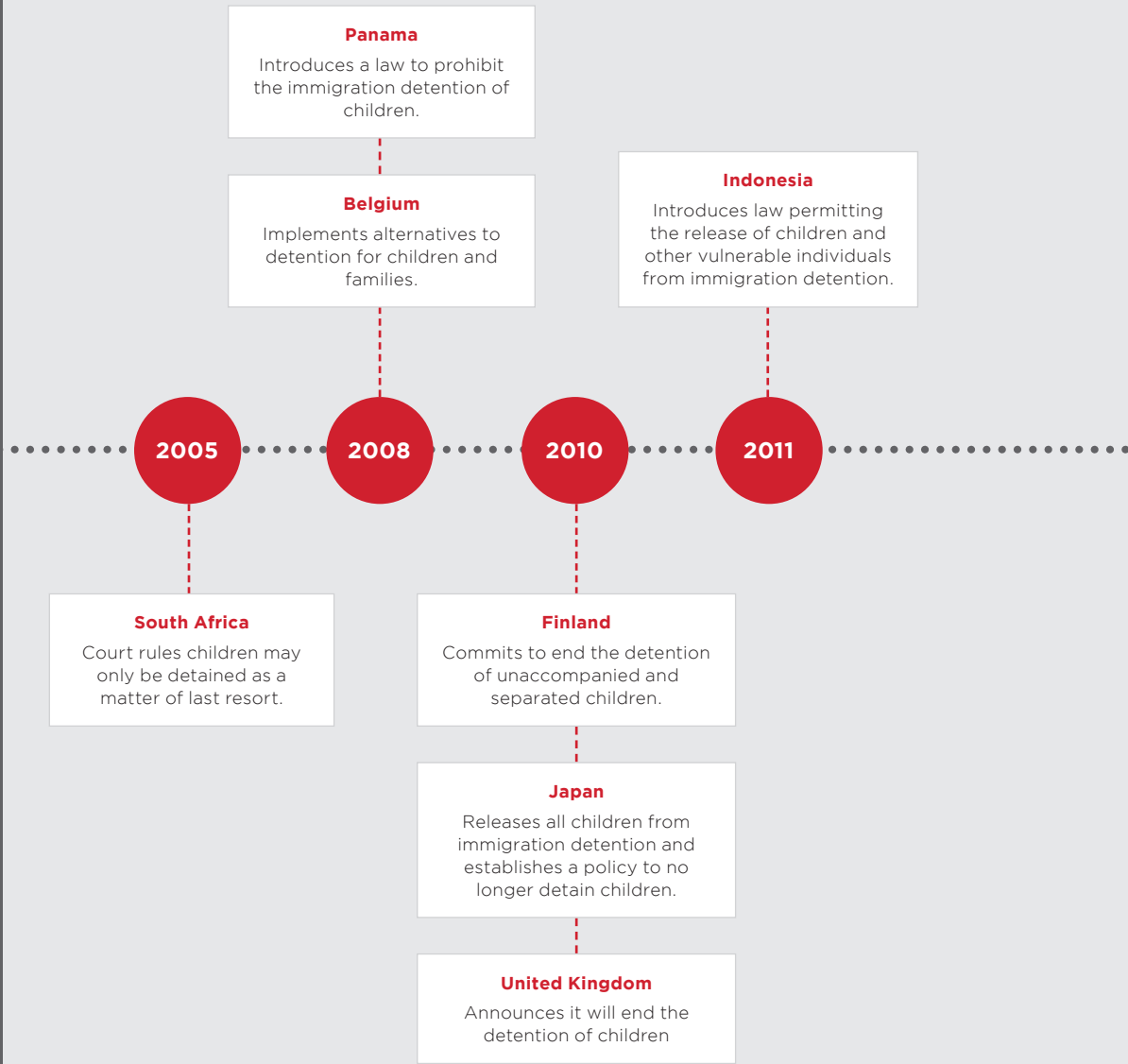
Where the age of an individual is in dispute, an age assessment may be required. The UN Committee on the Rights of the Child has recommended that age assessments should have regard for the psychological maturity of the individual, as well as their physical appearance. Assessments should be conducted in an objective, safe, child- and gender-sensitive manner. Age assessment can integrate documentary

evidence, interviews and professional observation with medical assessments.¹⁵⁰ In Sweden and Belgium, these three methods are combined. Age assessment procedures can be contentious, with interviews and observational technique - visual, cognitive, behavioural and psychological - often being subjective and dependent upon the expertise of the assessor, particularly on culturally-appropriate

markers of age.¹⁵¹ Medical tests including Magnetic Resonance Tomography, bone and dental radiology and examinations of sexual maturity have also been criticised for their inaccuracy.¹⁵² If age determination assessments do not remove doubts as to the age of the person, then they should be given the benefit of the doubt and considered a minor.¹⁵³

BOX 5

ENDING IMMIGRATION DETENTION OF CHILDREN



A SNAPSHOT OF GLOBAL TRENDS

China

Passes a new law restricting the detention of children under 16 years of age.

Malta

Commits to ending child immigration detention

France

Limits the detention of minors to exceptional circumstances

Turkey

Passes new legislation prohibiting the detention of unaccompanied minors seeking international protection.

2012

2014

2015

The Netherlands

Announces that families with children who seek asylum will no longer be detained at the border, except in exceptional situations.

Taiwan

Prohibits the detention of children under the age of 12 years old.

Israel

Introduces a new law excluding children from "residence orders" (a requirement to reside at designated detention centres) and directing authorities to place unaccompanied minors and other specified children into community settings.

BOX 6**APPOINTMENT OF A GUARDIAN**

Unaccompanied children, and those separated from their primary caregiver, are particularly vulnerable to abuse and exploitation and are entitled to special protection.¹³⁴ A crucial protection measure is the appointment of an independent, legal guardian. The guardian's key role is to help ensure the child is not at any legal disadvantage in the immigration process, and that their support and care needs are being met. In Comment No. 6, the CRC Committee reinforced the need for States to appoint a guardian or adviser as soon as an

unaccompanied or separated child is identified, and to maintain such guardianship arrangements until the child has either reached the age of majority or has permanently left the territory. The guardian should be consulted and informed regarding all actions concerning the child, and should have authority to be present in all planning and decision-making processes involving the child.¹³⁵

There are different types of guardianship models.¹³⁶ Good practice examples maintain a clear distinction between the

role of the guardian and that of the immigration authorities. In Belgium, guardians are professional non-government individuals and volunteers, while in Sweden these are citizens of good standing. In both countries, guardianship is appointed by an independent body, this being the Guardianship Service and Chief Guardian respectively. In the Philippines, the Department of Social Welfare and Development are delegated as the responsible guardians to provide shelter, social work and health care services.

BOX 7**UNACCOMPANIED CHILDREN ARE NOT TO BE DETAINED****HUNGARY**

Section 56 of Hungary's Act II of 2007 on the Admission and Rights of Residence of Third-Country Nationals establishes that unaccompanied children cannot be detained for migration reasons.¹³⁷ Unaccompanied children who come into contact with authorities, however, must provide evidence of their identity (with personal identification or valid travel document) and demonstrate a legal ground for stay in Hungary. Those who cannot provide this may be held for a maximum period of 24 hours while the authorities conduct identification and age assessment verification. Those found to be children are appointed a guardian

employed by the Department of Child Protection Services, who is legally responsible for the overall care, management and legal representation of the child.

Since May 2011, unaccompanied children seeking asylum or international protection fall under the scope of the country's general child protection regime and thus enjoy the same rights as Hungarian children. They are regarded primarily as children, and only secondarily as migrants.¹³⁸ They are placed in a specific child protection facility in Fót supervised by Hungarian authorities, with services provided by a variety of national and international organisa-

tions.¹³⁹ Section 45(1) of the Hungarian Child Protection Act requires that children in care facilities must be provided with food, clothing, health care, education and housing suitable for the development of their physical, mental and emotional needs.

Non-asylum seeking children are accommodated in a child protection facility in Hódmezővásárhely run by the Catholic Church under a contract with the Social and Child Protection Directorate. The capacity at this facility is, however, limited and some non-asylum seeking children are placed at other child protection facilities when required.¹⁴⁰

5. 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 compli-

ance 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

5.1 Respect of fundamental rights

It is crucial that States ensure all persons, irrespective of their status, are able to exercise their fundamental human rights and freedoms. These rights establish minimum standards of treatment to ensure each person is treated with dignity; as such, these rights should be respected and promoted for every person within the State's jurisdiction.¹⁴¹ These fundamental rights include economic, social and cultural rights such as access to health, livelihood and education. As outlined above in Section 4, fundamental rights include the right to liberty and freedom of movement and the right to protection from discrimination on any grounds including national origin or migration status. These latter rights are particularly important in relation to State governance of non-citizens. Further, ensuring fundamental rights are respected can support migrants to stay engaged with authorities, minimise secondary movement and improve the safety and security of both migrant and local populations. Fundamental rights may be provided and/or supported through laws, policies or practice.

Ensuring fundamental rights are respected can support migrants to stay engaged with authorities, minimise secondary movement and improve the safety and security of both migrant and local populations

Argentina, Brazil, Costa Rica and Venezuela strongly espouse the principle of non-discrimination and do not distinguish between

nationals and non-nationals for the purposes of access to and enjoyment of fundamental rights. As seen in Box 1, Argentina has established in law that constitutional and human rights protections extend to all persons in the country, irrespective of their legal status. Further, migration is protected as a human right. The law also guarantees all persons the right to non-discrimination, and access to education, medical and social services.

5.2 Basic needs

The ability to meet basic needs is the second minimum standard that underpins alternatives. It is important that all individuals, regardless of migration status, are able to meet their basic needs. The ability to meet basic needs is fundamental to human life and is protected and reinforced in various human rights instruments.¹⁴²

In addition to this mandate, there is evidence that asylum seekers, refugees and irregular migrants are better able to comply with requirements if they are able to meet their basic needs while in the community.¹⁴³ Those migrants living in stable accommodation appear to be in a better position to remain in contact with authorities than those who have become impoverished or homeless.¹⁴⁴ Policies that restrict access to housing, basic welfare or health care amongst irregular migrants have not been associated with increased rates of independent departure or deterrence outcomes.¹⁴⁵ Instead, these policies have been associated with poorer health, with serious consequences for authorities working towards case resolution including return.¹⁴⁶ However, case management programs that work with clients to meet their basic needs have been associated with higher rates of independent departure or other case resolution.¹⁴⁷ It must be noted that confinement in immigration detention is not an appropriate way to provide

for basic needs, nor does it ensure their fundamental rights are respected, nor does it ensure their fundamental rights are respected.

In some cases, individuals are able to provide for their own needs through legal work. A number of countries provide asylum seekers with the right to work while their status is being determined, as seen in Box 8 Spain, Box 9 Chile and Box 21 Sweden. In the EU, the Reception Directives requires Member States to provide asylum seekers with “an adequate standard of living ... which guarantees their subsistence and protects their physical and

mental health.”¹⁴⁸ Member States are also required to give applicants access to the labour market no later than nine months from the date of lodging a protection application.¹⁴⁹

Migrants are better able to comply with requirements if they are able to access and meet their basic needs while in the community

BOX 8

ENSURING ASYLUM SEEKERS CAN MEET THEIR BASIC NEEDS

SPAIN

In Spain, asylum seekers who enter the refugee determination process can be housed in an open reception centre if they cannot afford private accommodation.¹⁵⁰ These centres are operated by the government or by non-government organisations. The total reception capacity in Spain is about 850 places, with priority given to vulnerable individuals. Asylum seekers cannot choose which area within Spain they will be located. The centres are responsible for the reception, promotion and integration of asylum seekers and refugees.¹⁵¹ Residents are free to come and go from the centres as they like. As an example, one centre provides bedrooms shared by 3-4 single adults, while families have their own room with a small bathroom attached. There are catered

meals in a dining hall, public lounge areas, library, shared computer and Internet access and a shared laundry. Residents receive €50 per month cash allowance for their own use including public transport. Twice a year residents are given money for clothes.

Residents are assigned a social worker who provides information and advice on their situation, works to develop an individual pathway and assists them in accessing education, health care and other social systems of Spain. All residents are expected to attend Spanish language classes, cultural orientation, and employment preparation programs. Recreational activities such as sports, visits to the local library, exhibitions and movies are supported by an activities officer. Psychologi-

cal services and specialised services including legal aid are available for eligible residents. The centres also undertake advocacy activities in the local Spanish community.¹⁵² Residents are issued a card that identifies them as asylum seekers and facilitates their access to medical care.

Asylum seekers can be housed in reception centres for six months. If they are still awaiting a decision on their refugee application at that time, they are supported to find independent housing and employment. At this point, they are given the right to work. Vulnerable individuals and families may apply to extend their stay in the centre for an extra six months if needed. The program has been praised by UNHCR for its high standards.¹⁵³

However, those excluded from the labour market may need financial aid or direct provision of goods. Non-government organisations often play an important role in providing for basic needs, with or without government funding. In doing so, they create the conditions to enable release from detention. Support to meet basic needs can be seen in Box 7 Hungary, Box 8 Spain, Box 9 Chile, Box 10 Canada, Box 11 Zambia, Box 14 Hong Kong, Box 16 Australia, Box 17 the Netherlands, Box 18 Belgium, Box 19 Hungary, Germany and the United States, Box 20 Europe, Box 21 Sweden and Box 24 the United States.

Simply providing legal entitlements to health-care, employment or education is often not

enough to ensure that people can access these in practice. For example, frontline health providers may not be aware of their obligations to provide treatment to migrant groups and the cost of accessing health services can be prohibitive. Further, it may be difficult to obtain a work permit and/or employment. Work is particularly hard to secure with temporary status with short-term employment rights or when limited to working in set industries. An absence of documentation and/or previous school records can result in education providers denying access. In some countries, children are only able to access informal learning centres rather than government schools, preventing them from receiving an officially recognised qualification.

BOX 9**FORMAL STATUS AND DOCUMENTATION****VARIOUS COUNTRIES**

In Chile asylum seekers are issued with a renewable temporary stay permit, valid for eight months, which provides the holder with an entitlement to work. A comprehensive social assistance scheme ensures asylum seekers and their families are able to meet their basic needs, with access to food, housing, furniture and transportation. An asylum seeker is entitled to full support for three months; this then decreases to 75% after three months, 50% after six months, and ends after 12 months. However, this may be extended in special circumstances.¹⁵⁵

Afghan refugees in Iran are issued with “Amayesh cards” that provide them with legal

status in the country. These cards serve as valid identity cards and permit the holder to access health care and education. Amayesh cards are currently issued for a year and must be renewed annually, at a cost of approximately USD \$3 per card.

In Romania, tolerated status, and an accompanying ‘tolerated document’ are issued by the Romanian General Inspectorate to persons who cannot leave the Romanian territory but who would not otherwise have a legal basis to remain.¹⁵⁶ Tolerated status is granted for an initial period of six months, renewable for further six-month periods until the reasons for toleration cease to exist. At that time, the individual

is required to depart the country. Individuals holding a tolerated document have the right to work, are required to report regularly to a territorial unit of the General Inspectorate, and must notify authorities of any changes to their place of residence. They are also required to reside in a particular geographical area and obtain approval to travel outside of this area.¹⁵⁷

In Turkey, stateless persons who have been identified are to be issued a Stateless Person Identification Document. This grants the right to legal residence and access to health, education and legal services.

5.3 Formal status and documentation

Formal status – and documentation of that status – are the third minimum standard to underpin successful alternatives. Individuals who are waiting for a decision on their migration status are particularly vulnerable to detention if they do not have formal interim status allowing them to remain in the country pending case resolution. Documentation should be issued that provides evidence of the individual's identity and permission to be in the country. Such documentation papers are important because they ensure individuals who have already been screened by authorities are not picked up by another branch of government and re-processed unnecessarily. Such documentation can also be used by social support organisations to identify those individuals who are eligible for their services. It can also act as a *de facto* reporting mechanism if it has to be reissued after a set period of time or in particular circumstances. If an appropriate visa or status has not been developed, such documentation may state that a deportation order will not be effected until a particular date or outcome is achieved (see Box 14 Hong Kong). States can build on or modify existing processes for issuing visas to develop such interim statuses.¹⁵⁴ Although this documentation is most often issued by the governing State, asylum seekers and refugees in some countries rely on the identification documents issued by UNHCR to defend their presence in the territory and guard themselves from being detained unnecessarily.

Documentation underpins successful alternatives to detention and can serve multiple purposes for various stakeholders

Box 9 sets out different examples of interim legal status and documentation that can be conferred upon individuals awaiting a final immigration outcome or who have been found with no legal basis to remain but are unable to depart the country due to administrative or other reasons. In most examples, the granting of legal status and issuance of documentation is accompanied by work rights and access to social assistance. See also Box 8 Spain, Box 13 Turkey, Box 14 Hong Kong, Box 21 Sweden, and Box 26 Australia, Mexico, Philippines and South Korea.

5.4 Legal advice and interpretation

Legal advice and interpretation are further minimum standards that ensure individuals are properly advised about their migration and/or detention situation and the legal processes surrounding their case. These ensure the right to due process is protected. Individuals are in a better position to comply with authorities if they understand their legal position, the judicial and bureaucratic procedures in which they are engaged, and the potential futures that await them.¹⁵⁸ Lawyers and appropriately trained migration agents are best able to provide accurate and reliable advice to an individual on these matters. As one study concluded, “The single most important institutional feature that fostered trust was access to early, reliable legal advice and assistance.”¹⁵⁹

Individuals are in a better position to comply with authorities if they understand their legal position, the judicial and bureaucratic procedures in which they are engaged, and the potential futures that await them.

Caseworkers who are knowledgeable about the migration system can reinforce the information provided by legal counsel and authorities to create a consistent message and provide practical support to complete immigration processes. In addition, the use of legal counsel is seen to benefit the immigration system by creating a fairer system¹⁶⁰ and increasing efficiency and consequently reducing costs overall by ensuring decision-makers are not required to delay proceedings or spend time clarifying claims made by applicants without representation.¹⁶¹ Legal aid programs for migrants are seen in numerous countries including Japan, Jordan, Thailand, Egypt, the United States and Yemen. The majority of these were administered by non-government organisations to provide legal assistance and counselling to asylum seekers in their refugee status determination programs, to asylum seekers and irregular migrants in employment matters, or to assist persons who are detained or at risk of detention.

Interpretation and translation are also extremely important to ensure vital information is effectively communicated.¹⁶² In addition to translated written materials, qualified interpreters improve communication with lawyers, caseworkers and immigration officials. When interpreters cannot be on site, telephone-based interpretation services may be the next best option.¹⁶³

5.5 Fair and timely case resolution

Another important minimum standard is the fair and timely resolution of migration status. Fair and timely case resolution is a fundamental requirement for an effective and sound migration management system. As demonstrated earlier in this Handbook, individuals are more likely to accept and comply with a negative decision on their visa application, status determination or other immigration process if they believe their application has been assessed in a fair and just manner. If an individual believes the system is unfair, they will be much less likely to accept negative

outcomes (such as a visa refusal), to comply with conditions and to remain engaged with authorities. Where processes are protracted, poorly managed and lack transparency, individuals will be at risk of becoming lost in the system and stuck in situations of uncertainty. This encourages secondary movement or going 'underground' as a strategy to continue progressing with their lives.

Elements that impact on the fairness of the case resolution system include difficulty obtaining information on immigration processes, inconsistent or contradictory information or decisions, weak mechanisms for appealing negative decisions, and a lack of transparency of the decision-making process (such as reasons for negative decisions). A prolonged and inefficient case resolution process can also impact a person's belief in the system and willingness to accept final outcomes, whether it be independent or voluntary departure or deportation. Further, as noted in Section 8.3 *Detention as a last resort, with review*, immigration detention is usually experienced as a severe injustice due to being incarcerated despite believing themselves innocent of any crime.¹⁶⁴ This feeling of injustice can saturate their experience of the immigration procedure and lead them to believe that their case has not been heard fairly. This can make it difficult to work towards return for those found to have no legal right to remain in the country. Deportation can be extremely difficult to achieve if the person does not want to comply, even with detained populations.¹⁶⁵

5.6 Regular review of placement decisions

The final minimum standard is regular review of placement decisions in order to reassess the necessity and proportionality of any conditions or restrictions imposed and to take into account any changes in an individual's circumstances. Alternatives that restrict liberty are subject to human rights standards, including periodic review by an independent body.¹⁶⁶

As applicable, individuals subject to alternatives need to have timely access to effective complaints mechanisms as well as remedies.¹⁶⁷

Regular reviews also give authorities a chance to reassess a person's willingness to remain engaged with authorities on the progress of their migration case and to comply with any conditions imposed. As seen in Box 10 Canada, reducing conditions to reward and reinforce compliance is an effective tool in maintaining engagement. Regular reviews also enable authorities to identify changes in circumstances that affect placement decisions, such as new vulnerability or risk factors, and identify any new or enduring barriers to case resolution.¹⁶⁸

Further, the right to judicial review of any decision to detain is key for preventing arbitrary detention.¹⁶⁹ It is particularly important that systems of detention include regular, independent review of the detention decision and of potential avenues for release. The ability to challenge one's detention in an impartial court is a fundamental mechanism to safeguard individual freedom against arbitrary detention.

Regular reviews enable authorities to identify changes in circumstances that affect placement decisions, such as new vulnerability or risk factors, and identify any new or enduring barriers to case resolution.

One of the strongest mechanisms to achieve this is to establish in law that any decision to detain requires judicial approval, as seen in Argentina (Box 1) and Germany.¹⁷⁰ Decisions regarding confinement should be regulated through automatic, prompt and regular inde-

pendent review, whether by the courts or an independent administrative body.¹⁷¹ Review by a court or independent administrative body ensures independent and systemic oversight. Such transparency ensures that the reasons for taking the decision to detain have been well established by the decision-maker and that the person concerned has had a genuine opportunity to present relevant evidence and raise concerns.

Avenues for release from detention may include bail or bond schemes (described in *Bail, bond, surety or guarantee*) or release at the end of a maximum period of detention. Release may also result from issues of vulnerability and duty of care, such as when someone develops serious mental health issues that are compounded due to their ongoing confinement or, in the case of stateless persons, to limit periods of detention when waiting for a resolution of their situation.¹⁷² Developing pathways into community options ensures detention is not the result of a lack of options for release. See Box 25 Canada and Box 26 Australia, Mexico, the Philippines and South Korea.

BOX 10

REGULAR REVIEW

CANADA AND THE EUROPEAN UNION

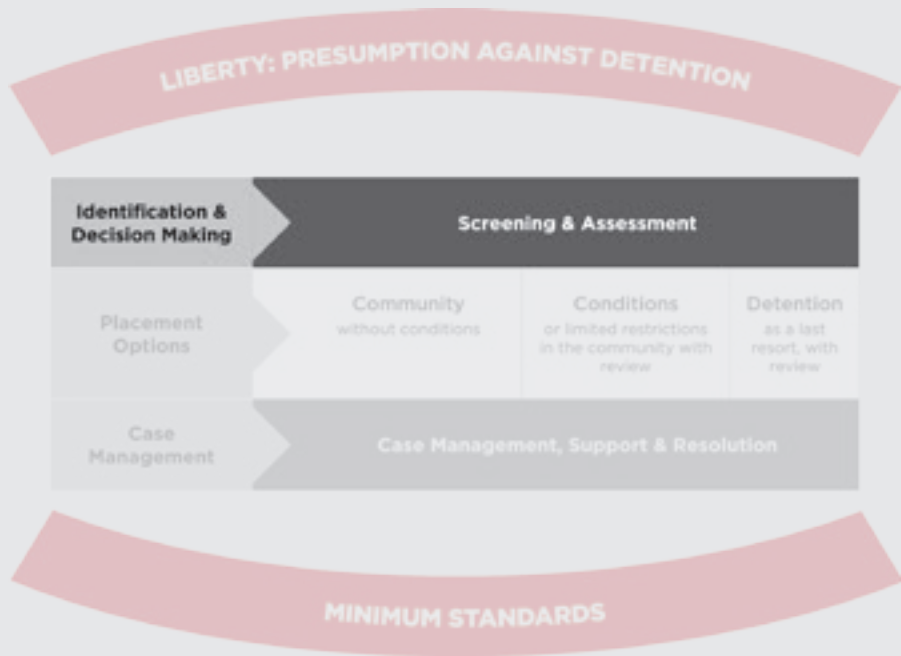
The Toronto Bail Program in Canada provides an example of the importance of regular review of conditions. The program has been operating since 1996 as a specialist agency funded by the government.¹⁷³ The organisation identifies eligible detainees through a screening and assessment process and then supports their application for release on bail. Clients include migrants who are facing departure after completing a prison sentence, refused refugee claimants, and asylum seekers detained due to issues of credibility or flight risk. The program relies on strong case management,

support, information and advice, reporting and supervision. Those who enter the program are initially placed in intensive supervision, with regular reporting. These conditions are reviewed and reduced after a period of compliance, building trust between case managers and participants. Case managers also identify and address issues such as substance abuse, drug addiction or mental health needs, as these personal issues often impact compliance. The program costs CA\$10-12 per person per day compared with CA\$179 for detention.¹⁷⁴ In the 2009-2010 financial

year, it maintained a 96.35% retention rate;¹⁷⁵ in the 2013-2014 year, it was 94.31%.¹⁷⁶

Member States of the European Union are required to undertake timely judicial review of detention decisions, by way of Article 15 (2) of the Return Directive and Article 9 (3) of the revised Reception Conditions Directive.¹⁷⁷ In addition, Article 15 (3) of the Return Directive and Article 9 (5) of the Reception Conditions Directive establish that detention has to be reviewed at reasonable intervals of time either by application from the third-country national or *ex officio*.

6. 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.

Screening and Assessment are different yet complementary processes that allow authorities to adjust placement decisions and to ensure any conditions on their placement are still necessary

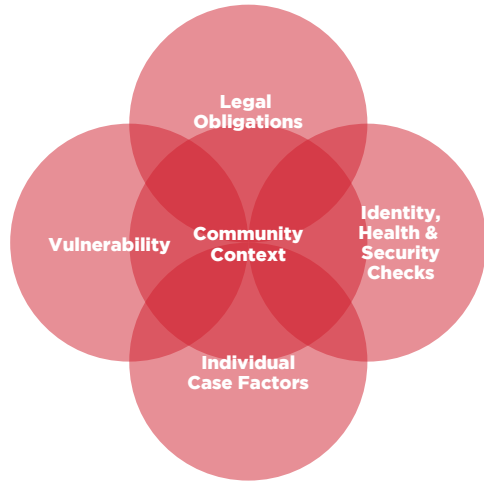
Screening is the process to obtain basic information and individual attributes, such as bio-data. Information collected during screening includes, *inter alia*, an individual's identity, nationality, legal status, health status, security indicators, vulnerability indicators and compliance history. This information can be used to determine the individual's migration status and to make initial referral, management and placement decisions.

Assessment involves a more in-depth evaluation of an individual's circumstances, vulnerabilities and/or risk factors. An assessment may be conducted to evaluate needs identified during screening (e.g. trafficking survivor or stateless) or it may involve an in-depth examination of the appropriate course of action to take for a particular person. An assessment may occur at the same time and by the same person conducting the screening, or it may happen at a later date and on a repeat basis by caseworkers, immigration officers and/or members of the judiciary. Assessments are used to make or adjust management and placement decisions.

Screening and assessment of the individual case can include several factors. The sections below will describe four key areas that are considered central to effective case management with migrants. As seen in Figure 2, these areas are:

- Legal obligations
- Identity, health and security checks
- Vulnerability
- Individual case factors
- Community context

Figure 2: Understanding the population through individual assessment



6.1 Legal obligations

It is of primary importance that detention is legally applied in each case to protect individuals from arbitrary or wrongful detention. A process that screens individuals against international human rights laws and standards and national laws and policies regarding detention can reduce the likelihood of unlawful detention and the costly litigation and public criticism that can entail. An assessment of legal obligations in each individual case can establish the lawfulness of detention and identify any legal requirements that must be fulfilled.

Many countries have laws that outline mandatory actions in particular migration cases, including that certain vulnerable individuals, such as children, cannot be detained. These will vary according to national law and, in some cases, regional agreements. States must be extremely careful that the right to be protected from arbitrary detention will be upheld should any *form of mandatory detention* be considered.¹⁷⁸

Some of the obligations imposed that might be assessed at this stage include those that prevent the detention of particular people, such as unaccompanied children (Box 7 Hungary). Laws may also prohibit the detention of citizens and residents with legal status or other vulnerable individuals (as seen in Section 4.4.)

Law or policy may require that alternatives to detention are applied or shown to be inadequate in an individual case before detention can be applied, as seen in Section 4.

Finally, there may be laws or policies outlining the circumstances in which people who are already in detention must be released. These can include:

- When a duty of care cannot be met within a detention environment
- When a maximum period of detention has been reached
- When a visa is issued or right to stay achieved

BOX 11

SCREENING AND ASSESSMENT IN A MIXED MIGRATION CONTEXT

ZAMBIA

Between 2013 and 2014, the government of Zambia collaborated with the IOM, UNHCR and the United Nations Children’s Fund to develop the capacity of national actors to respond to the needs of vulnerable migrants in a mixed migratory context. A technical taskforce involving several government ministries, police and civil society groups was formed to support the program’s goals.

A National Referral Mechanism (NRM)¹⁷⁹ and associated Guidelines were developed to effectively identify vulnerable migrants and refer them to appropriate authorities and services.¹⁸⁰ According to the NRM, vulnerable migrants include refugees, asylum seekers, rejected asylum seekers, victims of trafficking (including ‘presumed’ and ‘potential’ trafficked persons), unaccompanied and separated

children, stranded migrants and stateless migrants.

The NRM process starts with an initial interview and registration of migrants by front-line officers.¹⁸¹ The purpose of this initial interview is to assess immediate protection/assistance needs and to collect and register basic bio-data.

The migrant is then referred to the relevant authority for a more comprehensive assessment and status determination. The relevant authority may include the police (for victims of trafficking), the social welfare ministry (for unaccompanied or separated minors), the Office of the Commissioner for Refugees (for refugees, asylum seekers and refused asylum seekers) and the immigration authorities (for stranded migrants or stateless persons).

After this comprehensive assessment, migrants are referred to relevant service providers to address short, medium and long-term needs and to appropriate authorities to facilitate case resolution.

Following an initial piloting stage, the Guidelines have been rolled out across Zambia. More than 200 front-line officers have received training on the Guidelines and NRM.¹⁸² Initial monitoring and assessment has shown a strengthened capacity of front-line officers and service providers to: (a) identify various vulnerable migrants using the Profiling Form; (b) refer migrants to relevant authorities and service providers; (c) provide appropriate protective services; and (d) coordinate and collaborate with stakeholders to improve protective services for vulnerable migrants in Zambia.

Incorporating legal obligations into a screening and assessment process ensures that decisions regarding detention are lawful, protecting both individuals and the State from the harmful consequences of unlawful or arbitrary detention.

6.2 Health, identity and security checks

A central component of any screening and assessment process is having standard government health, identity and security checks. These three assessments are vital for managing and regulating the entry and exit of people from a territory. A number of countries have introduced streamlined identity, health and security checks to minimise the use or period of detention during these processes.

6.2.1 Health checks

A medical assessment allows the government to check for any health issues, including communicable diseases such as tuberculosis.¹⁸³ Health checks enable the government to identify and treat key health issues and to protect public health. They can also be used to uphold the health of detained populations by ensuring contagious diseases are not introduced to detention centres. Checks can also ensure the screening out or release of seriously ill people from detention. Health checks are sometimes used to limit any unfair burden of national health care systems; however this must be exercised with caution to ensure that individuals who are seriously ill do not face inhumane suffering should they be denied medical attention or face deportation without the prospect of appropriate medical care on return.¹⁸⁴ Sweden offers health checks to asylum seekers on arrival but this is only mandatory if there are visible signs of illness that may impact public health.¹⁸⁵

6.2.2 Identity checks

Identity checks establish the key elements of a person's identity such as their name, country of origin, country of citizenship and date of birth. This is sometimes easily established when identity and travel documents, such as passports, concur with all other evidence. However, establishing identity can prove difficult if the person has been forced to flee a country of persecution without original documentation or if they are attempting to enter under an assumed name.¹⁸⁶ This research cannot speak to these issues; however, the inability to provide documentation establishing identity should not be a reason to detain, as detention in these circumstances would arguably violate the norms of necessity and proportionality.

The inability to provide documentation establishing identity should not be a reason to detain

Further, evidence shows asylum seekers are predisposed to cooperate with immigration procedures while their status is being determined, and therefore detention cannot be considered necessary on the basis of a presumption of absconding.¹⁸⁷ Indeed, many countries house asylum seekers in open accommodation centres while undertaking identity confirmation including Sweden, Finland and Germany, while Canada directs its officials to release individuals who are cooperating with efforts to establish their identity but whose identity cannot be established.¹⁸⁸

6.2.3 Security checks

A security check establishes that the individual concerned does not pose a threat to national security or public order. A history of participating in terrorist networks or human rights abuses may, among other things, preclude entry into the territory if it is considered an issue of national security or public order. Countries that include security concerns in risk assessments include Australia, the United Kingdom, the United States (Box 12)

and Hong Kong (Box 14) Such checks should be undertaken as soon as possible and in a timely manner to ensure detention is not prolonged unnecessarily. Individuals who are cooperating with efforts to undertake a security check should not be forced to endure prolonged detention. Individuals who are considered a security risk through this process must have an opportunity to understand the basis of that assessment and have the chance to provide further informa-

BOX 12

SCREENING AND ASSESSMENT

THE UNITED STATES

In March 2013, US Immigration and Customs Enforcement (ICE) deployed a new Risk Classification Assessment instrument nationally. This is the first automated system of individualised assessment used to assist placement determinations. The Risk Classification Assessment tool was developed in response to criticism over the increasing numbers of people being unnecessarily detained or detained for prolonged periods. Such detention was taking place without uniform, individualised assessment or determination that their detention was proportionate or justified, including whether they were a danger to society, or a flight risk.¹⁸⁹

The Risk Classification Assessment tool is used during the detainee intake process to determine (a) whether a person should be released or detained, (b) if released,

what levels of supervision should be placed on the individual, and (c) if detained, the individual's custody classification level. The tool guides ICE officers through a multi-staged process of decision-making, starting with a legal assessment of whether the individual is subject to mandatory detention, or whether detention would otherwise be required. In respect to the latter, the Risk Classification Assessment tool uses objective classification scales and mathematically weighted factors/algorithms to score the risk that an individual poses to the community. Persons who do not pose a risk to the community and who are eligible to be released are then assessed using additional factors that score the risk of absconding. The results determine the type of alternative best suited to the individual.

The Risk Classification Assessment tool requires ICE officers to screen for the existence of family ties, immigration history including compliance with previous immigration decisions, as well as medical, mental health and other vulnerability triggers at the outset. It includes prompting questions for a number of vulnerability triggers including disability, advanced age, pregnancy, nursing mothers, sole caretaking responsibilities, mental health issues, and victimisation, including aliens who may be eligible for relief under the Violence against Women Act, survivors of crime, or survivors of human trafficking.¹⁹⁰ It is designed to take eight minutes to complete. It remains to be seen how effective the tool is in a context where conditions are applied rigorously and there is a historical predisposition to detain.¹⁹¹

tion to defend their claims before an independent body, with legal advice. The assessment of risk associated with migrants who have completed a prison sentence is included as an issue of character in Section 6.4.5.

6.3 Vulnerability

An assessment of vulnerability can ensure management strategies are sensitive to the particular needs of vulnerable individuals and incorporate appropriate support. Such an assessment can identify those individuals who require additional support to meet their basic needs or undertake daily activities, as well as identifying those who require extra assistance to understand and negotiate migration procedures and to meet the conditions of their release. Particularly vulnerable individuals may have fewer personal resources to cope with the detention environment and may be at higher risk of harm.¹⁹² In some countries it has been established that certain vulnerable individuals should never be detained, as discussed in Section 4.4 .

Vulnerability assessments identify the ways in which an individual’s position in society places them in an unequal relationship with others. Work on this concept focuses on the contexts that create vulnerability by framing assessments around what people may be *vulnerable to*.¹⁹³ However, most vulnerability assessments currently in use identify certain categories of people as being vulnerable based on particular personal characteristics.¹⁹⁴ For the purposes of this report we will discuss four areas which have traditionally been used to identify vulnerable individuals, as seen in Figure 3. These are:

- Age
- Gender / Diversity
- Health
- Protection needs

Figure 3: Assessing vulnerability

Age	Elderly and children particularly unaccompanied and separated minors.
Gender / Diversity	Women at risk, nursing mothers and pregnant women and those at risk due to sexual orientation or gender identity
Health	Physical and mental ill health or disability and psychosocial and welfare factors.
Protection needs	Refugees, asylum seekers, stateless persons, trafficked persons, survivors of torture and trauma and of sexual and gender-based violence.

6.3.1 Age

Vulnerability assessments should identify those individuals whose age places them in a position of vulnerability. Economic, political and personal power in society is often dependent on age. Elderly people who are frail or no longer able to work are often dependent on others to provide for their basic needs.¹⁹⁵ Policies in Canada¹⁹⁶ and China both require that detention is avoided or used as a measure of last resort for the elderly. Similarly, children mostly rely on adults to provide for their basic needs, and should never be detained, as discussed in Section 4.4 .

6.3.2 Gender / Diversity

Gender, gender identity, sexual orientation and visible markers of diversity can create vulnerability in some contexts. Women at risk, nursing mothers and pregnant women

are likely to be more vulnerable in a detention setting. Sexual orientation and gender identity can also create vulnerability, particularly in a detention context.¹⁹⁷ Identifying these issues during a vulnerability assessment can assist in ensuring management choices include a safe living environment, as seen in Box 18 Belgium. UNHCR Detention Guideline 9 offers further guidance on this in relation to asylum seekers.

6.3.3 Health

Those with serious issues impacting on their health and wellbeing may be vulnerable during a migration status determination process. Those with physical or mental health issues that compromise their independence may need assistance with daily care and

with obtaining medical attention. Such assistance can meet duty of care obligations while also ensuring a person's ill health does not interfere with their ability to meet the requirements of their placement in the community. For instance, someone who is suffering from a chronic illness may not be physically able to maintain regular reporting requirements despite a willingness to remain in contact with authorities.¹⁹⁸ Additional psychosocial factors that impact wellbeing and create vulnerability include a serious breakdown in family relationships, those experiencing violence or abuse or children with serious behavioural problems.¹⁹⁹ Countries that screen and assess for health vulnerabilities include Hong Kong (Box 14) and Australia (Box 16).

BOX 13

PROHIBITING THE DETENTION OF VULNERABLE INDIVIDUALS

TURKEY

For the first time, Turkey has introduced a comprehensive framework for the governance of migration. The *Law on Foreigners and International Protection* (LFIP) was ratified by the Turkish Parliament on 4 April 2014. It introduces important protections and procedural safeguards in administrative decision-making for persons seeking international protection. It also excludes certain vulnerable individuals from detention and introduces alternatives into law for the first time.

Under the LFIP, detention is prohibited for unaccompanied minors seeking international protection,²⁰² victims of human traffick-

ing, international protection status holders, international protection applicants (except in set circumstances) and stateless individuals.

The LFIP also exempts a number of vulnerable individuals from deportation orders and, therefore, detention. This includes individuals who are at risk of torture/ill-treatment if expelled; are unable to travel due to poor health, age or pregnancy; require medical treatment that cannot be obtained in the country of origin or return; or are victims of serious psychological, physical or sexual violence, until treatment is completed.

For such vulnerable individuals, humanitarian residence

permits are issued (with specific permits for victims of human trafficking). These permits can also be issued to individuals for whom a deportation order has been issued but who cannot be deported (e.g. because their country of origin refuses to accept their return). Permit holders may be required to reside at designated reception and accommodation centres and to report to authorities at specified periods. The permit includes a foreigner identification number, which is used to access health care, education and legal services. Asylum seekers may live with freedom of movement if they reside in their allocated 'satellite city'.²⁰³

An assessment of health and wellbeing is particularly important in detention cases, as many detainees have limited access to appropriate medical care especially for serious or chronic conditions. In addition, detention may be a core contributing factor to the onset and/or deterioration of some health conditions, as discussed in Section 1.3.3.

6.3.4 Protection needs

International human rights agreements highlight the responsibility of States to protect vulnerable individuals on their territory. Among others, these agreements protect children, asylum seekers and refugees, survivors of torture, victims of human trafficking, women and stateless persons.²⁰⁰ Regional agreements in Latin America and Africa offer additional protection to migrants who have been forced to leave their country for legitimate reasons.²⁰¹ In addition, those who have experienced torture, violence or trauma may be more vulnerable to the harmful effects of detention and at higher risk of re-traumatisation by being placed in a prison-like setting. Vulnerability assessments will identify those individuals with protection needs and ensure they access asylum or other protection processes and are placed in an appropriate environment while their status is assessed. See also [UNHCR's Detention Guidelines](#) for applicable criteria and standards relating to asylum seekers as well as Box 8 Spain, Box 13 Turkey and Box 21 Sweden.

6.4 Individual case factors

There are a range of factors relating to the individual and their situation that may be relevant when considering what supports or extra conditions might be needed in order to manage them appropriately in a community setting. Some of the key areas to incorporate in this assessment include:

→ Stage of migration process

- Anticipated length of time until case resolution
- Intended destination
- Family and community ties
- Character including compliance to date
- Belief in the process

6.4.1 Stage of migration process

It is important to understand what stage an individual has reached in the migration process in order to place them in an appropriate setting. People who are still awaiting a primary decision on their visa application are in very different circumstances to those who have been refused a visa at all levels and have no further legal avenues to remain in the country.

One area of consensus is that asylum seekers and irregular migrants rarely abscond while awaiting the outcome of a visa application, status determination or other lawful process, if in their destination country. Statistics from the United States' Department of Justice show that over 85% of asylum seekers who were living independently in the community without restrictions on their freedom of movement appeared for their hearings with an Immigration Judge, without any extra conditions being imposed.²⁰⁴ Such results indicate monitoring or other conditions may not be necessary for many people who are still engaged in assessment procedures.

It is important to note that this factor does not determine compliance alone, as several countries have successful programs working with people in a community setting who are facing return or deportation, as seen in Box 10 Canada, Box 16 Australia, Box 17 the Netherlands, Box 18 Belgium and Box 21 Sweden. However, these programs take the stage of the migration process into account and make use of additional supports and conditions to assist these individuals to work towards independent departure whenever possible.

6.4.2 Anticipated length of time until case resolution

The anticipated length of time until a migration process is complete or until deportation can be achieved is also an important factor when considering alternatives, as seen in Box 1 Argentina, Box 10 Canada and Box 14 Hong Kong. Detention cannot be justified when it is clear that a visa decision or deportation will not be achievable in a reasonable amount of time, given that the likelihood of psychological harm escalates the longer someone is detained.²⁰⁵

Certain migrants are at greater risk of unnecessary, prolonged or repeated detention when they should instead be placed in community alternatives

Certain migrants are at greater risk of unnecessary, prolonged or repeated detention when they should instead be placed in community alternatives, including: stateless persons; migrants whose countries of origin or domicile are unable or unwilling to issue travel documentation; migrants facing deportation to a country which is in turmoil due to war, violent conflict or natural disaster; and migrants who cannot be returned due to a serious medical condition.²⁰⁶

6.4.3 Intended destination

if they are in their destination country and awaiting the outcome of a visa application, status determination or other legal process. It stands to reason that absconding is unlikely while there is a real prospect of gaining legal status in a preferred destination, as remaining engaged in the process

ensures the best chance of obtaining a visa or other legal grounds to remain.

This factor is not related to whether the host country itself is categorised as a transit or destination country. Instead, it is more effective to establish whether that country is the intended destination of *each individual*. For instance, one study in the United States assessed compliance amongst a group of asylum seekers released from detention. It found that those individuals who had said Canada was their intended destination were least likely to appear at their immigration hearings.²⁰⁷ The categorisation of the United States as a ‘destination country’ was not of consequence to those individuals who were intent on reaching Canada.

6.4.4 Family and community ties

Many people are driven by their commitment to their family and this can shape migration journeys in particular ways. Families with young children are generally considered to be less likely to abscond, especially when engaged in social systems such as schooling,²⁰⁸ as are those individuals with family in the community who provide an extra source of support and point of contact.²⁰⁹ Those who have left family behind may risk working unlawfully in order to send remittances to loved ones struggling overseas. Despite these concerns, many families comply with difficult restrictions for long periods in the hope that they will eventually be reunited in a safe country.²¹⁰

Ties to the local community are also important when assessing the individual case.²¹¹ Local community ties increase the likelihood that the person will remain in the local area or in regular contact with their networks. Factors used to assess these ties include whether the person has close family or relatives, strong social networks including membership in a religious organisation, a stable address, employ-

ment, an ongoing course of study or training and ownership of property or business. Length of time living in the community may also be an indicator in this respect.

Notwithstanding these existing ties, effective ties can be established quickly for new arrivals who do not have existing connections but who join community or religious organisations that provide support and/or case management on release.

Family or community ties are often assessed as part of a bond or supervision program, as discussed in Section 8.2.3. See also Box 14 Hong Kong, Box 24 the United States and Box 25 Canada.

6.4.5 Character including compliance to date

As in the criminal justice setting, many countries rely on evidence of a person's character, including their previous compliance with authorities, when considering the most appropriate management option. Past behaviour can be a good indicator of future choices and character assessments can help in establishing reasonable expectations.

Irregular migration status in and of itself does not indicate a likelihood of absconding

For instance, someone who has a history of cooperating with authorities may be reasonably expected to continue to behave in a trustworthy manner until evidence to the contrary arises. Evidence of previous cooperation with authorities may include complying with authorities while completing a community service or prison sentence. Individuals who have served a sentence for a crime can be supported to

reach case resolution in the community and should not be automatically excluded from community placement.²¹² Countries that make use of such assessments are able to identify those individuals with a history of non-compliance and introduce more stringent conditions to mitigate risk of absconding, such as those outlined in Section 8.2 *Conditions or limited restrictions in the community*.

It should be noted that irregular migration status in and of itself does not indicate a likelihood of absconding. In addition, the use of fraudulent documents when fleeing persecution or other serious harm should not be considered an issue of character.

Character assessments including previous compliance with conditions of release or departure are factors used to assess flight risk in, *inter alia*, Australia Box 16, Canada Box 25, Hong Kong Box 14, South Africa, the United Kingdom and the United States Box 24.

6.4.6 Trust in the process

Evidence from the IDC's program of research shows that asylum seekers, refugees and migrants are more likely to accept and comply with a negative decision on their visa application, status determination or other immigration process if they trust they have been through a fair process; they have been informed and supported through that process; and they have explored all options to remain in the country legally.²¹³ In contrast, those individuals who believe their case has never been heard properly or who have felt that the process has been unfair are more likely to appeal a negative decision, find another avenue to remain in the country, or undertake secondary movement.²¹⁴ An assessment of an individual's belief in the process will help identify those who may require additional supports to achieve a sustainable case resolution.

Full and timely legal advice and case management throughout the process are key mechanisms to support this outcome. However, some people will not have faith in the bureaucratic process they have been through, such as if they know of a similar case that has received a different outcome²¹⁵ or if they are facing serious threats to life or liberty on return that fall outside protection mechanisms.²¹⁶ In these cases, it is particularly important that caseworkers and lawyers recognise these concerns, by exploring all options to remain in the country legally. If no further options remain, it may be necessary to explore alternative solutions, such as removal to a third country, to a different

region of their country of origin or provision of more substantial repatriation support that may assist the person to overcome their disbelief at a negative decision and avoid the trauma and force involved in deportation. For more information on support while working towards removal, see Section 7.2.

6.5 Community context

The final element of screening and assessment is to identify and assess what options are available in the community context to support individuals. Contextual factors, which are often outside the control of the individual, may have a significant impact on their ability

BOX 14

IDENTIFYING INDIVIDUALS WHO DO NOT NEED TO BE DETAINED

HONG KONG

Authorities in Hong Kong SAR undertake screening and assessment of irregular migrants when considering detention.²¹⁷ Detention policy states that “[i]n determining whether a person should be released or detained, the Director/Secretary will take into consideration all the relevant circumstances of the case, including:

- Whether the person’s removal is going to be possible within a reasonable time;
- Whether that person concerned constitutes a threat / security risk to the community;
- Whether there is any risk of that person’s absconding and/or (re) offending;

- Whether that person’s identity is resolved or satisfied to be genuine;
- Whether that person has close connection or fixed abode in Hong Kong; and
- Whether there are other circumstances in favour of release.”²¹⁸

After a short period of detention, most vulnerable individuals including asylum seekers and torture claimants²¹⁹ are released on their own recognisance. This may include conditions of self-surety and minimal reporting requirements. Asylum seekers and torture claimants are issued with recognisance papers documenting their status in the community. A government-funded project run by a non-government

organisation arranges housing in the community and provides food, clothing and medicine. Using a case management approach, workers assess each case on intake and develop an appropriate program of response, in line with the resources available. Vulnerable clients, such as unaccompanied minors, are given priority and extra support as able. The program costs HK\$109 per person per day and has a compliance rate of 97%.²²⁰ Caseworkers are not responsible for compliance matters, although known breaches must be reported to authorities. Other non-government organisations in Hong Kong provide **pro bono** legal advice and support services, which strengthen this community context.

to maintain their commitments with authorities and to stay engaged with the case resolution process. Community context can be assessed at a systemic level, to identify existing infrastructure and mechanisms that may be engaged, as well as at an individual level, to make case level decisions about support needs and placement options. For instance, this can include ensuring that housing, nutrition and other minimum standards are going to be met. If not, then authorities may need to arrange additional supports.

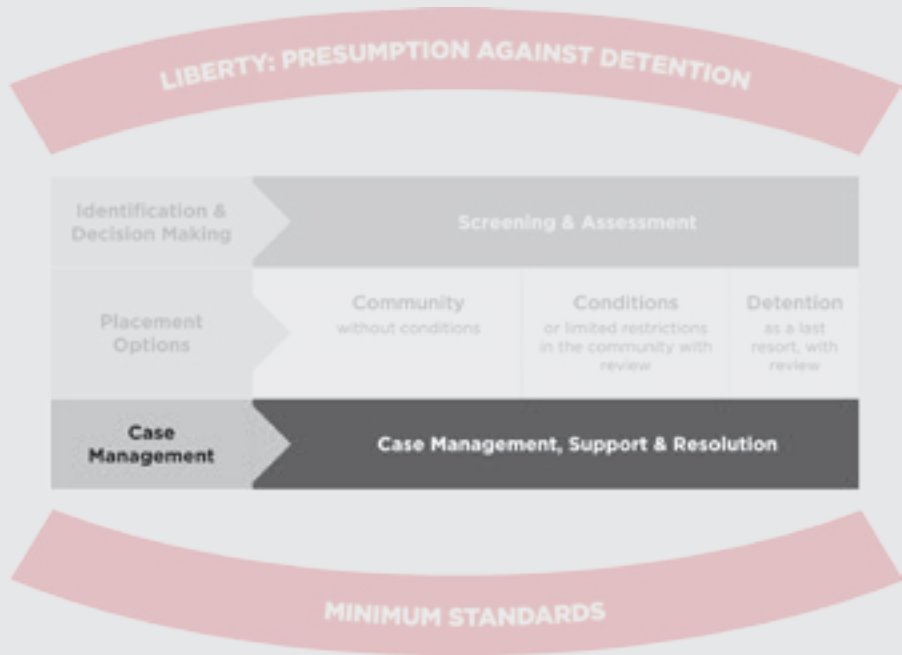
Governments can invest in the community context to strengthen support structures and mitigate concerns

Assessing the community context assists decision-makers in deciding on the best placement options available for an individual. It enables the individual being screened and assessed to be placed into the most appropriate and effective alternative to meet their needs and rights and to allow them to stay engaged with immigration processing. This does not need to be labour intensive: successful assessment includes processes to identify the options

available, and a referral process to subsequently place them in that measure. The key is to streamline such processes with clear identification and referral policies, practical tools, information and multi-stakeholder collaboration, as seen in Box 11 Zambia.

For governments interested in developing or expanding community options, it is important to assess at a systemic level what mechanisms are already available in the community that could be used to support and manage individuals outside of detention – even if this is not the current primary purpose of those mechanisms. For example, the expansion of national child protection programs to include unaccompanied children, such as in Hungary (Box 7).

7. 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.

7.1 Case management and support

Case management is a comprehensive and systematic service delivery approach designed to ensure support for, and a coordinated response to, the health and wellbeing of people with complex needs.²²² Case management centres on under-

standing and responding to the capacities, needs and challenges of individuals and their context, including personal resources, vulnerability, protection and risk factors.

Case managers can contribute to timely case resolution by identifying legal, practical and personal barriers to likely outcomes and working on shared solutions.

Case managers form working relationships with individuals and families in order to empower them, 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. Case managers are generally social workers, psychologists or other human services professionals.²²³

Case management is described below in more detail in the context of migration governance. Practical examples are found in Box 7 Hungary, Box 8 Spain, Box 10 Canada, Box 11 Zambia, Box 14 Hong Kong, Box 15 Two Case Studies, Box 16 Australia, Box 17 the Netherlands, Box 18 Belgium and Box 21 Sweden.

7.1.1 Case management with migrants

Applied in the context of migration, case management is a strategy for supporting and managing refugees, asylum seekers, stateless persons and irregular migrants in the community or in detention, while they are working towards achieving case resolution.²²⁴ The case manager role differs to that of an immigration officer, bureaucrat or guard. Case managers do not make decisions on people's

immigration cases or undertake compliance enforcement. Rather, the case manager forms an essential link between the individual, authorities and the community. Case managers can be particularly important for:

- **Promoting informed decision making** by both the government decision-maker and individual in question. Case managers can ensure case-by-case, initial and ongoing assessments of the risks, vulnerabilities and needs of an individual that may impact on their capacity to remain engaged with the authorities and comply with any conditions or restrictions. In providing such early and ongoing intervention, case managers can help reduce instances of unnecessary immigration detention and ensure placement decisions, including any conditions or restrictions, are continually re-evaluated.
- Case managers can also facilitate an individual's timely access to all relevant information, options, rights and responsibilities. They can help ensure that individuals have an understanding of their immigration status, legal and administrative processes, and the options available to them in their country of origin or another country. The more transparent the process, the more likely a person is to feel that all claims have been heard and considered, and to understand what their options are. This helps to promote an individual's trust in the system, and belief that they have been through a fair process.
- **Promoting timely and fair case resolution.** Case management can assist in achieving faster and more sustainable immigration decisions, building confidence in the determination process and reducing unmeritorious appeals. This in turn can improve final immigration outcomes, be that integration for individuals granted status, or voluntary or independent departure for refused

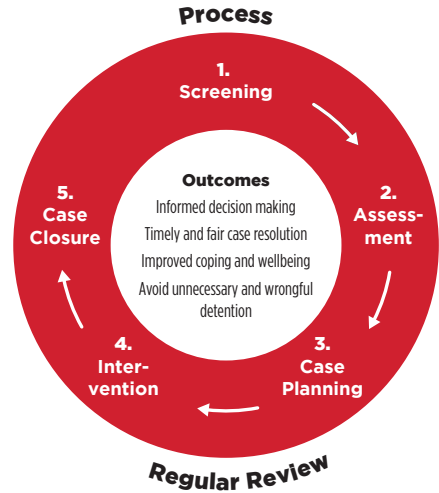
individuals. For example, with a consistent, trusting relationship between case manager and individual, the individual may disclose critical case information that authorities may not yet be aware of. With client consent and transparent communication for the purpose of information-gathering, case managers can work with the individual, lawyer and immigration authorities to ensure this is included as early as possible, to try and prevent the need for case review later. In addition, case management assists with preparing clients and establishing realistic expectations on immigration decisions, including exploring independent departure options if refused.

→ **Promoting coping and wellbeing** by facilitating access to community services and support networks. Where a person with an identified vulnerability (such as a health concern or torture experience) is supported during status determination, better outcomes for the individual, community and government are achieved regardless of the immigration outcome. For example, if a person is granted refugee status or a visa, the support received could mean that they are better placed to make a meaningful contribution to society. Alternatively, the person may be in a better position to return home and resettle if their case is refused. Strategies used by case managers in working with individuals facing removal include exploring legal options to remain, third country options, relocation to another area within the country of origin if safe to do so, and repatriation assistance. Case managers also have the flexibility to respond to barriers to return. This may include stabilising health conditions, obtaining travel documents and/or helping to establish contact with family, friends or support organisations in the country of return.

7.1.2 The case management process

Screening, assessment, case planning, intervention and ongoing review are the key steps in the case management process. This process is visualised in Figure 4 and described in more detail below.

Figure 4: The case management process



1. Screening

It is recommended that screening should take place as early as possible, at the time of irregular arrival, detection in the community with irregular status, or lodging of an asylum or protection claim. Where an indication of vulnerability or risk is present, the individual should be referred for comprehensive assessment.

2. Comprehensive assessment

Following an indication of risk or vulnerability during screening, assessment provides a basis for further decision making. Through consideration of all systems and factors impacting on the individual, a case manager can identify and address issues regarding basic needs and

protection, whilst also considering systemic and policy issues including the government's need to manage a person's immigration status. The case manager will engage with the client and all key stakeholders, including immigration authorities, health professionals, legal counsellors and family members to understand the client's vulnerabilities, strengths and risks and what kind of support the client may need to ensure wellbeing and timely case resolution. This may lead to a recommendation about appropriate management responses.

3. Case planning

Understanding the needs and priorities of the individual, and the individual's understanding of their situation, may demonstrate what action is needed to assist an expeditious case resolution. It may be legal assistance to lodge a thorough refugee claim. It may be counselling to deal with experiences of torture or trauma. Information gathered throughout the assessment process is therefore considered and analysed, goals set, prioritised and action plans put in place. The case manager and individual together develop a detailed case plan, outlining necessary steps to reach goals, suggested timeframes, and persons responsible. Consideration and planning for practical necessities such as housing, health care, livelihood, social support needs, reporting requirements and logistics is critical.

4. Intervention

The agreed case plan is implemented, and should ensure communication, education, advocacy and facilitation of appropriate service involvement, assisting individuals to maintain a link to immigration authorities. Full engagement with the individual and all key stakeholders is critical in resolving immigration cases and supporting vulnerable individuals: facilitating regular case conferences can be a productive intervention. Using the ongoing relationship between case manager

and client, individuals are supported to explore all possible immigration outcomes from the time of their case being opened.

Regular and ongoing review

As work and relationships develop, the case manager will continuously monitor the situation so any emerging needs or change in situation is identified and responded to accordingly, working towards a case outcome.

5. Case closure

The case is closed when the individual departs the country or is granted the right to remain. In both instances, referral to another service provider for ongoing assistance should be considered, if required.

7.1.3 Foundations of effective case management

Case management builds on the foundations of:

- Early intervention
- Face-to-face, one-on-one contact
- Regular assessment and review
- Confidentiality and information management
- Consulting key stakeholders
- Trust, building rapport, consistent relationships and information provision
- Explore all available options to empower individuals to make decisions
- Clear roles and expectations
- Resources and options for individuals as needed

7.1.4 Implementing case management

Case management is implemented in a number of ways, ranging from 'triage' systems designed to deal with large numbers to intensive, individual casework with complex cases. Many migrants will be able to work to

case resolution independently without the need for additional support. However, individuals with high level needs or complex circumstances may require more intensive case management. Caseloads will vary depending on assessed need and complexity. Reassessments are undertaken by case managers at critical points, such as decisions on the migration or asylum case, at a final refusal and

prior to decisions to detain or remove. Case managers may provide training and advice to enforcement and compliance units, and/or maintain oversight of individual health and wellbeing within these programs. Several countries have introduced national case management programs after first piloting the approach at a small scale, including Australia (Box 16) and Belgium (Box 18).

BOX 15**CASE MANAGEMENT IN THE MIGRATION CONTEXT****TWO CASE STUDIES****Case study 1: Case management with families pending removal****Cecilia is a mother with sons aged seven and 16.**

Cecilia is a mother with sons aged seven and 16.²²⁵ She came to Belgium from Brazil without documents to join her sister. After five years in Belgium, Cecilia was detained and sent back to Brazil. However, a month later she made her way back to Belgium. Cecilia was refused legal residential status and she and her children were

placed in the open family units described in Box 18, pending their removal. Cecilia was initially assessed as a risk to abscond, as she was adamant on staying in Belgium.

Cecilia's case manager sought legal advice to ensure all her options to remain in the country legally had been fully explored. The legal advisor suggested Cecilia return to Brazil and apply for a visa in

order to come and work legally in Belgium. The case manager ensured Cecilia knew how to apply for a visa from Brazil and engaged the International Organization for Migration to work with Cecilia to explore possibilities for the family's return.

Through this process, Cecilia finally agreed to return independently to Brazil with her family.

Case study 2: Case management and case resolution

Ravi came to Australia as a student, later lodging an application for asylum based on fear of reprisal for his involvement in student politics in India.²²⁶ Ravi was found not to have protection concerns and, following a failed appeal, was required to depart Australia. Ravi refused to depart, citing his ongoing fear, and threatened suicide should he be forced to return. Ravi's case manager explored

his fears and expectations around the right to remain in Australia. Whilst Ravi did hold some fears related to his safety, he also had an overwhelming sense of shame of facing his family without savings. Ravi's case manager sought independent legal advice to review Ravi's case and outline his realistic chances of remaining in Australia. The case manager also negotiated an additional three months, with work rights, while Ravi explored these

options. He was also referred to a counsellor for additional support.

During this time, Ravi managed to save some money so that he would not be destitute on arrival. On receiving legal advice that he had no further grounds to remain, the case manager explored his return options with him. Ravi consequently departed Australia independently.

7.2 Case resolution

Case resolution is not the same as case management, although they often overlap. Case resolution is focused on finding a permanent or temporary migration outcome. While this responsibility ultimately sits with immigration authorities, case managers can contribute to timely case resolution by identifying legal, practical and personal barriers to likely outcomes and working on shared solutions. Case resolution can draw from a range of solutions including various visa and departure options. Examples of case resolution options are provided below and in Box 15 Case studies, Box 19 Options for those who cannot be deported and Box 20 Protecting victims of trafficking.²²⁷

The following sections focus in particular on the challenges of resolving complex cases and on preparing migrants for departure. Some migration cases require extra work to achieve resolution due to complex migration

issues, the case becoming stalled due to a bureaucratic issue (such as when there is no standard policy to deal with people who are stateless), severe client vulnerability or due to challenges in achieving departure. Intensive case resolution work can be used as a mechanism to assist in resolving an individual's migration status while they remain in the community. Allocating extra resources to complex cases identified through the screening and assessment process can assist in resolving a case while an individual remains in a community setting. The intensive case resolution strategies included in this report are:

- Case resolution for complex cases
- Preparing for departure

7.2.1 Case resolution for complex cases

In complex cases, individuals are less able to focus on resolving their migration status due to multiple and complex issues that demand their attention and engage their time

BOX 16

INTENSIVE CASE RESOLUTION WITH COMPLEX CASES

AUSTRALIA

In Australia, vulnerable migrants with complex needs are referred to the Status Resolution Support Services (SRSS). As of October 2014, the SRSS replaced four previous support programs. The SRSS is designed to provide extra support to individuals as they engage with immigration authorities. The guiding principles of the SRSS are to involve clients in identifying and addressing their own needs and building on their own strengths. The three broad areas of service provision are orientation,

accommodation and case management.²²⁸

This service is built on an original pilot program with a group of clients with high-level welfare needs and an average of more than six years in Australia. Despite these barriers, the pilot achieved significant outcomes. Of 918 people assisted between March 2006 and January 2009, 560 people (61%) had a final outcome. Of this group, 370 people (66%) received a temporary or permanent visa to remain, 114 people (20%) departed

independently, 37 people (7%) absconded, 33 people (6%) were removed by the Department and six people (1%) died.²²⁹ This equates to a 93% compliance rate and a 60% rate of independent departure amongst refused applicants. The program cost a minimum of AU\$38 per day compared with a minimum of AU\$125 for detention.²³⁰ The government has found that: “[d]rawing on appropriate services and focusing on addressing barriers is proving a successful mix for achieving sustainable immigration outcomes.”²³¹

and energy. Complex cases vary widely but many involve issues of vulnerability (such as serious illness or trauma), an inability to meet basic needs (resulting in homelessness and destitution), risk of self-harm or suicidal ideation, or difficulties in departing the country. Providing extra resources to work with individuals to address the variety of issues affecting their migration situation can be an effective way of dealing with barriers to case resolution, as seen in Box 16 Australia.

7.2.2 Preparing for departure

For individuals found to have no legal basis to remain, return preparation and counselling programs have been an effective mechanism to support and facilitate independent or voluntary departure without the need for detention and deportation. Return preparation and counselling programs can be effective if a strong case management model allows workers to respond to the whole of the person's context and to ensure that the individual has explored all options to remain in the country legally (see Box 18 Belgium).

States are increasingly choosing to incorporate voluntary return into migration governance systems. There are a number of programs designed to support a person to prepare for voluntary or independent departure while they remain in the community, including the Assisted Voluntary Return and Reintegration (AVRR) programs run by the International Organization for Migration.²³² These programs include pre-departure assistance, return/transit assistance and post-return support for reception and reintegration. This practical support can include organising and paying for flights, making contact with families or friends, and planning for life on return. Such programs are extremely useful for migrants who wish to return but find themselves stranded for reasons such as a lack of finances or lack travel documents. Assisted return programs appear to be more effective at achieving independent departure when integrated with case management throughout the migration assessment

process, rather than being introduced after a period allowing for independent departure has elapsed without any support (see Box 17 the Netherlands and Box 21 Sweden).

In addition to providing practical support, such programs can encourage individuals to exit the country independently by highlighting the benefits of legal return, as opposed to having to contend with the stigma of deportation and exclusion from future return to the country. The effectiveness of such 'return counselling' is likely to depend on the individual's situation and their trust in their caseworkers. One US study, described in Box 24 found that departure planning particularly increased appearance and independent departure for undocumented migrants and criminal non-citizens, as these groups wanted to be able to legally re-enter the country in the future. In addition to other mechanisms, the program supported independent departure by obtaining travel documents, buying tickets, explaining how to confirm departure with the authorities and retrieve any bond deposit after departure.²³⁴ Similarly, the 'Failed Refugee Project' in Ontario, Canada provided return counselling and financial support to asylum seekers who had exhausted all avenues of appeal. This project successfully effected removals without resorting to detention in 60% of cases within the 30 day period for departure.²³⁵ As seen in the Case Study 2 (Box 15), securing short term work rights can be integral to enabling independent return. Contrasted against this, prolonged detention or unnecessary detention pending removal has been found in some contexts to be counterproductive to government objectives of achieving compliance with immigration outcomes, including returns (see Section 1.3.2).

Refused asylum seekers may have powerful reasons to fear return which are not allayed by standard reintegration support packages, and particular care must be taken when working with this group.²³⁶ Individual assessment and case management can assist authorities in determining the best pathway to return for these different populations.

Resolving migration status

The resolution of a migration case takes many forms. Case resolution ranges from regularisation, protection and other humanitarian interventions, other permanent migration solutions (such as family reunification, marriage), medium term options (such as study or temporary work), short-term provisional visas, departure to a third country, departure with a plan for lawful re-entry, return to a different area of the country of citizenship, assisted voluntary return and other departure options.

BOX 17

MAKING PLANS FOR LIFE AFTER RETURN

THE NETHERLANDS

In the Netherlands, an NGO-run programme assists persons who have been issued with a deportation order or have overstayed their visa to return to their country of origin.²³³ The program, which runs for a minimum of 13 weeks, is based on the premise that people should be empowered to prepare for departure from the Netherlands, and that the coercive environment of detention is not conducive to overcoming real or perceived barriers to return.

Coaches, or caseworkers, build trust with individuals

and help them to identify and overcome obstacles to return. The program focuses on empowerment and restoring the independence of participants by building up the skills and confidence necessary for return. The program includes business and skills training, some assistance to meet basic needs, and referrals to psychosocial services where required. Participants develop a plan to establish a new business upon returning to their country of origin and receive financial support to implement this upon return.

The program is mainly government funded. It costs 6,000 EUR to assist an individual to return (including all associated costs) – the equivalent of 30 days in immigration detention. The program acts as an alternative to detention because the government undertakes that participants will not be detained and, in some cases, people are released from detention to participate in the program. As of September 2014, over half the people enrolled in the program had returned to their countries

BOX 18**PREPARING FAMILIES FOR INDEPENDENT DEPARTURE****BELGIUM**

Belgium²³⁷ has open housing facilities for families who have to leave the country, who apply for asylum at the border, or who fall under the Dublin Regulations.²³⁸ These housing facilities are located in close proximity to public transportation, schools and shops. Usually, each family is allocated its own unit. Buildings are not locked and there are no security staff. The families receive a weekly allowance, food vouchers and non-food items. Children can attend schools in the local area and families have access to physical and mental health services if required.

Each family is assigned a 'coach' employed by the

Belgian Immigration Department. These coaches are, in effect, case managers responsible for providing holistic, tailored support through intensive casework. They review the family's file, explore all options to remain in the country legally, seek legal advice if required, make practical arrangements for the journey and work with the family to accept and prepare for return. Case managers cultivate rapport and encourage families to share their full story in order to realistically consider all future options.

Since the project began, the majority of families (70% to 80%) have remained in

immigration processes.²³⁹

There has been a high rate of voluntary return and low rates of absconding: from October 2008 to August 2011, 217 families (including 396 children) were housed at the units.²⁴⁰ Of this group, 88 families returned to their countries of origin or were removed to a third country under the Dublin Regulations. Almost all of these (80) departed independently, with only eight forced returns. Of the remaining 129 families, 69 were released and 48 absconded (usually within five days of arrival).²⁴¹ The average length of stay was 24 days.²⁴²

FACILITATING LAWFUL STATUS**THE UNITED STATES**

The United States established the T Non-Immigrant Status (the “T Visa”) for non-citizens who are survivors of severe forms of human trafficking.²⁴³ It extends protection to such individuals, and allows them to remain in the country to assist in an investigation or prosecution of human trafficking. The T Visa begins as a temporary four-year visa. After three years of holding T non-immigrant status, the non-citizen can apply for permanent residency. T Visa holders are given work rights and are eligible for the same federally-funded benefits and services as refugees. Further, T Visa holders have some access to family reunification, in order to protect family members at risk of reprisals by traffickers.²⁴⁴

FACILITATING LAWFUL STATUS**MOROCCO**

Morocco hosts between 10,000 to 20,000 undocumented migrants from Sub-Saharan African nations. In September 2013, King Muhammad VI announced that some undocumented migrants would be ‘regularised’ and given permission to work in the country legally.²⁴⁸ This limited scheme resulted in approximately 18,000 one-year residency permits being granted to undocumented migrants in the country.²⁴⁹

FACILITATING LAWFUL STATUS**ARGENTINA**

Argentina has pursued a strong regularisation and legalisation strategy for managing its substantial population of immigrants, most of whom originate from countries in the region.²⁴⁵ It provides residence to any citizen of a Mercado Comun del Sur country (which includes all South American states) who does not have a criminal record. It has also legislated to provide temporary residence permits for people who are not be able to return to their country of origin because of a natural or environmental disaster.²⁴⁶ Further, between 2007 and 2010, Argentina implemented the “Patria Grande” regularisation programme. This granted temporary or permanent residence to 560,131 people, thus contributing to a decrease in unemployment and poverty.²⁴⁷ Legal migration has been seen to benefit the economy and so irregular migration has largely been redirected into the formal market through regularisation.

FACILITATING LAWFUL STATUS**SWEDEN**

Sweden conducted a regularisation program between November 2005 and March 2006, targeting individuals who had been issued with final removal orders. This was initiated in part due to heightened media attention over children from undocumented families who were experiencing severe psychological problems caused by their irregular status. A total of 31,120 applications for residence permits were processed, of which 17,406 were granted. These were mostly issued to families with small children and migrants who had been issued removal orders but could not be returned to their country. Factors such as length of stay in Sweden, situation in their country of origin, criminal history and social and health circumstances were taken into consideration.²⁵¹

FACILITATING LAWFUL STATUS**BELGIUM**

Belgium launched a program in 2009 to regularise migrants who had been residing in the country for at least five years. Applications were received between 15 September and 15 December 2009. Applicants had to demonstrate integration into Belgian society (through language skills, attendance at literary courses or having children who were enrolled in Belgian schools). The regularisation program also offered permanent regularisation to asylum seekers whose applications had been pending for more than three years, and who could produce an employment contract and regional labour card. Through this program, 11,016 regularisation applications were granted.²⁵⁰

BOX 19

OPTIONS FOR THOSE WHO CANNOT BE DEPORTED

VARIOUS COUNTRIES

See also Box 26.

Hungary – Under Act II of 2007, a residence permit can be issued on humanitarian grounds to persons who have been granted “exile” status, or tolerated stay.²⁵² Residence permits are issued for one year and may be renewed for further one-year periods. Those with ‘exile’ status are entitled to social assistance including accommodation or rental support, medical services, education assistance, and financial support to depart the country when possible.²⁵³

Germany – Unreturnable migrants in Germany are granted tolerated status, and

issued with a document called a *Duldung*. This certifies that the individual is obliged to leave the territory, but cannot do so at present. A *Duldung* can be granted for a variety of reasons, including administrative obstacles preventing travel, such as a lack of passport, or conflict in the country of origin. After a year, *Duldung* holders have limited work rights and receive basic social assistance, at 40% below unemployment benefits for German nationals. They are required to live in designated areas (to distribute the social welfare load across the Länder), and require permission to travel.

In the **United States**, individuals from certain countries that have experienced devastating natural disasters, civil war or other conditions that temporarily prevent their citizens from returning safely, may be able to obtain Temporary Protected Status (TPS). A TPS provides the holder with temporary permission to remain in the US, and also provides temporary work authorisation. Once granted TPS, an individual cannot be detained and is not removable during the designated period. In order to qualify for TPS, an individual must prove that s/he is a national of a current TPS designated country and has been in the US since a specified date.

BOX 20

PROTECTING VICTIMS OF TRAFFICKING

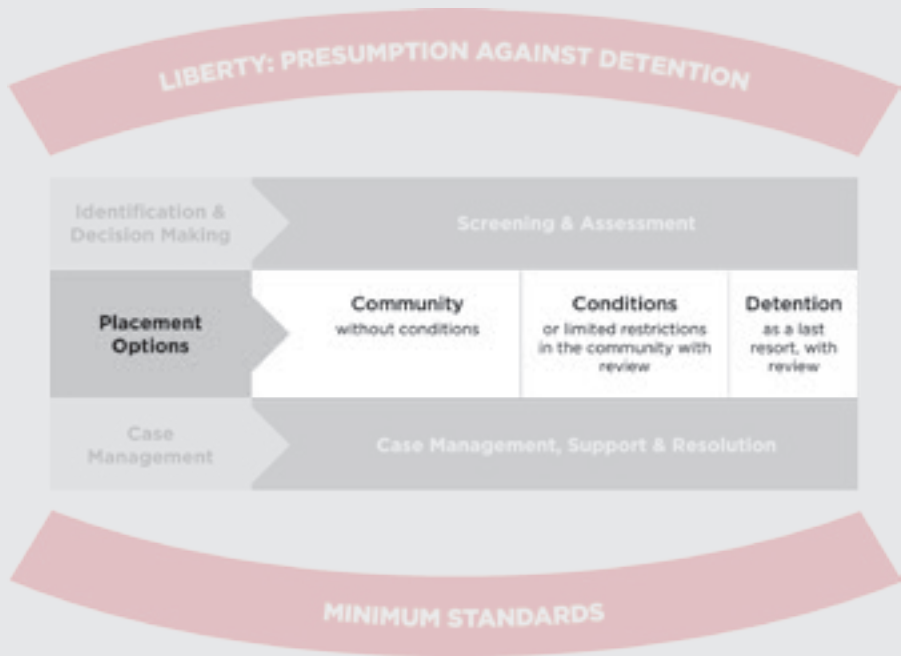
EUROPE

A reflection period is “a period of time in which the trafficked persons can consider their options in a safe environment, without risk of being removed from the country.”²⁵⁴ Granting a reflection period to survivors of trafficking is recognised as a best practice and measure that not only helps to protect the rights of trafficked survivors, but also encourages survivors to cooperate with authorities in the prosecution of traffickers.²⁵⁵

The *Council of Europe Convention on Action against Trafficking in Human Beings* includes a mandatory 30 day reflection period, irrespective of whether the person is cooperating with the prosecuting authorities. It also provides for renewable residence permits, valid for at least six months. Under Article 8 of the Directive, residence permits may be issued if the person(a) is necessary for the investigation of the trafficking offence or

judicial proceedings, (b) has shown a clear intention to cooperate, (c) has severed all relations with the traffickers; and (d) would pose no risk to public order, policy or security. Holders of residence permits should be able to access standards of living capable of subsistence, access to emergency medical treatment, translation and interpreting services, and if provided for by national law, psychological services and free legal aid.

8. 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 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.

8.1 Community without conditions

If screening and assessment demonstrate that there are no legitimate grounds for detention, then liberty is the first and preferred placement option. Placement in the community without conditions or restrictions upholds an individual's right to liberty and freedom of movement. Such placement is underpinned and supported by the minimum standards described in Section 5.

Open accommodation centres and reception centres are one example of such placement options. Such centres may be dormi-

tory-style living with mess hall kitchens and communal facilities or a more independent style of living in self-contained flats with self-catering. Residents can come and go as they like, but may need to meet with immigration to progress their migration case. Such institutional models often provide space on-site for relevant services such as legal advice or counselling.

Some countries tend not to use the institutional or cluster housing models but instead disperse individuals throughout the local community. This may be in community or religious group housing, in NGO-run shelters, with friends or family or in private rental properties.

Many countries operate specialist housing for vulnerable individuals such as trafficked persons, people with physical or mental illness, and single mothers. A number of countries place unaccompanied minors into the mainstream child protection system.

8.1.1 Accommodation options

Despite the importance of developing a holistic approach to alternatives, there is often particular interest and concern about where people will live if they remain in the community. Accommodation can include:

- Private accommodation
- Living with immediate family, friends or relatives
- Living with members of the host community
- Government-funded housing
- Private housing funded by charities
- Open reception centres for asylum seekers
- Open centres for recognised refugees
- Open refugee camps
- Shelters run as part of humanitarian aid
- Shelters for unaccompanied children or separated children

- Foster homes or orphanages (such as used with children who are citizens)
- Shelters for destitute, irregular migrants
- Homeless shelters or transitional housing for the homeless
- Centres for migrants preparing to depart the country

8.1.2 Minimum supports and requirements

As discussed in Section 5, minimum standards underpin these placement options. The provision of minimum standards looks different country to country. In some countries all basic needs are met through the institutional setting, while in others basic needs are provided by NGOs with or without government funding. A number of countries allow work rights for asylum seekers and other migrants awaiting a decision in their case. This reduces the economic burden on governments and increases the ability of the individual to self-sustain and cope during the process, in turn improving integration (if approved) or reintegration and return with dignity (if refused).

For many placed in the community, there will be no need for conditions or restrictions. However most individuals in the community may be required to undertake a number of minimal requirements to ensure they remain active in the system and achieve case resolution, including to:

- Appear at appointments, hearings or interviews
- Undertake acts to assist case resolution
- Respect visa or residency status conditions

Such requirements are differentiated from conditions or restrictions, as the latter are more onerous and impact on a person's right to liberty and freedom of movement. It is important to note, however, that minimal requirements may become conditions or restrictions, or applied as such, depending on the individual case. For example, in some countries individuals who fail to appear at

immigration appointments or to undertake certain acts to assist in achieving case resolution may be automatically deemed to not be in compliance with their immigration obligations and subject to more onerous conditions. Meanwhile, requiring an individual to participate in high frequency meetings with their caseworker could amount to a condition or restriction if unnecessary and disproportionate to the individual's circumstances.

Appear at appointments, hearings or interviews

When placed in the community, an individual may be required to appear at set appointments, hearings or official interviews with caseworkers or immigration authorities regarding their visa application or migration status. This assists in progressing the migration matter and working towards case resolution. Attendance at such appointments, hearings or interviews can also be used as an opportunity to conduct a follow-up assessment of an individual's placement and whether additional supports are required to manage him or her in the community.²⁵⁶ They can also be used to re-evaluate the conditions of release in the community should a negative decision on a visa application or other status be received. See Box 10 Canada, Box 14 Hong Kong, Box 16 Australia, and Box 21 Sweden for examples.

Undertake acts to achieve case resolution

An individual may be required to undertake acts to assist in achieving case resolution. As seen in Box 1 Argentina, individuals may be required to explore all options to regularise their status within a set deadline. Similarly in Brazil, the first measure of response to an immigration infraction is to order an individual to leave the country, regularise his or her status within a certain period of time and/or to pay a fine.²⁵⁷

Individuals may also be required to present further evidence in support of their migration claims by a certain date, such as to produce documents or identify witnesses. They may also be required to take steps in preparation for return, such as applying for a passport or other travel document or purchasing tickets to leave the country, as seen in Box 16 Australia, Box 17 the Netherlands, Box 18 Belgium and Box 21 Sweden.

Respect visa or residency status requirements

Individuals may also be obliged to respect the requirements imposed on them by the short-term visa or other temporary status issued. These can sometimes place limitations on a person's participation in the structures of society, such as limitations on access to social welfare benefits, public healthcare or employment. However, there is no evidence that such limitations encourage case resolution or compliance. Instead, as described in Sections 2.4.1 and 5.2, the ability to meet basic needs contributes to case resolution from community settings. Another requirement may be that the visa holder is not permitted to leave the country without permission.

BOX 21

RECEPTION IN THE COMMUNITY

SWEDEN

In Sweden, asylum seekers are taken to an open reception centre where they are registered and screened for health or other support needs. They are registered on arrival and issued with a plastic photo identity card. This is used by immigration to track the case and used by the asylum seeker to access services in the community.²⁵⁸ A caseworker explains the Refugee Status Determination process and their rights and entitlements in Sweden.

After several weeks, asylum seekers are transferred to a regional area and housed in flats and apartments close to a Swedish Migration Board reception office. Asylum seekers can live independently if they can pay their own rent. Asylum seekers are provided with a daily allowance of up to SEK71 (approximately USD11) for single adults (less for adults sharing accommodation, and children). Emergency

medical and dental procedures are provided at low cost, about SEK50 (approximately USD8). Like Swedish children, asylum-seeking children are entitled to free medical coverage. Asylum seekers can request the assistance of a lawyer, who is appointed and paid for by the Swedish Migration Board. Asylum seekers who can prove their identity, or who are cooperating with authorities to establish their identity, are entitled to work.

Asylum seekers have regular meetings with caseworkers appointed by the Swedish Migration Board. Caseworkers can refer clients for medical care, counselling or other services where required. They also provide “motivational counselling” to prepare the asylum seeker for all possible immigration outcomes, and assess the risk of absconding due to a negative asylum decision. There are three options on negative decisions: volun-

tary repatriation, escort by caseworkers or transfer to the authority of the police (forced return). Incentives are provided to those who opt for voluntarily repatriation, including financial assistance, and travel arranged by the caseworker and paid for by the Swedish Migration Board.²⁵⁹ Where there is no risk of absconding, failed asylum seekers are given between 14 and 30 calendar days to leave the country independently. In 2012, 68% of third country nationals ordered to leave the country departed voluntarily or through an Assisted Voluntary Return program.²⁶⁰ Those who do not cooperate with independent departure options can have conditions introduced including reporting requirements or reduced benefits.²⁶¹ As seen in Box 27, detention is only applied as a last resort during deportation procedures in conditions that support dignity and wellbeing.

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).

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

8.2 Conditions or limited restrictions in the community, with review

The foundation provided through minimum standards – including formal status and documentation, legal advice, basic needs and fundamental rights – create a strong context from which individuals can participate in the administrative procedures associated with achieving case resolution. Satisfactory outcomes can often be achieved without extra conditions or restrictions being imposed.

However, for those individuals with a history of non-compliance or where there are other serious concerns identified through the screening and assessment process, there are a range of conditions or restrictions that may promote compliance without undue restrictions on liberty or freedom of movement. Unfortunately, there is very limited data available documenting the specific levels of effectiveness of each of these conditions or restrictions.²⁷³ The data that is available has been noted.

Conditions or restrictions may include the following:

- Monitoring
- Supervision
- Surety and other consequences for non-compliance

Many alternatives integrate a number of these mechanisms – together with the minimum standards of legal advice, basic needs, legal status and documentation and case management – to create effective management programs in a community context. As detailed in *Regular review of placement decisions*, ongoing and regular assessments should be conducted to re-negotiate or amend the use of conditions and restrictions as a person's circumstances change, to make sure they are not unnecessary or disproportional. For instance, reassessment of a case due to non-compliance or a negative visa or status

decision may lead to an increase in conditions or restrictions. Conversely, it is often appropriate to decrease the level or type of conditions for an individual who is working well with authorities. It is important that the application of conditions is independently monitored to ensure that any conditions or restrictions are applied in limited circumstances and only when necessary.²⁷⁴ For example, Venezuela maintains a 30-day time limit on the use of any conditions imposed to implement a deportation order.²⁷⁵

It should be noted that the undue application of additional conditions or restrictions can increase the costs of community management programs unnecessarily while also decreasing efficiency. Compliance issues may arise when conditions or restrictions create an unmanageable or unfair burden for the individual. For instance, in-person reporting can be overly onerous if it requires lengthy or expensive travel, if it regularly disrupts legal employment or if it is required of those responsible for caring for children or the sick. Such conditions sometimes lead to non-compliance, even when the individual is willing to remain in contact with authorities. If such requirements are too onerous, or is required at high levels over long periods of time, compliance can be inadvertently compromised.

8.2.1 Monitoring

Authorities often make use of monitoring mechanisms to ensure that irregular migrants remain in contact with authorities and can be located to participate in the progress of their migration case as required.²⁷⁶ Monitoring mechanisms are designed to establish and maintain a line of communication and to keep track of an individual's whereabouts. Monitoring differs from supervision or case management in that it does not provide opportunities to communicate or to respond to substantial matters such as changes in

a person's situation or concerns regarding compliance. Monitoring mechanisms include:

- Registration with authorities
- Nominated address
- Handover of travel documents
- Reporting requirements
- Directed residence

Registration with authorities

Registration provides authorities with a central database of all relevant cases and is often closely linked with the issuing of documentation. This strategy is well established in many countries, however its use is still growing in some regions. For instance, the use of registration processes for asylum seekers and refugees in Uganda, Zambia and Kenya has resulted in fewer people being detained unnecessarily.²⁷⁷

Nominated address

Providing a nominated address is used by different governments for different reasons. Some governments use this mechanism largely to ensure that the applicant will receive all official communication about the progression of the case. Other governments use a registered address to monitor movement and ensure the individual can be located by authorities in the community.²⁷⁸ The address that can be registered depends on these different purposes: it may be the personal, residential address of the individual (including that of an accommodation facility) or it may be another address, such as that of the person's legal counsel. The requirement to provide a nominated or registered address is used in Box 25 Canada.

Handover of travel documents

When an individual is assessed as a high risk of transit or absconding, authorities may decide to take possession of the individu-

al's travel documents, such as a passport, until migration matters are resolved. This is seen as an effective strategy to reduce the use of asylum processes to gain entry to a territory to work unlawfully for short periods of time.²⁷⁹ Authorities must ensure that such documents are kept in secure locations and can be retrieved by the individual should they decide to depart the country voluntarily. In addition, appropriate documentation needs to be issued as a replacement so that the individual can continue with everyday activities that require identification and to protect them from unnecessary detention. This strategy is used in several countries including Hungary,²⁸⁰ Austria,²⁸¹ Jordan, Box 2 Poland and Croatia and Box 25 Canada.

Reporting requirements

An obligation to report regularly to authorities is the most common condition identified. Reporting acts as a monitoring mechanism by ensuring the individual remains known to and in contact with authorities. In-person reporting requires the individual to present themselves at set intervals at a nominated location (such as an immigration office, police station or contracted agency). They are often then required to sign a register documenting their presence. Telephone reporting requires the individual to call a particular number at set times (sometimes from a set telephone number) and to record a statement, which is subsequently verified using voice recognition technology.²⁸²

In many contexts, authorities or the courts have the discretion to decide the frequency of reporting. Screening and ongoing assessment will assist authorities to determine appropriate reporting requirements, and reduce the expense and impact of unnecessary or overly onerous reporting obligations. Personal circumstances should be taken into account when determining this condition. Individuals

with vulnerabilities (such as illness, disability or pregnancy) should be offered modified measures such as telephone reporting or less frequent, in-person reporting. Other relevant factors may include distance to be travelled, transportation available, caring obligations and employment schedule. The frequency of reporting should be reviewed and modified, as circumstances require. For instance, if a date of departure is approaching, greater frequency may be necessary. On the other hand, once the individual has established trust by fulfilling initial reporting requirements, less onerous reporting conditions can be introduced.²⁸³ Unnecessary reporting requirements erode trust in the system and wastes resources.²⁸⁴

De facto reporting occurs when the individual can only renew a temporary residency status or obtain food vouchers or other goods in person; however, this only contributes to monitoring if a lack of appearance is reported to authorities. Failure to attend should not deprive an individual of his or her allocations. Some of the countries that use reporting include Box 13 Turkey, Box 14 Hong Kong and Box 10 Canada, as well as Box 23 Slovenia, United States, Sweden and the United Kingdom.

Directed residence

Some governments direct individuals to live in certain locations, leading to a *de facto form of* monitoring. For example, migrants who require shelter may be directed to live at a particular migrant accommodation centre. In addition to establishing a known address, such accommodation centres sometimes fulfil additional monitoring activities by reporting absentee residents to immigration authorities. Further, some centres have immigration officers or case managers located on-site, increasing contact with migration authorities. Other countries direct individuals to live in a certain region or district within the country. This is usually designed to distribute the burden of social welfare across regional or local government areas. Examples of directed residence can be found in Box 2 Poland and Croatia, Box 8 Spain, Box 13 Turkey and Box 18 Belgium.

8.2.2 Supervision

Supervision involves a substantial commitment to directly monitor, evaluate and respond to an individual's compliance with their undertakings and monitoring activities. Supervision is a separate function to case management due to its focus on compliance and case resolution. It is more active than monitoring, as it provides the officer with authority to respond to changes in circumstances or deal with compliance issues. Supervision can involve:

- Supervision by migration authorities
- Delegated supervision

Supervision by migration authorities

Intensive supervision is used by migration authorities to directly observe an individual's location and activities. Intensive supervision substantially increases the level of communication and contact between authorities and an individual through telephone calls, meetings and home visits. This intensive work is designed to establish and verify information, such as whether the person is actually living at the address provided. Supervision provides authorities with the information required to make decisions about case management or case resolution, including appropriate pathways for those facing return. Intensive supervision programs

BOX 23

REPORTING AS A MONITORING MECHANISM

VARIOUS COUNTRIES

Slovenia – Third country nationals subject to a deportation order may be required to report to the nearest police station instead of being placed in detention.²⁸⁵ Individuals are usually required to report once per month.

United States – The United States uses both telephone and in-person reporting. The telephonic reporting voice verification program makes automated calls to participants at periodic intervals, requiring them to call back within a certain timeframe. When the call is returned, the computer compares the caller's voice against the registered biometric voiceprint

and registers them as having reported.²⁸⁶

Sweden – Individuals subject to a supervision order (a combination of reporting and a surrender of documents) are obliged to report to the nearest police station or the Swedish Migration Board on a regular basis. There is no standardised procedure regarding its application; instead, the frequency of reporting is determined on a case-by-case basis. Reporting frequencies usually range from once a week to once every two weeks. However, they can be every day if an individual is determined to pose a high risk of absconding. Failure

to report leads to a follow up assessment; it does not automatically lead to detention. If the assessment identifies a high risk of absconding, a decision to detain may be taken.

United Kingdom – Asylum seekers and irregular migrants are regularly required to report either to local Home Office offices or, more rarely, to police stations. Reporting requirements and conditions are regulated in the UK Home Office Guidance "Reporting – Standards of Operational Practice". The frequency of reporting varies considerably, usually from every day to once a month.

appear to be most successful when established in conjunction with case management, legal support, basic needs and documentation, as seen in Box 24 the United States.

Delegated supervision

Immigration authorities sometimes delegate supervision tasks by authorising another organisation or individual to supervise the compliance of irregular migrants with the conditions of their release. Non-government organisations have sometimes been

willing to undertake supervision responsibilities as part of a broader support program, particularly if it is a condition of release from detention. When family members or community groups commit their funds through a guarantor or bail program (see Section 8.2.3 *Bail, bond, surety or guarantee*) this may result in an informal form of supervision, as they take on some of the consequences for non-compliance. Delegated supervision can be seen in Box 10 Canada.

BOX 24

SUPERVISION DURING REMOVAL PROCEEDINGS

THE UNITED STATES

In the United States, the Vera Institute for Justice was contracted by the government to undertake a three year test of community supervision for people in immigration removal proceedings between 1997 and 2000.²⁸⁷ The study compared the outcomes of those released into the program with a control group released through standard bond or parole procedures. Participants for the program were identified through a screening and assessment process and required to have a verified residential address. Participants received information about immigration proceedings and the consequences of non-compliance; reminders of court hearings; and referrals to legal representatives and support services such as food banks and health clinics. A sub-group placed in intensive supervi-

sion were required to have a guarantor, such as a relative, who agreed to take moral responsibility for the person to fulfil their obligations.²⁸⁸ These participants were monitored through regular reporting by telephone or in person and home visits. The program cost US\$12 per day as compared with \$61 per day for detainees in the same period.²⁸⁹

The Appearance Assistance Program demonstrated that authorities did not need to detain all noncitizens in removal proceedings to ensure high rates of appearance at immigration court hearings: 91% of participants in the intensive program attended all required hearings compared with 71% of those in a control group. The effect on appearance rates was most dramatic for those least likely to appear – undocu-

mented workers with little chance of winning their migration case in supervision: 88% of this group appeared at all hearings when supervised, compared with 59% of those in a comparison group released through standard bond procedures.

The project found that supervision was cost effective and almost doubled the rate of compliance with final orders, with 69% of participants in intensive supervision complying with the final order in comparison to 38% of a comparison group released on bond or parole. Outcomes were associated with several factors in addition to monitoring and supervision activities including family or community ties, in-depth explanation regarding the hearing process, and assistance to depart the country legally.

When supervision is undertaken by an organisation providing other support services, such as providing for basic needs, it is important to clarify the roles of each party in terms of compliance and enforcement (for example, see Box 14 Hong Kong). A focus on service provision may preclude some organisations from reporting instances of non-compliance to authorities.

8.2.3 Surety and other consequences for non-compliance

Several mechanisms used to manage people in a community setting impose consequences if particular conditions are not met. There is no authoritative evidence regarding

the effectiveness of negative consequences in increasing compliance with conditions of release.²⁹⁰ Notwithstanding this lack of evidence, the strategy is commonly used by governments and is included in this Handbook to prompt discussion. Consequences for non-compliance include:

- Bail, bond, surety or guarantee
- Other consequences.

Bail, bond, surety or guarantee

Bail, bond, surety or guarantor systems all create a negative financial consequence for non-compliance. These are similar mechanisms by which a sum of money is forfeit if the individual does not comply with his or her

BOX 25

BAIL AS A CONSEQUENCE FOR NON-COMPLIANCE

CANADA

Canada uses financial consequences, through a bail mechanism, as one tool in its system for managing irregular migrants and asylum seekers in the community.²⁹² The decision to detain is automatically reviewed at regular detention review hearings. These hearings are undertaken by a member of the Immigration and Refugee Board within 48 hours of detention, then within another seven days and then every 30 days thereafter, as required.²⁹³ Detainees may also request a review hearing if they have new facts pertaining to the decision to detain. Eligible detainees may access free legal representation in the form of legal

aid. At detention hearings, the burden of proof lies with the border services agency to demonstrate a continuing need for detention for a reason outlined in law. The detainee may also submit information to support their case for release. Bail is automatically considered as an option to enable release at these hearings.

At these hearings, release may be ordered with or without conditions being imposed. A significant factor in favour of release is if the detainee's application is supported by a "bondsperson". A bondsperson agrees to pay a monetary bond which is paid up front, held in trust and then returned if the

individual complies with the conditions of their release, which may include, *inter alia*, providing a nominated address, handover of travel documents, or reporting requirements. In some situations, the money does not need to be paid unless the person does not comply with the conditions of their release. A bondsperson is often someone who knows the detainee personally and is confident in their willingness to comply with authorities.²⁹⁴ Several non-government organisations in Canada offer to act as a bondsperson for detainees who do not have either the resources or family/community ties required to make bail.

immigration procedures or other conditions of their release to the community. The money involved in these schemes can be from the individual themselves, or from a third party such as a family member, friend or community organisation.²⁹¹ Some of these mechanisms require a sum to be paid up front, which can be retrieved if their obligations are fulfilled. Others require a sum of money to be paid to authorities only if the applicant does not fulfil his or her commitments. In order to be both accessible and effective for eligible detainees, such schemes are best served by setting amounts based on the individual's financial situation. In several countries that operate a system of financial consequences, non-government organisations have funds available to eligible detainees who may otherwise be unable to afford to apply to the bond program. Such schemes can be seen in Box 14 Hong Kong, Box 24 the United States and Box 10 Canada.

Other consequences

Finally, some countries rely on the threat of negative consequences to try and reduce non-compliance. The least imposing consequence is to increase conditions. This may mean new conditions are introduced or existing conditions, such as reporting, are intensified. Meanwhile, some governments cut access to basic social welfare, such as housing, as a consequence for non-compliance. However, this fails to fulfil the principle of minimum standards and can be counter-productive for case resolution. As shown in Section 5.2 on basic needs, migrants who become homeless and impoverished are less likely to remain in contact with authorities.

Maintaining minimum standards can assist case resolution as detailed in Section 5

Detention is a further mechanism used as a consequence for non-compliance. It is unclear in what ways the threat of detention may affect compliance and does not in itself guarantee case resolution such as departure.²⁹⁵ Finally, a consequence for those with no further avenue to remain in the country is to withdraw the option of supported and/or independent departure. Independent departure allows returnees to retain a level of autonomy and control over matters such as packing up belongings, organising finances (such as closing bank accounts), and saying farewell to family and friends. Enforced departure or deportation is a much more traumatic and degrading experience in which migrants are subject to the full force of State authority. Further, deportation is often linked to bans on re-entry (with implications for all subsequent international travel) and/or a debt for deportation procedures.²⁹⁶ These adverse consequences are designed to encourage independent departure. Examples of consequences for non-compliance can be seen in Box 14 Hong Kong and Box 21 Sweden.

8.3 Detention as a last resort, with review

International human rights law and standards make clear that immigration detention should be used only as a last resort, in exceptional cases, after all other options have been shown to be inadequate in the individual case. The use of confinement with people in an administrative procedure is highly controversial due to its negative impact on health, wellbeing and human rights. Detention should be avoided entirely for vulnerable individuals and be in accordance with international, regional and national law and standards. This includes the requirement that the standards of necessity, reasonableness and proportionality have been met in the individual case. In spite of these serious concerns, detention is included here to be used only as a last resort for exceptional cases after a comprehen-

sive process has determined before an independent judicial authority that all other options will not address the identified concerns.

If detention is to be used in accordance with international law, several preconditions must be met. It must be:

- Lawful
- Necessary and reasonable in the circumstances
- For a legitimate purpose

→ Proportionate to achieve that legitimate purpose

→ Applied without discrimination

→ The last resort based on evidence there are no alternatives that can achieve that legitimate purpose.

Authorities must be able to show that detention is necessary and proportionate to the reasons for the detention and that they have come to that decision through a thorough assessment of the individual

BOX 26

DETENTION RELEASE OPTIONS

VARIOUS COUNTRIES

Philippines – Section 13 of the Department of Justice Department Order No. 94, series of 1998, provides for the provisional release of refugee applicants from detention.²⁹⁸ Through this Department Order, detainees who seek asylum may be released by order of the Department of Justice. In practice, the asylum seeker is issued with a Certification of Status in coordination with UNHCR. This document is sent to the Immigration Commissioner to complete and issue. The only condition is that the asylum seeker agrees to follow the requirements of the Refugee Status Determination process.

Australia has a series of ‘bridging visas,’ used to provide temporary legal status to migrants who have applied for a substantive visa or are preparing for return.²⁹⁹

Within this system, Australia has an avenue to release detainees who are unable to depart the country due to circumstances outside their control, such as when their country of origin or regular domicile is unable or unwilling to issue travel documents. The Removal Pending Bridging Visa enables migrants who are complying with efforts to prepare for their removal to be released from detention while this preparation is completed. The visa includes the right to work, access to healthcare and basic welfare. Visa holders must assist with preparations to depart the country.

In **Mexico**, legislation provides that an individual must be released from detention when their departure or deportation cannot be achieved within 60 days,

due to administrative or logistical hurdles (such as difficulty obtaining travel documents or unconfirmed identity and/or nationality) or due to serious physical or mental health concerns. The individual is instead granted with a temporary residence status, together with work rights (through Article 111 of the Immigration Act).

South Korea has a provisional release visa which provides authorities with a discretionary avenue to release migrants from detention. Established under Article 65 of the *Immigration Control Act* and its decree, the visa can be issued with consideration of the following factors: irreparable harm to the detainee, possibility of absconding and humanitarian concerns.³⁰⁰

without discrimination, and that all other options have been explored. In such cases, detention in appropriate conditions, of limited duration and with regular judicial or other independent review in line with international standards, may be considered the last resort.

Comprehensive information on the areas of detention that require oversight and vigilant monitoring are available elsewhere.²⁹⁷ While these are not repeated in detail here, the key areas of note include detention and immigration procedures; treatment and safeguards; safety, order and discipline; material conditions; activities; health care; personnel/staffing; and persons in situations of risk/vulnerability.

8.4 Alternative forms of detention

The IDC's program of research was designed to focus on those forms of migration governance that allow migrants to live in the community with liberty and freedom of movement while their migration status is being resolved. As a result of this focus, any form of management that amounts to *de facto* detention by having the intended or unintended effect of substantially curtailing or completely denying liberty and freedom of movement is regarded as a *form* of detention. The various *forms of detention* include transit zones, closed accommodation centres, alternative places of detention, home detention (including curfews), and traditional immigration detention centres.

In addition, certain forms of electronic monitoring are viewed as an alternative *form* of detention due to their use to substantially curtail liberty and freedom of movement. Electronic monitoring devices, or 'ankle bracelets', are used to monitor the location of an individual whose movement within

the community has been strictly limited to certain areas or at particular times of day.³⁰¹

Alternative forms of detention require an extremely high threshold before application including a high level of regulation and independent oversight

These devices are attached to the person's body, usually by being securely strapped around the ankle. Some of these devices use Global Positioning System (GPS) technology to be able to identify the specific location of an individual at any given time. Other devices require the person wearing the device to be at a base unit at set times and is used to monitor compliance with curfews. All such forms of regulation are included within this section on detention because they substantially curtail freedom of movement and liberty, and consequently require an extremely high threshold before application. As with other forms of detention, they require a high level of regulation and independent oversight, including prompt and regular judicial review and monitoring.

BOX 27

DETENTION CONDITIONS THAT RESPECT DIGNITY AND WELL-BEING

SWEDEN

In Sweden, detention may only be used for people who are in the process of being deported because they have not complied with a final negative decision requiring them to depart the country.³⁰² Detention centres are small, closed accommodation facilities. Residents can move about freely within the facility. Bedrooms are shared between two to four people. There are lounge areas with televi-

sions, computer rooms with access to the Internet, and gyms. Most rooms have windows looking out to garden areas. Supervised access to a central courtyard provides limited access to an outdoor area. Residents can use mobile phones that do not have an in-built camera. Staff work to build a culture of dignity and respect with clients. They do not wear security uniforms or carry weapons. Rooms for

visitors are furnished with tables, chairs, lounges and toys for children. Two non-government organisations have unrestricted access to the centres to support residents, provide additional activities and informally monitor the conditions of detention. These conditions have been found to be of a very high standard by international observers³⁰³

9. Conclusion

This Handbook has identified and described laws, policies and practices that allow non-citizens to remain in the community with freedom of movement while their migration status is being resolved, or while awaiting deportation or removal from the country. This pragmatic approach was underpinned by a human rights framework and a concern for minimising harm but shaped by the legitimate concerns of government in terms of compliance, timely case resolution and cost. In taking such a broad approach, the IDC's program of research has been able to identify strategies to prevent unnecessary detention and reduce the length of time someone is detained, while also outlining key factors impacting the effectiveness of case management programs in the community.

With effective laws and policies, clear systems and good implementation, managing asylum seekers, refugees and irregular migrants can be achieved in the community in most instances

These findings have been brought together in the Revised CAP model. The Revised CAP outlines the principles and processes that, together, prevent unnecessary detention and support the success of community placement options. The Revised CAP model is not designed to offer a single solution to the issues faced by governments in governing migration, but it may identify ways of moving forward in this difficult area of policy. The Revised CAP model can assist in framing discussions and providing a shared understanding

of the issues, while the practical country examples elaborate on aspects of implementation and demonstrate that reducing detention through community management is achievable and beneficial for a range of parties. Further research and evaluation of alternatives would provide a much stronger foundation for future policy development.

This Handbook has taken a strengths-based approach to the issue of detention by focusing on those laws, policies or programs that impose the least restrictions on freedom of movement or that maintain the highest threshold for decisions to detain. For this reason, positive elements of a country's law, policy or practice that may be worth replicating in other settings have been included, even when there may be concerns about another aspect of that country's detention or migration policy.

Notwithstanding the high importance for governments to create migration systems that respect human rights and protect migrants from unnecessary detention, this Handbook has highlighted opportunities for non-government organisations to develop and offer alternatives independently or in partnership with government authorities. This report has attempted to point to potential areas for both governments and non-government organisations to work on for productive change.

This Handbook has shown that there is a range of alternatives to detention that governments can draw upon to reduce unnecessary detention and increase the success of community-based management. Many solutions exist. In fact, the IDC has identified more than 250 examples in over 60 countries. This includes in countries with large numbers of mixed migrants and fewer resources. Further, alternatives can be applied in the majority of cases. Detention is rarely necessary while working towards satisfactory case resolution. Placement options range

from open accommodation in the community with minimal requirements for low-risk groups through to intensive supervision and case management for populations of highest concern, such as non-citizens facing deportation after completing a prison sentence.

Alternatives are also associated with a range of benefits. First, alternatives are up to 80% cheaper than detention due to lower running costs. They also eliminate costly litigation and compensation claims. Second, alternatives are less harmful than detention. Community placement supports health and wellbeing and upholds human rights. They also see people better placed to move forward with their lives once their migration status is resolved, whether it be integration or departure. Third, alternatives can achieve effective case resolution outcomes. Alternatives have been shown to achieve up to 95% appearance rates and up to 69% voluntary and independent return rates for refused cases.

It is challenging to govern migration in a way that reflects authority over national territory while also treating non-citizens in a humane and dignified manner. This research has identified and described a range of mechanisms used to prevent unnecessary detention and provide alternatives to detention that protect the rights and dignity of asylum seekers, refugees and irregular migrants while meeting government and community expectations. The policies described in this report, as outlined in CAP, are currently being implemented in a range of countries to enforce immigration law through mechanisms that do not rely heavily on detention. Such targeted enforcement provides a sophisticated response to the diverse population of irregular migrants and asylum seekers within national territories.

Dealing with irregular migration is an everyday issue of governance. As this Handbook shows, with effective laws and policies, clear systems and good implementation, managing asylum seekers, refugees and irregular migrants can be achieved in the community in most instances. By learning to screen and assess the case of each individual subject to or at risk of detention, authorities can learn to manage people in the community in the majority of cases without the financial and human cost that detention incurs. The Handbook shows that cost-effective and reliable alternatives to detention are currently used in a variety of settings and have been found to benefit a range of stakeholders affected by this area of policy.

Suggested further reading

A number of these papers are available on the International Detention Coalition website at <http://idcoalition.org/issues/alternatives-to-detention>.

1. The Forced Migration Review Special Issue 44 on *Detention, alternatives to detention, and deportation* 2013 available at: <http://www.fmreview.org/detention/contents>
2. Costello, C. & Kaytaz, E. (2013). *Building empirical evidence into alternatives to detention: Perceptions of asylum-seekers and refugees in Toronto and Geneva*. Geneva: UNHCR.
3. De Bruycker, P. (Ed.), Bloomfield, A., Tsourdi, E. & Pétin, J. (2015). *Alternatives to immigration and asylum detention in the EU: Time for implementation*. Odysseus Network and the European Union.
4. Edwards, A. (2011). *Back to basics: The right to liberty and security of person and 'alternatives to detention' of asylum-seekers, stateless persons, and other migrants*. UNHCR Legal and Protection Policy Research Series. Geneva: UNHCR.
5. European Migration Network. (2014). *The use of detention and alternatives to detention in the context of immigration policies: Synthesis report for the EMN Focussed Study 2014*. European Commission.
6. Field, O., & Edwards, A. (2006). *Alternatives to detention of asylum seekers and refugees*. Geneva: UNHCR.
7. Jesuit Refugee Service Europe. (2010). *Becoming vulnerable in detention: Civil society report on the detention of vulnerable asylum seekers and irregular migrants in the European Union*. Brussels: JRS Europe.
8. Jesuit Refugee Service Europe. (2011). *From deprivation to liberty - alternatives to detention in Belgium, Germany and the United Kingdom*. Brussels: JRS Europe.
9. Lutheran Immigration and Refugee Service. (2009). *Alternatives to detention programs: An international perspective*. Washington, D.C.: LIRS.
10. Mitchell, G., & Kirsner, S. (2004). Asylum seekers living in the Australian community: A casework and reception approach, Asylum Seeker Project, Hotham Mission, Melbourne. *Refuge*, 22(1), 119-128.
11. Robinson, V., & Segrott, J. (2002). *Understanding the decision-making of asylum seekers*. London: Home Office.
12. Sampson, R. (2013). *Embodied borders: Biopolitics, knowledge mobilisation and alternatives to immigration detention*. PhD thesis, Politics, La Trobe University.
13. Sampson, R., & Mitchell, G. (2013). "Global trends in immigration detention and alternatives to detention: Practical, political and symbolic rationales." *Journal on Migration and Human Security*, 1(3), 97-121. <http://dx.doi.org/10.14240/jmhs.v1i3.14>.
14. Sullivan, E., Mottino, F., Khashu, A., & O'Neil, M. (2000). *Testing community supervision for the INS: An evaluation of the appearance assistance program Volume 1*. New York: Vera Institute for Justice.
15. UN High Commissioner for Refugees. (2012). *Detention guidelines: Guidelines on the applicable criteria and standards relating to the detention of asylum-seekers and alternatives to detention*. Geneva: UNHCR.
16. UN High Commissioner for Refugees. (2014). *Beyond detention: A global strategy to support governments to end the detention of asylum-seekers and refugees*. Geneva: UNHCR. Available at <http://www.refworld.org/docid/536b564d4.html>

Glossary

Term	Definition
Absconding	Actions taken by a person to avoid contact with immigration authorities in order to avoid legal migration proceedings and/or outcomes.
Alternative(s) to immigration detention ('alternatives')	Any law, policy or practice by which persons are able to reside in the community, without being detained for migration-related reasons.
Alternative forms of detention	Any form of migration control which may not be officially recognised or classified as detention, but which amounts to de facto detention, by having the intended or unintended effect of substantially curtailing or completely denying liberty and freedom of movement.
Asylum seeker	A person who has made an application to be recognised as a refugee, but who has not yet received a final decision on that application.
Case management	A comprehensive and systematic service delivery approach designed to ensure support for, and a coordinated response to, the health and wellbeing of people with complex needs. Case management centres on understanding and responding to the unique needs and challenges of individuals and their context, including vulnerability, protection and risk factors.
Case resolution	A final outcome of a person's immigration status including permission to remain in the territory, departure to the country of origin or country of habitual residence, or departure to a third country.
Child	A person below the age of eighteen years.
Compliance	To fulfil any conditions or immigration-related requirements expressly imposed by the relevant authorities on a person to regulate his/her stay in, or departure from, the country.
Community	The wider society of the country. Community-based alternatives use government and/or civil-society support to place and manage persons outside of detention amongst the civilian population. The term is not used to reference specific types of community, such as ethnic or location-based communities.
Conditions	Conditions are actions that individuals are required to undertake to achieve compliance. Conditions must be shown to be necessary and proportionate in the individual case or their application will be arbitrary.

Term	Definition
Deportation	<p>The act of a State to remove a person from its territory after the person has been refused admission or has forfeited or never obtained permission to remain on the territory. A person may be deported to his or her country of origin, habitual residence, or a third country.</p> <p>In this Handbook, the term 'deportation' is used synonymously with 'forced removal' and 'expulsion', unless otherwise indicated. It is noted that these terms may have different usages and meanings under different national and international laws.</p>
Deprivation of liberty	<p>Any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority. Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), Art. 4(2)</p>
Guardian	<p>The legally recognised relationship between a designated competent adult and a child or disadvantaged person in order to assure and safeguard the protection of her or his rights. A guardian has a range of powers, rights and duties, including exercising rights on behalf of the child and protecting the best interests of the child.</p>
Immigration detention	<p>The deprivation of liberty for migration-related reasons.</p>
Independent departure	<p>Compliance with the obligation to depart a country within a specified time period and without government escort, whether to the migrant's country of origin, country of habitual residence, or a third country. (c.f. voluntary departure).</p>
IOM	<p>International Organization for Migration</p>
Irregular migrant	<p>A migrant who does not fulfil, or no longer fulfils, the conditions of entry, stay or residence within a State.</p>
Migrant	<p>A person who is outside of a State of which he or she is a citizen, national or habitual resident. Persons are migrants regardless of whether their migration is temporary, lawful, regular, irregular, forced, for protection, for economic reasons, or for any other reason.</p>
Refugee	<p>A person who fulfils the definition of a "refugee" in the 1951 Convention and 1967 Protocol relating to the Status of Refugees or any regional refugee instrument. The recognition of refugee status is a declaratory act and the rights of refugees are invoked before their status is formally recognised by a decision-maker. For this reason, in this Handbook, unless specifically indicated to the contrary and particularly where a distinction is necessary in relation to case resolution, the term "refugee" includes reference to asylum seekers.</p>

Term	Definition
Regularisation	Regularisation is one process through which undocumented migrants gain legal immigration status. Regularisation includes both one-off initiatives available for a set period (also called ‘amnesties’) and ongoing programs. It may be aimed at specific groups or on a case-by-case basis for reasons such as humanitarian protection, medical needs or family unity.
Restrictions	Restrictions are limitations that can be placed on an individual to help achieve compliance. Restrictions imply some degree of restriction on a person's liberty or freedom of movement, and must always be shown to be necessary and proportionate in the individual case, otherwise will be arbitrary.
Separated child	A child ‘separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.’ Committee on the Rights of the Child, General Comment No.6 (2005), Treatment of Unaccompanied and Separated Children Outside their Country of Origin.
Stateless person	A person who is not considered as a national by any State under the operation of its law. Article 1 of the 1954 Convention relating to the Status of Stateless Persons. In this Handbook, the term “stateless person” also includes reference to persons at risk of statelessness.
Trafficked person	A trafficked person is defined as a person who has been recruited, transported, transferred, harboured or received by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. UN General Assembly, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, 15 November 2000.
Unaccompanied child	A child who has been ‘separated from both parents and other relatives’ and is ‘not being cared for by an adult who, by law or custom, is responsible for doing so.’ Committee on the Rights of the Child, General Comment No.6 (2005), Treatment of Unaccompanied and Separated Children Outside their Country of Origin.
UNHCR	Office of the United Nations High Commissioner for Refugees
Voluntary departure	The decision of a person to depart the country entirely voluntarily, whether to his or her country of origin, country of habitual residence or a third country. Voluntary departure may take place even when legal avenues to pursue residency in that country remain available. (c.f. independent departure)

Appendix A – Research methods

Research Project #1

The particular aim of this research was to identify and describe examples of community-based alternatives to immigration detention. The specific objectives were to:

- Identify the policy objectives underlying the use of immigration detention.
- Identify key examples in the management of asylum seekers, refugees and migrants which fulfil these policy objectives outside of detention.
- Identify the range of alternatives to detention that are currently operating internationally, and describe in detail key examples in various contexts/regions, including examples with vulnerable individuals.
- Describe the role of governments and their institutions in creating and implementing alternatives to detention.
- Describe the role of non-government organisations and civil society in creating and sustaining the use of alternatives to detention.
- Describe the immigration outcomes and cost benefits where known.
- Explore the factors which are regarded as contributing to the effectiveness of community-based alternatives to detention.

Data collection was undertaken in three stages, with each step informing the next stage of data collection.

Stage 1: Literature review

Three types of literature were identified and reviewed as the first stage of data collection. This included 1) research on 'alterna-

tives to detention' including both original research and those based on existing materials; 2) evaluations of relevant policies and programs by governments or consultants; and 3) 'grey' literature including policy documents describing relevant laws, policies or programs. In addition, relevant international and regional agreements were used to understand the context of migration regulation.

Stage 2: International internet-based survey

Based on the literature review and consultations with staff of the IDC, an Internet-based survey was undertaken in November-December 2009. An invitation to participate was sent via e-mail through a range of networks including members of the IDC, the Forced Migration e-group and several other international organisations and networks. We had 88 survey responses from 28 countries (eight participants did not list a country). The survey data was used to inform the international field work and was included for analysis as part of the overall qualitative dataset.

Stage 3: International field work

Countries were selected for field work based on a range of factors including type of alternative to detention program and target population. In-depth field work was undertaken in eight countries between January and March 2010. The field work included interviews regarding broad policy issues as well as specific alternative to detention programs. Site visits included, *inter alia*:

- a shelter for unaccompanied minors in Hungary;
- an accommodation centre for asylum seekers in Spain;

- a shelter for destitute migrants in Spain;
- a return-counselling program for families in Belgium;
- an asylum seeker reception program in Sweden;
- a detention centre in Sweden;
- a shelter for undocumented migrants in the United States; and
- a migrant support program in Hong Kong.

Additional interviews were undertaken with representatives from international organisations located in Geneva, Switzerland.

A total of 43 interviews with 57 participants and eight site visits were completed. Participants included representatives of governments, non-government organisations, international advocacy organisations and UN bodies.

Further details on the research methods for this first project can be found at pages 14-15 of Sampson, R., Mitchell, G. and Bowring, L. (2011). *There are alternatives: A Handbook for Preventing Unnecessary Immigration Detention*. Melbourne: The International Detention Coalition.

Research Project #2

Consistent with the approach to IDC's 2011 Handbook, qualitative research methods were utilized to explore the laws, policies and practices employed by governments to manage refugees, asylum seekers, stateless persons and irregular migrants in the community without resorting to unnecessary and damaging immigration detention. Qualitative methods were considered most useful in collecting the kind of information required to fulfil the objectives of the research.

The following 20 countries were selected, four from each of the following five regions: the Americas, Asia-Pacific, Europe, Middle East and North Africa, and South and East Africa. Countries were chosen on the basis that they were 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.

Asia/Pacific Thailand, Indonesia, Pakistan, Malaysia
Middle East/North Africa Yemen, Morocco, Jordan, Egypt
South/East Africa Uganda, Zimbabwe, Tanzania, Botswana
Americas Brazil, Costa Rica, Ecuador, Mexico
Europe Malta, Poland, Romania, Turkey

Data collection consisted of a literature review for each country and region, as well as in-depth interviews with governments, non-government organisations (local, regional and international), and international bodies and organisations working in migration governance, related to detention and alternatives. Additional interviews were undertaken with regional and international experts and academics in detention and alternatives. These participants were identified through a thematic literature review and in consultation with IDC staff and members organisations.

International fieldwork/site observations were also undertaken in three of the 20 countries, namely Turkey, Indonesia, and Mexico in 2013. In-person interviews were also conducted in Botswana, Indonesia, Jordan, Mexico, Malaysia and Turkey. In-person interviews were limited due to financial and time constraints. All other interviews were generally conducted remotely, using Skype or telephone. Some interviews were conducted with the assistance of an interpreter.

Country	NGO (local or international)	Government	International body	Other
Yemen	0	0	2	
Morocco	0	0	0	
Jordan	3	3	2	
Egypt	1	0	1	
Zimbabwe	0	0	0	
Botswana	2	0	1	2
Tanzania	1	0	1	
Uganda	1	0	0	
Costa Rica	2	1	1	
Mexico	*	*	*	
Ecuador	3	1	0	
Brazil	0	0	1	
Turkey	4	1	2	
Poland	3	1	0	
Romania	1	1	1	
Malta	1	0	0	
Indonesia	3	0	2	2
Malaysia	6	2	1	
Pakistan	2	0	0	
Thailand	3	0	0	
TOTAL COUNTRIES	36*	10*	15*	4
EXPERT	2		3	1
TOTAL	38*	10*	18*	5
TOTAL INTERVIEWS				71

Other sources of knowledge

These two studies were conducted specifically to identify alternatives across regions and country contexts. An additional piece of research on detention and alternatives in Mexico was undertaken by the IDC Americas office in 2012. That study involved field research and interviews with 32 participants from government and from local, regional and international non-government organisations.

Finally, the IDC secretariat staff and member groups have developed a significant body of expert knowledge on alternatives as a result of their ongoing work on this issue for over five years. IDC staff and members have run and/or attended a series of major international, regional and national roundtables and consultations on alternatives that have elicited valuable information and insights that have informed the revision of the Handbook.

Limitations of the program of research

There are some limitations to the research.

First, the research was not designed to directly evaluate the effectiveness of different policies. Instead, this aspect of the findings are based on the experience of those government representatives and service providers interviewed and on the findings described in existing research and government reports. The relative paucity of evidence in some areas of policy means the correlation between specific policies and levels of compliance, cost and case resolution is not always entirely clear. In particular, while the research identified programs believed to be better for health and wellbeing, it did not evaluate this impact or the ways in which they are experienced by refugees, asylum seekers, stateless persons or irregular migrants themselves. As a result, the experiences of those people most directly impacted by these policies and programs are absent. Evaluation of these

policies for a range of stakeholders would be of great benefit to future work in this area.

Second, due to financial and time constraints, in-person interviews were limited, with data from other countries based on desk-based research and remote interviews. Given the same questions were asked, this is not a substantial limitation as IDC considers that the remote interviews were still able to provide equivalent information. Conducting remote interviews was seen as an important method to overcome geographical and financial limitations.

Third, there are potential limitations to the interviews themselves due to the number of interviewers undertaking interviews, which may have created inconsistencies in the data obtained. Furthermore, some people did not respond to IDC's request for an interview, were unable to be interviewed within the timeframe or declined to be interviewed due to organisational restrictions or a consideration that there were risks to being involved in the research. As a result, IDC was unable to fully triangulate the interview data in some countries and no interviews were conducted for Morocco and Zimbabwe.

Endnotes

1. In this Handbook, 'community' refers to the wider society of the host country and not to a culturally-defined group with shared ethnicity or language.
2. Association for the Prevention of Torture, International Detention Coalition, and United Nations High Commissioner for Refugees, *Monitoring Immigration Detention: Practical Manual*, (APT and UNHCR, 2014), <<http://idcoalition.org/publications/monitoring-immigration-detention-practical-guide/>>; UN High Commissioner for Refugees, *Guidelines on the Applicable Criteria and Standards Relating to the Detention of Asylum-Seekers and Alternatives to Detention*, (Geneva: UNHCR, 2012).
3. The number of international migrants worldwide grew from 154 million in 1990 to 232 million in 2013. See United Nations Department of Economic and Social Affairs, 'The Number of International Migrants Worldwide Reaches 232 Million,' Population Facts no. 2013/2 (UNDESA Population Division, 2013), <http://esa.un.org/unmigration/documents/The_number_of_international_migrants.pdf>
4. United Nations Development Programme, *Human Development Report 2009: Overcoming Barriers: Human Mobility and Development*, (New York: UNDP, 2009), <<http://hdr.undp.org/en/reports/global/hdr2009/>>
5. In the 27 Member States of the European Union in 2008, there were an estimated 28.9 million foreign residents of which it is estimated that 1.9 - 3.8 million were irregular: Vasela Kovacheva and Dita Vogel, *The Size of the Irregular Foreign Resident Population in the European Union in 2002, 2005 and 2008: Aggregated Estimates*, (Hamburg: Hamburg Institute of International Economics, 2009), <http://irregular-migration.hwwi.net/typo3_upload/groups/31/4_Background_Information/4.7.Working_Papers/WP4_Kovacheva-Vogel_2009_EuropeEstimate_Dec09.pdf> In 2012, there was an estimated 11.2 million undocumented migrants in the United States, accounting for 26% of the total migrant population: Jeffrey S. Passel and D'Vera Cohn, 'Unauthorized Immigrant Totals Rise in 7 States, Fall in 14' (Washington: Pew Research Center's Hispanic Trends Project, 2014). Comparative figures for all regions are difficult to obtain: c.f. Graeme Hugo, "Migration in the Asia-Pacific Region," (Adelaide: Global Commission on International Migration, 2005).
6. International Organization for Migration, *World Migration Report 2010. The Future of Migration: Building Capacities for Change* (2005) 29 <http://publications.iom.int/bookstore/free/WMR_2010_ENGLISH.pdf>
7. United Nations Development Programme, *Human Development Report 2009*, (see n. 4).
8. Amy Nethery and Stephanie J. Silverman, eds. *Immigration Detention: The Migration of a Policy and Its Human Impact* (Ashgate: Routledge, 2015). For instance, the United States expanded its detention capacity from 6,785 places per day in 1994 to 34,000 per day in 2013: Global Detention Project 'United States detention profile' (March 2009) <<http://www.globaldetentionproject.org/de/countries/americas/united-states/introduction.html>>. For more details of global detention capacities see Robyn Sampson and Grant Mitchell, "Global Trends in Immigration Detention and Alternatives to Detention: Practical, Political and Symbolic Rationales." *Journal on Migration and Human Security* 1, no. 3 (2013): 97-121.
9. Michel Coutu and Marie-Helene Giroux, "The Aftermath of 11 September 2001: Liberty Vs. Security before the Supreme Court of Canada," *Int J Refugee Law* 18, no. 2 (2006): 313-32; Donald Kerwin, "The Use and Misuse of 'National Security' Rationale in Crafting U.S. Refugee and Immigration Policies," *Int J Refugee Law*, 17 no. 4 (2005): 749-763.
10. A good discussion can be found at Khalid Koser, *Irregular Migration, State Security and Human Security*, (London: Global Commission on International Migration, 2005), <<http://www.gcim.org/attachments/TP5.pdf>>
11. Gemma Aubarell, Ricard Zapata-Barrero, and Xavier Aragall, "New Directions of National Immigration Policies: The Development of the External Dimension and Its Relationship with the Euro-Mediterranean Process," In *EuroMesco Paper* 79, 2009 http://www.iemed.org/documents/EuroMeSCo%20Paper%2079_eng.pdf; Global Detention Project 'United States' (see n. 8); Derek Lutterbeck, "Policing Migration in the Mediterranean," *Mediterranean Politics* 11, no. 1 (2006): 59 - 82; Savitri Taylor, "The Impact of Australia-PNG Border Management Cooperation on Refugee Protection," *Local-Global: Identity, Security, Community (Special Issue: Beyond border control)* 8 (2010): 76-99.
12. Aubarell, Zapata-Barrero and Aragall, "New Directions," (see n. 11); Sandra Lavenex and Emek M. Uçarer, "The External Dimension of Europeanization," *Cooperation and Conflict* 39, no. 4 (2004): 417-43; Ricard Zapata-Barrero, Johantán Zaragoza, and Xavier Aragall, "Cooperation and the Externalization of Borders and

- of Migration Policies: Spain's New Political Orientations," In *New Directions of National Immigration Policies: The Development of the External Dimension and Its Relationship with the Euro-Mediterranean Process*, 2009, <http://www.euromesco.net/images/joint%20migration%20report.pdf>.
13. Sampson and Mitchell, "Global Trends," (see n. 8).
 14. The Global Detention Project aims to document detention infrastructure internationally but does not have a global estimate. For country estimates see www.globaldetentionproject.org
 15. Much of this section was first published in April 2015 in the IDC Briefing Paper *Does Detention Deter?* Written by Robyn Sampson. Available at <http://idcoalition.org/detentiondatabase/does-detention-deter/>
 16. Arjen Leerkes and Dennis Broeders, "A Case of Mixed Motives? Formal and Informal Functions of Administrative Immigration Detention," *British Journal of Criminology* 50, no. 5 (2010): 830-50.
 17. Alice Edwards, *Back to Basics: The Right to Liberty and Security of Person and 'Alternatives to Detention' of Asylum-Seekers, Stateless Persons, and Other Migrants*, (Geneva: UNHCR, 2011).
 18. For instance, the Australian Minister for Immigration stated: "We already have the toughest mandatory detention regime in the Western developed world, yet people still come to Australia...So I don't think mandatory detention should be seen as a deterrent" in Michael Owen and Tony Barrass, "Getting Tougher 'Won't Stop Boats' Says Chris Bowen," *The Australian*, November 2nd, 2010, <http://www.theaustralian.com.au/news/nation/getting-tougher-wont-stop-boats-says-chris-bowen/story-e6frg6nf-1225946353586>
 19. Edwards, *Back to Basics* (see n 17).
 20. Heather Crawley, *Chance or Choice? Understanding Why Asylum Seekers Come to the UK*. (London: UK Refugee Council, 2010); Kate Day and Paul White, "Choice or Circumstance: The UK as the Location of Asylum Applications by Bosnian and Somali Refugees," *GeoJournal* 56, no. 1 (2002): 15-26; Alan Gilbert and Khalid Koser, "Coming to the UK: What Do Asylum-Seekers Know About the UK before Arrival?" *Journal of Ethnic and Migration Studies* 32, no. 7 (2006): 1209-1225; Tetty Havinga and Anita Bocker, "Country of Asylum by Choice or by Chance: Asylum-Seekers in Belgium, the Netherlands and the UK," *Journal of Ethnic and Migration Studies* 25, no. 1 (1999): 43-61; Thomas Holzer, Gerald Schneider, and Thomas Widmer, "The Impact of Legislative Deterrence Measures on the Number of Asylum Applications in Switzerland (1986-1995)," *International Migration Review* 34, no. 4 (2000): 1182; Eric Neumayer, "Asylum Destination Choice: What Makes Some West European Countries More Attractive Than Others?" *European Union Politics* 5, no. 2 (2004): 155-80; Roslyn Richardson, "Sending a Message? Refugees and Australia's Deterrence Campaign," *Media International Australia*, no. 135 (2010): 7-18; Vaughan Robinson and Jeremy Segrott, *Understanding the Decision-Making of Asylum Seekers*, (London: Home Office, 2002); Eiko Thielemann, *Does Policy Matter? On Governments' Attempts to Control Unwanted Migration*, (San Diego: Center for Comparative Immigration Studies, 2004).
 21. Robinson and Segrott, *Understanding Decision-Making* (see n. 20).
 22. Day and White, "Choice or Circumstance," (see n. 20); Gilbert and Koser, "Coming to the UK," (see n. 20); Havinga and Bocker, "By Choice or by Chance" (see n. 20); Robinson and Segrott, *Understanding Decision-Making* (see n. 20).
 23. Richardson, "Sending a Message?" (see n. 20).
 24. Robinson and Segrott, *Understanding Decision-Making*, (see n. 20).
 25. Richardson, "Sending a Message?" (see n. 20).
 26. Guy J. Coffey, Ida Kaplan, Robyn C. Sampson, and Maria Montagna Tucci, "The Meaning and Mental Health Consequences of Long-Term Immigration Detention for People Seeking Asylum," *Social Science & Medicine* 70, no. 12 (2010): 2070-79.
 27. London Detainee Support Group, *No Return, No Release, No Reason: Challenging Indefinite Detention*, (London: LDSG, 2010) <http://www.ldsg.org.uk/files/uploads/NoReasonReport0910.pdf> In addition, airlines may refuse to accept deportees on board if they are resisting deportation: Matthew Gibney and Randall Hansen, "Deportation and the Liberal State: The Forcible Return of Asylum Seekers and Unlawful Migrants in Canada, Germany and the United Kingdom," In *New Issues in Refugee Research Paper No. 77*, (Geneva: UNHCR, 2003) 12.
 28. Mieke Kox, *Leaving Detention? A Study on the Influence of Immigration Detention on Migrants' Decision-Making Processes Regarding Return*, (The Hague: IOM, 2011).
 29. Coffey et al., "Meaning and Mental Health Consequences" (see n. 26).
 30. Richard Black, Khalid Koser, Karen Munk, Gaby Atfield, Lisa D'Onofrio and Richmond Tiemoko, *Understanding Voluntary Return: Home Office Online Report 50/04*, (London: Home Office, 2004); Robyn Sampson, Ignacio Correa-Velez, and Grant Mitchell, *Removing Seriously*

- Ill Asylum Seekers from Australia* (Melbourne: Refugee Health Research Centre, 2007).
31. Joris Van Wijk, *Reaching out to the Unknown: Native Counselling and the Decision-Making Process of Irregular Migrants and Rejected Asylum Seekers on Voluntary Return* (The Hague: IOM, 2008).
 32. Anne Bathily, *Immigration detention and its Impact on Integration - A European approach* (Milan: Fondazione ISMU, 2014).
 33. Equal Rights Trust, *Unravelling Anomaly: Detention, Discrimination and the Protection Needs of Stateless Persons* (London: The Equal Rights Trust, 2010).
 34. London Detainee Support Group, *No Return, No Release, No Reason* (see n. 27).
 35. B van Alphen, T Molleman, A Leerkes, J van Hoek, *Van bejegining tot vertrek - Eenonderzoek naar de werking van vreemdelingenbewaring* (The Hague: Onderzoek en beleid 308, Wetenschappelijk Onderzoek- en Documentatiecentrum, Ministerie van Veiligheid en Justitie, 2014), 150; A. Leerkes, E. Boersema, *Het lot van het inreisverbod, Memorandum 2014-2*, (The Hague: Wetenschappelijk Onderzoek- en Documentatiecentrum, Ministerie van Veiligheid en Justitie, 2014), http://www.wodc.nl/images/mem2014-2-volledigetekst_tcm44-555776.pdf; Mark Provera, "The Criminalisation of Irregular Migration in the European Union," in *CEPS Paper in Liberty and Security in Europe*, 80 (2015).
 36. Coffey et al., "Meaning and Mental Health Consequences" (see n. 26); Axel Klein and Lucy Williams, "Immigration Detention in the Community: Research on the Experiences of Migrants Released from Detention Centres in the UK," *Population, Space and Place* 18, no. 6 (2012): 741-753.
 37. Coffey et al., "Meaning and Mental Health Consequences" (see n. 26).
 38. Physicians for Human Rights and the Bellevue/ NYU Program for Survivors of Torture, *From Persecution to Prison: the Health Consequences of Detention for Ssylum Seekers* (Boston & New York: PHR and The Bellevue/NYU Program for Survivors of Torture, 2003); Katy Robjant, Rita Hassan, and Cornelius Katona, "Mental Health Implications of Detaining Asylum Seekers: Systematic Review," *The British Journal of Psychiatry* 194 (2009): 306-12; Zachary Steel and Derrick Silove, "The Mental Health Implications of Detaining Asylum Seekers," *eMedical Journal of Australia* 175 (2001): 596 - 99.
 39. Soorej Jose Puthooppambal, Magdalena Bjerneld, and Carina Källestål, "Quality of Life Among Immigrants in Swedish Immigration Detention Centres: A Cross-Sectional Questionnaire Study," *Global Health Action* 8 (2015), doi: 10.3402/gha.v8.28321.
 40. Physicians for Human Rights et al., *From persecution to prison*, 5 (see n 38).
 41. Kathy Eagar, Janette Green, Kerry Innes, Lauren Jones, Carmel Cheney-Fielding, Peter Samsa, and Peter Eklund, *The Health of People in Australian Detention Centres - Health Profile and Ongoing Information Requirements*, (Wollongong, NSW: Centre for Health Service Development, University of Wollongong, 2007); Aamer Sultan and Kevin O'Sullivan, "Psychological Disturbances in Asylum Seekers Held in Long Term Detention: A Participant-Observer Account," *eMedical Journal of Australia* 175 (2001): 593 - 596.
 42. Ann Lorek, Kimberly Ehntholt, Anne Nesbitt, Emmanuel Wey, Chipo Githinji, Eve Rossor, and Rush Wickramasinghe, "The Mental and Physical Health Difficulties of Children Held within a British Immigration Detention Center: A Pilot Study," *Child Abuse & Neglect* 33, no. 9 (2009): 573-85; Sarah Mares and Jon Jureidini, "Psychiatric Assessment of Children and Families in Immigration Detention - Clinical, Administrative and Ethical Issues," *Australian and New Zealand Journal of Public Health* 28, no. 6 (2004): 520-26; Zachary Steel, Shakeh Momartin, Catherine Bateman, Atena Hafshejani, Derrick M. Silove, Naleyva Everson, Konya Roy, et al. "Psychiatric Status of Asylum Seeker Families Held for a Protracted Period in a Remote Detention Centre in Australia," *Australian and New Zealand Journal of Public Health* 28, no. 6 (2004): 527-36; Zachary Steel and Louise Newman, "The Child Asylum Seeker: Psychological and Developmental Impact of Immigration Detention," *Child and Adolescent Psychiatric Clinics of North America* 17, no. 3 (2008): 665-683.
 43. Coffey et al., "Meaning and Mental Health Consequences" (see n. 26); Masao Ichikawa, Shinji Nakahara, and Susumu Wakai, "Effect of Post-Migration Detention on Mental Health among Afghan Asylum Seekers in Japan," *Australian and New Zealand Journal of Psychiatry* 40, no. 4 (2006): 341-46; Zachary Steel, Derrick Silove, Robert Brooks, Shakeh Momartin, Bushra Alzuhairi, and Ina Susljik, "Impact of Immigration Detention and Temporary Protection on the Mental Health of Refugees," *British Journal of Psychiatry* 188 (2006): 58-64.
 44. Tony Ward, *Long-term Health Costs of Extended Mandatory Detention of Asylum Seekers*, (Melbourne: Yarra Institute for Religion and Social Policy, 2011).
 45. The International Covenant on Civil and Political Rights provides for the protection from arbitrary detention in Article 9 and the protection of freedom of movement in Article 12.

46. Discussed in full in Edwards, *Back to Basics* (see n 17); Isabel Ricupero and Michael Flynn, *Migration and Detention: Mapping the International Legal Terrain*, (Geneva: Global Detention Project, 2009).
47. For this research, the responses varied, but, when the word “alternatives” was used, respondents either did not know what they were, were adamant that none existed in their countries, or spoke only in terms of certain types of alternatives. When the interview questions were framed substantively, details of alternative measures were forthcoming. For further details on how different organisations define and view alternatives see, for example, UN High Commissioner for Refugees, *Guidelines on the Applicable Criteria and Standards Relating to the Detention of Asylum-Seekers and Alternatives to Detention*, (Geneva: UNHCR, 2012); Equal Rights Trust, *Unravelling Anomaly* (see n. 33); European Union Agency for Fundamental Rights, *Detention of Third-Country Nationals in Return Procedures: Thematic Report*, (Vienna: FRA, 2010), 72-81.
48. Sampson and Mitchell, “Global Trends” (see n. 8).
49. Natasa Chmelickova, ed. *Survey on Alternatives to Detention of Asylum Seekers in EU Member States*, (Regional Advocacy Coalition, 2006); Cathryn Costello and Ezra Kaytaz, *Building Empirical Evidence into Alternatives to Detention: Perceptions of Asylum-Seekers and Refugees in Toronto and Geneva*, (Geneva: UNHCR, 2013); European Migration Network, *The Use of Detention and Alternatives to Detention in the Context of Immigration Policies: Synthesis Report for the EMN Focussed Study 2014*, (European Commission, 2014); Ophelia Field and Alice Edwards, *Alternatives to Detention of Asylum Seekers and Refugees*, (Geneva: UNHCR, 2006).
50. Amnesty International, *Irregular Migrants and Asylum-Seekers: Alternatives to Immigration Detention*, (London: Amnesty International, 2009); Edwards, *Back to Basics* (see n 17); Field and Edwards, *Alternatives to Detention* (see n. 49).
51. Nina Siulc, Zhifen Cheng, Arnold Son, and Olga Byrne, *Legal Orientation Program: Evaluation and Performance and Outcome Measurement Report, Phase II*, (New York: Vera Institute of Justice, 2008). The lack of an evidence-base for migration programs is discussed in International Organization for Migration, *Assessing the Costs and Impacts of Migration Policy: An International Comparison*, (Geneva: IOM, 2008).
52. Jane Aspden, *Evaluation of the Solihull Pilot for the United Kingdom Border Agency and the Legal Services Commission*. (UKBA and LSC, 2008); Andrew Cranfield, *Review of the Alternative to Detention (A2D) Project*, (London: Tribal Group, 2009); Department of Immigration and Citizenship, *Community Care Pilot and Status Resolution Trial*, (Canberra: DIAC, 2009); Lisa Nandy, An Evaluative Report on the Millbank Alternative to Detention Project, (London: The Children’s Society and Bail for Immigration Detainees, 2009); Eileen Sullivan, Felinda Mottino, Ajay Khashu, and Moira O’Neil, “Testing Community Supervision for the INS: An Evaluation of the Appearance Assistance Program Volume 1” (New York: Vera Institute for Justice, 2000), <http://www.vera.org/content/testing-community-supervision-ins-evaluation-appearance-assistance-program>; Verbauwhede, *Alternatives to Detention for Families with Minor Children - The Belgium Approach* (Belgian Presidency of the Council of the European Union, 2010), http://idcoalition.org/wp-content/uploads/2010/09/discussant_i_alternatives_for_detention.pdf
53. International Detention Coalition, *Case Management as an Alternative to Immigration Detention: The Australian Experience*, (Melbourne: IDC, 2009); International Detention Coalition, *Dignity Without Exception: Alternatives to Immigration Detention in Mexico*, (Mexico City, Mexico: IDC, 2013); Grant Mitchell and Sara Kirsner, “Asylum Seekers Living in the Australian Community: A Casework and Reception Approach, Asylum Seeker Project, Hotham Mission, Melbourne,” *Refuge*, 22, no. 1 (2004): 119-28; Rutgers School of Law - Newark Immigrant Rights Clinic and American Friends Service Committee, *Freed But Not Free: A Report Examining the Current Use of Alternatives to Immigration Detention*, (New Jersey: Rutgers and AFSC, 2012); Susan Weishar, “A More Humane System: Immigration Detention through Community-Based Alternatives (Part 2),” *JustSouth Quarterly*, no. Spring (2011): 4 & 9.
54. Department of Immigration and Citizenship, *Annual Report 2009-2010*, (Canberra: DIAC, 2010) 159; Dita Vogel and Norbert Cyrus, *Irregular Migration in Europe - Doubts on the Effectiveness of Control Strategies*. (Hamburg: Hamburg Institute of International Economics, 2008).
55. Examples are provided in Section 4.
56. Valerie Braithwaite, *Compliance with Migration Law: Report for the Department of Immigration and Citizenship*, (Canberra: DIAC, 2010); Costello and Kaytaz *Building Empirical Evidence* (see n. 49); Ilan Katz, Abigail Powell, Sandra Gendra, Tricia Deasy, and Erik Okerstrom, *The Experiences of Irregular Maritime Arrivals Detained in Immigration Detention Facilities: Final Report*. (Sydney: Social Policy Research Centre, University of New South Wales and Australian Survey Research Group, 2013).
57. Braithwaite, *Compliance with Migration Law* (see n. 56); Costello and Kaytaz, *Building Empirical*

- Evidence* (see n. 49); Katz et al., *Irregular Maritime Arrivals Detained* (see n. 56).
58. Costello and Kaytaz, Building Empirical Evidence (see n. 49).
 59. Edwards, *Back to Basics* (see n 17).
 60. U.S. Government Accountability Office, *Alternatives to Detention: Improved Data Collection and Analyses Needed to Better Assess Program Effectiveness* (Washington, D.C.: US GAO, 2014), <http://www.gao.gov/products/GAO-15-26> 30-31.
 61. Edwards, *Back to Basics* (see n 17).
 62. Email from the Director of the Toronto Bail Project 30.07.2015. On file with the IDC.
 63. International Detention Coalition, *Case Management as an Alternative* (see n. 53).
 64. Department of Immigration and Border Protection, *Annual Report 2009-10* (Canberra: DIAC, 2010) 171.
 65. United Kingdom Home Office, *UK Freedom of Information Request - 34114*. On file with the IDC.
 66. Email from UNHCR Indonesia, 13 March 2015. Copy on file with the IDC.
 67. Oral testimony of Julie Myers Wood. "S. 744 and the Immigration Reform and Control Act of 1986: Lessons Learned or Mistakes Repeated?" Hearing before the U.S. House of Representatives Committee on the Judiciary, One Hundred Thirteenth Congress, First Session on s.744. 22 May 2013. <http://judiciary.house.gov/cache/files/3498f4a0-82f4-4902-a73b-da2d54055f44/113-30-81174.pdf> 81.
 68. Of 19,905 third country nationals ordered to leave, 12,988 returned voluntarily and 614 returned through an Assisted Voluntary Return program. European Migration Network, "Country Factsheet: Sweden 2012." http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/country-factsheets/sweden-emn-ountry-factsheet_en.pdf 6.
 69. Jesuit Refugee Service Europe, *From Deprivation to Liberty: Alternatives to Detention in Belgium, Germany, and the United Kingdom*, (Brussels: JRS Europe, 2011).
 70. An analysis of such cost savings can also be found in Susan Banki and Ian Katz, *Resolving Immigration Status Part 2: Comparative Case Studies*, (Sydney NSW: Social Policy Research Centre UNSW, 2009); Edwards, *Back to Basics* 84 (see n 17); Field and Edwards, *Alternatives to Detention* 48-50 (see n. 49).
 71. National Immigration Forum, *The Math of Immigration Detention* (2013) 1 [http://www.immigra-tiondetention.pdf](http://www.immigra-tionforum.org/images/uploads/mathoffimmigrationdetention.pdf)
 72. The annual cost of detaining an asylum seeker in Australia was \$239,000 in 2013-14: Australian National Commission of Audit, *The Report of the National Commission of Audit* (Canberra: NCOA, 2014) 10.14 <http://www.ncoa.gov.au/report/appendix-vol-2/10-14-illegal-maritime-arrival-costs.html>
 73. Cost to operate the Asylum Seeker Assistance Scheme. Based upon the provision of assistance to 2802 persons at a cost of AUD 9.058 million during 2009-2010: Australia Department of Immigration and Citizenship, *Annual Report 2009-2010*, (Canberra: DIAC, 2010), Administered Item - Payments to the Australian Red Cross Society for the Asylum Seeker Assistance Scheme <http://www.immi.gov.au/about/reports/annual/2009-10/html/outcome-2/administered2-1-5.htm>
 74. Cost to operate the Community Care Pilot at AUS\$5.6 million for 2008/9 with a maximum of 400 people in the pilot during this period, with an average daily cost of AUD \$38.30. Excludes case management costs. See Joint Standing Committee on Migration, "Inquiry into Immigration Detention in Australia: Report 2 - Community-Based alternatives to Detention," (Canberra: Commonwealth of Australia, 2009), 122 http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Completed_Inquiries/mig/detention/report2
 75. Philippe De Bruycker (Ed.), Alice Bloomfield, Evangelia (Lilian) Tsourdi, and Joanna Pétin, "Alternatives to Immigration and Asylum Detention in the EU: Time for Implementation," (Odysseus Network and the European Union, 2015), 129 <http://odysseus-network.eu/wp-content/uploads/2015/02/FINAL-REPORT-alternatives-to-detention-in-the-EU.pdf>
 76. De Bruycker, "Alternatives in the EU," 129 (see n. 75).
 77. Figures for 2013. Quoted in European Migration Network, *The Use of Detention and Alternatives to Detention in the Context of Immigration Policies in Belgium*, (Brussels: EMN, 2014), <http://www.emnbelgium.be/publication/detention-and-alternatives-detention-belgium>
 78. EMN, *Immigration Policies Belgium*, see (n.77). Although data for 2013 could not be located, the cost per day per person for housing and assisting asylum-seekers in *open centres* was €53 in 2009 (approximately USD \$68). Mieke Candaele, spokesperson for FEDASIL, quoted in UNHCR, "Alternatives to the Detention of Asylum-Seekers in Belgium," (UNHCR, November 2011), <http://www.refworld.org/docid/524fc3ef4.html>

79. Edwards, *Back to Basics* (see n 17).
80. Edwards, *Back to Basics* (see n 17).
81. Edwards, *Back to Basics* (see n 17).
82. This figure is for shelters for unaccompanied refugee and asylum seeking children. This includes rental of premises, weekly allowances, security, supplies, and activities for the children, but excludes health care costs and the initial purchase of furniture and equipment. Email from UNHCR Indonesia, 2015. On file with the IDC.
83. U.S. GAO, *Improved Data Collection* 19 (see n. 60).
84. ISAP program. U.S. GAO, *Improved Data Collection* 19 (see n. 60).
85. Interview during fieldwork by Robyn Sampson.
86. UK National Audit Office, *Returning failed asylum applicants*, (London: The Stationary Office, 2005) 44.
87. Given some costs are the same across these two models (i.e. airfares and some staffing costs); the comparison is demonstrated by comparing the 'non-common costs' (i.e. location, detention versus counselling, allowances). This allows for a conservative estimate of the costs to be compared. Senate Legal and Constitutional Legislation Committee, *Additional Budget Estimates Hearing: Immigration and Citizenship Portfolio*, (2009) http://www.aph.gov.au/senate/committee/legcon_ctte/estimates/add_0809/diac/38.pdf
88. See Medical Justice, *Review into Ending the Detention of Children for Immigration Purposes: Response by Medical Justice*, (2010) quoted in Edwards, *Back to Basics* (see n 17).
89. O'Brien, Natalie, "Asylum Compo Bill Tops \$16m," *The Sydney Morning Herald*, June 12 2011.
90. Ward, *Long Term Health Costs* (see n. 44).
91. As described in detail in Section 1.3.3. See also Ichikawa et al. "Effect of Post-Migration Detention (see n. 43); Steel et al. *Impact of Detention* (see n 43).
92. Coffey et al., "Meaning and Mental Health Consequences" (see n. 26).
93. Cornelis J. Laban, Ivan H. Komproe, Hajo B. P. E. Gernaat, and Joop T.V.M. de Jong. "The Impact of a Long Asylum Procedure on Quality of Life, Disability and Physical Health in Iraqi Asylum Seekers in the Netherlands." *Social Psychiatry and Psychiatric Epidemiology* 43, no. 7 (2008): 507-15; Susan Rees, "Refugee or Retrauma? The Impact of Asylum Seeker Status on the Wellbeing of East Timorese Women Asylum Seekers Residing in the Australian Community," *Australasian Psychiatry*, 11 Supplement, (2003): 96-101.
94. Ilan Katz, Geraldine Doney, and Effie Mitchell, *Evaluation of the Expansion of the Community Detention Program: Final Report to the Department of Immigration and Citizenship*, (Sydney: Social Policy Research Centre, UNSW, 2013) 8.
95. Katz, *Evaluation of Community Detention* (see n. 94).
96. Australian Human Rights Commission, *Immigration Detention at Villawood: Summary of Observations from Visit to Immigration Detention Facilities at Villawood*, (Canberra: AHRC, 2012), 16.
97. For instance, evidence suggests returned asylum seekers who were detained in Australia for long periods were in a much more difficult position trying to re-establish life than returned asylum seekers who had not been detained: David Corlett, *Following Them Home: The Fate of the Returned Asylum Seekers*. (Melbourne: Black Inc., 2005) 59. See Sampson, Correa-Velez and Mitchell *Removing Seriously Ill Asylum Seekers* (see n. 30) regarding the impact of poor health on the ability to prepare for return and Coffey et al., "Meaning and Mental Health Consequences" (see n. 26) regarding the difficulties faced by former detainees in building a new life after release with a visa.
98. Field and Edwards argue that asylum seekers in their destination country want to comply with authorities while waiting for a visa outcome in order to secure their future legal status, Field and Edwards, *Alternatives to Detention* (see n. 49).
99. UNHCR, *Refugee Protection and Mixed Migration: A 10-point Plan of Action*, (Geneva: UNHCR, 2007). For a discussion of the different types of irregular migrants see Ryszard Cholewinski and Kristina Touzenis, "Irregular Migration into and through Southern and Eastern Mediterranean Countries: Legal Perspectives," In *CARIM Analytic and Synthetic Notes 2009/01* (Florence: Consortium for Applied Research on International Migration, 2009) and Vogel and Cyrus *Irregular Migration in Europe* (see n. 54).
100. See also Section 2.4.1. This was evident in field work in Spain, Sweden, Hong Kong and the Netherlands. This finding is evident in Field and Edwards, *Alternatives to Detention* (see n. 49); Mitchell and Kirsner *Casework and Reception Approach* (see n. 53); Sullivan et al., "Testing Community Supervision" (see n. 52). It is important to note that transit or destination status can only be established on a case-by-case basis for each individual (see Section 6.4.3).

101. Field and Edwards, *Alternatives to Detention*, iv (see n. 49).
102. See Rutvica Andrijasevic, "Lampedusa in Focus: Migrants Caught between the Libyan Desert and the Deep Sea," *Feminist Review* 82, no. 1 (2006): 120-25; Jacqueline Hagan, Karl Eschbach, and Nestor Rodriguez, "U.S. Deportation Policy, Family Separation, and Circular Migration," *The International Migration Review* 42, no. 1 (2008): 64; Stephen H. Legomsky, "The USA and the Caribbean Interdiction Program," *Int J Refugee Law* 18, no. 3-4 (2006): 677-95; Janet Phillips and Harriet Spinks, "Background Note: Boat Arrivals in Australia since 1976," (Canberra: Parliamentary Library, Commonwealth of Australia, 2011).
103. See also Section 5 Minimum Standards. This was evident in field work in Sweden, Belgium and Hong Kong. This finding is supported by the findings of Edwards, *Back to Basics* (see n 17); Jesuit Refugee Service Europe, *From Deprivation to Liberty*, (see n. 69); Field and Edwards, *Alternatives to Detention* 30-35 (see n. 49); Lucy Fiske and Mary Ann Kenny, "'Marriage of Convenience' or 'Match Made in Heaven': Lawyers and Social Workers Working with Asylum Seekers." *Australian Journal of Human Rights* 10, no. 1 (2004): 137-57; Fleay, Caroline, and Lisa Hartley. 2015. "I Feel Like a Beggar: Asylum Seekers Living in the Australian Community Without the Right to Work." *Journal of International Migration and Integration* (2015): 1-18, doi: 10.1007/s12134-015-0453-x; Lutheran Immigration and Refugee Service, *Alternatives to Detention Programs: An International Perspective*, (Washington, D.C.: LIRS, 2009); Mitchell and Kirsner *Casework and Reception Approach* (see n. 53).
104. For a discussion, see Jesuit Refugee Service Europe *Living in Limbo: Forced Migrant Destitution in Europe* (Brussels: Jesuit Refugee Service Europe, 2010). <http://www.irseurope.org/publications/JRS%20Europe%20Living%20in%20Limbo%20-18-18h.pdf>
105. Alice Bloch and Liza Schuster, "Asylum and Welfare: Contemporary Debates," *Critical Social Policy* 22, no. 3 (2002): 393-414; Wayne A. Cornelius, "Controlling 'Unwanted' Immigration: Lessons from the United States, 1993-2004," *Journal of Ethnic and Migration Studies* 31, no. 4 (2005): 775-94; Sylvie Da Lomba, "The Threat of Destitution as a Deterrent against Asylum Seeking in the European Union," *Refuge* 23, no. 1 (2006): 81-93; Thielemann *Does Policy Matter* (see n. 20).
106. Hildegard Dumper, Richard Malfait, and Nick Scott Flynn, *Mental Health, Destitution & Asylum Seekers: A Study of Destitute Asylum Seekers in the Dispersal Areas of the South East of England*, (South of England Refugee & Asylum Seeker Consortium, 2006). This coincides with research that shows refugees' mental health is significantly associated with current socio-political circumstances: Matthew Porter and Nick Haslam, "Predisplacement and Postdisplacement Factors Associated with Mental Health of Refugees and Internally Displaced Persons: A Meta-Analysis," *Journal of American Medical Association* 294, no. 5 (2005): 602-12. For a discussion on the importance of supporting health throughout the assessment process, see Ignacio Correa-Velez, Vanessa Johnston, Joanne Kirk, and Angeline Ferdinand, "Community-Based Asylum Seekers' Use of Primary Health Care Services in Melbourne," *The Medical Journal of Australia* 188, no. 6 (2008): 344-348; Sampson, Correa-Velez and Mitchell *Removing Seriously Ill Asylum Seekers* (see n. 30).
107. This is discussed in more detail in Sections 7 Case management and 5.4 Legal advice. This finding was evident in the United Kingdom, Sweden, the United States, Australia, Belgium and reinforced by the findings of Aspden, *Evaluation of the Solihull Pilot* (see n. 52); Edwards, *Back to Basics* (see n 17); Field and Edwards, *Alternatives to Detention* 45 (see n. 49); Fiske and Kenny, "Marriage of Convenience" (see n. 103); Hotham Mission Asylum Seeker Project, *Providing Casework to Asylum Seekers at the Final Stages: Discussion Paper*, (Melbourne: Hotham Mission, 2006), <http://idcoalition.org/paper-providing-casework-to-asylum-seekers-at-the-final-stages/>; Sullivan et al., "Testing Community Supervision" (see n. 52).
108. Edwards, *Back to Basics* (see n 17) regarding the Glasgow 'family return project'. See also Jesuit Refugee Service Europe, *From Deprivation to Liberty* (see n. 69).
109. This was evident in Hungary, Hong Kong and Spain. Unfortunately, there is very little data establishing the effectiveness of community management options in 'transit' countries. Some research points to the ways 'transit' countries are actually destination countries for many people: "it is a misconception that all or most migrants crossing the Sahara are "in transit" to Europe. There are possibly more sub-Saharan Africans living in the Maghreb than in Europe... While Libya is an important destination country in its own right, many migrants failing or not venturing to enter Europe prefer to stay in North Africa as a second-best option." Hein de Haas, "Irregular Migration from West Africa to the Maghreb and the European Union: An Overview of Recent Trends," In *IOM Migration Research Series*, (Geneva: International Organization for Migration, 2008) 9.
110. Field and Edwards, *Alternatives to Detention*, 51 (see n. 49).
111. MHub, *Detained Youth: The Fate of Young Migrants, Asylum-Seekers and Refugees in Libya Today*, (MHub, 2015), <http://www.mixedmigra->

- tionhub.org/wp-content/uploads/2015/07/MHUB_2015_Detained-Youth.pdf
112. Edwards, *Back to Basics*, (see n 17).
 113. The United Nations Office of the High Commissioner for Human Rights (OHCHR) has developed a set of guidelines and principles on human rights-based migration governance. The fundamental premise of these guidelines and principles is that all migrants, regardless of their legal status, how they arrive at the border, where they come from or what they look like, are entitled to enjoy their human rights. See OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders*, (Geneva: OHCHR, 2015) http://www.ohchr.org/Documents/Issues/Migration/OHCHR_Recommended_Principles_Guidelines.pdf
 114. For relevant international standards relating to detention: see International Detention Coalition, *Legal Framework and Standards Relating to the Detention of Refugees, Asylum Seekers and Migrants*, (Melbourne: IDC, 2011); See also Amnesty International, *Migration-Related Detention: A Research Guide on Human Rights Standards Relevant to the Detention of Migrants, Asylum-Seekers and Refugees*, (London: Amnesty, 2007) <http://www.unhcr.org/refworld/docid/476b7d322.html> ; UNHCR, Detention Guidelines (see n. 2).
 115. For a discussion of the human rights that underlie this presumption against detention, see Edwards, *Back to Basics* (see n 17) and European Union Agency for Fundamental Rights, *Detention of Third-Country Nationals*, 80-81 (see n. 47).
 116. Ruben Giustiniani, ed. *Migración: Un Derecho Humano (Migration: A Human Right)*, (Buenos Aires: Prometeo, 2004); Cristina Zurbriggen and Lenin Mondol, *Estado actual y perspectivas de las políticas migratorias en el MERCOSUR (Current situation and perspectives of migration policies in MERCOSUR)*, (Montevideo: FLACSO, 2010); Barbara Hines, "The Right to Migrate as a Human Right: The Current Argentine Immigration Law," *Cornell Int'l L.J.* 471 (2010); Also the government reports: Argentine Republic, *Initial Report Submitted by the Argentine Republic under Article 73 of the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, 4 August 2010, CMW/C/ARG/1; *Informe Nacional de la República Argentina sobre la Implementación de los Compromisos emanados de la Cuarta Cumbre de las Américas (National Reports on the Implementation of Commitments from the Fourth Summit of the Americas)*, XLVII GRIC/SIRG Ministerial, GRIC/Inf.1/07, 22 May 2007.
 117. The Directive of the European Parliament and of the Council 2008/115/EC of 16 December 2008, on Common Standards and Procedures in Member States for Returning Illegally Staying Third-Country Nationals.
 118. The Directive of the European Parliament and of the Council 2013/180/96 of 26 June 2013, Laying Down Standards for the Reception of Applicants for International Protection (Recast).
 119. European Union Agency for Fundamental Rights, *Fundamental Rights: Challenges and Achievements in 2012*, (Vienna: EU FRA, 2012).
 120. European Migration Network, *Synthesis Report for the EMN Focussed Study 34* (see n. 49).
 121. European Union Agency for Fundamental Rights, *Fundamental Rights*, 80-81 (see n. 119). The report identifies such case law in Austria, Germany, Denmark, the Netherlands and Slovenia. Hong Kong case law has also required that the government outline the reasons for detention: Mark Daly, "Refugee Law in Hong Kong: Building the Legal Infrastructure," *Hong Kong Lawyer* 09 (2009): 14-30.
 122. UN Committee on the Rights of the Child, *Report of the 2012 Day of General Discussion: The Rights of all Children in the Context of International Migration*, (2012) <http://www2.ohchr.org/english/bodies/crc/docs/discussion2012/ReportDGDChildrenAndMigration2012.pdf>
 123. UN General Assembly, *Report of the Special Rapporteur on the Human Rights of Migrants, François Crépeau*. A/HRC/20/24 (2012), para 72(f); see also Platform for International Cooperation on Undocumented Migrants (PICUM), *Children First and Foremost: A Guide to Realizing the Rights of Children and Families in an Irregular Migrant Situation*, (PICUM, 2013) <http://picum.org/picum.org/uploads/publication/Children%20First%20and%20Foremost.pdf>
 124. UN General Assembly, *Report of the Special Rapporteur para 72(f)* (see n. 123).
 125. UNICEF, *Administrative Detention of Children: A Global Report*, (Geneva: UNICEF, 2011), 167, 226, 229.
 126. Michael Dudley and Bijou Blick, *The Heart of the Nation's Existence - A Review of Reports on the Treatment of Children in Australian Detention Centres*, (ChilOut, 2002) Appendix E; Sarah Mares and Jon Jureidini, "Psychiatric Assessment of Children and Families in Immigration Detention - Clinical, Administrative and Ethical Issues." *Australian and New Zealand Journal of Public Health* 28, no. 6 (2004): 520-526; Human Rights and Equal Opportunity Commission, *A Last Resort? National Enquiry into Children in Detention*, (Canberra: HREOC, 2004); Zachary Steel, "The Politics of Exclusion and Denial: The Mental Health Costs of Australia's Refugee Policy," *Australian and New Zealand Journal of Psychiatry* 37, (2003): A45-A46.

127. "Incarceration, even under relatively safe conditions, is damaging for immigrant children, especially those with high levels of previous trauma exposure" in Rachel Kronick, Cécile Rousseau, and Janet Cleveland. "Asylum-Seeking Children's Experiences of Detention in Canada: A Qualitative Study," *American Journal of Orthopsychiatry*, 85, no. 3 (2015): 287-94. See also David Corlett, Grant Mitchell, Jeroen Van Hove, Lucy Bowring and Katherine Wright, *Captured Childhood*, (Melbourne: International Detention Coalition, 2012) 51; Lorek et al., "Children in Detention" (see n. 42).
128. Kronick, Rousseau and Cleveland, "Asylum-seeking children's experiences of detention" (see n. 127).
129. See also UNHCR and IRC, *Field Handbook for the Implementation of UNHCR BID Guidelines*, (Geneva: UNHCR and IRC, 2011); UNHCR, *UNHCR Guidelines on Determining the Best Interests of the Child*, (Geneva: UNHCR, 2008).
130. Terry Smith and Laura Brownlees, *Age Assessment Practices: A Literature Review & Annotated Bibliography*, (New York: UNICEF, 2011).
131. Corlett et al., *Captured Childhood*, 65 (see n. 127)
132. Corlett et al., *Captured Childhood*, 65 (see n. 127)
133. UN Committee on the Rights of the Child, *General Comment No. 6: Treatment of Unaccompanied and Separated Children outside their Country of Origin* (2005), <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/438/05/PDF/G0543805.pdf?OpenElement>
134. European Union Agency for Fundamental Rights, *Guardianship for Children Deprived of Parental Care - A Handbook to Reinforce Guardianship Systems to Cater for the Specific Needs of Child Victims of Trafficking*, (Luxembourg: Publication Office of the European Union, 2014).
135. UN Committee on the Rights of the Child, *General Comment No. 6*, para 33 (see n. 133).
136. European Union Agency for Fundamental Rights, *Guardianship* (see n. 134).
137. Section 56 of Hungary's Act II of 2007 also provides that children with families may be detained as a measure of last resort and for a maximum of 30 days, where the best interests of the child shall be a primary consideration, and if the immigration authorities are of the opinion that the objectives of detention cannot be met by the confiscation of travel documents or a designated residence requirement.
138. European Migration Network, *Policies, Practices and Data on Unaccompanied Minors in 2014: Hungary*, (European Commission, 2014) http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/unaccompanied-minors/13a_hungary_unaccompanied_minors_en.pdf
139. European Migration Network, *Policies, Practices and Data Hungary* (see n. 138).
140. European Migration Network, *Policies, Practices and Data Hungary* (see n. 138).
141. European Union Agency for Fundamental Rights, *Fundamental Rights: Challenges and Achievements in 2014*, (Vienna: EU FRA. 2014), http://fra.europa.eu/sites/default/files/fra-annual-report-2014_en.pdf; UNHCR, *Detention Guidelines* (see n. 2).
142. John A. Dent, *Research Paper on the Social and Economic Rights of Non-Nationals in Europe*, (ECRE, undated).
143. As described in the above Section 2.5.
144. For a discussion, see Jesuit Refugee Service Europe, *Living in Limbo* (see n.104).
145. Bloch and Schuster, "Asylum and Welfare: Contemporary Debates" (see n. 105); Cornelius "Controlling 'Unwanted' Immigration" (see n. 105); Da Lomba, "The Threat of Destitution" (see n. 105); Thielemann *Does Policy Matter* (see n. 20).
146. Dumper et al., *Mental health, Destitution & Asylum Seekers* (see n. 106). c.f. Hotham Mission Asylum Seeker Project, *Providing Casework*, (see n. 107); Sampson, Correa-Velez and Mitchell *Removing Seriously Ill Asylum Seekers* (see n. 30).
147. As described in Section 2.5.
148. Council of the European Union, *Directive 2013/33/EU*, Article 17 (see n. 118).
149. Council of the European Union, *Directive 2013/33/EU*, Article 15 (see n. 118).
150. Information in this break out box is from interviews and site visits, with further references as noted.
151. "[B]earing in mind that the general objective of a C.A.R. is to develop the capacity of the Centre resident's integration in Spanish society, the Centre operates as a mediating agent in the integration process" Ministerio de Trabajo y Asuntos Sociales, *Refugee Reception Centres (C.A.R.)*, (Madrid: Calidad Administracion Publica, 2007).
152. Ministerio de Trabajo y Asuntos Sociales, C.A.R.: Refugee Reception Centre, (Madrid: Ministerio de Trabajo y Asuntos Sociales, 2006).
153. UNHCR, *Submission by the UNHCR for the OHCHR's Compilation Report Universal Periodic Review Spain*, (Geneva: UNHCR, 2009).

154. For a discussion of the role of visas on resolving migration status, see Susan Banki and Ilan Katz, *Resolving Immigration Status Part 1: Review of the International Literature*, (Sydney NSW: Social Policy Research Centre UNSW, 2009); Banki and Katz, *Resolving Immigration Status Part 2* (see n. 70).
155. UNHCR, *Options Paper 2: Options for Government on Open Reception and Alternatives to Detention*, (Geneva: UNHCR, 2015) 6.
156. Tolerated status is granted to persons satisfying the criteria laid out in article 99 of Romania's Emergency Ordinance 194/2002 on alien's regime in Romania. This includes persons against whom a detention order was made but who could not be returned within 6 months; persons for whom there are serious reasons to believe are victims of human trafficking; and persons detained for deportation, but who could not be removed within 2 years.
157. European Migration Network, *Synthesis Report for the EMN Focussed Study*, 34 (see n. 49).
158. As described in Section 2.4.1 and 2.5. The importance of provision of information has been identified by Aspden, *Evaluation of the Solihull Pilot* (see n. 52); Field and Edwards, *Alternatives to Detention 45* (see n. 49); and Lutheran Immigration and Refugee Service, *An International Perspective* (see n. 103).
159. Costello and Kaytaz, *Building Empirical Evidence*, 35 (see n. 49).
160. Ramji-Nogales, Schoenholtz and Schrag, "Refugee Roulette" (see n. 214).
161. American Bar Association, *Reforming the Immigration System: Proposals to Promote Independence, Fairness, Efficiency, and Professionalism in the Adjudication of Removal Cases*, (Washington DC: ABA, 2010); Aspden, *Evaluation of the Solihull Pilot* (see n. 52).
162. Rutgers School of Law - Newark Immigrant Rights Clinic and American Friends Service Committee, *Freed But Not Free* (see n. 53).
163. Telephone interpretation services are available in some countries. For instance, a number of companies provide telephone interpretation services in Australia. This is especially useful when there are a small number of bilingual speakers for a particular language and for those in rural areas. Telephone interpretation is not ideal but it does improve communication and reduce the reliance on informal interpreters, such as family members.
164. Coffey et al., "Meaning and Mental Health Consequences" (see n. 26).
165. London Detainee Support Group, *No Return, No Release, No Reason* (see n. 27). In addition, airlines may refuse to accept deportees on board if they are resisting deportation: Gibney and Hansen, "Deportation and the Liberal State," (see n. 27).
166. UNHCR, *Detention Guidelines: Guidelines on the Applicable Criteria and Standards Relating to the Detention of Asylum-Seekers and Alternatives to Detention*, (Geneva: UNHCR, 2012), <http://www.unhcr.org/refworld/docid/503489533b8.html>
167. UNHCR and OHCHR, *Global Roundtable on Alternatives to Detention of Asylum-Seekers, Refugees, Migrants and Stateless Persons: Summary Conclusions*, (May 2011) 31, <http://www.unhcr.org/refworld/docid/4e315b882.html>
168. Rutgers School of Law - Newark Immigrant Rights Clinic and American Friends Service Committee, *Freed But Not Free*, 17 (see n. 53).
169. European Union Agency for Fundamental Rights, *Handbook on European Law Relating to Asylum, Borders and Immigration*, (Vienna: EU FRA, 2014), 165.
170. In Germany, immigration and asylum authorities, border guards and the police are responsible for conducting an individual assessment of the grounds for detention, and will file an application for detention of a third-country national with the courts. The final decision to detain can only be made by the court. See European Migration Network, *Synthesis Report for the EMN Focussed Study*, 25 (see n. 49).
171. Eleanor Acer, "Living up to America's Values: Reforming the U.S. Detention System for Asylum Seekers," *Refuge 20*, no. 3 (2004): 44-57; Vladeck, Stephen I. "Boumediene's Quiet Theory: Access to Courts and the Separation of Powers." *Notre Dame Law Review* 84, no. 5 (2009): 2107-2150.
172. For a discussion of the issues facing stateless persons see Equal Rights Trust *Unravelling Anomaly* (see n. 33).
173. For an in-depth description of this program see Edwards *Back to Basics* (see n 17); Field and Edwards *Alternatives to Detention*, 85-89 (see n. 49).
174. Edwards *Back to Basics* (see n 17).
175. Edwards *Back to Basics* (see n 17).
176. Email from the Director of the Toronto Bail Project 30.07.2015. On file with the IDC.
177. European Union Agency for Fundamental Rights, *Handbook on European Law* (see n. 169).
178. For instance, Australia has been found to be in breach of the right to be protected from arbitrary detention on at least five occasions due to its mandatory immigration detention laws. Australian Human Rights Commission, *Migration*

- Laws Must Live up to Australia's Human Rights Commitments, Media release, August 6th 2006, http://www.humanrights.gov.au/about/media/media_releases/2006/59_06.htm
179. International Organization for Migration, National Referral Mechanism (NRM) for the Protection of Vulnerable *Migrants in Zambia*, (IOM, undated), <https://www.iom.int/files/live/sites/iom/files/Country/docs/National-Referral-Mechanism-NRM-for-the-Protection-of-Vulnerable-Migrants-in-Zambia.pdf>
 180. International Organization for Migration, *Guidelines: Protection Assistance for Vulnerable Migrants in Zambia*. (IOM Development Fund and the European Union, undated), http://www.iom.int/files/live/sites/iom/files/Country/docs/Guidelines_Protection-Assistance-for-Vulnerable-Migrants.pdf
 181. International Organization for Migration, *Guidelines*, Annex 1 (see n. 180).
 182. International Organization for Migration, *Training Manual (Facilitator's Guide): Protection Assistance for Vulnerable Migrants in Zambia*, (IOM, undated), <https://www.iom.int/files/live/sites/iom/files/Country/docs/Manual-Protection-Assistance-for-Vulnerable-Migrants.pdf>; International Organization for Migration, Participant Handbook: Training on Protection Assistance for Vulnerable Migrants in Zambia, (IOM, undated), <http://www.iom.int/files/live/sites/iom/files/Country/docs/Participants-Handbook-Protection-Assistance-for-Vulnerable-Migrants.pdf>
 183. Kathleen King and Peter Vodicka, "Screening for Conditions of Public Health Importance in People Arriving in Australia by Boat without Authority," *eMJA* 175 (2001): 600-02.
 184. For a discussion of the issues of the deportation of individuals with a serious illness see Sampson, Correa-Velez and Mitchell *Removing Seriously Ill Asylum Seekers* (see n. 30).
 185. Interview in Sweden.
 186. Godfried Engbersen and Dennis Broeders, "The Fight against Illegal Migration: Identification Policies and Immigrants' Counterstrategies," *American Behavioral Scientist* 50, no. 12 (2007): 1592-609.
 187. Costello and Kaytaz *Building Empirical Evidence* (see n. 49); Ilan Katz Abigail Powell, Sandra Gendera, Tricia Deasy, and Erik Okerstrom, *The Experiences of Irregular Maritime Arrivals Detained in Immigration Detention Facilities: Final Report - SPRC Report 11/13*, (Sydney: Social Policy Research Centre, University of New South Wales and Australian Survey Research Group, 2013).
 188. Citizenship and Immigration Canada, *ENF 20: Detention*. (CIC, 2007), Section 5.8 [http://](http://www.cic.gc.ca/english/resources/manuals/enf/enf20-eng.pdf)
 - www.cic.gc.ca/english/resources/manuals/enf/enf20-eng.pdf
 189. Lutheran Immigration and Refugee Service, *Unlocking Liberty: A Way Forward for U.S. Immigration Detention Policy*, (Baltimore, MD: LIRS, 2011) 19.
 190. LIRS, "Unlocking Liberty", 19 (see n. 189).
 191. Mark Noferi and Robert Koulisch, "The Immigration Detention Risk Assessment," *Georgetown Immigration Law Journal* 29 *Advanced Access* (2015): 45-93; Sampson and Mitchell, "Global Trends" (see n. 8).
 192. Jesuit Refugee Service Europe, *Becoming Vulnerable in Detention: Civil Society Report on the Detention of Vulnerable Asylum Seekers and Irregular Migrants in the European Union*, (Brussels: JRS Europe, 2010).
 193. Lynn Gillam, "Ethical Considerations in Refugee Research: What Guidance do Australia's Research Ethics Documents Have to Offer?" Paper presented at *Researching Refugees and Asylum Seekers: Ethical Considerations* at the University of Melbourne, 17th November 2010; JRS Europe, *Becoming Vulnerable in Detention* (see n. 192).
 194. Article 17.1 of the EU Council of Ministers' Directive 2003/9/EC *Laying Down Minimum Standards for the Reception of Asylum Seekers in Member States* (Official Journal of the European Union L 31/20, 6 February 2003) lists the following vulnerable groups: "minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence" (Art. 17.1).
 195. We note the age of an 'elder' in many countries of origin can be much lower than the age associated with being elderly in destination countries: Rebecca Atwell, Ignacio Correa-Velez, and Sandra M. Gifford, "Ageing out of Place: Health and Well-Being Needs and Access to Home and Aged Care Services for Recently Arrived Older Refugees in Melbourne, Australia," *International Journal of Migration, Health and Social Care* 3, no. 1 (2007): 4-14.
 196. In Canada, officers are instructed to consider *alternatives to detention* and ensure detention is avoided or considered as a last resort for the elderly: Citizenship and Immigration Canada, *ENF 20*, Section 5.13 (see n. 188).
 197. Laurel Anderson, "Punishing the Innocent: How the Classification of Male-to-Female Transgender Individuals in Immigration Detention Constitutes Illegal Punishment under the Fifth Amendment," *Berkeley Journal of Gender, Law & Justice* 25, no. 1 (2010): 1-31.

198. Interview in the United States.
199. Department of Immigration and Citizenship, *Fact Sheet 64: Community Assistance Support Program*. (Canberra: DIAC, 2009).
200. International Detention Coalition, *Legal Framework and Standards* (see n. 114).
201. Eduardo Arboleda, "Refugee Definition in Africa and Latin America: The Lessons of Pragmatism," *Int J Refugee Law* 3, no. 2 (1991): 185-207.
202. Instead, they are to be placed by the Ministry of Family and Social Policies in accommodation facilities in the care of their adult relatives or in the care of a foster family (upon taking into account the opinion of the unaccompanied minor). Unaccompanied minors over the age of 16 can be placed in reception centers.
203. UNHCR, *Refugee Protection and Mixed Migration: The 10-Point Plan of Action*, (Geneva: UNHCR, 2012).
204. Field and Edwards *Alternatives to Detention*, 248 (see n. 49).
205. Coffey et al., "Meaning and Mental Health Consequences" (see n. 26); Eagar et al., *Health in Immigration Detention* (see n 41); Jesuit Refugee Service Europe, *Becoming Vulnerable in Detention* (see n. 192).
206. Equal Rights Trust *Unravelling Anomaly* (see n. 33); A Face to the Story, *Point of No Return: The Futile Detention of Unreturnable Migrants*, (Brussels: Flemish Refugee Action (Belgium), Detention Action (UK), France terre d'asile (France), Menedék - Hungarian Association for Migrants, and ECRE, 2014), http://pointofnoreturn.eu/wp-content/uploads/2014/01/PONR_report.pdf
207. Sullivan et al., "Testing Community Supervision," 30 (see n. 52); Field and Edwards *Alternatives to Detention*, 25 (see n. 49).
208. Field and Edwards *Alternatives to Detention*, 27 (see n. 49); Jesuit Refugee Service Europe, *Alternatives to Detention of Asylum Seekers: Working Paper*, (Brussels: JRS Europe, 2008) 11.
209. For instance, the Hong Kong government lists a lack of family or community ties as a factor which might increase the likelihood of detention: "The detainee does not have fixed abode or close connection (e.g. family or friends) in Hong Kong to make it likely that he/she will be easily located". Security Bureau Immigration Department, *Detention Policy*, (Hong Kong SAR: The Government of the Hong Kong Special Administrative Region, undated). Also evidenced in factors influencing decisions to release on bond: Field and Edwards *Alternatives to Detention*, 206 UK and 225 USA (see n. 49).
210. Cécile Rousseau, Marie-Claire Rufagari, Déogratias Bagilishya, and Toby Measham, "Remaking Family Life: Strategies for Re-Establishing Continuity among Congolese Refugees During the Family Reunification Process," *Social Science & Medicine* 59, no. 5 (2004): 1095-1108; Brooke Wilmsen and Sandra Gifford, *Refugee Resettlement, Family Separation and Australia's Humanitarian Programme*, (Geneva: UNHCR, 2009).
211. This is a factor in decisions to release in the United States (Box 12), Hong Kong (Box 14) and Canada (Box 25). This is reinforced by claims that it is easier, for the purposes of deportation, to locate a person who entered a country legally because of ongoing participation in established structures of society: Gibney and Hansen, *Deportation and the Liberal State* (see n. 27).
212. As one study of recidivism amongst foreigners found: "The findings do not lend support to the arguments that removable aliens pose a disproportionate risk of repeat involvement in local criminal justice systems." Jennifer S. Wong, Laura J. Hickman, and Marika Suttorp-Booth, "Examining Recidivism among Foreign-Born Jail Inmates: Does Immigration Status Make a Difference over the Long Term?" *Global Crime* (2015): 17.
213. As described in Section 2.5.2.
214. As described in Section 2.5.2.
215. Disparities in the adjudication of refugee and visa cases is well documented. Alongside regular training and review of decision makers, legal advice for applicants is a key factor for promoting accurate and consistent decisions across decision makers: Jaya Ramji-Nogales, Andrew I. Schoenholtz, and Philip G. Schrag, "Refugee Roulette: Disparities in Asylum Adjudication," *Stanford Law Review* 60, no. 2 (2007): 295(117).
216. Hotham Mission Asylum Seeker Project, *Providing Casework* (see n. 107); Sampson, Correa-Velez and Mitchell *Removing Seriously Ill Asylum Seekers* (see n. 30).
217. Information in this break out box is from interviews and site visits, with further references as noted. Detention policy has been influenced heavily by decisions handed down in the cases *A, F, AS and YA v Director of Immigration* [2008] HKCU 1109 (CACV 314-317 of 2007, 18 July 2008) and *Hashimi Habib Halim v Director of Immigration* [2008] HKCU 1576 (HCAL 139 of 2007, 15 October 2008). For a discussion, see Daly, "Refugee Law in Hong Kong" (see n. 121).
218. Security Bureau Immigration Department, *Detention Policy*, (see n. 208).
219. Hong Kong SAR has introduced a specific process for migrants to apply for protection

- from torture. See Daly, "Refugee Law in Hong Kong" (see n. 121).
220. Edwards *Back to Basics* (see n 17).
 221. Hotham Mission Asylum Seeker Project, *Providing Casework* (see n. 107); International Detention Coalition, *Case Management as an Alternative* (see n. 53).
 222. Adapted from Case Management Society of Australia, *What is Case Management?* (CMSA, undated) <http://www.cmsa.org.au/definition.html>; Sheldon Gelman and Arthur J. Frankel, *Case Management: An Introduction to Concepts and Skills*, (Chicago, Ill: Lyceum Books, 2004).
 223. Hotham Mission Asylum Seeker Project, *Providing Casework* (see n. 107). For a description of the role of a case manager in a migration context, see Box 15 Case Studies.
 224. Hotham Mission Asylum Seeker Project, *Providing Casework* (see n. 107). For an example of its use by an immigration authority, see Department of Immigration and Multicultural Affairs, *Case Management in DIMA*, (Canberra: DIMA, n.d.).
 225. Case study provided to researchers by an expert involved in this case. A pseudonym has been used.
 226. Case study provided by one of the researchers who was personally involved in the resolution of this case. A pseudonym has been used.
 227. See also Sebastian Sunderhaus, *Regularization Programs for Undocumented Migrants: Working paper 142*, (Koln/New York: The Center for Comparative Immigration Studies, 2006) http://ccis.ucsd.edu/wp-content/uploads/WP_142.pdf
 228. The Department of Immigration and Border Protection will refer individuals to the SRSS program by 'bands'; individuals will then be eligible for services based on the band they are in. For an overview of the different bands and services provided, see Australian Red Cross, *Addressing the Humanitarian Needs of Migrants in Transition: Status Resolution Support Overview*, (Australian Red Cross, undated) <http://refugeehealthnetwork.org.au/wp-content/uploads/Red-Cross-SRSS-overview1.pdf>; Adult Multicultural Education Services, *Status Resolution Support Services (SRSS) - Overview*, (AMES, 2014), <http://refugeehealthnetwork.org.au/wp-content/uploads/AMES-SRSS-Overview.pdf>
 229. Department of Immigration and Citizenship, *Community Care Pilot* (see n. 52).
 230. These costs have been calculated as follows: The Community Care Pilot cost \$5.6 million for 2008/9 with a maximum of 400 people in the pilot during this period: the average daily cost is calculated at \$38.30, excluding case management costs. Joint Standing Committee on Migration, "Inquiry into Immigration Detention, 122 (see n. 74). We have reported the cost of detention as used for detention debts. Joint Standing Committee on Migration, *Inquiry into Immigration Detention in Australia: A New Beginning. First report: Criteria for Release from Detention*, (Canberra: Commonwealth of Australia, 2008) 112.
 231. Department of Immigration and Citizenship *Annual Report 2009-2010*, 168 (See n. 73).
 232. The International Organization for Migration has found that "additional 'investment' by returning states in reintegration support in countries of origin is likely to render the return most sustainable with flow-on benefits such as encouraging other irregular migrants to return home voluntarily and incentivizing returnees to stay home." International Organization for Migration: *Return Migration: Policies and Practices in Europe*, (Geneva: IOM, 2004) 7.
 233. Information in this break out box is from interviews and further references as noted.
 234. Sullivan et al., "Testing Community Supervision," 16 (see n. 52).
 235. Field and Edwards *Alternatives to Detention*, 92 (see n. 49).
 236. Hotham Mission Asylum Seeker Project, *Providing Casework* (see n. 107); c.f. The Centre for Social Justice, *Asylum Matters: Restoring Trust in the UK Asylum System*. (London: The Centre for Social Justice, 2008) 4.
 237. Information in this break out box is from interviews, site visits and further references as noted.
 238. Families who do not fall within this criteria are provided with accommodation for a limited period in an open return centre established in 2013 in the town of Holsbeek. The facility is jointly managed by FEDASIL and the Immigration Office and during their stay, families are counselled on the possibility of either obtaining a residence permit or voluntary return to their country of origin. See European Migration Network, *Focused study of Belgium* (see n. 77).
 239. UNHCR, *Alternatives to the Detention of Asylum-Seekers in Belgium*. (Brussels: UNHCR, 2011) 14, http://www.unhcr.be/fileadmin/user_upload/pdf_documents/UNHCR-alternatives_to_Detention-Roadmap-Belgium-ENG-screen.pdf
 240. UNHCR, *Alternatives in Belgium* 14 (see n. 238).
 241. Pieter Stockmans, "Return Homes as an Alternative to Detention," Presentation at the *Expert Meeting on Detention in the Framework of the Eastern Partnership Panel on Migration and Asylum*, Chisinau, Moldova. 26-27 March 2014.

242. UNHCR, *Alternatives in Belgium* 14 (see n. 238).
243. US Citizenship and Immigration Services *Questions and Answers: Victims of Human Trafficking, T Nonimmigrant Status*. (Washington, D.C.: US Citizenship and Immigration Services, 2010).
244. Sarah Craggs and Ruzayda Martens, *Rights, Residence and Rehabilitation: A Comparative Study Assessing Residence Options for Trafficked Persons*, (Geneva: IOM, 2010) 67.
245. This information was provided to the International Detention Coalition by a regional expert, with further references as noted.
246. UNHCR, *High Commissioner's Dialogue on Protection Challenges: Breakout Session 1: Gaps in the International Protection Framework and in Its Implementation 8-9 December*, (Geneva: UNCHR, 2010) <http://www.unhcr.org/4d09e47a9.pdf>
247. Foreign Ministry of Argentina, *Informe elaborado en cumplimiento de la A/RES/67/172: La perspectiva de derechos humanos en el tratamiento de la cuestión migratoria en la República Argentina*, (FMA, 2013).
248. P.A.R. "Migration through Morocco: No Way Forward or Back," *The Economist*, February 11th, 2014, <http://www.economist.com/blogs/pomegranate/2014/02/migration-through-morocco>
249. IRIN, "Morocco: The Forgotten Frontline of the Migrant Crisis," July 29th, 2015, <http://allafrica.com/stories/201507301776.html>
250. Centre for Equal Opportunities and Opposition to Racism, *Annual Report on Migration*, (Brussels: CEOOR, 2013) 118.
251. Isabelle Johansson, *Particularly Distressing Circumstances: Regularization and Employment in Sweden, REGAINE Assessment Report* (International Centre for Migration Policy Development, 2014) 17-18.
252. Article 2 of Act II of 2007 states that "exile" means any person who is provided temporary shelter and may not be returned to the country of his/her nationality, or in the case of a stateless person, to the country of domicile, for fear of being subjected to capital punishment, torture or any other form of cruel, inhuman or degrading treatment, and there is no safe third country offering refuge, and who is not entitled to asylum or treatment as a stateless person, nor to any subsidiary form of protection or temporary protection".
253. European Migration Network, "Ad-Hoc Query on Implementing Tolerated Stay," (EMN, 2014), http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/ad-hoc-queries/illegal-immigration/549_emn_ahq_on_implementing_tolerated_stay_03072014_en.pdf
254. Cragg and Martens, *Rights, Residence and Rehabilitation*, 132 (see n. 244).
255. United Nations Office on Drugs and Crime, *Toolkit to Combat Trafficking in Persons*, (Geneva: UNODC, 2008) 326.
256. As discussed in Section 7, a robust case management system and regular engagement with caseworkers help ensure that individuals are better supported and managed in the community to achieve case resolution.
257. Sections 57 and 127 of Brazil's Law No. 6.815 of August 19, 1980, the Foreigner's Statute (*Estatuto do Estrangeiro*).
258. Information in this break out box is from interviews and site visits, with further references as noted. Further information available at http://www.migrationsverket.se/info/skydd_en.html
259. Grant Mitchell, "Asylum Seekers in Sweden," (August 2001) <http://www.fabian.org.au/940.asp>
260. Of 19,905 third country nationals ordered to leave, 12,988 returned voluntarily and 614 returned through an Assisted Voluntary Return program. European Migration Network, "Country Factsheet: Sweden 2012," (EMN, 2012) 6, http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/country-factsheets/sweden-emn-ountry-factsheet_en.pdf.
261. Grant Mitchell, *Asylum Seekers in Sweden: An Integrated Approach to Reception, Detention, Determination, Integration and Return*, (2001), <http://idcoalition.org/asylum-seekers-in-sweden/>
262. Franck Düvell, "Transit Migration: A Blurred and Politicised Concept," *Population, Space and Place* 18, no. 4 (2012): 415-427; Aspasia Papadopoulou-Kourkoulou, *Transit Migration: The Missing Link between Emigration and Settlement* (Basingstoke: Palgrave Macmillan, 2008).
263. There is now large-scale economic and political investment by the European Union in the ability of its nearest neighbours to halt the travel of migrants, including in Eastern Europe, Turkey and northern Africa. The United States has also taken such measures to reduce migration through Mexico and other Latin American countries, while Australia has invested in such intervention in Indonesia. See Jason De León, "The Efficacy and Impact of the Alien Transfer Exit Programme: Migrant Perspectives from Nogales, Sonora, Mexico," *International Migration* 51, no. 2 (2013): 10-23; Raúl Hernández i Sagrera, "Exporting EU Integrated Border Management Beyond EU Borders: Modernization and

- Institutional Transformation in Exchange for More Mobility?" *Cambridge Review of International Affairs* 27, no. 1 (2014): 167-83; Kemal Kirisci, "Reconciling Refugee Protection with Efforts to Combat Irregular Migration: The Case of Turkey and the European Union," In *Global Migration Perspectives*, edited by Jeff Crisp and Khalid Koser, (Geneva: Global Commission on International Migration, 2004); Amy Nethery and Stephanie J. Silverman, eds. *Immigration Detention: The Migration of a Policy and Its Human Impact*, (Ashgate: Routledge, 2015); Amy Nethery, Brynna Rafferty-Brown, and Savitri Taylor, "Exporting Detention: Australia-Funded Immigration Detention in Indonesia," *Journal of Refugee Studies* (2012) doi: 10.1093/jrs/fes027; Florian Trauner and Stephanie Deimel, "The Impact of EU Migration Policies on African Countries: The Case of Mali," *International Migration* 51, n. 4(2013): 20-32.
264. Papadopoulou-Kourkoulou, *Transit Migration* (see n. 262).
265. Antje Missbach, "Making a "Career" in People-Smuggling in Indonesia: Protracted Transit, Restricted Mobility and the Lack of Legal Work Rights," *Sojourn: Journal of Social Issues in Southeast Asia* 30, no. 2(2015): 423-454.
266. MHub *Detained Youth* (see n. 111).
267. Information provided to the IDC by a national expert.
268. This was evident in Hungary, Hong Kong and Spain. Unfortunately, there is very little research establishing the effectiveness of community management options in 'transit' countries. Some research points to the ways 'transit' countries are actually destination countries for many people: de Haas, "Irregular Migration from West Africa," (see n. 109).
269. Joe Biden, "A plan for Central America," *The New York Times*, January 29th 2015, <http://www.nytimes.com/2015/01/30/opinion/joe-biden-a-plan-for-central-america.html>
270. Mana Rabiee, "Greece pledges to shut immigration detention centers," *Reuters U.S.*, February 14th 2015, <http://www.reuters.com/video/2015/02/14/greece-pledges-to-shut-immigrant-detenti?videoId=363197263>
271. Karolina Tagaris, "Greece pledges to shut immigration detention centers." *Reuters U.K.* February 14th 2015. <http://uk.reuters.com/article/2015/02/14/uk-greece-politics-immigrants-idUKKBNOLIQ720150214>
272. UNHCR, "UNHCR Welcomes the Envisaged Changes in the Administrative Detention of Third Country Nationals" Press release, February 19th, 2015 <http://www.unhcr.gr/nea/artikel/24dcef5d13ebd29a1559fc4d7339ad10/unhcr-welcomes-the-envisaged-changes.html>
273. Banki and Katz, *Resolving Immigration Status Part 2*, 102 (see n. 70); Field and Edwards, *Alternatives to Detention*, 47 (see n. 49).
274. Edwards, *Back to Basics* (see n 17).
275. See Article 46 of the Venezuelan Immigration Law and Migration No. 37.944 of 24 May, 2004.
276. Banki and Katz, *Resolving Immigration Status Part 2*, 14-16 (see n. 70); Field and Edwards, *Alternatives to Detention*, 45 (see n. 49).
277. Field and Edwards, *Alternatives to Detention*, 35 (see n. 49).
278. Field and Edwards, *Alternatives to Detention*, 30 (see n. 49).
279. Field and Edwards, *Alternatives to Detention*, 35 (see n. 49).
280. Pursuant to section 48(2) of Hungary's of Hungary's Act II of 2007 on the Admission and Rights of Residence of Third-Country Nationals
281. Field and Edwards, *Alternatives to Detention*, 35 (see n. 49).
282. We have not come across any examples of authorities using new communication technologies such as email, SMS/text messages, Skype or web-based log in for reporting purposes. This may be worth further exploration, as it has the potential to increase contact with authorities while limiting impositions on daily life.
283. "Persons released to [the Toronto Bail Project] are initially required to report twice weekly to the offices of TBP in downtown Toronto. Reporting requirements are softened as trust develops between the two parties and there are no lapses in reporting." Edwards, *Back to Basics*, 58 (see n 17).
284. Rutgers School of Law - Newark Immigrant Rights Clinic and American Friends Service Committee, *Freed But Not Free*, 16 (see n. 53).
285. Information in this break out box is from De Bruycker, "Alternatives in the EU," 129 (see n. 75), with further references as noted.
286. Information obtained during fieldwork.
287. Information in this break out box based on Sullivan et al., "Testing Community Supervision" (see n. 52).
288. Unlike bond or bail programs, there were no financial consequences for the guarantor upon non-compliance in this program.
289. A detailed breakdown of cost outcomes is found at Sullivan et al., "Testing Community Supervision," 64-69 (see n. 52).

290. Field and Edwards, *Alternatives to Detention*, 45 (see n. 49) also recommend further research in this area.
291. It is important to be aware that some detainees may be exploited if they become indebted to unscrupulous guarantors.
292. Information in this break out box is from Edwards, *Back to Basics* (see n 17) and other references as noted.
293. Citizenship and Immigration Canada, *ENF 20* (see n. 188).
294. Community Legal Education Ontario, *Being Arrested and Detained for Immigration Reasons*, (CLEO, 2008), <http://www.cleo.on.ca/english/pub/onpub/PDF/immigration/arrdetim.pdf>
295. As discussed in Section 1.3.2. See also Costello and Kaytaz, *Building Empirical Evidence* (see n. 49); London Detainee Support Group, *No Return, No Release, No Reason* (see n. 27).
296. For a discussion on issues of sustainable return see Ruerd Ruben, Marieke Van Houte, and Tine Davids. "What Determines the Embeddedness of Forced-Return Migrants? Rethinking the Role of Pre- and Post-Return Assistance." *International Migration Review* 43, no. 4 (2009): 908-37.
297. APT, IDC and UNHCR, *Monitoring Immigration Detention* (see n. 2).
298. *Department Order No. 94/1998, Establishing a Procedure for Processing Applications for the Grant of Refugee Status* [Philippines], 4 March 1998, <http://www.unhcr.org/refworld/docid/3ede2d914.html>
299. Information in this break out box based on the expert knowledge of staff of the International Detention Coalition, and from Department of Immigration and Citizenship, *Fact Sheet 85: Removal Pending Bridging Visa*, (Canberra: DIAC, 2007).
300. Information provided to the IDC by a national expert.
301. Electronic monitoring has been used in migration matters primarily in the USA: Field and Edwards, *Alternatives to Detention*, 36-38 (see n. 49).
302. Information in this break out box is from interviews and site visit. Further information available at http://www.migrationsverket.se/info/skydd_en.html
303. Committee for the Prevention of Torture, *Report to the Swedish Government on the Visit to Sweden Carried Out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 9 to 18 June 2009*, <http://www.cpt.coe.int/documents/swe/2009-34-inf-eng.pdf>

**International
Detention Coalition**

Human rights for detained refugees,
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